

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.109 of 2021

Arising Out of PS. Case No.-56 Year-2016 Thana- GANGABRIDGE District- Vaishali

RATAN MEHTA Son of Ashok Mehta @ Ram Bachan Singh Resident of
Village- Bigha Anand Bagh, P.S.- Karpi, District- Arwal.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arvind Kumar Pandey, Advocate
		Mr. Jay Ram Prasad, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 19-07-2023

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, putting to challenge a judgment of conviction dated 07.10.2020 and an order of sentence dated 15.10.2020, passed by learned Additional Sessions Judge-1st-cum-Special Judge NDPS Act, Vaishali at Hajipur, in G.R. No. 2436 of 2016, arising out of Ganga Bridge P.S. Case No. 56 of 2016, whereby the appellant has been convicted and sentenced as under:



Criminal Appeal (DB) No. 109 of 2021				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Ratan Mehta	20(b)(ii)(C) of the NDPS Act	R.I. for 13 years	1,00,000/-	S.I. for six months

2. A self statement of the Station House Officer, Ganga Bridge Police Station, recorded at 6:30 am on 23.06.2016 at Shahpur (Terasia), is the basis for registration of the concerned Ganga Bridge P.S. Case No. 56 of 2016, disclosing the commission of the offences punishable under Section 8/20(b)(ii) (C), 25 and 29 of the NDPS Act. He asserted in his self statement that, on 26.06.2016 at 11:30 pm, he along with other police personnel were on a mission to conduct raids under a simultaneous drive. The team consisted of a Sub-Inspector of police, Amarjeet Kumar (PW-7), Assistant Sub-Inspector of police, Nand Kishore Singh (PW-2), Assistant Sub-Inspector, Badri Narayan Singh (PW-3), a SAP constable, Devi Dayal Singh (not examined), SAP constable, Binod Kumar Roy (not examined) BHG (Bihar Home Guard), Ram Iqbal Rai (not examined), BHG Shankar Kumar (PW-4) and BHG Mukesh Kumar (not examined). During the course of the duty at about 2:30 am, he received a secret information that accused Pradeep Roy was scheduled to reach his house with *ganja* in two vehicles. After informing the senior officials about the secret information, he proceeded to village



Shahpur and when he reached there at 3 am, he found two vehicles approaching. The vehicles were signaled to stop, whereafter the person sitting in the second vehicle started fleeing away and managed to escape taking advantage of banana orchard. The person sitting in the first vehicle was questioned by the police officials, who disclosed his name as Ratan Mehta (the present appellant) and name of the person, who had fled away, as Pradeep Rai. Two persons, namely, Rajiv Rai (PW 6) and Shivjee Rai (PW 8) were requested to become independent witnesses to the search and seizure, to which they agreed. From the pickup van, which the appellant was occupying, the police recovered 19 packets of *ganja*. From the second vehicle, i.e., Hyundai I-20, 4 packets of *ganja* was recovered. With the help of the local people, the *ganja*, so recovered, was weighed, weight of *ganja* recovered from the pickup van, from which the appellant was apprehended, was found to be 280 kg, whereas that recovered from blue color Hyundai I-20 was found to be 20 kg. The 23 packets of *ganja*, so recovered, were marked as S-1 to S-23 and from each of the packets 25 grams of *ganja* was extracted as sample. The sample was drawn and sealed. On inquiry, the appellant is said to have disclosed to the police officials that only co-accused Pradeep Rai only could make any disclosure about *ganja*. In the presence of two independent



witnesses, a seizure list was prepared on which they put their signatures.

3. The charge-sheet was submitted for commission of the offences punishable under Sections 8/20(b)(ii)(C), 23(c) and 29 of the NDPS Act by the Investigating Officer subsequently on 17.09.2016. We have perused the charge-sheet. It is evident from reading of the contents of the charge-sheet that it was not filed upon completion of investigation, rather it was done so as to obviate the consequence of completion statutory period, under Section 167 of the CrPC. Be that as it may, based on the charge-sheet, so submitted, cognizance was taken by learned court on 27.09.2016 for commission of the offences punishable under Sections 8/20(b)(ii)(C), 25 and 29 of the NDPS Act.

4. Subsequently, the charge was framed against the appellant on 20.12.2016 for commission of the offences punishable under Section 20(b)(ii)(C), 23(c) and Section 29 of the NDPS Act. The appellant denied the charge and claimed to be tried, and accordingly, he was put to trial.

5. At the trial, the prosecution examined 10 witnesses including the seizure list witnesses Rajiv Rai (PW-6) and Shivjee Rai (PW-8). It is noteworthy that, according to the prosecution's case, the samples drawn by the informant of the seized articles



were sent to forensic examination under an order passed by the learned District and Sessions Judge, Hajipur (Vaishali) dated 02.07.2016. It is evident from the FSL report, which came to be marked as exhibit-6 at the trial that a special messenger was deputed for handing over the sample to the Forensic Science Laboratory. The sample was, however, received by the FSL, Muzaffarpur, Bihar, on 11.07.2016. The result of the forensic examination proved that the sample received by the laboratory was *ganja*. The Senior Scientific Officer, Majid Khan, who had conducted forensic examination, came to be examined as PW-5. The Investigating officer, Rajesh Kumar Pandit, was examined at the trial as PW-10. Ashok Kumar Harijan, an Assistant Sub-Inspector of Police, who was in-charge of the *malkhana* of the Ganga Bridge Police Station, produced before the trial court material exhibits, i.e., 23 packets of *ganja*, which were, according to the prosecution's case, seized from the pick-up van, which the appellant was driving; which came to be marked as exhibits M to M-22. He also produced before the trial court, *malkhana* register showing of deposit of the *ganja* in the *malkhana*. Rest of the witnesses, namely, Awnish Kumar (PW-1), Nand Kishore Singh (PW-2), Badri Narayan Singh (PW-3), Shankar Kumar (PW-4) and Amarjeet Kumar, were members of the raiding party. It is



noteworthy that the seizure list witnesses PW-6 and PW-8 came to be declared hostile at the trial at the instance of the prosecution as they did not support the prosecution's case of recovery of the contraband in their presence. He deposed that no recovery or seizure was made in his presence and that the paper, on which his signature was obtained, was blank. Similarly, PW-8 also did not support the prosecution's case of recovery of any article in his presence and deposed that he had put his thumb impressions on a blank paper under coercion.

6. The trial court, after having considered the evidence on record, has reached a conclusion, based on the evidence of the police personnel, who had conducted the raid, search and seizure, read with the evidence of PW-9 and the investigating officer PW-10 that the prosecution was able to prove the charge of the offences punishable under Section 20(b)(ii)(C) of the NDPS Act. The trial court, however, acquitted the appellant of the charge of commission of offences punishable under Section 23(c) and 29 of the NDPS Act and sentenced the appellant to imprisonment and fine, as has been noted above.

7. Mr. Arvind Kumar Pandey, learned counsel appearing on behalf of the appellant, assailing the impugned judgment, has submitted that there has been patent violations of the requirement



under Section 52A(b) of the NDPS Act inasmuch as neither any application was made before the Magistrate for drawing the samples of the seized *ganja* in the presence of the Magistrate nor, the samples were drawn in the presence of any Magistrate. He contends that the entire case of the prosecution fails on this ground alone inasmuch as the prosecution miserably failed to adhere to the statutory mandatory requirement under Section 52A(2)(b) of the NDPS Act, which requires drawing of samples in the presence of a Magistrate. He further submits that in the present case there has been violation of Section 42 of the NDPS Act also as, according to the prosecution's case, the search was conducted at 3 am before sunrise and after the sunset inasmuch as there is no evidence to the effect that the informant had taken down any information in writing as contemplated under Section 42(1) of the NDPS Act or recorded the grounds for his belief under the second *proviso* to subsection (1) of Section 42 of the NDPS Act. He has argued that it is the prosecution case that the raiding party had arranged an electronic balance in the wee hours of the date of the occurrence from neighborhood is a cock and bull story inasmuch as the witnesses were not able to state at the trial as to from where and from whom the said electronic balance was borrowed for weighing the *ganja* said to have been recovered from the pick-up van,



which, according to the prosecution, the appellant was driving. He has also argued that apparently there has been inordinate delay in dispatching the samples said to have been drawn by the Station House Officer himself at the place of occurrence to the Forensic Science Laboratory. He has submitted that, according to the prosecution's case, the recovery was made on 23.06.2016 and samples were drawn simultaneously. As is evident from the Forensic Science Laboratory's report, the samples were sent on 02.07.2016 through a special messenger, which was received in the Forensic Science Laboratory, Muzaffarpur on 11.07.2016. There is no evidence as to where the samples were kept after the sample were drawn till date they were dispatched to the Forensic Science Laboratory through a special messenger and where the special messenger had kept the samples from the date of dispatch, i.e., 02.07.2016 to 11.07.2016. He has further submitted that as the police officials are the only witness, who have supported the prosecution's case, finding of conviction recorded by the trial court is untenable in the facts and circumstances of the case. He has further submitted that the trial court has based its judgment on such evidence also which was not explained to the appellant while being questioned under Section 313 of the Cr.PC. He submits that no question was put to the appellant that the material, which was



seized from the pick-up van, was found to be *ganja* based on the Forensic Science Laboratory report. Failure on the part of the learned court to put the question has seriously prejudiced the appellant and accordingly the finding of the trial court requires interference on this ground also.

8. Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State, has submitted that the prosecution's witnesses have supported the prosecution's case except seizure list witnesses. The seizure list witnesses, while denying recovery to have been made in their presence, have proved the presence of their signature/thumb impression on the seizure list. She contends that once the seizure list witnesses have proved the presence of their signature /thumb impression on the seizure list, they subsequently cannot deny the contents of the seizure list. She has submitted that despite the fact that PWs- 6 and 8 have been declared hostile at the instance of the prosecution, the prosecution has been able to prove preparation of seizure list in their presence as they have not disputed availability of their signature/thumb impression on the seizure memo. She has argued that soon after the seizure was carried out, the samples were drawn and sent to the Forensic Science Laboratory with utmost expedition. Slight delay in sending the sample cannot be a reason



to doubt the prosecution's case of recovery of *ganja* from the appellant's conscious possession, which was found kept in the pick-up van, which the appellant was driving. She contends that the court may not brush aside the depositions of the prosecution's witnesses on the sole ground that they are police personnel. She contends that it cannot be presumed that all such officials would not be telling the truth on oath while being examined at the trial as the prosecution's witness. She, accordingly, submits that the finding recorded by the trial court is wholly justified and requires no interference.

9. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions made on behalf of the parties. After having carefully perused the lower court's records, we reach at a conclusion that there has been non-compliance of the requirement under Section 52A(2)(b) of the NDPS Act inasmuch as the samples were not drawn in the presence of a Magistrate, which is a mandatory requirement. The truthfulness of seizure of *ganja* stood compromised by failure on the part of the prosecution to ensure, in accordance with the requirement under Section 52A(2)(b) of the NDPS Act, that the samples were drawn in the presence of a Magistrate. We further



notice that, according to the First Information Report and the evidence of the witnesses, the search was conducted at 3 am, before sunrise. Section 42 of the NDPS Act mandates that it is essential for the empowered officer to conduct search of a conveyance if he has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence of facility for the escape of an offender, he may enter and search such conveyance at any time between sunset and sunrise "after recording the grounds of his believe". We do not find any material to show that the Station House Officer, prior to the searching of the vehicle or even thereafter, has recorded the grounds of his believe that if he had to wait for a warrant or authorization, that might give an opportunity to the appellant for concealment of evidence or facility of his escape. Further, Section 42(1) requires an empowered officer to take down, in writing, the reason to believe that any offence has been committed in respect to the Narcotics Drug and Psychotropic Substance or controlled substance. Sub-section (2) of Section 42 requires that when an officer takes down an information in writing or records grounds for his believe under the *proviso* thereto, he shall within 72 hours send a copy thereof to his immediate official superior. In the present case, there is no evidence that the copy of the information,



taken down in writing under Sub-section (1) or records grounds for his belief in accordance with the second *proviso* to Section 41, was ever sent to his immediate superior official, much less within 72 hours. PW-1, the informant, in his evidence at the trial, deposed in his cross-examination that he had borrowed the electronic weighing machine from the neighborhood, where the search and seizure was conducted. He, however, expressed his inability to state at the trial as to wherefrom the electronic weighing machine was brought. None of the prosecution's witnesses have deposed at the trial as to where-from the said electronic weighing machine was obtained for weighing the contraband, which, according to the prosecution, was *ganja*. In the absence of such evidence, in the Court's opinion, seizure and sealing of the *ganja*, at the place of occurrence itself, becomes doubtful.

10. Thirdly, the delay in transmission of the samples, said to have been drawn by the SHO himself, cannot be ignored. The samples were drawn, according to the prosecution's case, on 23.06.2016. The sample, according to the case of prosecution, was dispatched under the court's order on 02.07.2016. Where the samples were kept in safe custody during the interregnum period is not known. Further, the samples, according to the prosecution's case, were dispatched to the Forensic Science Laboratory by a



special messenger on 02.07.2016. We take judicial notice of the fact that the distance of Muzaffarpur, where Regional Forensic Science Laboratory is located, is hardly at a distance from the Ganga Bridge Police Station. There is no clue, based on evidence adduced at the trial, as to how were the samples kept and handled from 02.07.2016 till 11.07.2016, when the same was received in the Regional Forensic Science Laboratory, Muzaffarpur.

11. In view of the above noted discussions, we are of the considered opinion that there has been violation of Section 52A(2) (b) of the NDPS Act in the matter of drawing of the samples and there has been unexplained delay in transmission of the samples to the Forensic Science Laboratory. The failure on the part of the prosecution's witnesses, who are police officials/personnel, who disclosed as to wherefrom an electronic weighing machine was obtained at 3 am from the neighborhood, makes the case further doubtful on the point of seizure of the articles at the place of occurrence. These aspects coupled with the fact that no independent witness other than the police personnel, who were members of the raiding team, has supported the prosecution's case of search and seizure, in our opinion, we do not consider it safe to uphold the conviction of the appellant recorded by the trial court in its impugned judgment.



12. For the reasons noted above, we are inclined to interfere with the finding of conviction recorded by the trial court and acquit the appellant by giving him benefit of doubt.

13. Accordingly, the impugned judgment of conviction dated 07.10.2020 and the order of sentence dated 15.10.2020, passed by learned Additional Sessions Judge-1st-cum-Special Judge NDPS Act, Vaishali at Hajipur, in Ganga Bridge Police Station Case No 56 of 2016, G. R. No. 2436 of 2016, are hereby set side. The appellant stands acquitted of the charge of commission of the offence punishable under Section 20(b)(ii)(C) of the NDPS Act by giving him benefit of doubt.

14. This appeal is accordingly allowed.

15. The appellant is in custody. Let him be released forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

nishant/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.08.2023
Transmission Date	08.08.2023

