

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.47 of 2015**

Arising Out of PS. Case No.-8 Year-2010 Thana- RATANPUR District- Supaul

Sudhir Kumar Jha S/o Kameshwar Jha resident of Village P.O. Motipur, P.S.
Karjain Bazar, District - Supaul

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Parmeshwar Mehta, Adv.
For the Respondent/s : Mr. D.K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-09-2023

1. It is really shocking to learn that appellant of this case has served the entire sentence of twelve years and additional six months for not having paid the fine, when there does not appear to be any material against him to justify his conviction.
2. The appellant stood convicted under Sections 20 B (ii), 22 and 23 of the N.D.P.S Act, 1985 vide judgment dated 21.11.2014 passed by the additional Sessions Judge no. 1 cum-Special Judge N.D.P.S Act,



Saharsa in Special Case no. 3 of 2010 arising out of Ratanpura P.S. Case No. 8 of 2010 and by order dated 22.11.2014, he was sentenced to undergo RI for twelve years under all the three counts and to pay a fine of Rs. 1,20,0000/- for each of the offences in which conviction was recorded and in default of payment of fine, to further suffer imprisonment for six months. The sentences were, however, ordered to run concurrently.

3. We have heard, Shri Parmeshwar Mehta, learned advocate for the appellant and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State.
4. The appellant is said to have been arrested while sitting on the driver seat of a vehicle from where 199 kgs of Ganja is said to have been recovered. The FIR was lodged on 17.06.2010 by Mr. Ritesh Kumar Srivastava (PW 2) who has only stated that on secret information, he along with the police party, eight in number, went to the place indicated in such information and saw a vehicle and few persons there.



Seeing the police party, some of the persons tried to escape but one was arrested, who disclosed his name as that of the appellant.

5. From the vehicle, 199 kgs of Ganja, a mobile telephone, a cheque book, some land papers and the owner book of the vehicle as also a demand draft of Rs. 32,000/- was recovered.
6. On the basis of the aforementioned written report by PW 2, Ratanpura P.S. Case No. 8 of 2010 dated 16.06.2010 under Sections 8, 20B, 22 and 27 of the NDPS Act was registered for investigation.
7. Two persons were put up on trial; one being the appellant and the other one Mangesh Kumar Singh who has been acquitted.
8. Out of 8 witnesses examined at the trial, the seizure list witnesses namely P.Ws. 5 and 6 have not supported the prosecution story and have been declared hostile.
9. P.W. 7 has been tendered.
10. The case rested on the deposition of PWs 1 to 4,



none of whom have been able to satisfy that the requirements under the NDPS Act, 1985 were fulfilled.

11. We regret to record that the learned Special Judge did not at all apply his mind before convicting the appellant on three counts under the NDPS Act, 1985. All that he has recorded is that at the time of arrest, the appellant was given the information that he could exercise his Miranda right of being searched in the presence of a Class -I Officer to which he denied and that the sample which was sent to forensic laboratory for confirmation whether what was seized was narcotic was tested positive for ganja.

12. The Trial Court did not at all consider it necessary to test the case with respect to its correctness.

13. The provisions contained in Section 42 and 52 of the NDPS Act, 1985 appear to have been flouted with impunity. The FIR itself suggests that the appellant was caught fleeing away from the place of the occurrence. Neither the informant (PW 2) nor the



other witnesses have stated that from the seized narcotics, samples were ever drawn. It remains unknown where was the consignment stored. When were the sample drawn also remains unknown. With such facts remains unknown, the Trial Court appears to have been satisfied only on the statement of one of the witnesses that permission was taken from the Trial Court for sending the samples to the FSL. The court perhaps did not realize that in the absence of any record of the date of sampling or of the storage of the seized narcotics where samples may have been drawn. There was no gurarantee about the prosecution version being correct. There was an inordinate and unexplainable delay in dispatching such sample to the Forensic Science Laboratory. The report of the FSL which had been exhibited, clearly spells out that the consignment was dispatched vide memo 356 dated 20.09.2011 i.e. after more than a year of the seizure of narcotics. The consignment was received in the FSL on 12.10.2011. Though the report confirms that the



sample was found to be dried, pressed, greenish brown coloured flowering and fruiting vegetables substance containing Tetra Hydro Cannabinol (THC) which is one of the chief intoxicating ingredients of *Ganja* but that is of no consequence when there is no proof of sample having been drawn from the seized narcotic. Which sample and from which stock was tested remains unknown. The Trial Court judgment does not even indicate whether the narcotics was produced for inspection of the court.

14. Under such situation, Mr. Parmeshwar Mehta, learned advocate for the appellant, is perfectly entitled to argue that there was no seizure at all and that the appellant was wrongly arrested and kept in custody for more than 12 years.

15. The falsity of the case further appears from the fact that P.W.s 1 to 4 though claimed that the seizure was made at the place where vehicle was parked but they had no idea as to from where the weighing instrument was procured for the seized



narcotics to be assessed to be 199 kgs. Even the informant (PW 2) did not have any clue about it. The samples were required to be drawn at the place of search or at least without losing time in the malkhana where otherwise the seized narcotic should have been kept. There is no evidence on record that the seized consignment was sent to malkhana for storage. Equally distressing is the fact that there is no evidence on record that the consignment was brought for the inspection of the Court.

16. Thus in the absence of primary evidence, the prosecution case totters.

17. This is not the manner in which a case involving NDPS Act, 1985 with such stringent provisions is to be dealt with. We are aghast to see that in a judicial proceeding, the Trial Court has failed to even consider the basic facts which would have or not made out any case.

18. In this scenario, we even doubt whether there was any seizure. The reasoning given by the Trial



Court is bereft of all logic and understanding about the provisions of the NDPS Act, 1985.

19. The judgment and order of conviction cannot at all be sustained.
20. We thus set aside the conviction and the consequent sentence of the appellant.
21. We say no further. As noted above, we are extremely pained to record that only after remaining in jail for more than 12 years, the appellant walked out of the jail.
22. The appeal succeeds and the judgment of conviction and order of sentence is set aside.
23. The appeal stands allowed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.09.2023
Transmission Date	18.09.2023

