

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1322 of 2018

Arising Out of PS. Case No.-51 Year-2016 Thana- D.R.I District- Muzaffarpur

Naubat Ram S/o Sri Om Prakash, Resident of Village- Gajupura, P.S.- Milak
Khanam, Distt- Rampur UP.

... .. Appellant/s

Versus

The Union Of India Through P. K. Pandey, D. R. I. - Patna

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1087 of 2018

Arising Out of PS. Case No.-51 Year-2016 Thana- D.R.I District- Patna

Bhikam Singh @ Bikam Singh son of Om Prakash Resident of Village -
Gajupura, P.O. and P.S. Milak Khanam, District - Rampur U.P.

... .. Appellant/s

Versus

The Union Of India Through P. K. Pandey D. R. I. , Patna

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1322 of 2018)

For the Appellant/s : Mr. Prakash Tiwari, Advocate

For the Respondent DRI : Mr. Anshuman Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 1087 of 2018)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate

Ms. Meena Singh, Advocate

Mr. Nachiketa Jha

For the Respondent DRI : Mr. Anshuman Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 08-12-2023

Since same judgment and order of the Trial Court is being
assailed in both these appeals, they have been heard together and are being
disposed of by the present common judgment and order.



2. The Appellants have preferred these appeals under Section 374 (2) and 389 (1) of the Code of Criminal Procedure assailing the judgment dated 21st July, 2018 and order of conviction and sentence dated 24th July, 2018, passed by the learned 1st Additional District and Sessions Judge, Muzaffarpur in Trial No. 06 of 2018 (Arising out of DRI Case No. 51 of 2016) whereby and whereunder the Appellants have been convicted as under:

Appellant's Name	Penal Provisions	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
CRIMINAL APPEAL (DB) No. 1322 of 2018				
Naubat Ram	Under Sections 20(b)(ii)(C) and 25 of the N.D.P.S. Act	RI for Twelve years	One lakh fifty thousand	RI for one and half year
CRIMINAL APPEAL (DB) No. 1087 of 2018				
Bhikam Singh @ Bikam Singh	Under Sections 20(b)(ii)(C) and 25 of the N.D.P.S. Act	RI for Twelve years	One lakh fifty thousand	RI for one and half year

3. One Pradeep Kumar Pandey, Intelligence Officer, attached to Directorate of Revenue Intelligence (DRI), Patna lodged a complaint before the learned District and Sessions Judge, Muzaffarpur, Bihar, alleging *inter alia* that on 19th of January, 2016, he received an information that a huge consignment of Ganja was being transported



to Muzaffarpur by a Tata Container Truck, bearing Registration No. UP22T-5311. The complainant recorded the said information in compliance of Section 42 of the said Act and submitted the same before his superior Officer. Under the instruction of the superior Officer of DRI, a team of Officers and members and staffs of the DRI was constituted to keep surveillance on Muzaffarpur-Darbhanga Highway on 21st of January, 2016. On that day at about 8-10 a.m. in the morning, the said team intercepted a truck bearing above-mentioned Registration Number. There were Driver and a helper in the said truck. They were served with notice under Section 50 of the said Act informing *inter alia* that if they would want they might opt for search of both, their truck and persons in presence of a Gazetted Officer. However, they agreed to be searched at the spot where the truck was intercepted by the team of DRI.

4. It is further reported by the complainant that during search beside personal belongings, the raid party recovered huge quantity of Cannabis (Ganja) from a specially built cavity made inside the container of the said truck. As local people had assembled around the place where the said truck was intercepted, the complainant considered it safe to bring the truck and the driver and conductor to the office premises of DRI, at Muzaffarpur. On search, the



complainant found 30 plastic sacks containing Cannabis wrapped in newspapers and black plastic sheets. He marked the said packets by identification mark No. 1 to 30. There were dark green coloured dry leafy substances having smell of cannabis in the said sacks. The weighment of the said sacks was taken and the net weight of the said cannabis was found to be 448.40 kg. The complainant took samples from the said sacks and prepared two packets of the said samples; both the seized and sample packets of cannabis were sealed. The complaint also recorded statement of the driver and conductor of the truck under Section 67 of the said Act. After completion of search and seizure, the appellants were arrested by the complainant. The arrest memos of the appellants, seizure list, etc., were submitted to the Senior Intelligence Officer, DRI, Patna, on 2nd January 2016 by the complainant. It was learnt from the statement of the appellants that they were illegally and surreptitiously carrying the seized cannabis from Assam to Muzaffarpur.

5. The appellants were put on trial. During trial, the prosecution examined 7 witnesses. Signatures of the appellants over notices under Section 50 of the said Act were marked as Annexure – 1 and 2 series respectively. Arrest memos were marked as Exhibit 3 and 3/1. Other documents, viz., seizure list memo, inventory, Panchnama,



forwarding report, seizure report, test report, signature of the testing authority on test report, the written complaint and godown register of the godown of DRI for the year 2016 were marked as Exhibit 3 to 15, respectively. A sealed envelope of sample of the seized material was marked as material Exhibit 1.

6. Mr. Krishna Prasad Singh, learned Sr. Advocate for the appellants submits at the outset that since the punishment provided under different penal provisions of the NDPS Act is very stringent, the provisions of Sections 42, 50, 52, 52A, 55 and 57 of the said Act have to be strictly complied with in order to safeguard the interest of the accused/appellants. Non-compliance of these provisions goes to the root of the case and vitiates the trial.

7. With the above prologue, it is submitted by the learned counsel for the appellants that according to the prosecution, the truck allegedly carrying huge quantity of cannabis was intercepted on Muzaffarpur Darbhanga Highway near Mathi Toll Plaza in the district of Darbhanga. It is found from the evidence of PW-1 Pradeep Kumar Pandey, who was the complainant that they brought the said truck to DRI office premises at Muzaffarpur which is situated at a distance of about 30 kilometres away from the place where the said truck was intercepted.



8. The learned Advocate for the Appellants has pointed out that the prosecution has failed to assign any cogent reason as to why the said truck was compelled to be driven a distance of about 30 kilometres from the place of interception.

9. Learned Advocate for the Appellants further submits that according to the complainant the appellants were served with notices under Section 50 of the said Act and their persons were searched at the spot but in course of his evidence it is stated by the complainant that the Appellants were individually searched in presence of one Mr. Rakesh Ranjan, who is a Senior Intelligence Officer at Muzaffarpur.

10. Mr. Singh, also submits that the officers and staff of DRI conducted search of the said container truck and recovered 30 bags of cannabis wrapped in black coloured plastic sacks and paper. The said narcotic substance was weighed and gross weight of the substance was found to be 461.08 Kg and net weight was 448.40 kg. It is also submitted by the learned counsel for the Appellants that the complainant also deposed that he took small amount of seized articles from each of the bags mixed them well and had kept the said articles in two packets measuring about 24 grams each. The said packets were sealed and labelled with identification letters A and B.



11. It is further urged by the learned Advocate for the Appellants that P.W.-2 Rajeev Ranjan Pathak is a Senior Intelligence Officer of DRI at Patna. P.W. 3, Rajesh Kumar and P.W. 4, Ramanand Choudhary are Officers of DRI and P.W. 5, Rakesh Ranjan is the Senior Intelligence Officer of DRI. P.W. 6 is a Constable of Excise Department, who was posted on deputation in DRI at the relevant point of time. P.W. 7, Parmanand Kumar is an Inspector of Custom Duty Division, Muzaffarpur.

12. Deposition of P.W. 1, P.W. 2, P.W. 5 and P.W. 6 in their examination-in-chief is almost similar with regard to interception of truck, bringing the said truck to Muzaffarpur DRI Office, conducting search, recovery of cannabis and preparation of seizure list and samples etc.

13. It is also pointed out by the learned Advocate for the Appellants that from the evidence of P.W. 2, it transpires that the said truck was brought to Muzaffarpur DRI office because of the fact that they sensed strong smell of cannabis from the container of the truck. Therefore, it is absolutely clear that no search and seizure was made at the place of interception of the truck. Under such circumstances, a reasonable suspicion may be drawn that the same contraband articles



were intentionally planted inside the truck and subsequently it was shown to have been recovered from the possession of the Appellants.

14. Learned Advocate for the Appellants next submits that during trial, it was necessary for the prosecution to establish by cogent evidence that cannabis were seized from the possession of the accused. In the instant case, the contraband articles were not seized in presence of the independent witnesses. All the seizure list witnesses are the employees of DRI. Therefore, mandatory provision of Section 100 of the Cr.P.C., was violated during search and seizure of narcotic substances. It is no longer *res integra* that in order to establish charge under the N.D.P.S. Act, prosecution enjoins a boundened duty to establish search and seizure without any iota of doubt. In the instant case, there is no independent witnesses of search and seizure. At the time of trial, the seized materials which were considered to be the best evidence as per the decision of the Hon'ble Supreme Court in ***Jitendra and Anr. Vs. State of M.P.***, reported in **2004 (10) SCC 562**, was not produced before the Trial Court for bringing them in evidence. There is no explanation for this failure to produce them. It is clearly held by the Hon'ble Supreme Court in the aforesaid decision that mere oral evidence as to their features and production of seizure list does not discharge the heavy burden which lies on the



prosecution, particularly where offence is punishable with stringent sentence under the N.D.P.S. Act

15. Next limb of argument by the learned Advocate for the Appellants is that the prosecution has hopelessly failed to carry out the mandatory provision of Sub-section (2) of Section 52A of the N.D.P.S. Act. Section 52 A (2) of the said Act runs thus:

*“(2) Where any 4[narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such 4[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the 4 narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the 4[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of—
(a) certifying the correctness of the inventory so prepared; or*



(b) taking, in the presence of such magistrate, photographs of 5 such drugs, substances or conveyances and certifying such photographs as true; or
(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.”

16. It is submitted by the learned Advocate for the Appellants that the above provision of Section 52A of the N.D.P.S. Act is a mandatory provision inasmuch as the said provision was inserted in the Act with a definite purpose, i.e., to prevent substitution of articles seized by the concerned Officer of the Department. Non-compliance of the provisions of Section 52A makes the entire search and seizure vitiated.

17. It is pointed out by the learned Advocate for the Appellants that even the scientific expert, who examined the sample allegedly taken from the seized 30 nos. of bags of cannabis was not examined. Therefore, the defence has lost its valuable right to cross-examine the scientific expert. In such circumstances, scientific experts report which was marked as Exhibit-10 at the instance of the complainant ought not to have been taken into consideration by the learned Trial Judge. The learned Trial Judge accepted the evidence adduced by the witnesses on behalf of the prosecution as gospel truth without



adhering to the basic requirement of probe of a case under the N.D.P.S. Act.

18. Learned Advocate on behalf of the DRI / Respondents, on the other hand submits that Section 53 of the N.D.P.S. Act empowers the Central Government after consultation with the State Government to invest any Officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government including Para-military Forces or Armed Forces or any class of such Officers with the powers of Officer in-charge of a Police Station or the investigation of the offences under the N.D.P.S. Act. Therefore, the Revenue Intelligence Officers are enjoined with the power of Officer in-charge of a Police Station insofar as search, seizure and investigation of the offences under the N.D.P.S. Act. However, it has been established in plethora of decisions by different High Courts that the said Officers of Revenue Intelligence Directorate are not Police Officers. Therefore, statement recorded by the Officers of DRI of the accused persons are admissible in evidence and on the basis of such statement, the accused persons / Appellants were rightly held guilty for committing offence under the relevant provision of the N.D.P.S. Act.



19. It is further submitted by the learned Advocate for the Respondents that the requirement of seizure in presence of the independent witnesses and compliance of Section 100 of the Code of Criminal Procedure comes into play when search and seizure is made in a house or godown, confined by walls on four sides. Search of vehicle on an open field does not postulate the requirement of Section 100 of the Code of Criminal Procedure.

20. Having heard the learned Advocates on behalf of the parties and on careful perusal of the entire materials on record, we are of the view that the power and authority of the Officers, especially empowered under Section 53 of the N.D.P.S. Act ought to be decided first in order to come to a conclusive findings as to whether they are enjoining certain immunities in comparison to the Police Officers. The Officer empowered under Section 53 shall have all the powers of an Officer In-charge of Police Station investigating a cognizable case. But these powers are only limited for the purpose of investigation. Therefore, it is apparent that considering seriousness of the offence, the Legislature thought that apart from investigation by the Police under the Code of Criminal Procedure, some other Officers mentioned in Sections 41, 42, 43 and 53 be empowered to discharge certain duties as specified therein. But this does not mean that a



Police Officer who is investigating the offence under the said Act is not required to follow the procedure prescribed under the Code of Criminal Procedure. He has to investigate in accordance with the provisions of the Code of Criminal Procedure. To the other Officers, limited powers are given. Under Section 53, the Central Government or the State Government, as the case may be, is entitled to invest any Officers of the Department mentioned therein with the powers of an Officer In-charge of Police Station for the investigation of the offence under the Act. It would be, thus, clear that if a competent Police Officer has investigated the offence under the Act, there is no question of following any procedure other than the procedure prescribed under the Code of Criminal Procedure. Similarly, the Officers especially empowered under Section 53 of the said Act, is under obligation to follow the procedure contained in the Code of Criminal Procedure in the matter of investigation. It is needless to say that the Officers especially empowered under Section 53 is required to follow the specific requirements of the Code of Criminal Procedure in respect of search and seizure. In the instant case, the complainant and his team of DRI failed to follow the said procedure.

21. The Officers of the DRI are not absolved with the duty of production of seized narcotic substance before the Magistrate for



certifying the correctness of inventory and drawing representative samples of such substance in presence of such Magistrate and certifying the correctness of any list or sample so drawn. These mandatory provisions were not followed in the instant case. Therefore, there is reasonable ground to suspect as to whether, the samples were taken from the seized cannabis or if any narcotic substance was recovered from the said container of the truck or at all.

22. We are surprised to note that the learned Trial Judge did not wish to consider the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Mohanlal and Anr.*, reported in **2016 (3) SCC 379**. Paragraph 15 of the said report is absolutely relevant for the purpose of this case and reproduced below:

“15. It is manifest from Section 52-A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.”



23. In the instant case, the prosecution Agency failed to comply with the provision of Section 52A (2)(c) of the said Act. Therefore, preparation of sample bags, transmitting the same for scientific examination and report thereof had not been proved beyond shadow of doubt. The learned Trial Judge did not wish to consider the decision of *Mohanlal* (supra) because the said decision was delivered on 28th January, 2016 and according to him at the relevant point of time the provision contained in Section 52A (2)(c) was not applicable. It is sufficient to point out in this regard that a judgment of the higher Courts has the authority having retrospective effect. Therefore, a decision of the Hon'ble Supreme Court cannot be ruled out merely by saying that the declaration of law made by the Hon'ble Supreme Court is not applicable in view of its prospective nature. The declaration of law made by the higher Courts will always have retrospective effect. The decision of the Hon'ble Supreme Court in *Manoj Parihar vs. State of Jammu & Kashmir*, reported in (2022) 14 SCC 72 may be relied on in this regard.

24. Before we part with, we have noticed a disturbing feature in the instant appeal. It is not clear from the record of the Appellate Court as well as the Lower Court as to whether the contraband articles have been destroyed or not. If the contraband articles are not



destroyed as yet, it is a serious lapse on the part of the Investigating Agency because storing of such huge quantity of cannabis in a godown may have serious consequences if it becomes somehow open for human consumption. In such case, the entire purpose of the Narcotic Drugs and Psychotropic Substances Act will be frustrated.

25. For the reasons stated above, the Director of the DRI, Patna is specifically directed to destroy the seized articles within one month from the date of communication of this order, following specific provisions of the Act, if not already destroyed.

26. In view of the aforesaid facts and circumstances, both these appeals are allowed.

27. Consequently, the judgment dated 21st July, 2018 and order of conviction and sentence dated 24th July, 2018, passed by the learned 1st Additional District and Sessions Judge, Muzaffarpur in Trial No. 06 of 2018 (Arising out of DRI Case No. 51 of 2016), sentencing the Appellants for committing offence under Sections 20(b)(ii)(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, are set aside.

28. The Appellant of Cr. Appeal (DB) No. 1322 of 2018, namely, Naubat Ram, is in jail. Let him be released forthwith, if not required in any other matter.



29. The Appellant of Cr. Appeal (DB) No. 1087 of 2018, namely, Bhikam Singh @ Bikam Singh, is on bail. He is discharged from the liability of the bail bonds and the sureties, if any.

(Bibek Chaudhuri, J)

Chakradhari Sharan Singh, J : I agree.

(Chakradhari Sharan Singh, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	05.12.2023
Uploading Date	11.12.2023
Transmission Date	11.12.2023

