

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.287 of 2018

Arising Out of PS. Case No.-149 Year-2013 Thana- MOUZAHDIPUR District- Bhagalpur

Nand Lal Sah, Son of Late Gurucharan Sah, Resident of Aliganj, Gangti, P.S.
- Mojahidpur (Babarganj), District - Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vikramdeo Singh, Adv. Mr. Rajive Ranjan Singh, Adv.
For the State	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-05-2023

We have heard Mr. Vikramdeo Singh and
Mr. Rajive Ranjan Singh for the appellant and Mr. Dilip
Kumar Sinha for the State.

2. The present appeal is directed against
the judgment and order of conviction and sentence dated



20.12.2017 and 03.01.2018, respectively, passed by the 4th Addl. District and Sessions Judge-Cum-Special Judge, Excise and SC/ST Act, Bhagalpur in N.D.P.S. Case No. 3431B of 2013 arising out of Mojahidpur (Babarganj) P.S. Case No. 149/13, whereby the appellant has been convicted for the offences under Sections 20(b)(ii)(C), 23(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*in short the Act*) and has been sentenced to undergo rigorous imprisonment for 20 years, to pay a fine of Rs. 1,00,000/- and in default of payment of fine, to suffer simple imprisonment for 20 months for the offence under Section 20(b)(ii)(C) of the Act and rigorous imprisonment for 20 years, to pay a fine of Rs. 1,00,000/- and in default of payment of fine, to further suffer simple imprisonment for 20 months for the offence under Section 23(c) of the Act. No separate sentence has been awarded under Section 25 of the Act as sufficient punishment has already been awarded to



the appellant under Sections 20(b)(ii)(c) and 23(c) of the N.D.P.S. Act, 1985.

3. All the sentences have been ordered to be run concurrently.

4. In the house of the appellant and his brother/Lakhan Lal Sah, there was a recovery of total 511 kgs. of *Ganja* for which he along with others had been put on trial.

5. The trials appeared to have been separated and in the present trial, the appellant has been convicted and sentenced as aforesaid.

6. The case was initiated at the instance of one Parshuram Singh (P.W. 8), who at the relevant time was the S.H.O., Babarganj O.P., in the District of Bhagalpur. He had received a secret information on 02.10.2013 at about 7:15 P.M. for which a self-statement was recorded on 03.10.2013 at 8:25 A.M. that the appellant is using his premises for storing *Ganja* and that there is every likelihood of a fresh consignment



of *Ganja* to be brought to his house. On such secret information, after intimation to the superior police officer, a team was constituted for raiding the premises of the appellant and his brother. The appellant was not found present in the house when the raid was conducted. In one of the rooms of the house of the appellant, *Ganja* was recovered. Before the raid, the members of the raiding team got themselves searched in presence of independent witnesses, namely, Ramjiwan Sah (P.W. 9) and one Sumit Kumar. The raid was conducted in presence of the Deputy Superintendent of Police, Bhagalpur (P.W. 1). Along with the narcotics, a digital weighing machine also was found. Indian and Nepali currency notes were also recovered from one of the *almirahs* in the room. A contiguous godown belonging to one Mahesh Sah was also raided. Three vehicles were also found to be parked in the afore-noted godown. From the trunk of those vehicles, huge quantity of *Ganja* was recovered. Many tin trunks were



also recovered from the godown, which also contained *Ganja* like substance.

7. In the room of the house of the appellant from where the first recovery was made, two other persons were found present, namely, Manoranjan Kumar and Umashankar Yadav, who too were made accused in this case and faced trial and were convicted, but have been acquitted by this Court *vide* order dated 17.05.2023 passed in Cr. Appeal (DB) Nos. 223 of 2017 and 193 of 2017 respectively.

8. On the basis of the afore-noted recoveries, the F.I.R. was registered against the appellant and others for the offences under Sections 20(b) (c), 23(c) and 25 of the N.D.P.S. Act, 1985, as noted-above.

9. The learned Trial Court, after examining eight witnesses on behalf of the prosecution and one on behalf of the defence, convicted and sentenced the appellant as aforesaid.



10. The main contention of the appellant against the judgment and order of conviction and sentence is that though in the F.I.R. and in his deposition before the Court, P.W. 8 had stated that he had drawn the samples from the seized narcotics at the place of occurrence, but the Investigating Officer of this case, namely, Nilesh Kumar, who has been examined as P.W. 10, has deposed before the trial that he had taken over the investigation and the seized articles on 31.10.2013, but had got the samples sealed and sent to F.S.L. by taking permission of the Court on 02.12.2013. During his cross-examination, he has also stated that the narcotics were kept in the *malkhana* and he had visited the *malkhana* only after a month.

11. From such deposition of P.W. 10, referred to above, it becomes very obvious that notwithstanding the raid having been conducted in presence of the superior police officers, no sample was drawn and that the statement made by the informant



(P.W. 8) is incorrect.

12. Thus, it can safely be presumed that the samples were drawn in the *malkhana* after a month of the seizure. Thereafter, the samples were sent to the Forensic Science Laboratory, Patna on 20.12.2023, *i.e.*, after eighteen days. No reason also has been assigned for such delayed sampling or dispatch of the samples to the Laboratory for confirmation whether the seized articles were narcotics or something else.

13. We have examined the report of the Forensic Science Laboratory, Patna (Exhibit-6), which further reflects that the samples were dispatched through Constable/474-Roushan Kumar in the laboratory on 02.12.2013 only.

14. Thus, there was an unusual delay in drawing the samples, sealing the same and dispatching it to the F.S.L.

15. This delay, it has been argued and rightly so, is fatal and renders the prosecution case



highly untrustworthy.

16. In the afore-noted context, it is necessary to refer to the Standing Instruction No. 1 of 88 [the relevant Rules now is the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022], which provides that the samples from the narcotics substances so seized must be drawn on the spot of recovery and in front of witnesses, which fact must be mentioned in the seizure-list. The samples are to be numbered and sealed. The samples, in duplicate, are to be kept in heat-sealed plastic bags and the samples ought to be sent expeditiously to the laboratory for testing. Samples must be dispatched to the laboratory within seventy two hours of the seizure.

17. There is nothing on record to indicate any compliance of Section 52-A of the N.D.P.S. Act, 1985 also.

18. The second sample was sent to Kolkata on 22.12.2013.



19. P.W. 10 has very categorically stated that before 02.12.2013, no sample had been prepared and till then, the narcotics were kept in the *malkhana*.

20. One would wonder as to when was the sample drawn and before whom before having been taken by P.W. 10 to the Court for sealing and obtaining permission for its dispatch to the two laboratories. Even after such permission, there was an unreasonable delay in dispatching the same to the laboratories.

21. Veena Kumari (P.W. 1) has testified to the fact that she was part of the raiding team and that in her presence, the seizure-list was prepared, but she has not stated anything about drawing of samples at the place of recovery.

22. Ranjan Kumar (P.W. 2), another member of the raiding team, further confirms that at the time of raid, B.D.O. or C.O. or Magistrate was not present. He has also not stated anything about sealing of the seized articles or drawing of samples at the place



of raid.

23. One Harikishore Rai (P.W. 3) on the relevant date was posted as A.S.P., Law & Order, who has, but in his examination-in-chief, has stated that sample was drawn, but how was it drawn and whether those were sealed and numbered has not been stated by him.

24. It has been urged on behalf of the appellant that the statement of P.W. 3 cannot be believed for the reason that in his cross-examination, he has stated that he did not remember as to who had signed on the seal or that any sealing material was available with the raiding team for the purposes of sealing the narcotics as also the samples. Thus, it has been argued, the prosecution has not be able to prove that the provisions and the inhibiting in the N.D.P.S. Act, 1985 have been complied with.

25. This renders the prosecution case doubtful for the reason that we get no idea as to from



which stock of narcotics and before whom the samples were drawn.

26. The provisions of the Act as also the Rule and the Standing Instruction of the Ministry of Finance, Department of Revenue are for the purposes of ensuring that there is no false implication of any body as the offences are severely punishable under Act.

27. With the recovery not been found to be admissible, the case against the appellant collapses.

28. We have found that the learned Trial Court has taken a short-cut approach of only discussing the deposition of all the thirteen witnesses, but has not done any adjudication of the matter by analyzing their evidence.

29. Thus, we find that the conviction and sentence of the appellant is not fit to be sustained in the eyes of law.

30. The impugned judgment of conviction dated 20.12.2017 and the consequent order of sentence



dated 03.01.2018 passed by the learned 4th Addl. District and Sessions Judge-Cum-Special Judge, Excise and SC/ST Act, Bhagalpur in N.D.P.S. Case No. 3431B of 2013 arising out of Mojahidpur (Babarganj) P.S. Case No. 149/13 are, accordingly, set-aside.

31. The appeal is allowed.

32. The appellant, *viz.*, Nand Lal Sah is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his detention is required in any other case.

33. Interlocutory application/s, if any, also stands disposed off accordingly.

(Ashutosh Kumar, J)

(Harish Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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