

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1412 of 2019**

Arising Out of PS. Case No.-90 Year-2012 Thana- GOVERNMENT OFFICIAL COMP.
District- East Champaran

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Akhilesh Thakur Son of Late Mohan Thakur resident of Village- Raxaul,
Ward No. 20, P.S.- Raxaul, District- East Champaran.

... .. Appellant/s

Versus

The Union of India Through Intelligence Officer, Narcotics Control Bureau,
Patna Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Chandra Verma, Adv.
Mr. Uma Shankar Verma, Adv.
Mr. Abhishek Kumar, Adv.
Mr. Hemant Ray, Adv.

For the Respondent/s : Mr. Anshuman Singh, CGC

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 08-08-2023

We have heard Mr. Umesh Chandra Verma, the
learned Advocate for the appellant and Mr. Anshuman
Singh, the learned Advocate for the NCB.

2. The appellant stands convicted under Section
20 (b)(ii)(c) of the N.D.P.S. Act, 1985 (hereinafter called
'the Act') vide judgment dated 20.09.2012, passed by the
learned 7th Additional District & Sessions Judge-cum-



Special Judge (NDPS) in NDPS Case No. 90 of 2012 / Supplementary Registration Case No. 417 of 2018 and by order dated 24.09.2019 has been sentenced to undergo R.I. for 15 years, to pay a fine of Rs. 1,00,000/- and in default of payment of fine, to further suffer simple imprisonment for one year. He has but been acquitted for the offence under Section 23(c) of the Act.

3. The allegation against the appellant is of being in possession of 20.250 Kgs. of '*charas*'.

4. A complaint was lodged by one Rohit Srivastava (P.W.4) on 21.01.2013, alleging that on the secret information received by Manoj Shankar (P.W.5), the I.O. of the case on 10.08.2012 that somebody is reported to be carrying narcotics in huge quantity by train from Sugauli to Gorakhpur, a preventive team of NCB Officers, comprising all the prosecution witnesses was constituted. The Superintendent of the Customs had consented for the same on the basis of the information received by P.W.5.



5. A surveillance was mounted around Sugauli railway station. When a person was found to be moving with a black bag in a suspicious circumstance, he was stopped and was asked to give his search, to which he complied. He was given a notice under Section 50 of the Act, intimating him his right of being searched before a Magistrate, which he declined and agreed to be searched by the raiding team. He also admitted before the team that he was in possession of '*charas*'. In front of the two independent persons viz. Subodh Sah and Pawan Kumar, who unfortunately have not been examined and who were selected by the raiding team to be independent witnesses in case any person with narcotics was apprehended, the body of the appellant was searched. He was found to be keeping 40 slabs of semi-solid brown coloured resinous substance wrapped in adhesive polythene. The slabs were tested by the Field Testing Kit available with the team, which responded positive to the test for '*charas*'. The total quantity of recovered substance weighed around 20.250



Kgs.

6. According to the complaint, 25 grams of sample in two separate polythene packets were drawn, which were heat-sealed. The packets were kept in envelopes which were marked as S-1 and S-2, which too were sealed and an Officer of the Department signed over such seals. The appellant was also made to sign over the same.

7. The test memo was prepared in triplicate at the spot and the facsimile of the departmental seal was also affixed on the test memo. The balance of the '*charas*' was kept in the same bag in which the appellant had kept it, which too was sealed. The value of the narcotics seized from the possession of the appellant was assessed at Rs. 20 lakhs. The statement of the appellant was recorded under Section 67 of the NDPS Act, in which he admitted of his being a mule and a handler for someone else and that he only got transportation charges.

8. On the basis of the aforementioned recovery, the



appellant was made accused in case under Section 20(b) (ii)(c) and 23(c) of the NDPS Act and was remanded to custody.

9. The complaint also inter-alia states that the report of the search and seizure as also the arrest was furnished to the superior authorities in compliance with the provisions contained in Section 57 of the NDPS Act.

10. The samples were dispatched to the Chemical Laboratory, Kolkata on 12.08.2012 which was received in the laboratory on 13.08.2012. The test report (Exhibit-4/1) discloses that the sample responded to the test of resinous extract of *Cannabis sativa*, which is 'charas'. The appellant, thereafter, was put on trial and, as noted, the trial Court after examining six witnesses on behalf of the prosecution, convicted the appellant and sentenced him, as noted above.

11. Mr. Umesh Chandra Verma, learned Advocate for the appellant has submitted that only lip service to the provisions of the Act has been done and



there has not been any substantial compliance of the requirements under the Act. He has submitted that as mandated under Section 42 of the Act, the information received by Manoj Shankar (P.W.5) was never reduced in writing and dispatched to the immediate superior officer within 72 hours.

12. Apart from this, it has been submitted that the provisions contained in Section 52A, particularly sub-clause 2 thereof, has not been followed and no attempt was made to get a Magistrate summoned for overseeing the entire process of drawing of the samples. The process was not even video-graphed and, therefore, it was a violation of the standing order 1 and 2 of 1988 and 1989 as also the prescription in ***Union of India Vs. Mohan Lal & Anr., (2016) 3 SCC 379.***

13. Apart from this, it has been urged that even though two independent persons were chosen by the raiding team to be witnesses to the search and seizure in case any person with contraband was apprehended, but



those independent persons have not been examined at the trial and no explanation also has been offered for their non-examination.

14. The learned counsel for the State however, submits that but for the photography of the entire process of search and seizure, every mandate under the Act has been diligently followed. The appellant was found to be in possession of 20.250 Kgs of '*charas*', which tested positive in chemical examination. There has not been any delay in either drawing of samples or of dispatching it to chemical laboratory. In fact, the report of the laboratory also was sent within a week of its receipt.

15. The learned counsel for the State has also pointed out that the manner in which the sampling was done and the way it was sealed and numbered, no accusing finger could be raised on the fairness of the process. The balance of the narcotics was kept in the *malkhana* of NCB at Patna with godown entry serial no. 8 dated 11.08.2012.



16. From the perusal of the evidence on record, it appears that the mandate under the Act has substantially been followed. However, we have found a few of the provisions of the Act not having been complied with but, we do not find that such non-compliance has resulted in any prejudice to the appellant or has resulted in the trial of the appellant being unfair in any respect. There is nothing on record to indicate that the requirement under Section 42 of dispatching the secret information after reducing it in writing to a superior officer within 78 hours has been complied with. Juxtaposed to this, we find that the requirement under Section 57 of the Act has been complied, which fact stands proved by the deposition of P.W.5.

17. That the samples were not drawn in presence of the Magistrate is one of the lapse which has been pointed out, which is in violation of the standing orders 1 of the 1988/89 but, considering the promptness with which it was done viz. the sampling at



the spot and its proper identification and hot-sealing, we do not think it to be such a breach of the standing instructions, which could in any manner give us an impression that the trial has been vitiated or that the appellant has been given a raw deal. The sample so collected along with the test report obtained from the Field Testing Kit, prepared in triplicate was dispatched to the Chemical Laboratory only a day after its seizure. The balance of the narcotics was kept in the same bag in which it was being carried by the appellant and kept in the dedicated *Malkhana* of the NCB at Patna. The entry number of the godown has been provided in the records.

18. Again, we have not found any compliance of Section 52A so far as its destruction is concerned. Not only that, from the judgment rendered by the Trial Court, we do not get any idea whether the balance of the narcotics was produced in lieu of the certificate of destruction.

19. As noted above, we do not have any idea



about such requirement under Section 52A having being followed.

20. Nonetheless, that would only be a breach with respect to the storage and disposal.

21. The promptitude shown by the officers/ witnesses leave no manner of doubt that the appellant was carrying the narcotics with him which was tested to be '*charas*' and which was in huge quantity falling in the category of commercial quantity.

22. There is nothing for us to hold that the trial was not fair or that the allegation against the appellant was not proved. The independent witnesses before whom seizure was made have not been examined, but that cannot, in a case of this kind, be taken as an evidence of false implication of the appellants. It is not that non-examination of independent seizure list witnesses would be synonymous with a prosecution frustrated, especially in the absence of any evidence that there could be a possibility of the appellant being falsely framed.



23. The appellant was arrested at the railroad at Sugauli. His physiognomy was similar to the description given to P.W.5 in the secret information. Immediately after the search and seizure, samples were drawn which were sealed. There also appears to be inventorization of the aforesaid samples which were sent for chemical examination.

24. Thus, for all practical purposes, it has been proved that the appellant was in possession of commercial quantity of '*charas*' with a valuation of Rs. 20 lakhs in the international market. We find that since the report of the NCB only confirms that the sample positively responded to the test for '*charas*', there is nothing on record to indicate that it was '*Nepali charas*' and, therefore, the Trial Court has rightly acquitted the appellant under Section 23(c) of the NDPS Act.

25. However, considering the overall circumstances of the case and there being nothing on record to indicate that the appellant has not shown good



behaviour in jail and no attempt having been made by the appellant at the time of his arrest to flee away from the stranglehold of the police and his making a correct disclosure under Section 67 of the Evidence Act, we are of the view that the sentence imposed upon the appellant needs to be interfered with.

26. The minimum sentence provided for the offence under Section 20(b)(ii)(c) is 10 years in cases of commercial quantity along with a minimum fine of Rs. 1 lakh. The appellant is in custody for approximately 11 years by now. We have also given our anxious consideration to the fact that no other case was reported against the appellant while proceeding to interfere with the sentence.

27. Under the aforementioned circumstances, we deem it appropriate to reduce the sentence of the appellant from 15 years to the period which he has already undergone, which is approximately 11 years.

28. The appellant but shall be liable to pay the



fine of Rs. 1 lakh.

29. In case the appellant pays the fine, he shall be released from jail forthwith.

30. The appeal is dismissed with modification in the sentence.

31. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

32. The records of this case be also returned to the Trial court forthwith.

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

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2023
Transmission Date	16.08.2023

