

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

CRA 125 of 2007

**Hafijul Molla @ Siraj
Vs.
The State of West Bengal**

Amicus Curiae : Mr. Satadru Lahiri

For the State : Mr. Avishek Sinha

Heard on : 16.02.2023

Judgement on : 28.04.2023

ANANYA BANDYOPADHYAY, J.:

1. This appeal is preferred against the judgment and order dated 18.01.2006 passed by the Learned Judge Special Court under N.D.P.S Act & Additional District & Sessions Judge. 6th Court, Barasat, North 24 Parganas, convicting the appellant to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 20,000/- in default to suffer simple imprisonment for six months for the offence under Section 20(b)(ii)(B) of N.D.P.S. Act, 1985.
2. The complaint against the appellant revealed his presence at the Bagmore Lorry stand beside Ghosh Para Road near Bag More under P. S. Bizpur, District - North 24 Parganas on 05.02.2004 in between 18:20 hrs to 18:50 hrs possessing 3 kg. 200 gms. of ganja in one

polythene packet which was carried in one old nylon shopping bag. Being intercepted by the police on the basis of a source information, the appellant was unable to produce valid documents or license for such possession of ganja resulting in violation of Section 8 of the NDPS Act, 1985. The said amount of ganja was recovered from the possession of the appellant by the police.

3. Formal FIR being no. 19 dated 05.02.2004 was drawn up against the appellant and on completion of investigation charge sheet No. 25 dated 26.03.2004 under Section 20 of the NDPS Act was filed. Charges were framed against the appellant under Section 20(b)(ii)(B) of the NDPS Act, 1985 to which the appellant pleaded not guilty and claimed to be tried.
4. The prosecution cited 9 witnesses and exhibited certain documents.
5. The Learned Advocate Mr. Satadru Lahiri who acted as the *Amicus Curie* submitted that the charge framed under Section 20 of NDPS Act, 1985 was defective. The presence of the appellant at the relevant place was doubtful frustrating the possibility of recovery of ganja from his possession. The evidence of PWs' 1, 2, 3, 4, 7 and 9 should not be believed since all of these witnesses were the members of policemen. No independent witness was cited by the prosecution. The seizure was not conducted in the presence of seizure list witnesses. The evidence of PW-5 and PW-6 did not with the other police witnesses negating corroborate with the trustworthiness of seizure as they were forced to sign blank papers by the police. The

report submitted by PW-8 suffered from irregularities and illegalities as he could not mention the time and by whom the sample was received by his office. The method of examination of the sample was not written in the said report. The provisions prescribed under Section 50 of the NDPS Act, 1985 were not followed. The recovery chain could not be proved and accordingly the prosecution failed to establish its case and the appeal shall be allowed.

6. The Learned Advocate Mr. Avishek Sinha for the State submitted that the provision enumerated in Section 50 of the NDPS Act, 1985 was not necessary to be followed as the seizure of ganja was from the nylon bag. Moreover, based on the impartial evidence of the official witnesses conviction can be sustained irrespective of the independent witnesses in case they do not support the prosecution case. Evidence of the raiding party established the guilt of the appellant supported by the opinion of PW-8 that the sample sent for expert opinion contained ganja. Therefore, the prosecution aptly proved its case and the appeal shall be allowed.
7. Assailing the evidence adduced by the prosecution it transpired that the following were the prosecution witnesses and the documents exhibited respectively:-

P.W. 1	Madan Mohan Pal (S.I. of Police)
P.W. 2	Dulal Chandra Mondal (S.I. of Police)
P.W. 3	Tapan Kumar Ghosh (S.I. of Police)
P.W. 4	S. Biswas (S.I. of Police)

P.W. 5	Tapas Roy (Seizure witness)
P.W. 6	Kartik Biswas (Seizure witness)
P.W. 7	Jaydev Tarafdar (Constable)
P.W. 8	Dr. Utpal Sinha (Senior Scientific Officer)
P.W. 9	Jaydev Mondal (S.I. of Police)

The following are the documents exhibited:-

Ext. 1	Copy of Notice
Ext. 1/1	Reply of the accused of the notice
Ext. 2	Seizure List (nil)
Ext. 3	Seizure List
Ext. 4	Inventory
Ext. 5	Formal F.I.R. along with written complaint
Ext. 3/1	Signature of PW2 on the seizure list
Ext. 3/2	Signature and endorsement of PW3 of seizure list
Ext. 3/3	Signature of PW 4 on the seizure list
Ext. 3/4	Signature of PW 6 on the seizure list
Ext. 3/5	Signature of PW 6 on the seizure list
Ext. 6	Chemical Analysis Report
Ext. 7	Rough Sketch map with index

8. The complainant PW-1 on receiving a secret information on 05.02.2004 at about 4:10 P.M. as the Officer-in-Charge of Bijapur P.S. informed the C.I. Naihati and S.D.P.O. Barrackpore over telephone that a person was standing at Bagmore Lorry Stand with a bag containing ganja. PW-1 lodged a G.D. Entry and reached the spot accompanied by S.I. Dulal Chandra Mondal, A.S.I. S. Biswas, A.S.I. T. Banerjee, Constable U. Sapui and Constable J. Tarafder and found the appellant present with a nylon bag in his hand. On his way to flee at the sight of the policemen he was intercepted. PW 1 had informed the duty officer of the P.S. over R. T. to ask the SDO Barrackpore to arrange for a magistrate to conduct the search and seizure but in vain as no magistrate was available. PW-1 issued a written notice to the appellant with regard to his willingness to be searched in presence of a magistrate or a gazetted officer to which the appellant expressed his willingness to be searched by a gazetted officer. The copy of the notice and the reply of the appellant were marked as Exts. 1 and 1/1 respectively. The C.I. Naihati P.S. searched the appellant in person whereby a nil seizure list was prepared as nothing could be obtained on search of his body. The nil seizure list was marked Ext. 2. The nylon bag containing ganja was recovered from the appellant which was weighed to be of 3 Kg. 200 Gms. which was seized under a seizure list marked Ext-3. A sample of 1 K.g. ganja was segregated from the aforesaid recovered amount and the rest amount was duly packed, sealed and labeled under an

inventory marked as Ext-4. The formal FIR along with the complaint were marked as Ext-5.

9. PW-2, 3, 4, 7 corroborated the evidence of PW-1 in substance.
10. PW-9 (Jaydev Mondal) prepared the rough sketch map of the spot along with index marked Ext-7, examined the available witnesses and produced the arrested appellant before the Court on 06.02.2004. He had sent the seized sample to State Drug and Research Laboratory for chemical analysis and collected the report on 26.03.2004. Thereafter, submitted the charge sheet against the appellant under Section 20 of the NDPS Act, 1985 vide charge sheet no. 25 dated 26.3.2004.
11. PW-8 (Dr. Utpal Sinha), the Senior Scientific Officer of State Drug Control and Research Laboratory deposed the sample to be examined, received from the police weighed 1 Kilogram 142 Grams and after due analysis the sample was detected to contain ganja. He identified the report marked as Ext-6.
12. PW-5 (Tapash Roy) deposed to have signed on a blank paper at the direction of the police.
13. PW-6 (Kartick Biswas) deposed to have signed on a paper concerning an accidental case.
14. Learned Advocate Mr. Satadru Lahiri as an Amicus Curie submitted that PW-5, and P.W. 6 were not declared hostile by the prosecution and therefore their deposition becomes sacrosanct and the seizure of ganja was a fabricated proposition.

15. The provision enumerated in Section 42 of the NDPS Act, 1985 was complied with in the presence of the Gazetted Officer i.e. the C.I. Naihati and other witnesses. The Learned Trial Judge has rightly observed in the light of the decision cited in the case of ***Himachal Pradesh Vs. Pwaban Kumar, State of Rajasthan Vs. Bhawarlal*** that the provision of Section 50 of NDPS Act, 1985 pertains to personal search and not in connection with any bag, article or container etc. which is used for carrying. The evidence of police witnesses if trustworthy can be relied upon in exclusion of the independent witnesses. In the instant case the photographer and the person who measured the quantity of the recovered ganja were not examined. The evidence of PW-5 and PW-6 did not support the seizure though they identified their respective signature on the seizure list endorsing the process of seizure to have been concluded.
16. The evidence PW-9 and PW-8 corroborates the fact of sending the sample from the recovered ganja for chemical analysis and the subsequent identification of the presence of ganja therein by the deposition of PW-8 amply establishes the prosecution case in its effectivity negating the minor lapses. The evidence of the police witnesses is credible enough to be relied upon.
17. In the opinion of this Court, the Learned Trial judge has rightly convicted the appellant after proper appreciation of evidence and this Court is not inclined to interfere with the same.
18. In view of the above discussions, the appeal is dismissed.

19. The appellant according to records has already served out the sentence.

20. I record my appreciation for the able assistance rendered by Mr. Satadru Sinha, Learned Advocate, as *amicus curiae* in disposing of the appeal.

21. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(ANANYA BANDYOPADHYAY, J.)