

Form No.J(1)
Item No.150.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 03.05.2023

DELIVERED ON: 03.05.2023

PRESENT:

THE HON'BLE MR. JUSTICE SIDDHARTHA ROYCHOWDHURY

C.R.A. 403 of 2019

Dilip Bose @ Dilu
Vs.
The State of West Bengal

Appearance:-

Md. Khairul,
Munshi Maazoor Hossain,
Mr. Md. Irfan

...

for the appellant.

Ms. Anasuya Sinha,
Mr. Pinak Kr. Mitra

.....

for the State.

JUDGMENT

This criminal appeal impeaches the judgment and order of conviction passed by the learned Additional District and Sessions Judge, 12th Court, Alipore in Sessions case no.01(05) of 2014 and Sessions Trial no. 02 (07) arising out of Maniktala police station case no.80 dated 7th March, 2014 thereby convicting the accused persons for committing offence within the meaning of Section 21(b) of NDPS Act and sentenced him to suffer rigorous

imprisonment for five years and to pay fine of Rs. 20,000/- (Rupees twenty thousand only) with default clause.

Briefly stated, on 7th of March, 2014 on or about 8 hours, S.I. Prasanta Kumar Das of Narcotic Cell, DD, Lalbazar with the permission of his controlling officer Mr. Chattopadhyay, AC, Narcotic Cell, DD, Lalbazar, left for Guha Medico Ultadanga within police station Maniktala to work out on source information. At about 11 hours, source pointed out one person walking down Northern side footpath of Ultadange Road. He was intercepted in front of Guha Medico. The raiding team members disclosed their identity and informed the said person the reason for his detention. Local people assembled there. Two persons from the crowd agreed to become witnesses to the search and seizure. The detainee introduced himself as Dilip Bose @ Dilu. He was given option to be searched in presence of a G.O. As no G.O. was available, S.I. Prasanta Kumar Das informed his superior officer at about 12.25 hours. Inspector, Chanchal Biswas, Additional O.C. Ultadanga police Station, came to spot in uniform and he was introduced to the detainee. He gave the second option to the detainee and upon search by Prasanta Kumar Das, only personal belongings were found in his possession. After the detainee was searched 650 pieces of puria (small packets) weighing about 82 grams of narcotic substances and cash of Rs. 5800/- recovered from his possession. The narcotic substances were seized under proper seizure list, duly packed, sealed and labelled on spot in presence of G.O. and independent witnesses. The detainee was arrested. Memo of arrest and inspection memo was served. The Sub-Inspector of Police examined the witnesses and the G.O. at the spot and

recorded their statement under Section 161 of the code of Criminal Procedure. The team led by Prasanta Kumar Das returned to the police station with the contraband substances. O.C, Maniktala police station was, accordingly, informed in writing and Maniktala police station case no.80 of 2014 dated 7th March, 2014 under Section 21(b) of the NDPS Act was registered. S.I. Pratik Majumder was entrusted with the investigation of the case. Thereafter, it was taken up by S.I. Ashadur Rahaman of DD, Lalbazar. After completion of investigation, police submitted charge-sheet. The accused persons stood the trial pleading his innocence to the charge under Section 21(b) of the NDPS Act.

Prosecution examined five witnesses and the learned trial court, after considering the evidence of prosecution witnesses, passed the impugned judgment.

Mr. Khairul, learned counsel representing the appellant, assails the judgment by submitting that the impugned judgment was passed absolutely upon misreading of the evidence by the learned trial court. The learned trial court failed to appreciate the discrepancies galore in the case of prosecution. Prasanta Kumar Das admittedly, went to the place of occurrence to work out the source information and intercepted the accused person. The G.O. came to the place of occurrence on requisition. Admittedly, the search on the person of the accused was conducted on the spot. Prasanta Kumar Das, P.W.2 stated that the black polythene bag was recovered from the front side pocket of the trouser of the accused person and cash also recovered from the back side of the trouser of the accused person. But, according to G.O., more than 600

purias were recovered from the shirt pocket of the accused while cash was recovered from the pocket of the trousers.

It is further adverted that the G.O. stated that the accused put the signature on the seizure list as well as label before the case was registered. According to the learned counsel for the appellant, this factum indicates that the accuse person has been implicated in this case falsely. It is further contended that no independent witness was examined by the prosecution.

Ms. Sinha learned counsel representing the State, with all fairness, submits that the seizure list is eloquent and unerringly indicates that contraband substance was found from the possession of the accused person. It supports the testimony of P.W.2 that 650 purias of small packets of narcotic substance were recovered from the side pocket of the accused. A sum of Rs. 5850/- (Rupees five thousand eight hundred and fifty only) and was found from the back pocket of the trouser of the accused person. The discrepancy regarding place of recovery from the shirt or trousers' pocket as stated by P.W.4, the G.O., according to Ms. Sinha, is absolutely trivial in nature, which can be termed as minor discrepancy and may be ignored by this Court as it has been ignored rightly by the learned trial court.

True it is that independent witnesses to the seizure were not examined at the same time, there is no reason to disbelieve police personnel as witnesses unless there exists some strong ground. It is submitted by Ms. Sinha that since P.W. 3, SI, Pratick Majumder, was a member of the raiding team, who put his signature on the seizure list as witness to the seizure and subsequently, entrusted with the investigation of the case, S.I, Pratick

Majumder, was referred to as the I.O. of the case. He did not assume the role of investigating officer, when the seizure was made.

According to Ms. Sinha, the discrepancy as is appearing between the testimony of P.W. 2 and P.W. 4 so far factum of seizure is concerned, is trivial in nature, I am of the view that this discrepancy cannot be construed to be minor in nature and cannot be tread upon, it considering such discrepancy as pebbles. Rather, in my opinion, it is in the shape of boulders and court should not venture to jump over it. The entire prosecution case hinges on the factum of possession of contraband substance. The incident is of 2014, the order of conviction was passed in 2014. Therefore, such discrepancy in the testimony of P.W.2 and P.W.4 with regard to the recovery of contraband substance, makes the prosecution case doubtful and it strikes at the root of the prosecution case. Learned Trial Court did not even make any whisper to deal with such discrepancy.

In my humble opinion, the impugned judgment cannot be allowed to remain in force and should be set aside, which I accordingly do. Accused person be discharged from bail bond. He shall, however, furnish a bond under Section 437A of the Cr.P.C. for six months before the learned Trial Court.

The criminal appeal is, thus, disposed of.

Copy of the judgment along with lower Court record, be sent down to Learned Trial Court.

(Siddhartha Roychowdhury, J.)

