

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

**Present:**

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Subhendu Samanta**

***CRA 33 of 2019***

***With***

***CRAN 1 of 2022***

***Rahul Goswami & Anr.***

***-Vs-***

***The State of West Bengal***

**For the Appellant** : Mr. Joydeep Kanta Bhowmik, Adv.  
Mr. Sayantan Bhowmik, Adv.  
Mrs. Ankita Patodia, Adv.  
Ms. Rikta Sarkar, Adv.

**For the State** : Mr. Aditi Shankar Chakraborty, Ld. A.P.P.,  
Mr. Sourav Ganguly, Adv.

**Heard on** : 28<sup>th</sup> February, 2023.

**Judgment on** : 28<sup>th</sup> February, 2023.

**Joymalya Bagchi, J. :-**

1. Appeal is directed against the judgment and order dated 30.09.2019 and 01.10.2019 passed by the learned Judge, Special Court (Under NDPS Act), 2<sup>nd</sup> Court, Jalpaiguri in NDPS Case No. 48 of 2015 arising out of Bhaktinagar P.S. Case No. 1433 of 2015 dated 11.10.2015 convicting the appellants for commission of offence punishable under

Section 20(b)(ii)(C) of the NDPS Act and sentencing them to suffer simple imprisonment for ten years and pay fine of Rs. 1,00,000/- each, in default, to suffer simple imprisonment for six months each.

2. Prosecution case as alleged against the appellant is as follows:-

3. On 11.10.2015, SI, Subal Chandra Ghosh (PW1) was posted as Officer-in-charge of NGP Outpost. He received secret information that a truck loaded with ganja was coming from Cooch Behar side to proceed to Uttar Pradesh through Siliguri-Jalpaiguri Road. He diarised the information and forwarded it to his superior authority. Upon instruction from superior authority, he left with force to work out the information. He proceeded to Fulbari more in a Government vehicle. He reached Fulbari more and requested the independent witnesses to assist the search. A vehicle bearing No. HR-38N-8909 was proceeding down Siliguri-Jalpaiguri road. The vehicle was detained. Two persons were found sitting in the drivers cabin. PW1 enquired about their identity and they disclosed their identities as the appellants. They were detained. PW1 gave them option to be searched before a Gazetted Officer or an Executive Magistrate. They opted to be searched by a Gazetted Officer. He requested BDO, Rajganj (PW8) to come to the spot. In his presence the vehicle was searched. 12 bundles of nylon bags containing ganja were recovered. 6 bundles were bigger than the other bundles. The ganja was weighed in a weighing machine. Total weight was found as 400 kgs. 12 samples i.e. two samples from each bundle were taken. Samples were

sealed and labeled. Inventory of the contraband was prepared. The contraband was seized under a seizure list (Ext.2). Weighing machine was also seized under a seizure list (Ext.2/1). The vehicle was seized. Appellants were arrested. They were brought along with the contraband to the police station.

4. PW1 lodged written complaint which was treated as first information report and Bhaktinagar Police Station Case No. 1433 of 2015 dated 11.10.2015 under Section 20(b)(ii)(c)/23/25 of the NDPS Act was registered for investigation. In course of investigation, samples were sent for chemical examination Report of the chemical examiner was obtained (Ext.10) which proved presence of ganja. Charge sheet was filed.

5. Charges were framed under Section 20(b)(ii)(c) of the NDPS Act against the appellants. Appellants pleaded not guilty and claimed to be tried. In course of trial, prosecution examined nine witnesses and exhibited a number of documents.

6. In conclusion of trial, trial Judge by the impugned judgment and order dated 30.09.2019 and 01.10.2019 convicted and sentenced the appellants, as aforesaid.

7. Mr. Joydeep Kanta Bhowmik for the appellants argues the prosecution case has not been proved. Conscious possession of narcotics from the appellants has not been established. Mandatory requirements of law had not been followed during search. He contends there is no

compliance of Section 52A of the NDPS Act. He also submits there is delay in dispatch of samples for chemical examination. Hence, appellants may be acquitted.

8. On the other hand, learned Additional Public Prosecutor with Mr. Sourav Ganguly submits the prosecution case is established beyond doubt. Independent witness supported the seizure. Due to lapse of time, he was unable to identify the appellants. Contraband was physically produced in Court. Hence, no prejudice was caused to the appellants. Chain of custody of the seized samples has been proved and the chemical examiner's report was proved without objection. Hence, the appeal is liable to be dismissed.

9. PW1 (Subal Chandra Ghosh) is the de-facto complainant and leader of the raiding party. He deposed he received secret information that a truck carrying ganja from Cooch Behar side was proceeding to Uttar Pradesh through Siliguri-Jalpaiguri road. He diarised the information which was dispatch to his superior. Pursuant to his instruction, he along with his team proceeded to Fulbari more to work out the information. After some time, they saw a truck bearing No.HR-38N-8909 proceeding down the road. The truck was stopped. Appellants were found in the truck. They disclosed their identity. The appellants, on being given option, opted to be searched in presence of BDO. BDO (PW8) was requisitioned. In his presence, the truck was searched. 12 bundles of nylon packets containing ganja were recovered. On weighment, it was

found that the seized ganja weighed 400 kgs. Two samples from each bag were taken. Samples were sealed and labeled. During trial the consignment of ganja was produced in Court and marked as Material Exts.1 and 2. PW1 proved the formal first information report as well as the seizure lists. He also proved the weighment chart (Ext.7).

10. It is contended there is no endorsement that the superior officer had received the prior information. Hence, requirement of section 42(2) of NDPS Act has not been complied with. Prior information had been diarised and was produced in Court as Ext.3. Without prejudice to the aforesaid, it may be relevant to note that the recovery was made on a public which is governed under Section 43 of the NDPS Act. There is no manner of application of Section 42(2) or Section 50 of NDPS Act.

11. Deposition of PW1 is corroborated by other members of the raiding party viz., PWs.2, 3, 4, 5 and 6. They proved their signatures on the seizure list and the other documents.

12. PW7 (Kamal Saha) is an independent witness to the search. He deposed he was present when recovery was made. He proved his signature on the seized contraband as well as on the sample packets. He, however, could not identify the appellants due to lapse of time.

13. PW8, (Norbu Chewang Sherpa) BDO was present at the time of recovery. He proved his signature on the seizure list as well as the sample packets.

14. In the light of the aforesaid evidence on record, I am of the opinion recovery of 400 kgs. ganja from the truck bearing No. HR-38N-8909 is proved beyond doubt. At the time of recovery appellants were found in the truck. Appellant no.1 Rahul Goswami was sitting in the driver's seat and the second appellant viz., Sambhu Halder was sitting on the left seat in the driver's cabin.

15. From the aforesaid evidence it appears Rahul Goswami was driving the vehicle and the other appellant was his assistant. They had control and dominion over the vehicle. The sacks of ganja were hidden under bamboo sticks. These circumstances unequivocally establish the prosecution case that the appellants were surreptitiously transporting the contraband in the vehicle in question.

16. It has been argued that Section 52A of the NDPS Act has not been complied with. Inventory of articles certified by Magistrate has not been produced. But in the present case, the contraband was physically produced in Court and exhibited as Material Exts. 1 and 2. This establishes the recovery from the appellant beyond doubt. Reference may be made to *Vijay Jain vs. State of Madhya Pradesh*<sup>1</sup>. Hence, there was no prejudice caused to the appellants.

17. It has also been argued there is delay in dispatch of samples. Malkhana registered has not been produced. Evidence on record show there is delay of four months in dispatch of samples for examination.

---

<sup>1</sup> (2013) 14 SCC 527 (para 10)

But the chain of custody does not appear to have been breached. PW1 drew the samples at the spot. They were sealed and labelled. Sealed samples bore the signatures of not only of the members of the raiding party but an independent witness PW7 and BDO (PW8). The seized samples containing the aforesaid signatures were received by the chemical examiner who gave his report (Ext.10). Report shows presence of ganja in the samples. Samples have been produced in Court. Signatures on the packets have been proved by the independent witness as well as the BDO. This clearly establishes the chain of custody with regard to the samples drawn at the spot and the ones which were examined by the chemical examiner.

18. Hence, I am of the opinion the prosecution case has been proved beyond reasonable doubt.

19. Conviction and sentence of the appellants are upheld.

20. Accordingly, the appeal is dismissed.

21. Connected application being CRAN 1 of 2022 is also dismissed.

22. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure.

23. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

24. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

**(Subhendu Samanta, J.)**

**(Joymalya Bagchi, J.)**

as/akd/PA