

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1844 of 2023

Arising Out of PS. Case No.-159 Year-2021 Thana- BUXAR INDUSTRIAL District- Buxar

SANTOSH KUMAR SINGH @ RASGULLA S/O LATE RAM PRAVESH
SINGH R/O Village- Majharia, P.S- Buxar Industrial, District.- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Alok Abhinav (Amicus Curiae)
		Mr. Amar Kumar Singh, Advocate
For the Respondent/s	:	Mr. Bal Mukund Prasad Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 18-01-2024

1. Heard learned counsel for the appellant and learned APP appearing for the State.

2. This appeal has been filed against the judgment of conviction and order of sentence dated 13.02.2023 passed by the learned Additional District and Sessions Judge-III, Buxar, in connection with N.D.P.S. Case No. 31 of 2021, CIS No. 32 of 2021, arising out of Buxar Industrial P.S. Case No. 159 of 2021, whereby and whereunder the appellant has been convicted for the offence punishable under Section 20(b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'N.D.P.S. Act') and sentenced to undergo rigorous



imprisonment for ten (10) years with a fine of Rs. 1,00,000/- (Rupees one lakh only) for the said offence and in default of payment of fine, to further undergo rigorous imprisonment for a period of one (1) year.

3. The Substance of the prosecution's case is that the Station House officer (in short 'S.H.O.'), Mukesh Kumar, of Buxar Industrial Area P.S. got the secret information on 22.08.2021 at about 06.05 A.M. that one person namely, Santosh Kumar Singh @ Rasgulla Singh (appellant) indulged in selling of narcotic material namely, 'Ganja' in his newly constructed house situated at Kathkouli village, thereafter the matter was reported by him to his senior officer and he also requested to appoint a Magistrate and in this regard a necessary entry was made in the station diary and after that the Block Development Officer (in short B.D.O.) posted at Buxar was deputed and thereafter, for the verification of the said secret information, B.D.O., S.I., Haresh Kumar and constables namely, Kundan Kumar, Upendra Kumar and Ravi Ranjan Kumar proceeded from police station to Kathkouli village and reached near the house of accused Santosh Kumar Singh @ Rasgulla Singh.



As per further allegation, when the police party reached at the house of accused, one person, who was present in the said house, on seeing the police party, tried to flee away through the gate but on chase he was apprehended by the police party and on interrogation, he revealed his name as Santosh Kumar Singh @ Rasgulla Singh (appellant) and thereafter a notice under Section 50 of N.D.P.S. Act was given to him for the purpose of communicating the intention of police party to search his house, on which he gave his consent and thereafter the informant along with the deputed B.D.O. and two independent persons namely, Jai Prakash Singh and Raju Singh entered into the house of accused and during course of search, from one room situated in north-west corner on the first floor of the house, two steel boxes containing 5 sacks were recovered, out of the said boxes, the bigger box contained 3 sacks and the small box contained 2 sacks, after that the sacks were weighed with the help of weighing scale (Tarajoo) which was also found in the room and after weighing, the weight of the each sack was measured as 10.9 kg, 10.9 kg, 16.2 kg, 16.0 kg and 12.5 kg which was



66.5 kg in total and after that the seizure list was prepared in the presence of B.D.O. and independent witnesses, upon which they made their signatures and thereafter sample was taken from each sack and after that the sample and rest contrabands were sealed and marked as A, B, C, D and E and the sample was marked as A1 and one copy of the seizure memo was given to the accused Santosh Kumar Singh @ Rasgulla Singh and he was made aware of the offence which had been committed by him and then he was officially arrested.

4. The informant recorded his self-statement, Exhibit- P-12, describing the above-mentioned allegations, on that basis the formal FIR bearing Buxer (Industrial Area) P.S. Case No. 159 of 2021 was lodged for the offences punishable under Sections 20(b)(ii)(c)/22/27/29 of the N.D.P.S. Act, which set the criminal law in motion.

5. Here, it is relevant to mention that the appellant, at the time of his arrest, disclosed to the police party that seized contrabands were supplied to him by his co-villager namely, Prithivi Singh @ Runu Singh, who used to do such activity and also disclosed that the said co-villager had



purchased a Toyota Innova car from the proceeds of crime and also used the same in the smuggling of the narcotic materials. On the basis of said disclosure the co-accused namely, Prithivi Singh @ Runu Singh was also made accused and he was chargesheeted along with the appellant.

6. After completion of investigation, the police chargesheeted the appellant and co-accused Prithivi Singh @ Runu Singh for the alleged offences and cognizance of the alleged offences was taken and thereafter they stood charged for the offences punishable under Sections 20(b)(ii) (c), 22, 27 and 29 of N.D.P.S. Act.

7. During trial, the prosecution examined 5 witnesses and in documentary evidence, proved and exhibited the informant's self statement, an information given to the appellant under Section 50 of N.D.P.S. Act, seizure memo concerned to the recovery of alleged narcotic contrabands, seizure memo of the recovery of Toyota Innova car and mobile phones, confessional statement of the appellant, arrest memos of the appellant and co-accused, Formal FIR and F.S.L. report which were marked as Exhibits P-12, P-9, P-1, P-11, P-13, P-4, P-3, P-14 and P-16



respectively.

8. After completion of prosecution's evidence, the statements of the appellant and co-accused were recorded under Section 313 of Cr.P.C., in which the appellant denied all the material circumstances appearing against him from the prosecution's evidences and claimed himself to be innocent and took the defence that from his house, no '*Ganja*' was recovered and he did not indulge in the illicit business of smuggling of narcotic material.

9. The co-accused namely, Prithivi Singh @ Runu Singh also denied the material circumstances appearing against him from the prosecution's evidences and he took the defence that he had been arrested on 21.08.2021, a day prior to the raid and was brought at the police station but no police official of Industrial Area P.S. was present there rather police officials of Town Police Station and D.I.O. were present and he was falsely implicated by them.

10. The trial court held the appellant guilty of the offence punishable under Section 20(b)(ii)(c) of N.D.P.S. Act but did not convict for other charged offences on account of said offences having been not proved beyond



reasonable doubt and the co-accused was given the benefit of doubt and only the appellant was convicted and sentenced in the manner mentioned-above in paragraph no.2.

11. It has been argued by Mr. Alok Abhinav, learned *Amicuse Curiae* that though in the present matter, one independent person namely, Jai Prakash Singh, who is said to be a witness of the search and seizure, turned hostile but other prosecution witnesses, who are police officials, fully supported the recovery of the alleged contrabands from the alleged house and the appellant was also apprehended from the said house and the seized narcotic materials which were found packed in 5 sacks were sealed at the place of recovery after sampling and before the trial court, their recovery as well as the factum of sampling was proved by the prosecution. Further it has been submitted that though the prosecution did not produce any evidence to prove the secret information which is said to have been received by the informant but the B.D.O. who accompanied the police party to the place of recovery proved the other relevant facts such as the appellant's attempt to flee on



seeing the police party, recovery of the alleged contrabands in huge quantity etc. from the appellant's newly constructed house. Furthermore, it has been submitted that before the trial court, the prosecution failed to prove the fact as to making the senior police officials aware regarding the receipt of the secret information in respect of alleged activity of the appellant as in this regard no documentary evidence was given by the prosecution, however the oral testimony of the police officials, who were examined before the trial court, is sufficient to prove the said fact.

12. Heard learned Amicus Curiae and learned APP for the State and also perused the judgment impugned and evidences available on the case record of trial court and gone through the statement of accused.

13. The instant matter relates to the recovery of 66.5 kg. narcotic material namely, 'Ganja' and as per allegation, the said material was recovered from a newly constructed house of the appellant. The appellant has mainly taken the defence that he has no connection with the alleged house which is said to be the place of recovery of the alleged narcotic materials and he has been falsely roped



in this matter. Now, I have to see whether prosecution succeeded in proving the appellant's connection either in the form of as being owner or as a possessor of/over the newly constructed alleged house situated at Kathkouli village which is said to be the place of recovery of the alleged contraband. The seizure memo of the seized narcotic material is said to have been prepared before two independent persons namely, Jai Prakash Singh and Raju Singh. Jai Prakash Singh was examined as PW-5 before the trial court. He deposed that he knew the appellant on account of being a resident of Kathkouli, he identified his signature over the seizure memo which was exhibited as P-15. The witness deposed in his cross-examination that he had no knowledge about the case and nothing was recovered before him and he made his signature upon the blank paper at police station. Accordingly, the said witness did not support the prosecution's case and his evidence does not help the prosecution in establishing any type of connection of the appellant with the alleged newly constructed house which is said to be the place of recovery of alleged narcotic material.



14. The second independent witness namely, Raju Singh (DW-1) of the proceeding of search and seizure, whose name has been mentioned as a witness of the search and seizure in the seizure memo, was not produced and examined by the prosecution rather he was produced by the appellant and examined as defence witness DW-1. He deposed that the appellant is a resident of his village i.e. Majharia and the appellant has no any house at Kathkouli village (Buxar) and nothing was recovered from the appellant's possession when he was arrested and he saw the proceeding of the arresting of the appellant. The evidence of this witness, who was produced and examined by the defence, goes against the prosecution particularly with regard to the material fact as to appellant's connection with the alleged place of recovery rather supported the appellant's defence. Regarding the said material fact, now, I examine the evidence of other prosecution witnesses who are stated to be present at the place of recovery from where the contraband was recovered. PW-1 Haresh Kumar, who prepared the seizure memos of the alleged contraband, vehicle and mobile phone etc. Exhibit. P-1 and P-2



respectively and also prepared an arrest memo Exhibit-3 of the appellant, deposed in the cross-examination that the appellant was 10 metres away from the alleged house when he was apprehended. From this statement, one thing is quite clear that the appellant was not arrested inside the house i.e. place of recovery. The witness deposed in the cross-examination that he did not see any document concerned to the alleged house of recovery and the persons residing nearby stated that the said house always remained closed and there was no any board or name plate affixed at the said house. He further deposed in the cross-examination that the house was found open and there was no lock.

15. PW-2, Block Development Officer, who is said to be present with police party at the raiding place, deposed that he did not enter into the house that belonged to the arrested accused. He further deposed in the cross-examination that he did not remember the place of appellant's arrest and also does not remember whether any interrogation was made or not by the police officials from the persons residing nearby the place of recovery. He further deposed that he did not see any document concerned



to the title of the alleged house and could not state the boundaries of the said house.

16. PW-3, Mukesh Kumar, who is said to be the informant of the present matter and was present at the place of recovery at the time of raid, deposed that he did not see any document concerned to the place of recovery before or after the institution of the case and he did not see anyone residing in the alleged house and even did not mention in the FIR the details of the person who told him about the ownership and possession over the alleged house.

17. PW-4 is said to be the investigating officer and he deposed in the examination-in-chief that he inspected the alleged house situated at Kathkouli village and he described the boundaries of the said house, according to which, in Southern side there is only a house of Jay Prakash Singh, son of Ras Bihari Singh, in North side there is an agricultural land, in the Eastern and Western side there are open fields. According to this statement there is only one neighbour namely, Jay Prakash Singh, whose house is said to be situated near the southern boundary of the alleged house but the said person who was examined as



PW-5 did not say anything in his evidence to show the location of the alleged house at Kathkouli village at the place as described by PW-4 and moreover prosecution itself also remained careless in eliciting any relevant fact regarding the appellant's connection with the alleged house while conducting chief-examination by putting non-leading relevant question . He deposed in the cross-examination that there was no lock at the door of the alleged house and the door was simply closed with latch (chitkani) and he did not find anyone residing in the said house and did not see any document concerned to the ownership of the alleged house during investigation.

18. From the above discussed facts coming out from the statements of the prosecution witnesses, one thing is quite clear that during investigation, the investigating officer did not make any serious attempt to find out the appellant's connection with the alleged house from which the recovery of the alleged contrabands is stated to have been made and one person namely, Jay Prakash Singh (PW-5), who is said to be residing near the boundary of the alleged house, did not support the prosecution's allegation



as to appellant's possession and ownership over the alleged house and one material prosecution witness as discussed above stated that appellant was arrested 10 meters away from the alleged house and from the statements of above witnesses it is evident that it was not alleged that the alleged contrabands were recovered from the conscious and specific possession of the appellant. Accordingly, I find substance in the defence taken by the appellant as to no connection of him with the alleged house from whom the recovery of the alleged contrabands is said to have been made and the prosecution failed to establish the appellant's connection with the said house and also failed to establish the recovery of the alleged contrabands from the conscious and specific possession of the appellant.

19. So far as the compliance of mandatory provisions of the N.D.P.S. Act is concerned, on this aspect the prosecution's case also appears to be faulty.

20. PW-1, Haresh Kumar, deposed that the secret information regarding appellant's involvement in purchasing and selling of narcotic material namely, 'Ganja' was informed to his senior officer and he also requested his



senior officer to depute a Magistrate. Regarding the said information, the witness made vague statement in his cross-examination and he stated that he could not state the time, mode of information and about the senior officer who was informed. Here, it is important to mention that a B.D.O. was examined as PW-2 but he also could not produce any document regarding his deputation with the police party while he deposed in the cross-examination that the Sub-Divisional Officer (S.D.O.) directed him in writing. From these facts, it is evident that the secret information on that basis the police party proceeded towards the alleged house was not reduced into writing nor any material was produced to show the communication of the said information by the informant to his superior officer within the prescribed time. Hence, the provision of Section 42(2) of N.D.P.S. Act was not complied with by the informant which goes against the prosecution and makes its case weak.

21. Though in the present matter, the seized 5 sacks were produced before the trial court as appears from the evidence of P.W.- 4, who investigated the present matter but his evidence does not seem reliable to prove that



the sacks containing the alleged contrabands that were produced before the trial court were the same sacks which were actually seized from the alleged house and in this regard statements made by this witness in paragraph no. 17, 18, 22 and 24 are relevant. He deposed in the said paragraphs that there was no signature of the appellant as well as of the witnesses of the seizure on any of the seized sacks and there was also no signature of the informant upon any of the sacks, and the papers which were affixed over the 5 sacks did not contain the details of the place and time of sealing process. During evidence, the witness did not say anything about the particulars and type of the seal which is stated to have been affixed on the seized sacks and in this regard the witness deposed in the cross-examination that he got a particular seal and specimen of that seal was put by him on the FIR but he could not state about the details of the said seal. In the light of said statement, I have perused the formal FIR as well as self-statement of informant on that basis the FIR was registered but there is no details of the specimen of the said seal in the FIR as well as self-statement of the informant and furthermore, before the trial



court, the prosecution did not produce and prove the papers containing relevant details which are said to have been affixed on the sacks by the informant just after the recovery of the said sacks when the sealing process was being done and the said circumstance also goes against the prosecution. It is very important to mention that an inventory of the seized narcotic materials and other articles was not prepared by I.O. nor any attempt was made by him to first prepare the inventory and thereafter get such inventory certified regarding its correctness by any Magistrate. As in present matter no inventory was prepared, so there is no question of the process of photography in the presence of Magistrate regarding the procedure of certifying the inventory and photographs and the said circumstance also goes against the prosecution. In the present matter, the B.D.O. (PW-2) is said to be present at the time of search, seizure and other proceedings relating to seized contrabands but he did not say anything in his evidence before the trial court to show that the samples from the seized sacks, in which there were contrabands, were taken before him. Furthermore, the prosecution failed to produce any material



to show that after the seizure of the alleged contrabands the investigating officer made an attempt for deputation of a Magistrate for the purpose of drawing representative samples from the seized narcotic materials in presence of such Magistrate and in this regard, the provisions of Section 52A of N.D.P.S. Act were not followed by the police party which also goes against the prosecution. P.W.3, Mukesh Kumar, deposed in examination-in-chief that samples were taken from each sack, but P.W.4, Vijay Shankar Choudhari, who is the investigating officer, deposed that in the light of court's direction a sample of 250 gms. was only taken from one place of the 5 sacks. These statements show a serious contradiction regarding the factum of taking sample from each sack by the concerned police officer and the said circumstance also goes against the prosecution. In the present matter, as per the prosecution's evidence the seized materials were deposited in the police *Malkhana* but in this regard neither the Malkhana In-charge was examined nor any documentary evidence such as an entry in the *Malkhana* register about depositing the said articles was produced and proved by the prosecution before the trial



court which also goes against the prosecution.

22. From the circumstances appearing from the prosecution's evidences as discussed above, I am not persuaded to affirm the judgment and order impugned convicting the appellant and sentencing him for the offence charged and the above discussed circumstances completely go against the prosecution and cast a serious doubt in the prosecution's allegation and make the appellant entitle to get the benefit of doubt. As such, the judgment and order impugned are hereby set aside and the instant appeal stands allowed.

23. The appellant is in custody, hence he is directed to be released forthwith from the jail, if his custody is not required in any other matter.

24. Mr. Alok Abhinav, learned *Amicus Curiae* shall be entitled to remuneration, as per notification dated 18.05.2017 issued by the State Government, to be paid by the Patna High Court Legal Services Committee for assisting this court.

25. Let the judgment's copy be sent to the concerned trial court and Jail Superintendent for needful



and immediate compliance of this judgment.

26. Let the L.C.R. be sent back to the trial court
forthwith.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	AFR
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Uploading Date	
Transmission Date	

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