

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.583 of 2006

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Arun Kumar Das Son of Parmeshwar Lal Das, resident of Bharkholi, P.S.-
Jalalgarh, District- Purnea

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. N.K. Agarwal (Sr. Adv)
		Mr. Arvind Kumar
		Mr. Kumar Rajedep
		Ms. Diksha Kumari
For the Respondent/s	:	Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 24-04-2024

Heard Mr. N.K. Agarwal (Sr. Advocate), learned
counsel appearing for the appellant as well as Mrs. Anita
Kumari Singh, learned Additional Public Prosecutor for the
State.

2. This appeal has been preferred by the appellant
being aggrieved and dissatisfied with the judgment of
conviction dated 17.05.2006 and order of sentence dated
22.5.2006 passed by learned Additional Sessions Judge, I,
Purnea in Special Case No. 10 of 2000 and 01 of 2000
arising out of Sadar P.S. Case No. 110 of 2000 whereunder
appellant- Arun Kumar Das has been convicted to undergo
rigorous imprisonment for 7 years for the offence under



Section 15(b) of the N.D.P.S. Act.

3. Prosecution case in short, is that, on 05.05.2000 at about 02.50PM, the informant, namely, Arbind Kumar, S.I. (P.W-7) got confidential information that at the marketing yard, Gulabbagh, three bags of poppy straw have been loaded on the roof of Pal bus which is on its way from Purnea to Siligurhi. It is further alleged that 30 kg of Poppy straw was recovered from the aforesaid bags and appellant was found sitting on the roof of the bus. Upon query from appellant, he could not provide any paper for transporting of 30 kgs *danthal of posta dana* (poppy straw). Seizure list was prepared in presence of two witnesses namely Sanjay Kumar Sharma (P.W.-1 and Md. Zahid Alam (P.W.-2).

4. On the basis of fardbeyan of the informant (P.W.-7) in Sadar P.S. Case No. 110 of 2000 was registered and after completing the investigation, I.O. has submitted charge sheet against the appellant. Thereafter cognizance has been taken and the case was committed to the court of Sessions for trial and disposal.

5. Charge has been framed against the appellant.



Trial court explained the charge to the accused(appellant) to which he pleaded not guilty and claimed to be tried.

6. To substantiate the charge leveled against the accused, altogether seven prosecution witnesses have been examined by the prosecution. Out of them P.W.-1, Sanjay Kr. Sharma, P.W.-2, Md. Zahid Alam, P.W.-3 Pramod Kumar Modi, P.W.-4 Vishwanath Modi, P.W.-5 Badal Prasad Modi, P.W.-6 Shivnandan Modi and P.W.-7 Arvind Kumar(informant/I.O).

7. P.W.-1, namely, Sanjay Kumar Sharma and P.W.-2 Md. Zahid Alam are the independent witnesses of the seizure list and they were turned hostile in their evidence and they deposed in para-3 of their evidence that they put their signature on a blank paper on the direction of *darogaji*.

8. P.W.-3, P.W.-4, P.W.-5 and P.W.-6 have been examined and they deposed in their evidence that they did not know anything about the alleged occurrence. Ultimately, they were turned hostile in their evidence.

9. P.W.-7 (informant of this case) deposed in his evidence that on 05.05.2002, he got confidential



information that at the marketing yard, Gulabbagh, three bags of Poppy Straw have been loaded on the roof of Pal bus, which is on its way from Purnia to Silligurhi, thereafter, he along with police party went to the place of occurrence and intercepted the said bus at about 2.50 P.M. The accused appellant was found sitting on the three bags of poppy straw on the roof of the bus. The appellant disclosed that said bags of the *danthal of posta dana* (poppy straw) weighed about 30 kgs. Informant (P.W.-7) seized three bags of poppy straw in presence of two witnesses Sanjay Kumar Sharma (P.W.-1) and Md. Zahid Alam (P.W.-2) and prepared seizure list. He made his self-statement on the road.

10. The cross-examination of the P.W.-7 (informant) was recorded in which he deposed in para-9 that the seized article is not before him. In para-10 of his evidence, he deposed that the *sanha* is not brought by him. Vide para-14, he deposed that the incriminating narcotics substance has not been produced before the Gazetted Officer. It is further deposed in para-16 of his evidence that he has not taken any training in respect of identification of *danthal of posta dana*. Vide para-23, he deposed that he did



not weigh of the alleged narcotics substance.

11. Learned counsel appearing on behalf of the appellant raised manifold contentions and submitted that I.O of this case has not been examined in this case which caused prejudice to the appellant. P.W.-7(informant) deposed in para-14 that the seized contraband substance has not been produced before the Gazetted Officer. In this case, the seized narcotics substance was not sent for its examination. No proceedings under Section 52(A) of the N.D.P.S. Act was conducted by the Investigating Officer. So, the prosecution failed to ensure the compliance of Section 52(A) of the Narcotics Substance and Psychotropic Substance Act, inasmuch as, no samples was undertaken before the Magistrate. The evidence of informant(P.W.-7) has not supported by any other independent or seizure witnesses. In this case, except informant(P.W.-7), all other witnesses have not supported the prosecution case. Further submitted that the evidence of P.W.-7(informant) is full of contradictions and is thoroughly unconvincing. The conviction of the accused appellant as recorded by the trial Court is illegal on the face of record and suffers from



highest degree of perversity. Trial Court has convicted the appellant only on the basis of evidence of P.W.-7, informant of this case. Learned trial Court has not taken into consideration that P.W.-1 and P.W.-2 seizure list witnesses who have stated that their signature was obtained by the P.W.-7(informant) on a blank paper and they were turned hostile in their evidence.

12. Learned APP appearing for the state has argued that the impugned judgment of conviction and order of sentence are fit and proper and based on cogent and consistent evidence, which is adduced by the prosecution witnesses. The judgment of conviction challenged by the appellant is fit to be upheld and sustainable. This appeal requires no interference and is liable to be dismissed.

13. I have gone through the entire oral and documentary evidence adduced by the prosecution as well as the rival contentions raised on behalf of the learned counsel for the appellant and learned APP for the State.

14. The legal provisions in respect of case of N.D.P.S. which are necessitated to prove the prosecution case are required to be discussed. The N.D.P.S. Act



provides for a reverse burden of proof upon the accused, contrary to the normal rule of criminal jurisprudence for presumption of innocence unless prove guilty. This shall not dispense with the requirement of the prosecution for having first establish a *prima facie* case, only whereafter the burden will shift to the accused. The mere registration of a case under the Act will not *ipso facto* shift the burden on the accused from the very inception. Compliance with statutory requirements and procedures shall have to be strict and the scrutiny stringent. If there is any iota of doubt, the benefit shall have to be given to the accused. According to the fact of the present case, independent witnesses with regard to search and seizure, P.W.-1 and P.W.-2, both of them turned hostile deposing therein that their signature were obtained on blank paper by the *darogaji*. P.W.-3, P.W.-4, P.W.-5 and P.W.-6 have also not supported the prosecution case in their evidence. P.W.-7 informant of this case, in his examination-in-chief deposed about the prosecution case. During cross-examination, vide para-9, he deposed that the seized article is not before him. Vide para-14, he deposed that the seized article was



not produced before the Gazetted Officer. Vide para-16 of his evidence, he deposed that he had not taken any training in respect of identification of the *Posta Dana Danthal* (poppy straw). Vide para-23, the incriminating narcotics substance was not weighed by him.

15. In absence of FSL(Forensic Science Laboratory) report with respect to seized article as alleged, the case was not proved against the appellant/accused and could not presume that seized article comes within the purview of offence of Narcotics Drugs and Psychotropic Substance Act. The as alleged seized article did not bring before the Court at the time of adducing of the prosecution evidence. The evidence to prove that the incriminating *Posta dana danthal* was recovered from the possession of the appellant/accused consisted of the evidence of the police officer(P.W.-7) only and punch witnesses. The punch witnesses turned hostile. The independent witnesses of the seizure list, have not supported the prosecution case in their evidence. The only remaining prosecution witness (P.W.-7) informant being a police officer, it will not be safe to rely upon his testimony alone, which in any event



cannot be sufficient evidence by itself either with regard to the recovery or the seized material being incriminating narcotics substance. No explanation has also been furnished by the prosecution for non-production of the said recovered narcotics substance as an exhibit in the trial. Hence, the benefit of doubt will, therefore, have to be given to the appellant/accused.

16. In this case, sample of incriminating narcotics substance was not drawn. According to provision of Section 52(A)(2) that upon seizure of the contraband, the same has to be forwarded either to the Officer-in-charge of the nearest police station or to the Officer empowered under Section 53 who shall prepare and inventory as stipulated in the said provision and make an application to the Magistrate for the purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. In other words, the process of drawing of samples has to be in the presence



and under the supervision of the Magistrate and entire exercise has to be certified by him to be correct. So, the provision in respect of drawing of samples and at the time of seizure is not in conformity with the law laid down by the Hon'ble Apex Court in the case of **Union of India vs. Mohanlal (2016) 3 SCC 379**. This creates a serious doubt about the prosecution case that substance recovered was a contraband.

17. From perusal of the entire evidence adduced on behalf of the prosecution, the prosecution failed to prove its case beyond reasonable doubt and in absence of FSL report and not adopting the process of Section 52(A) of the N.D.P.S. Act. The prosecution failed to prove the charge levelled against the accused/appellant. In this case, the said contraband substance as alleged as recovered was not sent for chemical examination and the said contraband substance was not produced before the Court at the time of adducing the evidence and also not taking the recourse to sub-Section(2) of Section 52(A) of the N.D.P.S. Act.

18. Hence, the case of prosecution is not free from suspicion and the same has not been established



beyond a reasonable doubt. Accordingly, I set aside the impugned judgment of conviction and order of sentence insofar as the present appellant is concerned and quash his conviction and sentence.

19. The appellant is on bail. He is discharged from the liabilities of the bail bonds.

20. Accordingly, the instant appeal is allowed.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
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