

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1182 of 2018**

Arising Out of PS. Case No.-399 Year-2014 Thana- UDWANTNAGAR District- Bhojpur

1. Umesh Pradhan and Anr S/o Saudagar Pradhan, Resident of Village- Barka Dakaich, P.S.- Krishna Brahm, District- Buxar.
2. Deepak Singhm, S/o Ramakant Singh, Resident of Village- Nari Pahar, P.S.- Nirsa, District- Dhanbad, Jharkhand.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dharendra Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Sri Shyed Ashfaque Ahmad, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 25-01-2024

1. Heard learned counsel appearing for the appellants as well as learned APP appearing for the State.

2. The present appeal preferred by both above named appellants/convicts challenging the judgment of conviction dated 30.01.2018 and order for sentence dated 09.02.2018 passed in connection with N.D.P.S. Case No 12/2014 arising out of Udwant Nagar P.S. Case No. 399/2014, whereby and whereunder learned 2nd Additional Sessions Judge, Civil Court, Bhojpur (Arrah), Bihar-802301 convicted the appellants under Section 20(b)(ii)(c) of Narcotic Drugs and Psychotropic Substances (N.D.P.S.) Act, 1985 and has sentenced them to undergo rigorous imprisonment for 10 years



with fine of Rs. 01 Lakh each and in default of payment of fine appellants/convicts to undergo additional sentence of one year of imprisonment.

3. The case of prosecution as it springs from the First Information Report, which is based upon self-statement of S.I. Mithlesh Kumar (PW-6) that on the basis of secret information, he alongwith his police team intercepted a mini truck having registration no. WB29-1226 at about 23:00 hours on Arrash Sasaram Road in front of the police station where on inspections, he found total of 109 packets of *Ganga*, where 105 packets were of 2 Kg and 4 packets were of 5 Kg in weight, total of 230 Kg. He immediately informed about the recovery of aforesaid narcotic substance/contraband to his senior officer and also called circle officer namely, Rajsekhar to join the process of search, seizure and sampling, being executive magistrate. It transpires from the narration of FIR that on spot itself police arrested accused/appellants, namely, Umesh Pradhan and Deepak Singh. From the perusal of FIR. it also appears that while police team was in process of intercepting mini truck accused/appellants tried to escape but after short chasing they have been arrested.

4. On the basis of aforesaid written



information/application, police registered Udwant Nagar P.S. Case No. 399/2014 dated 14/11/2014 under Section 20(b)(ii)(C) and 22(C) of N.D.P.S. Act, where after completion of investigation submitted charge-sheet, whereupon learned Special Court after going through the material collected during the course of investigation took cognizance for the offence under Section 20(b)(ii)(C) and 22(C) of N.D.P.S. Act.

5. After compliance of of Section 207 of Cr.P.C., i.e. by supplying the police papers and materials collected during the investigation as per provision of Section 207 of Cr.P.C., charges were framed and explained to appellants/accused, which they pleaded “not guilty” and claimed trial.

6. Prosecution as to establish its case altogether examined seven prosecution witnesses, as PW- 1 Kumar Ranjit Singh, PW-2 Pappu Kamar, PW-3 Santosh Kumar, PW-4 Shiv Kamar Sah, PW-5 Radha Prasad Yadav, PW-6 Mithlesh Kumar(Informant), PW-7 Shiv Shankar Paswan (Investigating Officer).

7. The prosecution also relied upon following exhibits as to substantiate its case, which are under:

1. Exhibit 1- Signature of Kumar Ranjit



Singh on the seizure list.

2. Exhibit 2- Writing of the informant
Mithlesh Kumar SHO on seizure list

3. Exhibit 2/1 - Signature of the informant
Mithlesh Kumar SHO on seizure list.

4. Exhibit 2/2 – Initial signature of
Anchaladhikari (CO) Raj Sekhar Kumar on
seizure list.

5. Exhibit 2/3 – Signature of the Rajesh Nat
on seizure list

6. Exhibit 3 - Signature and writing of the
Mithlesh Kumar SHO on self written
statement

7. Exhibit 4 – Signature of the Investigating
Officer Shiv Shanakr Paswan on charge-
sheet.

8. Exhibit 5 – Report of Chemical
Laboratory, Custom House Kolkata

9. Exhibit 6 – FSL Patna report of the seized
contraband i.e. "*Ganja*".

8. On the basis of incriminating materials and
evidences as surfaced during the course of trial, statement of



accused/appellants were recorded under Section 313 of Cr.P.C., where they simply denied and show their complete innocence.

9. No oral witnesses or documents were produced in defence during the trial on behalf of the accused/appellants.

10. Learned trial court on the basis of evidences surfaced during the course of trial convicted both accused/appellants, as discussed above and sentenced to undergo rigorous imprisonment for ten years alongwith fine of Rs. 1,00,000/- where in default of payment of fine further ordered to undergo one year imprisonment. Being aggrieved with the said judgment of conviction and order of sentence, the present appeal was preferred.

11. Hence the present appeal.

12. Learned counsel appearing for the accused/appellants, while assailing the impugned judgment submitted that finding of conviction as recorded by learned trial court in views of evidences as surfaced during the course of trial and also in the background of settled legal propositions is appearing bad in the eyes of law. It is submitted that seized articles have not been produced during the trial and no explanation has been furnished by the prosecution for non-production of same during the trial. In support of his



submissions, he relied upon the report of Hon. Supreme Court as reported in the matter of **Vijay Jain vs. State of M.P. (2013) 14 SCC 527**. It is also pointed out by learned counsel that out of two seizure list witnesses one namely, Rajesh Nat was not examined during the trial, whereas the another witness, who is Kumar Ranjit Singh was examined as PW-1, who specifically stated in his cross-examination that he signed over plain paper and nothing was seized before him. It is submitted that this witness was not declared hostile and as such prosecution is bound to accept the version of this witness and if it is so then entire case of prosecution appears false. It is also submitted that compliance of Sections 42, 52-A and 57 of N.D.P.S. Act appears not to be followed in present case, benefit of which must go with appellants/convicts. In support of submissions, the learned counsel placed a reliance on the report of Hon. Supreme Court as reported in the matter of **Karnal Singh vs. State of Haryana (2009) 8 SCC 539**. It is also submitted that the prosecution witnesses took samples after mixing the contraband from different packets, which is also appearing against the settled positions of law. It is also pointed out that the version of prosecution witnesses making the facts contradictory, whether both appellants were arrested from the offending vehicle i.e.



WB 29-1226 or they were arrested after a short chase. It is also submitted that compliance of Standing “Order 01 of 1988” issued by Narcotic Control Bureau was also not followed in present case and on this ground alone the appellants/convicts may be acquitted, where reliance was made upon the report of Hon. Supreme Court reported as **U.P. vs. Hansraj (2018) 18 SCC 355.**

13. Per contra, learned APP Sri Shyed Ashfaque Ahmad appearing for the State contended that the police personnels and D.I.U. (District Intelligence Unit) team were present at the time of recovery of alleged contraband and supported the case of recovery and their testimony are consistent with each other, save and except minor contradictions and on that score it cannot be said that judgment of conviction as recorded by the trial court is bad in the eyes of law. It is pointed out that the "*Ganja*" was seized at the place of occurrence itself. It is further submitted that merely on the basis that seizure list witnesses were not examined or not supported the case of prosecution during the trial on that ground alone the conviction of appellants cannot be looked with tinted glass.

14. Taking note of the submission of learned APP, it is further submitted by learned counsel for the



appellants/convicts that no evidence adduced during the trial that seized contraband i.e. "*Ganja*" was ever kept in "*Malkahna*", rather it was kept in police station, he argued that the contradictions amongst depositions of witnesses cannot be said minor as even the parties of raiding team are not appearing consistent regarding compliance of the mandatory provisions regarding sampling, seizure etc.

15. Upon hearing the learned counsel for the respective parties and on perusal of the records, it appears to re-appreciate the evidences for the purpose of just disposal of present appeal, which are as:

16. PW-2, who is Pappu kumar, stated that on interception of mini truck, which was TATA 407, having registration no. WB 29-1226, the person, who was on the driver seat disclosed his name as Umesh Pradhan, whereas another person, who was sitting beside him disclosed his name as Deepak Singh. It is stated by him that total of 230 Kg of "*Ganja*" was recovered from said vehicle in total of 109 packets. He also stated that a sample was drawn and thereafter, it was sent for FSL. He is silent whether the search or sampling was made in presence of Magistrate but from his examination-in-chief it appears that the compliance of Section 42 of N.D.P.S.



not appears to be followed in present case, rather on cross-examination he stated that weighing machine was brought from some nearby shopkeeper, where he specifically stated that he did not sign any paper during the process.

17. PW-3 is Santosh Kumar, who is also the constable of DIU team and narrated the same fact in his examination-in-chief as that of PW-2 and same is not required to be repeated for the sake of convenience and brevity except the fact that he stated the number of packets was more than 100 without specifying the exact number, rather he deposed that it was total of 230 Kg. He is silent about sampling and seizure and also on the fact whether it was sent to *Malkhana* or police station.

17.1 Upon cross-examination he deposed before the court that vehicle was parked inside the thana, where documents were prepared. He also deposed that he did not sign any paper.

18. PW-4 is Shiv Kumar Sah. He also stated in examination-in-chief that recovery of "*Ganja*" of 230 Kg in 109 packets was made. He stated that the arrested persons i.e. appellants/accused and seized narcotics were brought to police station.



18.1 Upon cross-examination, he stated that two persons were called by Bada Babu (SHO) near to place of occurrence. It was also stated by him that after preparing seizure list truck was brought to police station. He categorically stated that he did not sign on seizure list. He specifically stated that he is not aware about the fact that what happened subsequently at police station. It was stated by him that both appellants/accused persons were arrested while sitting inside the vehicle where one was the driver.

19. PW-5 is Radha Prasad Yadav. He also supported the case of prosecution through his examination-in-chief and stated that both accused/appellants were arrested from vehicle itself and in presence of two independent witnesses packets were recovered containing total of 230 Kg of "Ganja". He is silent over the number of packets as earlier deposed by prosecution witnesses. It is further deposed by him that seizure list was prepared regarding seized "Ganja" and thereafter, seized materials were brought to police station.

19.1 Upon cross-examination, he stated that on the date of occurrence, he was posted with District Intelligence Unit (DIU). He failed to disclose about the number of packets when specifically asked in cross-examination, where he further stated



that he did not bring out those packets from the hidden shelf of the mini truck but stated that it was 230 Kg. It was stated that weighing machine was brought from one nearby shopkeeper namely, Jitendra. He stated that he was not involved in weighing process. It was stated by him that the documents were prepared at the place of occurrence itself but he failed to disclose whether he signed over search/seizure list or not.

20. PW-6 is Mithlesh Kumar. He also supported the case of recovery of contraband i.e. "Ganja" from mini truck having registration no. WB 29-1226. He stated specifically that as the vehicle came near to him the driver and one person jumped from vehicle but they were surrounded by police personnels. They were brought before CO (Anchladhikari), who asked them regarding information of contraband whereupon after their consent, search was made before two independent witnesses, where on the first instance, it was found empty but as a strong smell of "Ganja" was coming, whereupon accused/appellants disclosed that same is kept in a secret cell, which was opened by police and from there 109 packets were recovered having total of 230 Kg of "Ganja", where 105 packets were of 2 Kg and 4 packets were of 5 Kg. It was stated that from each packet, sample was taken and 2 packets of samples



were prepared. He stated to prepare the seizure list which on his identification was exhibited as **Ext. No. 2** and he identified his signature thereof, which on his identification exhibited as **Ext. No. 2/1**. This witness also identified the signature of CO (Anchladhikari) Rajesh Kumar, which on his identification exhibited as **Ext. No. 2/2**. He also identified the signature of seizure list witness namely, Rajesh Nat, which was exhibited as **Ext. No. 2/3**. He also identified the self written statement, which is the basis of present FIR, which on his identification exhibited as **Ext. No. 3**.

20.1 Upon cross-examination, it was stated by him that the independent witnesses were not called, rather they were present at the place of occurrence and before them the search operation was made. No paper was prepared regarding his personal search and also regarding the search of independent witnesses. He also stated that he cannot say about the distance at which accused/appellants were arrested. It was also stated by him that the sample is not present before him right now. He also failed to disclose about the keeping of sample and also failed to disclose whether it was sent anywhere. He stated that weighing stones were of 1 Kg, 2 Kg and 5 Kg.

21. PW-7 is Shiv Shankar Paswan. He is the



investigating officer of this case and recorded the statement of witnesses. He took permission on 21.11.2014 to send seized sample for forensic test and upon having such order it was sent to FSL Patna and also to FSL Kolkata. He categorically stated upon cross-examination that no exhibits were before him on the day of his deposition. He was not present at the time of recovery of seizure/contraband.

22. This Court, while dealing on the subject of non-production of seized contraband before the learned Trial Court would like to reproduce the relevant Paragraph of Judgment of **Vijay Jain Case (Supra)**, for better appreciation and understanding of present case, where ratio of **Jitendra v. State of M.P.**, reported in **(2004)10 SCC 562** and of **Ashok v. State of M.P.**, reported in **(2011) 5 SCC 123** were also taken into consideration.

Para-10 of the judgment speaks as:-

*“10. On the other hand, on a reading of this Court’s judgment in **Jitendra case**, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused*



*and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in **Ashok** this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial Court as material exhibit and there was no explanation for its non-production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant.”*

23. Coming to the next submission made on behalf of the appellants regarding the illegality of the sampling of the seized contraband, it is manifest from the evidence that the representative samples were not drawn from the seized substance and sent to the expert in the designated laboratory for chemical analysis and to report in accordance with law. It would



also be evident from the evidence that the seized substance and the samples were not handled properly in the prescribed manner.

24. Standing Instruction “No. 1 of 1988” dated 15.03.1988 of Narcotics Control Bureau, Government of India issued under Section 52 of the N.D.P.S. Act prescribes the detailed procedure for sampling, sealing and despatching the seized sample to the laboratory for test. Clauses 1.4, 1.5, 1.6 and 1.9 of the Standing Instruction No. 1 of 1988 dated 15.03.1998 read as under:

“1.4 If the drugs seized are found in packages/containers, the same should be serially numbered for purposes of identification. In case the drugs are found in loose form, the same should be arranged to be packed in unit containers of uniform size and serial numbers should be assigned to each package/ container. Besides the serial numbers, the gross and net weight, particular of the drug and the date of seizure should invariably be indicated on the packages. In case sufficient space is not available for recording the above information on



the package, a Card Board label, should be affixed with a seal of the seizing officer and on this Card Board label, the above details should be recorded.

1.5 Place and time of drawal of sample

Samples from the Narcotic Drugs and Psychotropic Substances seized must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug has been recovered, and mention to this effect should invariably be made in the panch nama drawn on the spot.

1.6 Quantity of different drugs required in the sample

The Quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, "Ganja" and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same



quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

1.9 It needs no emphasis that all samples must be drawn and sealed; in the presence of the accused, Panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person, from whose custody the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and the duplicate of each of the samples.”

25. The question as to whether or not the compliance of the guidelines issued by Standing Instruction No. 1 of 1988 would vitiate the trial was considered by the Hon’ble Supreme Court in **Khet Singh Vs. Union of India** since reported in **AIR 2002 SCC 1450, Noor Aga Vs. State of**



Punjab since reported in (2008) 16 SCC 417 and **Union of India Vs. Balmukund and others** since reported in 2012 (9) SCC 161.

26. In Khet Singh (supra) after examining the said issue the Hon'ble Supreme Court held in para 10 as under:

“10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer in-charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation.....”

27. In Noor Aga (supra) after giving thoughtful consideration to the guidelines issued under the N.D.P.S. Act in the Standing Order the Hon'ble Supreme Court observed in paras 89 to 91 as under:

“89. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-à-vis a departmental



proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefore, it becomes obligatory on the part of the subordinate authorities to comply therewith.

90. Recently, this Court in State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr. [(2008) 3 SCC 582], following the earlier decision of this Court in Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect



that had such evidence been produced, the same would have gone against the prosecution.”

28. In Union of India versus Balmukund (*supra*),
the Hon’ble Supreme Court observed in para 36 as under:

“36. There is another aspect of the matter which cannot also be lost sight of. Standing Instruction 1/88 which has been issued under the Act, lays down the procedure of taking samples. The High Court has noticed that P.W.7 had taken samples of 25 gm each from all the five bags and then mixed them and then sent to the laboratory. There is nothing to show that adequate quantity from each bag had been taken. It was a requirement of law.”

29. From the aforesaid discussed evidences and positions of law, it appears that in present case, several material contradictions are appearing, which cannot be ignored. The first and foremost material contradiction was surfaced from the depositions of PW-2, PW-3 and PW-4 that both accused/appellants were arrested when they were sitting in mini truck but from the deposition of PW-6 it appears that they were not present inside the mini truck rather they were arrested from a short distance from vehicle in issue, making the presence of accused/appellants inside the vehicle doubtful. Another material aspect as surfaced out of evidence is that the seized contraband



was not produced before the court during the trial or it was destroyed earlier, which appears in the violations of Section 52-A of N.D.P.S. Act and also in violation of standing order 01 of 1988 as discussed above. It also transpires from the deposition of PW-2 that the weighing machine was automated and it was not manual but weighing stones of 2 Kg and 5 Kg were used. PW-6 during his cross-examination stated that weighing stones were of 1 Kg, 2 Kg and 5 Kg and remained silent, whether it was automated weighing machine or not. It also transpires from the deposition of PW-6 that independent witnesses were present at the place of occurrence itself but from the depositions of PW-4, it appears that two independent persons were called by Bada Babu(SHO). This material thing makes sampling, weighing and making seizure list witnesses doubtful. The another aspect, which was ignored by learned trial court, is the examination of independent witnesses in present case, out of two independent witnesses, namely, Rajesh Nat and Kumar Ranjit Singh, Rajesh Nat was not examined but Kumar Ranjit Singh was examined as PW-1, who completely denied any seizure before him and and said to sign over plain paper only. Having such material contradictions and violations of mandatory provisions of law as discussed, it cannot be said that prosecution established its case



beyond reasonable doubts against accused/appellants.

30. Accordingly, the present appeal stands allowed.

31. The impugned judgment of conviction dated 30.01.2018 and the consequent order for sentence dated 09.02.2018 passed by the learned 2nd Additional Sessions Judge, Civil Court, Bhojpur (Arrah), Bihar-802301 in connection with N.D.P.S. Case No 12/2014 arising out of Udwant Nagar P.S. Case No. 399/2014 are set aside. The appellants/convicts are acquitted of the charges levelled against them. They are directed to be set at liberty forthwith unless their detentions are required in any other case.

32. LCR, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellants in furtherance of order of sentence, be returned to them immediately.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.02.2024
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