

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1350 of 2018**

Arising Out of PS. Case No.-137 Year-2016 Thana- MATIHANI District- Begusarai

Kartikyan @ Kartikeyan @ K. Karthikkeyan, Son of Shri Kumaravel @ Kumaravel Venkatachalam, Resident of Village- Laxminagar Chittode, P.S.- Chittode, District-Erode, (Tamil Nadu).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Din Bandhu Singh, Advocate Mr. Sandip Kumar Gautam, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 16-04-2024

We have heard Mr. Din Bandhu Singh, learned Advocate for the appellant/ Kartikyan @ Kartikeyan @ K. Karthikkeyan, who has been convicted under Section 20(b)(ii)(c) of the NDPS Act, 1985 *vide* judgment dated 20.08.2018 passed by the learned Additional Sessions Judge-Ist-cum-Special Judge, NDPS Act, Begusarai in NDPS Case No. 18 of 2016, arising out of Matihani P.S. Case No. 137 of 2016. By order dated 24.08.2018, has been sentenced to undergo RI for 12 years, to pay a fine



of Rs. 1 lakh and in default of payment of fine to further suffer RI for 2 years. The State has been represented by Mr. Abhimanyu Sharma, learned APP.

2. The appellant/ Kartikyan @ Kartikeyan @ K. Karthikkeyan, who has been assessed to be of 36 years at the time of delivery of judgment, is said to be the owner and driver of a twelve-wheeled truck bearing Registration No. KA-02AA-5151 which was intercepted on 30.10.2016 at about 5:30 in the morning and from which vehicle, 37 packets of *Ganja*, each weighing 11.5 kgs, was recovered.

3. According to the prosecution version, viz., the FIR, which was lodged on the basis of self-statement of Sunil Kumar, Sub Inspector of Police (PW-1), he along with the police team had been on patrolling duty from 11:00 PM onwards on 30.10.2016. At about 2:00 O'clock in the morning, he received a secret information about the possibility of some vehicle crossing the area with narcotics. Since it was in the wee hours, the



information was given by PW-1 to the Superintendent of Police, Begusarai, who telephonically constituted a police team under the supervision of one Md. Kalamuddin (not examined). While the raiding team was waiting at Maniyappa-Rampur, Patel Chowk, a truck bearing registration No. KA-02AA-5151 was spotted coming from Maniyappa direction. Seeing the police party, the driver jumped out of the vehicle but was arrested on the spot. He disclosed his name as that of the appellant. He also admitted that the truck belonged to him and that he had been driving the vehicle from Tripura. He was served with a notice under Section 50 of the NDPS Act, 1985, intimating him of Miranda Rules of his choice of being searched in presence of a Magistrate, to which he responded that he wished to be searched in presence of the Magistrate.

4. A Circle Officer was also summoned by PW-1, in whose presence, search of the person of the appellant was made and a mobile telephone and 1200



currency notes were also recovered. The afore-noted Circle Officer/ Sushil Mishra has been examined as PW-2.

5. On searching the truck, 37 packets of *Ganja*, each weighing 11.5 kgs, was found from the cavity. PW-1 smelt it to be the narcotic drugs and thereafter arranged for the weighing scale. The packets were numbered serially from A-1 to A-37.

6. The appellant was arrested. Seizure-list was prepared in presence of Jagjiwan Paswan and Ram Pukar Yadav, PW-6 and PW-9 respectively.

7. It may be noted that the afore-noted two persons were members of the raiding team and they were chosen as witnesses to the seizure because of absence of any other independent person at the place where the raid had been conducted.

8. The seized narcotic was brought to the police station and from there, it was sent to *Malkhana*. The FIR was registered and the investigation was handed over to



Bipin Singh (PW-8), who after investigation submitted charge-sheet against the appellant, whereupon the appellant was put on trial.

9. The trial court, after having examined nine witnesses on behalf of the prosecution, found the allegation against the appellant to be true and, therefore, convicted him for the offence under Section 20(b)(ii)(c) of the NDPS Act, 1985. The appellant was saddled with a sentence of RI for 12 years and a fine of Rs. 1 lakh with a default clause.

10. From the perusal of the records of this case, it appears that the investigation has been conducted in a most shoddy manner, which makes the prosecution case absolutely doubtful. We are amazed to record that the Investigator (PW-8) did not put any signature on the packets of *Ganja* which were kept in the *Malkhana* nor did he ever verify whether they were stored properly. It was precisely for this reason that he did not know whether the same packets of *Ganja* had



been produced before the Court for inspection.

11. This was not the only place where the Investigator had faulted. He could obtain the permission of the District Judge, Begusarai for sending the samples for forensic test on 10.11.2016 i.e. after 10 days of the seizure of the narcotics. It was received in the laboratory on 13.12.2016 and 16.12.2016 respectively.

12. The delay is absolutely unexplainable.

13. There is yet another glaring defect in the investigation which weakens the prosecution case beyond repairs. The seized narcotic was numbered serially at the spot by PW-1 as A-1 to A-37 which was only signed by him and nobody else; not even the Circle Officer, in whose presence the entire process was completed.

14. There is no reference of any sample having been drawn at that place. It, therefore, appears that the samples were only drawn either on 10.11.2016 or a day before or after.



15. We have referred to this particular date for the reason that the District Judge, Begusarai had given permission for sending the samples to the Forensic Science Laboratory, Kolkata. The entire provisions contained in Standing Order No. 1/88 dated 15.03.1988 and Standing Order No. 1/89 were blatantly flouted. These standing instructions are of Narcotics Control Bureau, Government of India, which were compulsorily to be followed before the enactment of NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022. These instructions state in particular about the place and time of drawal of samples, quantity of different drugs required in the sample etc. There could be no escape from the compliance of such guidelines.

16. The Supreme Court in ***Khet Singh vs. Union of India*** reported in ***AIR 2002 SCC 1450***, ***Noor Aga vs. State of Punjab*** reported in ***(2008) 16 SCC 417*** and ***Union of India vs. Bal Mukund and others*** reported in ***(2009) 12 SCC 161*** has held that



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 those instructions may not have the force of law but they are intended to guide the officers to ensure that a fair procedure is adopted in the investigation.

17. The Supreme Court in **Noor Aga** (Supra) has even gone to the extent of saying that the guidelines should not only be substantially complied but every instruction in it must be insisted upon.

18. Under such circumstances, the report of the FSL loses all its significance.

19. Though the sample was found to be dry pressed, greenish brown coloured, flowering and fruiting like vegetable substance containing THC (Tetra Hydro Cannabis), which is the chief ingredient of *ganja*, but such report would be of no use for the prosecution as there is nothing on record to indicate as to how the



samples were drawn. The delay in drawing the samples and further delay in the samples reaching the FSL make the entire report useless for the prosecution.

20. The packets presented before the Trial Court, without any marker of the IO, again has made such production meaningless. Any packet of any case kept in any *Malkhana* could be produced before the Trial Court in the garb of production of material exhibit. It is only the markers which distinctly make such material exhibits identifiable.

21. That apart, we have also found serious flaws in the manner in which the informant (PW-1) proceeded in the matter. The members of the police team were on patrolling duty in the night of 30.10.2016. It was only at 2 O'clock in the night that a confidential information was received by PW-1 about the possibility of a vehicle with narcotic passing through the area. The information was never recorded into writing. We do appreciate that it was very early in the morning and if



PW-1 is to be believed then he did provide telephonic information to the Superintendent of Police, who directed for constituting a raiding team and not waste time on other paraphernalias. A raiding team was constituted with a senior police officer by the name of Kalimuddin but the prosecution has chosen to keep him back.

22. This again is unexplainable.

23. The raiding team of PW-1 was absolutely unprepared for any search and seizure of narcotics. Precisely, for this reason, PW-1 admitted before the Trial Court that the measurement/ weighing scale was arranged locally. No details have been provided as to from where such machine was obtained.

24. The process of measuring and marking of the packets was done in presence of the Circle Officer (PW-2) but he was neither asked to nor did he himself volunteer to sign such measurement as also the sealing and segregating of 37 different packets and numbering it



as A-1 to A-37. All that PW-2 did was to see through the process of search of the person of the appellant.

25. The question which arises is whether he would be qualified to be called a Magistrate so as to subserve the principle enshrined in Section 50 of the NDPS Act. He had not been summoned on the spot. He had come and joined the raiding team before the truck in question was intercepted. He thus was part of the same raiding team.

26. This is no compliance of Section 50 of the NDPS Act.

27. That apart, we have found that PW-1 gravely faulted in not reducing such information and forwarding it to the superior police officer within 78 hours as mandated in the proviso to Section 42 of the NDPS Act, 1985.

28. All this signifies that the investigation was absolutely lopsided which cannot be solely relied upon, especially when the offence charged is so onerous



entailing such a heavy punishment.

29. There could be no explanation at all regarding the delay in drawing the sample and sending the same to the FSL. There was a long time gap which completely demolished the prosecution case. Who drew the samples and where is not known.

30. Though the prosecution has bolstered up his case by putting forth the substituted photo copy of the *Malkhana* register, indicating that the seized articles were kept in the *Malkhana* by PW-1 on 31.10.2016; but in the absence of same being marked by the Investigator or any other person of the raiding team or the CO, in whose presence it was seized, such cataloging is rendered meaningless.

31. Thus, the prosecution on account of its laxity has destroyed the best evidence of the case, viz., the material exhibit, which now cannot be referable to the seizure made in this case.

32. A fair Trial to an accused is a constitutional



guarantee under Section 21 of the Constitution. All these lapses on the part of the prosecution has rendered it a hollow promise. The investigation, we thus declare, was absolutely unfair to the appellant and consequently the trial also is vitiated.

33. There is no other option for us but to discard the prosecution case. In totality, the case has failed.

34. The appellant is thus acquitted of the charge levelled against him.

35. He is in custody since 31.10.2016. He is directed to be released forthwith if not wanted in any other case.

36. The appeal is allowed.

37. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

38. The records of this case shall also be transmitted to the Trial Court forthwith.



39. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2024
Transmission Date	22.04.2024

