

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1145 of 2017

Arising Out of PS. Case No.-192 Year-2012 Thana- BARACHATTI District- Gaya

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Shrawan Nat, Son of Neklal Nat, R/o Chand Pali, Bind Dera, P.S.- Simri,
District- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Kant, *Amicus Curiae*

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-05-2024

The appellant stands convicted under

Section 20 (b)(ii)(c) of the N.D.P.S. Act, 1985 *vide*

judgment dated 25.07.2017 passed by the learned 1st

Additional District & Sessions Judge, Gaya in N.D.P.S.

Case No. 12 of 2012, arising out of Barachatti P.S.

Case No. 192 of 2012. By order dated 02.08.2017, he

has been sentenced to undergo R.I. for twelve years, to

pay a fine of Rs. 1,00,000/- and in default of payment

of fine, to further suffer R.I. for two years.



2. 100 kilograms of Ganja is said to have been recovered from a box of a vehicle which apparently was being driven by the appellant.

3. Hence, the case against him.

4. With respect to the owner of the vehicle, viz. Chandrawati Devi, the investigation has been kept pending.

5. The Advocate-on-record, viz., Mr. Rakesh Narayan Singh, has given no objection in the case. We have requested Mr. Chandra Kant, the learned Advocate, to be *amicus* in this case. He has accepted the afore-noted request and has assisted this court in the hearing of this case.

6. The State has been represented by Mr. Abhimanyu Sharma, the learned APP.

7. The FIR was lodged by Krishna Kumar (P.W. 2) on 04.05.2012 alleging that on the same date, while he along with the police party was on patrolling duty, he found one pick-up van bearing Reg. No. BR



04D 6428 being driven in a rash and negligent manner. Seeing the police vehicle, the driver of the said pick-up speeded up the vehicle. While doing so, he lost control and the vehicle met with an accident. The driver wanted to run away but was apprehended. When the vehicle was searched, it was found that a box was kept in the body in which one quintal of Ganja was kept. In front of two of the local witnesses *viz.* Kameshwar Yadav (P.W. 6) and Sita Paswan (P.W. 3), a seizure list was prepared. On inquiry from the appellant, the driver of the pick-up van, it was learnt that the vehicle belonged to one Chandrawati Devi of Saran district. The vehicle as also the seized narcotics were brought to the police station, whereafter the formal FIR was registered.

8. On this self-statement of P.W. 2, referred to above, a case *vide* Barachatti P.S. Case No. 192 of 2012, dated 04.05.2012, was registered for investigation against the appellant for the offence under Section 20 of the N.D.P.S. Act.



9. The police, after investigation, submitted charge-sheet against the appellant and kept the investigation pending with respect to Chandrawati Devi, the so-called owner of the vehicle.

10. The Trial Court, after having examined six witnesses on behalf of the prosecution including the Investigator and two of the search and seizure witnesses, convicted and sentenced the appellant as aforesaid.

11. Mr. Chandra Kant, the learned *Amicus* has argued that no provision of the N.D.P.S. Act, 1985 has been followed in drawing samples of the Ganja and sending it immediately for the forensic examination. He has further submitted that there is nothing on record as also in the judgment which would indicate that the material exhibit or its destruction note was placed before the Trial Court for confirmation that the narcotics was seized in the operation as narrated by P.W. 2, the informant. He has further submitted that there has



been an unusual delay in sending the samples for forensic examination. The samples were sent on 28.06.2012 after obtaining permission of the learned Trial court, but the same was received on 04.07.2012. The delay is absolutely inexplicable.

12. Apart from this, it has been submitted that the seizure witnesses also have not supported the prosecution case in its entirety as P.W. 6 has been declared hostile; whereas P.W. 3 appears to be a stock witness of the police.

13. We have examined the deposition of the witnesses, especially of the informant and the Investigator and have found that the submission raised on behalf of the appellant by the *amicus* is correct.

14. Though, the informant (P.W. 2) claims to have seized the Ganja at the place of occurrence only, but there is nothing on record to indicate as to how the consignment of the narcotics was weighed. There is no reference to any weighing scale being



carried by the informant in his police vehicle. All that he has said in his deposition is that he had paper and carbon with him, with which he prepared the seizure list. There is no reference of any weighment at all, either in the FIR or in his deposition.

15. Apart from this, we have also found it to be strange that the entire consignment of narcotics was kept in the *Malkhana* of the police station and was not sent to the *Malkhana*, especially designated for the purposes of storing the seized narcotics before it is destroyed after obtaining the permission of the Trial Court.

16. The samples have not been drawn. This appears from the deposition of the informant/P.W. 2 as also of the Investigator (P.W. 5).

17. The Investigator (P.W. 5) has stated that he had drawn the samples from the consignment kept in the *Malkhana* of the police station. There is no reference of any marking or of any methodology of



drawing samples from the consignment of narcotics. It, therefore, appears to be only a paper work.

18. We have further found from the Ext.-4 that permission was sought by the Investigator (P.W. 5) on 28.06.2012 from the learned Trial Court for sending the drawn sample for forensic examination. The exhibit does not reflect how the samples were drawn, or whether it was ever drawn. It was only communicated to the Trial Court that samples are required to be sent to the forensic laboratory for confirmation that the narcotic is Ganja.

19. Apart from that, we have also found from the forensic report of the laboratory that the consignment had reached the laboratory on 04.07.2012. The delay is too enormous to be explained by the prosecution. After all, the provisions of the N.D.P.S. Act are very stringent and, therefore, strict compliance of the provisions are absolutely necessary to avoid any false implication and mis-trial.



20. There cannot be any doubt that there is nothing on record to indicate that there has been any compliance of Standing Instruction Nos. 1 of 1988 and 1 of 1989 with respect to the seizure and sampling. The entire narcotics was kept in the police *Malkhana* and, therefore, there could be no certainty there was no tampering with the seized narcotic. There is no record of any sample having been drawn and in what manner, which was required to demonstrated during the Trial for the prosecution to take the case to any logical conclusion.

21. The delay, as has already been noted, is absolutely detrimental to the prosecution case. This, coupled with the fact that the witnesses to the search and seizure did not support the prosecution case in its entirety, give a death blow to the prosecution case.

22. Kameshwar Yadav (P.W. 6) has denied that the seizure or sampling was made in his presence. He has been declared hostile.



23. Sita Paswan (P.W. 3) though has said that in his presence, the seizure was done, but some statements which he has made, apart from his being a witness to the seizure, makes his deposition highly unreliable. He saw that the appellant had been injured and had been bleeding and, therefore, was sent to the hospital on the police jeep by P.W. 2. This statement has not been confirmed by P.W. 2, who only claims to have sent the appellant to the hospital along with a constable.

24. That apart, two of the other witnesses, viz., Laxmi Yadav and Hira Lal Yadav are absolutely vague in their deposition before the Court. Laxmi Yadav had reached the P.O. only after the vehicle had turned turtle and the appellant/driver was sent to the police station. Nothing had happen before him and he was only shown the consignment of narcotics by P.W. 2.

25. Hira Lal Yadav (P.W. 4) identified the appellant as someone who looked like the person who



was arrested on the spot and who is the appellant before this Court.

26. Thus, their deposition also is of no help to us to come to the conclusion that the prosecution has come up with an untainted version.

27. What is most surprising for us to note is that the Trial Court never insisted for the production of the material exhibit, viz., the consignment of Ganja. There is no destruction report also on record. This only signifies that nothing was produced before the Trial Court or else, it would have been taken note of and would have been reflected in the judgment of conviction.

28. The Supreme Court in ***Khet Singh vs. Union of India (AIR 2002 SCC 1450)***; ***Noor Aga vs. State of Punjab and Anr. (2008 (16) SCC 417)*** and ***Union of India vs. Bal Mukund and others (2009 12 SCC 161)*** has held that the instruction issued by the Narcotic 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 N.D.P.S. Act. Even though those instructions may not have the force of law, but those are intended to guide the officer to ensure that a fair procedure is adopted in investigation.

29. The forensic report though states that the samples sent to it was Ganja, but which sample was sent remains completely under the wraps.

30. For the informant and Investigator having completely flouted the provisions contained in the N.D.P.S. Act, the prosecution has miserably failed to prove the case that the appellant was driving the vehicle and that from the vehicle driven by him, 100 kgs. of Ganja was recovered. The weighment of the consignment seized also appears to be completely doubtful, as has been noted by us earlier.

31. Does it mean that the appellant was falsely accused in this case?

32. It appears to be so.



33. There was an accident and the appellant had been injured. The accident may have been by the police vehicle. All these inferences are likely to be drawn only because the informant and the Investigator did not follow the instructions of the Narcotics Control Bureau and the provisions of N.D.P.S. Act.

34. With all these failings at the hands of the P.W. 2 and P.W. 5, we have no option, but to set aside the judgment and order of conviction and acquit the appellant of the charge leveled against him.

35. The appeal succeeds.

36. We do not know whether the appellant is still in jail as twelve years have passed by since he was arrested in this case in the year 2012, he is directed to be released from jail forthwith, if he is still lodged in jail.

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 the case be returned to the Trial Court forthwith.

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

40. We have appreciated the efforts made by Mr. Chandra Kant, the learned *Amicus*. Since, he is in the panel of Legal Services Authority, he declines to accept any payment for the services rendered by him in this case.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

manoj/paveen-II-

AFR/NAFR	NAFR
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