

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.3753 of 2024**

Arising Out of PS. Case No.-170 Year-2022 Thana- SIKTA District- West Champaran

Pradeep Kumar S/o- Ambika Sah Resident of Village- Shivaghat, P S-  
Gopalpur District- West Champaran

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

|                      |   |                                                                                           |
|----------------------|---|-------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr.Dhananjay Kumar, Advocate<br>Mr.Abhinav Pandey, Advocate<br>Ms. Kumud Ranjan, Advocate |
| For the Respondent/s | : | Mr.A.M.P. Mehta, Addl.PP                                                                  |

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

**Date : 18-11-2024**

Heard Mr. Dhananjay Kumar, learned counsel for the  
appellant and Mr. A.M.P. Mehta, learned Additional Public  
Prosecutor for the State.

**2.** The matter was taken up on board for final  
hearing in terms of order dated 24.10.2024 of this Court.

**3.** This memorandum of appeal has been preferred  
under Section 374(2) of the Code of Criminal Procedure  
against the judgment dated 29.07.2024 and sentence dated  
31.07.2024 passed in C.I.S. No. 25/2023 arising out of Sikta  
P.S. Case No. 170 of 2022 passed by learned Exclusive  
Special Judge, N.D.P.S., Bettiah, West Champaran, whereby



and whereunder learned trial court convicted the appellant under Sections 20(b)(ii)(c), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “N.D.P.S. Act”) and sentenced to undergo rigorous imprisonment for ten (10) years and fine of Rs. One Lakh, in default of payment of fine, further to undergo R.I. for one year.

**4.** The brief case of the prosecution speaks through written information of the informant namely, Ramesh Kumar Mahto (PW-2), S.I. of Sikta Police Station that while he alongwith other police personnel was on patrolling duty on 15.11.2022 at about 4:30 hours, they reached near to Sikta river and found that a white coloured ‘Bolero’ vehicle is coming from opposite direction. On seeing the police party, the driver of the vehicle fled away with the vehicle. Upon suspicion, Police chased and stopped the vehicle, but the driver of the vehicle escaped from there, whereas a person sitting inside the cabin of the vehicle was apprehended, who was none but the appellant/convict. Upon search of the Bolero vehicle bearing registration No. BR-06-PA-6267, in presence



of two witnesses, total of 23.292 Kgs. 'Ganja' in five plastic packets were recovered. It was said to be seized in accordance with law and thereafter seizure list was prepared.

**5.** On the basis of aforesaid written information Sikta P.S. Case No. 170 of 2022 was lodged on same very day.

**6.** Upon completion of investigation, charge-sheet bearing charge-sheet No. 48/23 dated 02.05.2023 under Section 20(b)(ii)(c), 23(c), 29 of the N.D.P.S. Act was submitted by the Investigating Officer before the learned special court/trial court, which upon perusal of material collected during course of investigation took cognizance for the offence as stated above vide order dated 09.05.2023.

**7.** On the basis of the materials collected during course of investigation, learned Special Court/Trial Court framed the charges against the appellant under Section 20(b)(ii)(c), 23(c), 29 of the N.D.P.S. Act on 03.07.2023, which was duly explained to the appellant/convict wherein he pleaded not guilty and claimed to be tried.

**8.** To substantiate its case, prosecution has



examined altogether nine witnesses namely, PW-1 Sunil Kumar (member of the raiding party), PW-2 Ramesh Kumar Mahto (informant); PW-3 Chandeshwar Singh (member of the raiding party); PW-4 Parmanand Rajak (member of the raiding party); PW-5 Manoj Kumar (member of the raiding party); PW-6 Bunni Lal Yadav (seizure and arrest memo witness); PW-7 Kari Sah (seizure and arrest memo witness); PW-8 Bechu Ram (First Investigating Officer) and PW-9 Saukat Ali (Second Investigating Officer).

9. The prosecution has produced and relied upon following documentary evidences also as to substantiate its case during trial, which are as under:

| Number of Exhibits | List of Documents                                                                          |
|--------------------|--------------------------------------------------------------------------------------------|
| Exhibit P-1/PW2    | Seizure list                                                                               |
| Exhibit P-2/PW2    | Arrest memo which is under the handwriting and signature of Ramesh Kumar Mahto, S.H.O.     |
| Exhibit P-3/PW2    | Self-written application                                                                   |
| Exhibit P-4/PW4    | Writing and signature of Ramesh Kumar Mahto, S.H.O. on page number of written application. |
| Exhibit P-5/PW2    | Formal F.I.R.                                                                              |
| Exhibit P-6/PW6    | Signature of Bunni Lal Prasad Yadav on seizure list                                        |
| Exhibit P-7/PW6    | Signature of Bunni Lal Prasad Yadav on arrest memo                                         |
| Exhibit P-8/PW7    | Signature of Kari Sah on seizure list                                                      |
| Exhibit P-9/PW7    | Signature of Kari Sah on arrest memo                                                       |
| Exhibit P-10/PW9   | Charge-sheet                                                                               |
| Exhibit P-11/PW9   | Forwarding report of the seized narcotic                                                   |



|              |                                                                      |
|--------------|----------------------------------------------------------------------|
|              | substance Ganja which bears the signature and seal of Hon'ble Court. |
| Exhibit P-12 | F.S.L. Report.                                                       |

**10.** On behalf of defence, no witness was examined.

**11.** After examination of prosecution witnesses and by taking note of evidence and incriminating circumstances as surfaced during trial, statement of accused/appellant was recorded under Section 313 of the Cr.P.C., which was denied by the appellant in totality by claiming his complete innocence and false implication.

**12.** On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellant/convict, in aforesaid terms. Being aggrieved of which present appeal was preferred.

**13.** Hence, the present appeal.

**14.** It is submitted by learned counsel appearing on behalf of the appellant/convict that none of the mandatory provision as available under N.D.P.S. Act regarding golden principle of search, seizure and sampling ('s.s.s') appears to be followed in the present case and, therefore, the initiation of prosecution from very beginning appearing questionable.



**15.** In course of argument, it is pointed out that **Exhibit -12** which is forensic science laboratory report shows that five different samples, each of 64.51 grams, 79.72 grams, 74.56 grams, 71.05 grams and 107.54 grams were sent for examination after drawing the sample, but the PW-9/Investigating Officer categorically deposed during the trial that it was taken as 50 grams. It is submitted that informant is silent about drawing of sample at the place of recovery.

**16.** Learned counsel further submitted that the compliance of personal search i.e. Section 50 and also Section 52A of the N.D.P.S. Act, which is mandatory under the law also appears not followed during investigation and, therefore, on this score alone, the impugned judgment is fit to be set-aside/quashed.

**17.** It is submitted that besides above major flaws, learned trial court failed to consider other several other major contradictions which surfaced out of the testimony of prosecution witnesses during the trial, which further makes recovery, sealing and search of contraband as a doubtful event.



**18.** While concluding the argument, learned counsel further submitted that the compliance of standing instruction No. 01/1988 also not appears to be followed in present case. In support of aforesaid, learned counsel relied upon the legal reports of Hon'ble Supreme Court as available through **Khet Singh v. Union of India, [(2002) 4 SCC 380]; Noor Aga v. State of Punjab, [(2008) 16 SCC 417]** and **Union of India v. Bal Mukund & Anr [(2009) 12 SCC 161]**.

**19.** Learned Special Public Prosecutor for the State, while appearing on behalf of the State, submitted that appellant was arrested from the cabin of the vehicle from where the contraband/Ganja, which was of commercial quantity found kept and, therefore, conviction, as recorded by the learned trial court by taking shelter of Section 35 of the N.D.P.S. Act cannot be said bad in the eyes of law.

**20.** It is further pointed out by learned Special P.P. that appellant failed to brought any cogent material during the trial which may negate *prima-facie* his culpable mental state *qua* recovered contraband/ Ganja, however, he could not



disputed the fact that independent seizure list prosecution witnesses completely denied the recovery and also the report of FSL which shows the variance of drawn sample, as submitted by the learned counsel appearing for the appellant, as above.

**21.** I have perused the Trial Court Records carefully and gone through the evidence available on record as also considered the rival submissions canvassed by learned counsel appearing on behalf of the parties.

**22.** After hearing the arguments and upon perusal of record, it appears that the evidence as surfaced during the trial is required to be discussed for the purpose of its re-appreciation for the just and proper disposal of the present appeal.

**23. PW-2 namely, Ramesh Kumar Mahto,** who is the informant of this case, alongwith his patrolling team and other prosecution witnesses stopped the Bolero vehicle bearing BR-06-PA-6267 on the basis of suspicion, while they were on patrolling duty on 15.11.2022 at about 4:30 hours, near quarter bridge of Sikta river. It was deposed that upon



search of the aforesaid Bolero vehicle, total five packets were found recovered which was said to be of 'Ganja', upon weighing separately through electronic machine, which was brought from a nearby shop, one packet was found 5 kg. 232 gram, second packet was of 5 kg. 290 grams, third packet was of 5 kg. 370 grams, fourth packet was of 5 kg. 400 grams and fifth packet was of 2 kgs. and as such in total 23.292 kgs. of Ganja/contraband was recovered. It was deposed that after recovery, a seizure list was prepared, where signature of Circle Officer was obtained alongwith signature of independent witnesses and subsequently police arrested the appellant/convict. It appears from his testimony, upon query, it was disclosed by appellant that the contraband is of Mukhdeo Patel, who is the resident of village-Shivpur, P.S.-Sathi, District-West Champaran and he works only as a carrier, for which he was paid somewhere between 12,000/- to 15,000/- for each trip. He identified his handwriting and signature *qua* seizure list, which upon his identification exhibited during trial as **Exhibit P-01(PW-2)**, arrest memo, which was exhibited as **Exhibit P-02(PW-02)**. He also



identified his self-written information and signature, which upon his identification exhibited as **Exhibit P-03(PW-02)** alongwith endorsement as to lodge present FIR, which upon his identification exhibited as **Exhibit-P-04(PW-02)**. He also identified his handwriting on formal FIR, which upon his identification exhibited as **Exhibit – P-05(PW-02)**.

**23.1.** Upon cross-examination, it appears that no packet was opened at the place of occurrence. No sample was withdrawn there and entire packets, after weighing, wrapped in cloths and thereafter it was sealed. Sample was not drawn at police station. It also appears that at the first instance contraband was look like ‘Ganja’. It was not tested by detecting kit and without any preliminary scientific detection, he came to the conclusion that seized material was ‘Ganja’. He denied the suggestion that appellant took lift from the alleged vehicle from where the contraband was recovered.

**24.** PW-6 and PW-7 are Bunni Lal Prasad Yadav and Kari Sah respectively. Both of them identified their signature upon seizure list and also on arrest memo, which upon their identification, exhibited as **Exhibit P-06(PW-6)** and **Exhibit**



**P-07(PW-6)** and also **Exhibit-P-08(PW-7), Exhibit-P-09(PW-7)** respectively.

**24.1.** Upon cross-examination, it was stated that they have no personal knowledge about present recovery and their signatures were obtained after calling them in police station, disputing the entire recovery of contraband before them, as it was testified by PW-2/informant namely, Ramesh Kumar Mahto, as discussed above.

**25.** PW-1 namely, Sunil Kumar, PW-3 namely, Chandeshwar Singh, PW-4 namely, Parmanand Rajak and PW-5 namely, Manoj Kumar, all appears to be the party of raiding team/patrolling party and their testimony qua recovery, sealing, sampling and seizure are almost on same line as it was testified by PW-2/informant and, therefore, it appears not apposite to discuss their testimony for the sake of brevity.

**26.** PW-8 is the first Investigating Officer of this case namely, Bechu Ram. He appears least concern to the investigation of the present case as the effective investigation was conducted by PW-9 namely, Saukat Ali. It appears from



his deposition that from all five packets total of 250 grams of sample was drawn, each of 50 grams, which was sealed and sent to FSL for its examination with chowkidar No. 2/1 namely, Chhotan Singh, which appears not examined during the trial. He identified charge-sheet, which upon his identification, exhibited as **Exhibit P-10(PW-09)**.

**27.** From aforesaid evidences, it appears that the appellant was arrested from the vehicle. The mandatory provisions appears not to be followed in view of Section 42 or 43 of the N.D.P.S. Act immediately after stopping the vehicle. The driver of the vehicle fled away. Nothing appears from the record which may suggest that the appellant was connected in any manner with the seized contraband/Ganja or the vehicle in issue.

**28.** Section 35 and 54 of the N.D.P.S. Act, no doubt, raised presumption with regard to culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the



circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the *actus reus* which is possession of contraband by the accused cannot be said to have been established. This legal ratio was upheld by Hon’ble Supreme Court in the matter of **Ritesh Chakarvarti Vs. State of M.P. [(2006)12 SCC 321]**.

**29.** It also appears from perusal of record that the testimony of witnesses contradicts the statement of other witness which makes the prosecution story doubtful as PW-1 deposed during the trial that sample was taken by PW-8 at spot, but PW-2 himself stated that he had not taken any sample at the spot. Further, PW-5 testified that Ganja was



recovered in four packets whereas other witnesses deposed that it was total of five packets, doubting the entire recovery. Further, PW-8 testified that informant/PW-2 did not handover the sealed material to the I.O. (PW-9) and, thus made entire seizure and sealing of contraband at spot doubtful.

**30.** Admittedly, no photography or videography of seized materials was done, moreover, the sample was drawn from one single packet out of five packets as per testimony of PW-9, who is the main investigating officer of this case as he categorically deposed that it was taken from single packet which appears in violation of standing instruction No. 01/1988 dated 15.03.1988. Further, comparing the sample drawn as 50 grams from each of the packet as deposed by PW-9, if it compares with **Exhibit-12** though not proved during the trial, but available on record, appears contradictory to the sample as shown in **Exhibit '12'** which are 64.51 grams, 79.72 grams, 74.56 grams, 71.05 grams and 107.54 grams respectively makes the entire sample doubtful by expressing the new facts *qua* drawn sample.

**31.** Issue, which also available from the record and



needs to be highlighted that the seized material/Ganja not appears to be produced before the court during the trial. It nowhere appears that same was destructed and any destruction certificate of said effect was procured in view of section 52A(1) of the N.D.P.S. Act. Non-compliance of aforesaid mandatory provision further goes against the prosecution.

**32.** 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.....”

**33.** 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.”

**34.** 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.”



**35.** Precisely, the evidence as adduced by the prosecution during the trial as discussed above, does not inspire confidence, because of the several discrepancies highlighted here-in-above. The prosecution was duty bound to answer the discrepancies as discussed above during the trial. None failure of which creates a serious doubt, the benefit of which must be extended to the appellant/convict.

**36.** Accordingly, by extending the benefit of doubt to the appellant/convict, the impugned judgment dated 29.07.2024 and sentence dated 31.07.2024 passed by learned Exclusive Special Judge, N.D.P.S., Bettiah, West Champaran in connection with in C.I.S. No. 25/2023 arising out of Sikta P.S. Case No. 170 of 2022 is hereby set-aside and quashed.

**37.** The appeal stands allowed.

**38.** The appellant/convict namely, Pradeep Kumar, is acquitted of the charges leveled against him by the learned trial court. He is directed to be released forthwith, if his presence is not required in any other case. Fine, if any paid, be returned to appellant immediately.



**39.** Let a copy of this judgment alongwith the Trial Court Records be sent to the learned Trial Court forthwith.

**(Chandra Shekhar Jha, J.)**

Rajeev/-

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| AFR/NAFR          | NAFR       |
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