

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.613 of 2016**

Arising Out of PS. Case No.-52 Year-2013 Thana- MAIRWAN District- Siwan

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Munna Prasad @ Munna Kumar Jaiswal, S/o late Jagdish Prasad, R/o Purani
Bazar Mairaw, P.S. Mairaw, District Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellants	:	Mr. Rakesh Narayan Singh, Advocate Mr. Kanhaiya Pandey, Advocate.
For the State	:	Ms. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 22-10-2024

The present appeal has been preferred against the impugned judgment of conviction and order of sentence dated 20.07.2016 and 22.07.2016 respectively whereby the sole appellant has been found guilty under Section 20(b)(ii)(B) of the NDPS Act and sentenced to rigorous imprisonment for 5 years and directed to pay a fine of Rs.40,000/- and in case of default to pay the fine, he has been directed to undergo further simple imprisonment for one year.

Prosecution case.

2. The prosecution case as emerging from the self statement of Officer-in-Charge of Mairwa Police Station, Siwan,



is that on 29.03.2013 at 16:30 O'clock he received secret information that the appellant is doing illegal trade of *Ganja* under the garb of trade of electronic items. Immediately, thereafter, he gave information to the local Circle Officer of Mairwa and requested him to accompany the raiding party. The concerned Circle Officer came to the Police Station at 16:45 O'clock and, thereafter, the informant along with the Police personnel rushed Purani Bazar. Two independent witnesses viz; Sanni Kumar and Jagdish Prasad were made seizure list witnesses. The search was conducted by the Circle Officer, Nand Kishore Singh in their presence. Then one sack containing *Ganja* was recovered from the gallery going to the house of the appellant and on weighment, the *Ganja* was found to be 18 Kg. No valid document was produced in connection with the seized *Ganja*. The seizure list was prepared and Munna Kumar Jaiswal selling the alleged *Ganja* was arrested and formal FIR was lodged after raiding the substance.

Factual background.

3. On the basis of self statement of the Officer-in-Charge, Mairwa Police Station, Mairwa P.S. Case No. 52 of 2013 was registered against the appellant. After investigation, charge sheet bearing no. 73 of 2013 dated 25.06.2013 was



submitted against the appellant under Sections 20/22 of N.D.P.S. Act and cognizance was taken and charge was framed under Section 20(b)(ii)(B) of the NDPS Act, 1985. The charge was read over and explained to the appellant to which he pleaded not guilty and claimed to be tried. Hence, the trial commenced.

4. During trial, altogether six witnesses were examined on behalf of the prosecution. P.W.-1 Jagdish Kumar, P.W.-2 Sanni Kumar and P.W.-3 Abdul Karim are independent witnesses. P.W.-4 is S.H.O. (informant), P.W.-5 is Gauri Shankar Baitha (ASI), P.W.-6 is Lalan Kumar (S.I.) and P.W.-6 is Girdhar Gopal (Assistant Chemical Examiner).

5. The prosecution also brought on record Ext.1- (signature of the witness Jagdish Prasad on the seizure list); Ext. 1/1 (signature of the witness Sanni Kumar on the seizure list); Ext. 1/2 (signature of Gauri Shankar Baitha on the seizure list); Ext. 1/3 (signature of Circle Officer, Mairwa, on the seizure list); Ext. 2 is formal FIR; Ext. 2/1 is endorsement on the formal FIR and Ext. 3 (signature of Girdhar Gopal on the FSL report).

Statement under Section 313 Cr.PC

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.PC confronting him with incriminating circumstances which came in the



prosecution evidence, so as to afford him opportunity to explain those circumstances. During this examination, he admitted that he had heard the evidence of prosecution witnesses against him. But he did not explain any circumstance, though he claimed that the prosecution evidence is false and he is innocent and has been falsely implicated.

7. The appellant has not examined any witness in his defence.

Findings of the Trial Court.

8. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence whereby the sole appellant has been found guilty and sentenced accordingly.

9. I have heard learned counsel for the appellant and learned APP for the State.

Submissions of the parties.

10. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence passed by learned Trial Court are not sustainable in the eyes of law or on facts. Learned Trial Court has failed to appreciate the evidence on record and erroneously passed the impugned



judgment of conviction and order of sentence.

11. He further submits that the seizure could not be proved by the prosecution because, P.W.-1 and P.W.-2 who are witnesses to the seizure list have stated in their testimony that they have not signed on the seizure list. No seizure was made in their presence and Police had taken only their signatures on a blank paper. He also submits that sampling has also not been prepared as per law. Seized material were neither produced before the Court nor destruction report was received by the Trial Court nor brought on record. No destruction report has been exhibited on record. Hence, the prosecution case is rendered unreliable making the whole prosecution case against the appellant doubtful and the appellant is entitled to get benefit of doubt.

12. He also submits that the appellant has already spent four years in custody out of sentence of rigorous imprisonment for five years.

13. However, learned counsel for the State defends the impugned judgment and the order of sentence submitting that the prosecution has proved its case beyond all reasonable doubts and the appellant has been appropriately sentenced.

14. I have thoroughly perused the relevant materials



on record and given thoughtful consideration to the submissions advanced by both the parties.

Appreciation of the evidences and finding of this Court

15. From perusal of the evidence on record, I find that altogether seven prosecution witnesses have been examined. Out of them, P.W.-1 and P.W.-2 are independent seizure witnesses but both of them have deposed that no seizure was made in their presence and their signature was taken by the Police on a blank paper. P.W.-3 is also independent witness but he has not supported the prosecution case and he has been declared hostile. P.W.-4 is informant. P.W.-5 is also Assistant Sub Inspector and he was part of the raiding party. He has prepared the seizure list. He has also deposed that before search, no memo of searching of the raiding party was made. P.W.-6 is ASI Lalan Kumar. He is also of no significance for prosecution because this witness has deposed that neither he was a member of raiding party nor any seizure was made in his presence nor has he made any weighment of the seized contraband. Next witness is Girdhar Gopal who has wrongly been shown as P.W.-6 whereas his number should have been P.W.-7. He was Assistant Chemical Commissioner, posted in Chemical Laboratory, Custom House, Kolkata. He had examined the



sample prepared in this case which was sent to him.

16. From perusal of the prosecution evidence, I find that seizure of the contraband gets vitiated in view of testimony of P.W.-1 and P.W.-2 who are seizure witnesses as per the claim of the prosecution case, but they have deposed that nothing was seized in their presence and his signature was taken on the seizure list by the Police on a blank paper. It also transpires from perusal of evidence on record that the seized contraband was not produced in Court at the time of recording of evidence nor any destruction report of the contraband allegedly seized have been brought on record. In view of such evidence on record, I find that the prosecution case is very doubtful against the appellant and the appellant is entitled to get benefit of doubt.

17. Hence, the impugned judgment of conviction and order of sentence is not sustainable in the eyes of law.

18. Accordingly, the present appeal is allowed acquitting the appellant of all charges.

19. Appellant Munna Prasad @ Munna Kumar Jaiswal is already on bail. Hence, he is discharged from his liability under his bail bond.

20. The record of the case be returned to the Trial Court forthwith.



21. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J)

S.Ali/-

AFR/NAFR	NAFR
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