

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5248 of 2023

Arising Out of PS. Case No.-511 Year-2017 Thana- BETTIAH CITY District- West
Champaran

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Gyan Kumar @ Gyan Sah, Son of Amerika Sah @ Ambika Prasad, R/o
Village- Purani Gudari Turhatoli, P.S.- Bettiah Town, Dist.- West Champaran.

... .. Appellant/S

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bashishtha Narayan Mishra, Advocate Mr. Brij Kishor Mishra, Advocate Mr. Avinash Raj, Advocate Mr. Sachida Nand Rai, Advocate
For the State	:	Mr. Anand Mohan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 19-08-2024

1. The present appeal preferred by appellant/convict Gyan Kumar @ Gyan Sah against judgment of conviction dated 11.10.2023 and order of sentence dated 18.10.2023 respectively passed by learned Additional Sessions Judge-4th-cum-Special Judge, N.D.P.S., Bettiah, District-West Champaran in Trial No.21 of 2018, C.I.S. No. 91 of 2017 arising out of Bettiah Town Police Station Case No. 511 of 2017, whereby and whereunder appellant/convict Gyan Kumar



@ Gyan Sah has been convicted for the offence punishable under sections-20(b) (ii) (C) of the N.D.P.S. Act and sentenced him to undergo rigorous imprisonment for ten (10) years and fine of Rs. 1,00,000/- (Rupees one lakh) under sections 20(b) (ii) (C) of the N.D.P.S. Act and in default of payment of fine, he shall further ordered to undergo rigorous imprisonment for one year.

2. The crux of prosecution case as springs through written information of informant, namely, Chandra Bhushan Kumar Singh (PW-6), SHO of Balthar police station that he received a secret information that appellant was the accused of Balthar P.S. Case No. 52/17 and he is hidden somewhere in Delhi, upon which, he shared this information with Special Cell of Delhi Police through Senior officials, who on the basis of information supplied by him arrested the appellant and produced before the Patiala House Court, New Delhi, from where, he was taken on transit remand by



informant. It further appears out of narration that during police custody, self statement of appellant/convict was recorded, where he named several co-accused persons and disclosed that at present 01 Kg of *Charas* is kept in his house, thereafter, this information was immediately given to the concerned police station as to conduct raid to recover the said *Charas* in terms of self confession, which was recovered by the local police and after such recovery, the present case was lodged.

3. After investigation, police submitted charge sheet no. 330 of 2018 on 15.05.2018 under Sections 20, 22, 23, 24, 25, 29 of the NDPS Act against the appellant and others. Thereafter, learned District and Sessions Judge, West Champaran at Bettiah took cognizance against the appellant and other co-accused under Sections 20, 22, 23, 24, 25, 29 of the NDPS Act and thereafter case was transferred to the court of Additional Sessions Judge-1st, West Champaran at Bettiah for trial and disposal.



4. To established its case before the learned trial court, the prosecution altogether examined total of seven witnesses, namely, **PW-1** Manish Kumar Sharma, **PW-2** Ram Vinay Kumar (I.O.), **PW-3** Dinesh Kumar, **PW-4** Prashant Kumar, **PW-5** Md. Jafruddin (2nd I.O.), **PW-6** Chandra Bhushan Kumar Singh (Informant) and **PW-7** Jharilal Yadav.

5. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit 1 -Signature of Manish Kumar Sharma on seizure list.

Exhibit 2 – Pagination by S.H.O. Town P.S., namely, Nityanand Chauhan on the written report of S.I. Chandra Bhushan Singh.

Exhibit -3 – Formal FIR.

Exhibit -1/A- Signature of witness Dinesh Kumar on seizure list.

Exhibit -1/B- Signature of witness Prashant Kumar on seizure list.

Exhibit -4- Charge-sheet

Exhibit -5- Writing and signature on forwarding report on the seized sample



for sending forensic science laboratory on which signature and stamp of learned court.

Exhibit -6- Signature of accused Gyan Sah and witness Prashant Kumar and Dinesh Kumar on seizure list which is in writing of seizure list witness Chandra Bhushan Singh.

Exhibit -7- written report of informant Chandra Bhushan Kumar Singh for lodging FIR.

Exhibit -8- FSL report.

Exhibit -9- Signature of S.I. cum S.H.O. Town police station, Bettiah on authorized letter for taking back of seized article.

Exhibit - 10- Confessional statement of accused Gyan Kumar.

M.O. 1 seized intoxicated substance.

6. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all the evidences as surfaced against him and claimed his complete innocence and false implication.

7. Total of three defence witnesses were



examined on behalf of accused/appellant during the trial.

8. No. documentary evidence was adduced on behalf of the appellant/accused.

9. On the basis of aforesaid evidences, learned trial court convicted the appellant and passed order of sentence, as aforesaid, being aggrieved with, appellant/convict preferred the present appeal.

10. Hence the present appeal.

11. It is submitted by learned counsel appearing on behalf of the appellant/convict, that except self statement of appellant/convict, nothing incriminating surfaced during the trial. It is submitted that even the seizure list witnesses i.e. PW-3 and PW-4 did not supported any seizures and upon instruction, they put their signatures on plan papers only. It is also submitted that though seized material was produced before the court but no Malkhana register, showing any number was produced before the court during the trial. It is pointed out that there is nothing on record which may



suggest that compliance of Section 100(4) Cr.P.C. was followed in the background of recovery, where contraband/*charas* was found kept inside the house of appellant/convict. It is also submitted that admittedly the house in issue was only constructed to its half and was accessible by general public and in the background of same, it cannot be said that the recovery of alleged contraband was made from conscious physical possession of the appellant/convict. It is further submitted that nothing surfaced during the trial, which may suggest to established the culpable mental state of appellant/convict *qua* recovered contraband i.e. *charas*. While concluding argument, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Surinder Kumar Khanna Vs Intelligence Officer, Directorate of Revenue Intelligence*** reported as **(2018) 8 SCC 271**, and also relied upon the legal report of ***Mohinder Singh Vs. State of Punjab*** reported as ***AIR 2018 SCC 3798***.



12. Learned APP while opposing the appeal submitted that the recovery of *ganja* was made in furtherance of confessional statement of appellant/convict and therefore, same is admissible under law. It is submitted that though certain minor contradictions appears during the trial but same cannot be the only reason to question the impugned judgment and, as such, there is no apparent reason to interfere with impugned judgment of conviction.

13. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

14. As to re-appreciate the evidence, while disposing the present appeal, it is apposite to discuss the evidences available on record, which are as under:-

15. PW-1 Manish Kumar Sharma, he deposed that occurrence is of 09.07.2017 and on that date he



was posted as SHO of Kalibaggh OP, where he received information from SHO Balthar, namely Chandra Bhushan Kumar (PW-6) that *Charas* is kept hidden in the house of appellant/convict, who is the accused of Balthar P.S. Case No. 58/2018. Upon said information, he conducted raid in the house of appellant alongwith then Chanpatia - SHO namely, Rajesh Jha (not examined), SHO Town, namely, Jafruddin (PW-5) and Chandra Bhushan Kumar (PW-6). The raid was conducted to the house of appellant/convict, whereupon search, 01 Kg of contraband i.e. *charas* was recovered. Seizure list of seized contraband was prepared at the spot itself. He identified his signature on seizure list, which upon identification, exhibited as **Exhibit No. 1**. He identified appellant/convict before the court.

15.1. Upon cross-examination, it was stated by him that no gazetted officer was the part or member of the team, which conducted raid in the house of appellant. It was stated by him that PW-6, Chandra



Bhushan Singh recorded self statement of appellant namely, Gyan Sah before him. He stated that seizure list is mentioning with police case number. He denied suggestion that seized material was not sealed at the place of occurrence, rather he stated that contraband was sealed before him and the seal of informant was put on that. It was stated that seal was not bearing signature of appellant. Seized contraband was kept in white colour bag, which was in single packet.

16. PW-2, is Ram Vinay Kumar, who supported the occurrence/recovery, on the same line as it was deposed by PW-1. It is further deposed that the endorsement to lodge FIR on written information made by SHO Nityanand Chauhan (Not examined), which upon his identification, exhibited as **Exhibit-2**. He further stated that formal FIR is in handwriting of Ajay Rai (not examined) which bears signature of Nityanand Chauhan (not examined) which was also identified by him and upon his identification it was exhibited as **Exhibit-3**. He



appears to be the first I.O. of this case and he received the charge of investigation on 09.07.2017 itself. It was deposed that immediately after getting charge of investigation of this case, he was given written statement, seizure list and seized material. He recorded the restatement of informant (PW-6). As per his deposition, the place of occurrence/recovery is the house of appellant/convict situated in old Gudarturhatoli, which falls under Kalibagh (OP). He also deposed to record the statement of seizure list witness, namely, Prashant Kumar (PW-4) and Dinesh Kumar (PW-3), who supported the occurrence. He also recorded the statement of ASI Md. Jafruddin (PW-5) and ASI Manish Kumar Sharma (PW-1), who supported the occurrence.

16.1 Upon cross-examination, it was stated by him that he took the charge of investigation of this case as per direction of SHO Town, namely, Nityanand Chauhan (not examined), immediately after getting investigation, he was supplied with FIR, seizure list and



contraband, which was given to him by SHO Town namely, Nityanand Chauhan. Appellant was not arrested by him. It was stated that no information regarding occurrence was given to Senior Officer by him. It appears from his deposition that exact location of contraband inside the house was disclosed by informant/PW-6 to the member of raiding team. It was stated that the room from which *charas* was recovered was unoccupied and having with one door. He saw seized contraband first time on 09.07.2017 and by that time it was wrapped with yellow plastic, which was further kept in a plastic bag, which was open. Thereafter he never saw the seized contraband. It was stated that the contraband was kept in Malkhana but he did not mention this fact in case diary during investigation that how and in which condition, it was kept in Malkhana. He also failed to disclose that whether any mark was given to seal of contraband, before depositing it in Malkhana. The weighing and sampling of contraband was not done



by him. As further investigation was handed over to another police officer, therefore, the sample was not sent by him to FSL for chemical examination. He failed to disclose whether the contraband was destroyed or not.

17. PW-3 Dinesh Kumar and **PW-4** Prashant Kumar, both are seizure list witnesses, who identified the seizure list and also their signature over there, which upon their identification were exhibited as **Exhibit 1/A and 1/B** respectively during the trial.

17.1. Upon cross-examination, it was deposed by PW-3 that he signed seizure near to one Harnath School and by that time it was a plain paper only. It was stated that when he signed said paper, he was alone and it was 3:00 PM, when police inspector came to him and asked to sign. Whereas, PW-4, upon cross-examination stated that he signed over blank paper and he never made statement before police and it was also stated that while obtaining signature it was not told by police that



for what reason, his signature is being obtained by him.
He stated that his signature was obtained at Naya Bazar
Chauk.

18. PW-5 Md. Jafruddin, he is also one of the
I.O. of this case. He took the charge of investigation on
25.01.2018. He also appears to be the part of raiding
team and conducted raid in the house of the appellant
on 09.07.2017. He submitted the charge sheet against
appellant through charge sheet no. 330/2018 dated
15.05.2018, where he identified his handwriting and
signature, which upon his identification were exhibited as
PW-05. He also identified his signature upon the
forwarding of seized material which sent for forensic
laboratory and upon his identification, it was exhibited as
PW-05.

18.1 Upon cross-examination, it was stated by
him that the seized material was remain deposited in
Malkhana for 10 months. He specifically stated that it
was not deposited by him to Malkhana. It was stated



that he submitted charge sheet without obtaining FSL report. He was also the part of raiding team and stated that on the date of raid, the appellant Gyan Sah was brought about 7:00 PM by SHO Balthar. Accused was also brought at his house. Some of the raiding team members entered into the house whereas others remains outside. The persons entered into the house were named by him as Balthar SHO namely, Chandra Bhushan Singh (PW-6), Chanpatia SHO namely, Rajesh Kumar Jha (not examined) and Kalibag (OP) In-charge, Manish Kumar Sharma (PW-1). He remained inside the house for about one hour. The search was made by Manish Kumar Sharma (PW-1) and Chandra Bhushan Singh (PW-6). He never obtained search warrant. Before entering into search, he was searched by Prashant Kumar and Dinesh Kumar, both are seizure list witnesses. The place of occurrence was not visited by any Executive Magistrate. He further stated that he was not present at the place from where the seized material was recovered. It was



stated by him that he was outside room, contrary to his earlier statement that he was the person, who also entered inside the house alongwith other police personnel. It was stated that seized materials were shown to all police officers who were present over there, which was covered by yellow colour packet. Nothing was taken out from said packet. He stated as not to participate in paper work. He denied suggestion negating recovery of contraband i.e. *charas* from the house of appellant.

19. PW-6 is Chandra Bhushan Kumar, who is the informant of this case stated that on 06.07.2017 he received secret information that the accused of Balthar P.S. Case No. 52/2017 is hidden somewhere in Delhi. He shared this secret information to his Senior Police Officers. He further informed this secret information to Delhi Police Special Cell with their help consequent upon, appellant was arrested in Delhi and was produced before the Patiala House Court. He visited Delhi and took



Transit remand of appellant on 08.07.2017 for Bihar and thereafter, his self confessional statement was recorded by him, where he admitted to be involved in liquor and drug cases. During the course of self confession, he stated to accept to keep *charas* in his under construction house, at second floor, in South West corner. On the basis of said self confession, a raiding team was constituted on 09.07.2017, whereupon raid, the *charas* was recovered from the place as disclosed by appellant to him. The Seizure list is also containing the signature of appellant and witnesses Prashant Kumar and Dinesh Kumar, which upon identification was exhibited as **PW-06**. It was stated by him that *charas* was sealed at place of occurrence itself. He identified his handwriting and signature on written information, which upon identification was identified as **P-07 (PW-06)**.

19.1 Upon cross-examination, it was stated by him that nothing was recovered from the person of appellant/convict. It was stated that disclosure regarding



ganja and *charas* was made to him by appellant at Delhi itself. It was stated that he did not called any Gazetted Officer before conducting raid. He also failed to disclose regarding production of seizure material before the court. He was again recalled for examination-in-chief, where he stated that the self confession of appellant was recorded by him on the basis of which, the seizure was effected. He identified his handwriting and signature over self confession of appellant which runs into three pages, upon his identification same was exhibited during trial **as C-10 (PW-06)**. It was stated categorically that on the basis of said self statement, Bettiah Town Kalibagh OP P.S. Case No. 511/2017 was recorded. He stated that he mentioned in his written information regarding sealing of seized material at the place of occurrence/recovery itself but he affirmed the fact that he did not mention regarding weighing of contraband in his written information.

20. PW-7 is Jharilal Yadav, who was posted



as Sub-Inspector at Bettiah Police Station. He produced seized material covered in a red colour cloth mentioning with 41/ 2017, which was opened under the direction of court during the trial. Upon opening two packets of contraband was found attached with brown colour tape mentioning a mark no. 41/2017 which was written at three different places. It was stated that something was also mentioned on plastic but same appears not legible. It was stated that both packets containing dark brown solid materials which was *charas* and was exhibited as MO-01 (PW-07).

20.1 Upon cross-examination, it was stated by him that he is not carrying Malkhana register at present. It was also stated by him that material exhibit was not bearing any police case number and also not bearing any signature of witnesses and appellant/accused. It was stated by him that seized material was given to him today itself by Malkhana in-charge. It was also stated by him that the material



exhibit is in torn condition and is not in proper sealed condition. It is wrapped with brown page and is not bearing signature of any police officers.

21. It appears from the deposition of PW-6, who is the informant of this case that the present recovery was made on the basis of self confession of appellant. Contraband was recovered from the house of the appellant which was under construction and therefore, the accessibility of said house of appellant by any other persons cannot be ruled out straightway. It further appears from deposition of almost all prosecution witnesses that compliance of Section 100(4) of Cr.P.C. was not followed in present case. It is admitted position that no Executive Magistrate was ever requested to appoint even matter was relates with search of the house of appellant.

22. Interestingly, both seizure list witnesses PW-3 and PW-4 denied any recovery or to sign any seizure list during course of investigation. It appears



from the deposition of PW-3 that he signed on blank paper near Harnath School, whereas PW-4 signed seizure list in New Market. He also said to sign on blank paper, completely denying the seizures of contraband, which creating a serious doubt regarding the case of prosecution which was initiated on the basis of written information of PW-6. It appears from the deposition of PW-5 that PW-1 Manish Kumar Sharma entered into the house alongwith him, whereas PW-1 stated that the contraband was found kept in a white colour bag and it was a single packet, whereas PW-5 stated that it was in yellow bag. PW-7 said that it was in two packets, creating a further doubt regarding entire seizures, which said to made from house of the appellant. It appears from the deposition of PW-7 that seized material was not found properly sealed while producing before the court during the trial and it was in torn condition. It was not also marked properly, which is sufficient to suggest that the entire search, sampling and seizure of recovery



contraband was doubtful.

23. It would be apposite to reproduce para no. 12 of the ***Mohinder Singh's case (supra)***, which reads as under:-

"12 For proving the offence under the NDPS Act, it is necessary for the prosecution to establish the quantity of the contraband goods allegedly seized from the possession of the accused and the best evidence would be the court records as to the production of the contraband before the Magistrate and deposit of the same before the Malkhana or the document showing destruction of the contraband."

24. Considering the aforesaid discussed evidence as surfaced during the trial, I am of the view that prosecution did not prove the charge levelled against the appellant during the trial. Hence, It would not be safe to uphold the finding of conviction which is based wholly upon the self statement of appellant which was recorded during police custody.

25. Hence, appeal stands allowed.

26. Accordingly, the impugned judgment dated 11.10.2023 and order of sentence dated



18.10.2023 as passed by learned Additional Sessions Judge-4th-cum-Special Judge, N.D.P.S., Bettiah, District-West Champaran in Trial No.21 of 2018, C.I.S. No. 91 of 2017 arising out of Bettiah Town Police Station Case No. 511 of 2017 is hereby set aside/quashed.

27. Appellant namely, Gyan Kumar @ Gyan Sah is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case.

28. Office is directed to send back the trial court records along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2024
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