

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1058 of 2017

Arising Out of PS.Case No. -150 Year- 2014 Thana -CHAURADANO District-
EAST CHAMPARAN (MOTIHARI)

=====

Guddu Singh, Son of Harendra Singh, Resident of Village : Duhu
Suho, P.S. : Chhauradano, District : East Champaran.

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party

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Appearance :

For the Appellant : Mr. Ram Adya Singh, Adv.

For the State : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 30-03-2018

The appellant/Guddu Singh has been convicted for the offence punishable under Section 20(b)ii(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*in short "the N.D.P.S. Act"*) by judgment dated 13.02.2017, passed by the learned 7th Additional Sessions Judge-Cum-Special Judge, Motihari, East Champaran, in N.D.P.S. Case No. 01 of 2015/30 of 2016, arising out of Chhauradano P.S. Case No. 150 of 2014, and by order dated 15.02.2017, he has been directed to undergo rigorous imprisonment for five



years, to pay a fine of Rs. 50,000/- for such offence and in default of payment of fine to further suffer simple imprisonment for one year.

2. The appellant was found to be in possession of two kilograms of *Ganja*, which is a narcotic substance.

3. The case of the prosecution is based on the written report lodged by Gopal Lal Khatik (P.W. 3), who, at the relevant time, was posted as Assistant Sub-Inspector, 13th Regiment, S.S.B., alleging that on 28.12.2014, he received a confidential information at about 11 O'clock in the day that there would be a smuggling of narcotic substance. On such information, the Superior Police Officer was informed and on being permitted, a raiding team was constituted which laid a seize near Vashnavi Cinema Hall, Chhaurodano. At about 2:30 P.M., one motorcycle which was being driven by two persons was spotted. The persons who were riding the motorcycle started running away. One of the persons who was nabbed by the raiding team, on enquiry, disclosed his name as that of the appellant. He was given the option of being searched in presence of a Gazetted Officer or a Magistrate which was declined by him and the appellant permitted the raiding team to search his person. Two of the passersby were requested to become witnesses to the search and seizure, to which they agreed. In their



presence, the motorcycle was searched and from the motorcycle, two plastic bags containing *Ganja* were found. On being tested by the drug detection kit, it was found to be *Ganja*. The narcotics was weighed to be two kilograms. During the course of investigation, the appellant disclosed that the motorcycle belonged to one Vidya Kishore Prasad of West Champaran. The appellant could not tell the name of the person who had given him the aforesaid *Ganja*, but was promised to be paid Rs. 1,000/-, on its successful delivery to one Pramod Singh, Son of Yogendra Singh, whose telephone number was also provided by the appellant.

3. On the basis of the aforesaid written report, a case *vide* Chhauradano P.S. Case No. 150 of 2014, dated 29.12.2014, was instituted for investigation for the offences punishable under Sections 18, 20 and 22 of the N.D.P.S. Act.

4. The police, after investigation, submitted charge-sheet, whereupon the cognizance was taken and the appellant was tried for the aforesaid offences.

5. The learned Trial Court, after examining eight witnesses on behalf of the prosecution and none on behalf of the defence convicted and sentenced the appellant as aforesaid.

6. The defence of the appellant before the Trial



Court was that on the day of the occurrence, he was going to his home from Chhauradano market on foot and saw that one person was fleeing away, after leaving his motorcycle. In the process of chasing the aforesaid person, the appellant was arrested on mistaken identity.

7. Sudhir Kumar Mauraya (P.W. 1), Sarvesh Pandey (P.W. 2), Chhotelal Prasad (P.W. 4) and Pankaj Kumar Pathak (P.W. 5) are the members of the raiding party and they have stated that on information to the informant (P.W. 3) that some persons are making attempts to smuggle narcotic drugs from Chhauradano to Nepal, a team was constituted of which they were the members. Near the Vashnavi Cinema Hall, vehicles were stopped and enquiry was made. At about 2:30 P.M., two persons driving a Splendor Motorcycle, on seeing the police party, wanted to flee away. One of them was arrested who disclosed his name as the appellant. In presence of Sri Nivas Prasad and Rakesh Paswan, who have been examined as P.W. 6 and P.W. 7 respectively, a search of the person of the appellant and the motorcycle which was being used at by him, was made. From the hoot of the motorcycle, two packets were recovered which were found to be containing *Ganja*. On taking weight of the narcotics, it was found to be two kilograms.



8. The aforesaid witnesses could not state as to how many motorcycles were checked during the course of search and whether any valid document could be obtained regarding the motorcycle from which the recovery was made. The packets in which the narcotics was kept was hanging from the handle of the motorcycle. The aforesaid packets were not sealed in their presence. No sample also was drawn from the aforesaid recovered narcotics. The appellant was stated to be standing about 15 to 20 steps away from the motorcycle from where the recovery was made.

9. From the deposition of the aforesaid witnesses, it becomes very clear that neither the secret information, which was received by P.W. 3, was reduced in writing and transmitted to the Superior Police Officer as mandated under Section 42(2) of the N.D.P.S. Act, 1985 nor the samples were drawn in their presence. The appellant was also found to be standing about 15 to 20 steps away from the motorcycle. In that view of the matter, the story of the appellant carrying the narcotics with him on the motorcycle appears to be doubtful. It appears to be a case of mistaken identity. That apart, nothing has been stated by the aforesaid witnesses to ascertain as to where the narcotics was kept, after the same having been seized by



the raiding team.

10. In this context, it would be relevant to note that the two seizure list witnesses, referred to above, viz. P.W. 6 and P.W. 7 have not supported the prosecution version and have been declared hostile.

11. The informant (P.W. 3) has, though, supported the prosecution version in his examination-in-chief, but in his cross-examination, he has stated that he had not entered the fact in the First Information Report that he had given written information to any Superior Officer about his having received secret information about the smuggling of narcotics. He has further stated that the appellant, while running away, was arrested about 15 to 20 steps behind the motorcycle. In nabbing him, it took about ten minutes. The packets which were found from the motorcycle and which were opened were not sealed and signed. In fact, P.W. 3 has stated that he does not remember whether those packets were sealed and signed. He had obtained the confession of the appellant at the place of occurrence. What transpired, on the recovered item being tested by the drugs detection kit, was also not known to him. In paragraph 31 of the cross-examination, he has stated that the narcotics was kept with the guard of the camp cell and was only sent to police station on the next



date. Till that time, the recovered narcotics was in the custody of the guard of the camp cell. P.W. 3 also did not remember whether the seizure list was prepared in his presence.

12. From the deposition of the aforesaid witness (P.W. 3), it becomes very evident that no written information as mandated under Section 42(2) of the N.D.P.S. Act has been sent to the Superior Police Officer by him. No sample also was taken at the place of search and the narcotics so seized was kept in custody of the guard of the camp cell. These are clear violations of the mandatory provisions of the N.D.P.S. Act which have rendered the prosecution case absolutely doubtful and the version of the prosecution unacceptable.

13. Jitendra Deo Deepak (P.W. 8) is the Investigating Officer of this case, who has stated that he had investigated the case and had sent the appellant to custody. He had recorded the confession of the appellant and had also taken the further statement of the informant (P.W. 3). The aforesaid witness does not claim to have written or entered in the case diary about his having received the recovered narcotics on 28.12.2014, along with the appellant. The explanation given by him before the Court was that he was only one month old in the service. The statements of



the witnesses were not taken by him during the course of the investigation nor has he stated anything in the case diary which would disclose that the concerned narcotics was tested by the drug detection kit. Though he had sealed and signed the recovered item, but has not referred about the same in the case diary. In paragraph 16 of the cross-examination, however, he has stated that he had kept the two aforesaid packets in the *Malkhana*, which also was not entered by him either in the investigation report or in the charge-sheet. No inventory of the narcotics was also made by him. The records further reveal that the sample of the narcotics was sent to Forensic Science Laboratory, Muzaffarpur (*in short "the F.S.L."*) on 05.07.2016, even though it was seized on 28.12.2014, *i.e.* about one and half years before. Such delay in dispatching the sample to the F.S.L., makes the report of the F.S.L. also highly suspect. Though the report of the FSL confirms that the sample was of *Ganja*, containing T.H.C., but such report is of no consequence as it is not certain as to which sample, drawn from which stock, was sent and which was tested for the report. Even in the FSL report dated 29.07.2016 (Ext.-9), the column meant for indicating the mode in which the parcels were found to be packed, on receipt and description of seal, was left blank.



14. Thus, from the deposition of the aforesaid witnesses, it is clearly revealed that there has been violation of Sections 41, 42, 52 and 55 of the N.D.P.S. Act and standing instructions of the N.C.B. with respect to search, seizure and sampling.

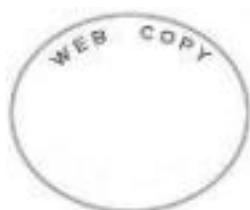
15. For the aforesaid reasons, this Court is of the view that the prosecution has not been able to bring home the charges against the appellant for the offence in which he has been convicted, beyond all reasonable doubts.

16. This Court has been informed that the appellant/Guddu Singh has remained in jail since 29.12.2014, *i.e.* for more than three years. This Court, therefore, has no option but to accord the benefit of doubt to the appellant.

17. The judgment and order of conviction dated 13.02.2017 and 15.02.2017 respectively, passed by the learned 7th Additional Sessions Judge-Cum-Special Judge, Motihari, East Champaran, in N.D.P.S. Case No. 01 of 2015/30 of 2016, arising out of Chhauradano P.S. Case No. 150 of 2014, is set-aside.

18. The appeal succeeds.

19. The appellant/Guddu Singh is acquitted of all charges. He is in jail. He is directed to be released forthwith, if not wanted in any other criminal case.



20. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for necessary compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.04.2018
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