

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.548 of 2018

Arising Out of PS. Case No.-35 Year-2015 Thana- KALUAHI District- Madhubani

Ramashish Singh, son of Late Asharfi Singh, resident of village Laxmipur,
P.S. Kaluahi, District Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 536 of 2018

Arising Out of PS. Case No.-35 Year-2015 Thana- KALUAHI District- Madhubani

Pramod Rai, Son of Late Ganour Rai, Resident of Village-Awapur, Police
Station Pupari, District Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 548 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mr. Pranshu, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 536 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ashok Kumar Jha, Advocate
Mr. Ritwik Thakur, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-09-2024

We have heard Mr. Ajay Kumar Thakur, the



learned Advocate for the appellants in both the appeals and Mr. Abhimanyu Sharma, the learned APP.

2. Both the appeals have been taken up together and are being disposed off by this common judgment.

3. The appellant/ Ramashish Singh [Criminal Appeal (DB) No. 548 of 2018] has been convicted under Sections 20(b)(ii)(C), 22(c), 12 and 24 of the N.D.P.S. Act, 1985 ("the Act" in short) and Sections 25(1-B)(A), 25(1-AA) and 26/35 of the Arms Act *vide* judgment dated 15.03.2018.

4. Appellant/ Pramod Rai [Criminal Appeal (DB) No. 536 of 2018] has been convicted under Sections 20(b)(ii)(C) and 22(c) of the N.D.P.S. Act by the same judgment dated 15.03.2018.

5. By order dated 05.04.2018, appellant/ Ramashish Singh has been sentenced to undergo RI for 15 years, to pay a fine of Rs. 2 lakhs and in default of payment of fine, to further suffer RI for one year under



Section 20(b)(ii)(C) read with Section 22(c) of the Act; RI for ten years, to pay a fine of Rs. 1 lakh and in default of payment of fine, to further suffer RI for six months under Section 24 of the Act; RI for three years, to pay a fine of Rs. 3000/- and in default of payment of fine, to further suffer RI for two months under Section 25(1-B)(a) of the Arms Act; RI for seven years, to pay a fine of Rs. 1000/- and in default of payment of fine to further suffer RI for five months under Section 25(1-AA) of the Arms Act and RI for three years, to pay a fine of Rs. 3000/- and in default of payment of fine to further suffer RI for two months under Section 26/35 of the Arms Act.

6. All the sentences have been ordered to run concurrently.

7. By the same order dated 05.04.2018, appellant/ Pamod Rai has been sentenced to undergo RI for six months, to pay a fine of Rs. 5000/- and in default of payment of fine to further suffer RI for one



month under Section 20(b)(ii)(C) read with Section 22(C) of the Act.

8. From the constructive possession of appellant/ Ramashish Singh, 525 kgs of *ganja*; 2.270 kgs of *charas*, a huge cache of firearms, cartridges and cash of Rs. 89,000/- was recovered. From the dickey of the motorcycle of appellant/ Pramod Rai, 650 gms of *ganja* is said to have been recovered.

9. One Dilip Kumar Sarkar (PW-5) lodged a written report addressed to the Officer-in-Charge of Kaluahi Police Station in the district of Madhubani alleging that, on 20.05.2015 at about 8:30 AM, he received a secret information that in village Laxmipur, falling under the territorial jurisdictions of Khajauli and Kaluahi Police Stations, huge quantity of narcotics have been stored. On receiving such information, PW-5 constituted a special team comprising him; one of his subordinate officers and approximately 26 constables and proceeded with that team to Khajauli Police Station.



He met the Officer-in-Charge of Khajauli Police Station, viz., Brij Kishore Singh (PW-2). He offered to help and he himself along with another officer of Khajauli Police Station, viz., Lal Babu Paswan (PW-3) accompanied him and his team to village Laxmipur. At Laxmipur, PW-5 learnt that appellant/ Ramashish Singh has in his possession narcotics in huge quantity. The team thereafter proceeded to the house of appellant/ Ramashish Singh. Two persons were found sitting on the outer patio of the house, talking amongst themselves. It has also been alleged that near them, unpacked *ganja* in some quantity was also kept. While all this was being done, the Officer-in-Charge of Kaluahi Police Station, viz., Md. Zakil Akhtar (PW-1) and the Block Development Officer, Kaluahi, viz., Arun Kumar Nirala (PW-7) also arrived. In presence of two independent witnesses, viz., Ajit Kumar and Baidnath Rai, both of whom have not been examined at the Trial, search and seizure were made. From different places in the house of



appellant/ Ramashish, 525 kgs of *ganja* and 2.270 kgs of *charas* was recovered. Apart from this, a large number of weapons, cartridges, magazines etc. were also recovered.

10. Both the appellants were arrested. The seizure-list was signed by the independent witnesses as also by PW-5 himself and the other police officers and the BDO, Kaluahi (PW-7). With the seized items, PW-5 proceeded for Kaluahi Police Station and handed over the seized narcotics to PW-1, which was kept in the *Malkhana* of Kaluahi Police Station.

11. For the aforementioned of narcotics (*ganja* and *charas*) and firearms, a case vide Kaluahi P.S. Case No. 35 of 2015 dated 20.05.2015 for the offences under Sections 20, 21 and 22 of the N.D.P.S. Act and Sections 25(1-BA)/26/25/25(1-AA)/35 of the Arms Act was registered for investigation against the appellants.

12. The Trial Court, after having examined nine witnesses on behalf of the prosecution, convicted and



sentenced the appellants as aforesaid.

13. In the background of such huge recoveries, Mr. Thakur has firstly contended that the prosecution case is fit to be rejected on the ground of serious breach of statutory provisions, viz., of Sections 42 and 52A of the Act, making the entire case suspect in the eyes of law.

14. Secondly, it has been argued, that there is nothing on record which would indicate as to how and when the samples were drawn from the seized narcotics for chemical testing.

15. It has also been urged that there has been a huge delay in the samples reaching the laboratories at Muzaffarpur and Kolkata even though those were sent by the special messenger.

16. Most importantly, it has been argued that material exhibits, viz., the narcotics or its destruction report was not produced before the Trial Court and thus the primary evidence in the case is missing.



17. Mr. Thakur has also, in this background, laid stress on non-examination of the seizure-list witnesses. All this, he contends, adds up to the frailty of the prosecution and its failure to prove the case against the appellants beyond all reasonable doubts.

18. As opposed to the aforementioned contentions, Mr. Abhimanyu Sharma has argued that the entire search and seizure procedure was witnessed by a Block Development Officer. The records indicate that losing no time, permission was obtained from the Court for drawing samples and sending it to FSL. Though there has been some delay in the samples being received at the CFSL but that would not necessarily, and in every event, mean tampering of the samples. Even admitting that the Magistrate before whom the samples were drawn has not been examined, it cannot be said with certainty that the sampling process was not overseen by a Magistrate as ordained under Section 52A of the Act as also the Standing Instructions No. 1 of 88 and 1 of



89 which would apply in the facts of this case.

19. With respect to the recovery of firearms, Mr. Sharma has argued that such huge cache of firearms cannot be planted at some body's house for falsely framing him. All the arms and ammunition were properly seized, marked and handed over to the Officer-in-Charge of Kaluahi Police Station. Those weapons were sent for ballistic examination and the Sergeant Major, viz., Kalpnath Singh (PW-9) has reported that the ammunition were all live and the weapons were usable.

20. Both the appellants dealt in firearms and narcotics, a deadly combination, which is the source of all crimes.

21. We have examined the records in detail. What is clearly noticeable to us is that the provisions contained in Section 42 of the Act has been violated with impunity. Section 42 mandates that if a raid is made on any information to an officer, before conducting the raid, he has to pen down that information or record the



grounds for his belief about the correctness of such information and is also required to send a copy of the aforementioned information, reduced in writing, to his immediate superior officer within 72 hours.

22. PW-5, the informant, received the confidential information at about 8:30 AM on 20.05.2015. Though he acted swiftly and constituted a team and then proceeded to the suspected place where the firearms and narcotics were reportedly stored, but missing out on recording such information and sending it to the superior officer within 72 hours, makes the allegation somewhat doubtful.

23. Long back, in ***Abdul Rashid Ibrahim Mansuri vs. State of Gujarat (2000) 2 SCC 513*** and ***Sajan Abraham vs. State of Kerala (2001) 6 SCC 692***, it was held that the officer on receiving the information from any person had to record it in writing in the register concerned and had to send a copy of it to his superior officer in accordance with Section 42 of the



Act. However, if the information is received when the officer is not in the police station, but while he is on the move, either on patrol duty or otherwise or either by mobile phone or other means and the information would call for immediate action and any delay would result in the goods or evidence being removed or destroyed, then it would not be feasible or practical to go for total compliance of Section 42. In such a situation, he could take action and only thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the superior officer.

24. In both the cases, referred to above, it was observed that the compliance with the requirements of Section 42 should normally precede the entry, search and seizure by the officer; but in special circumstances, involving emergent situations, the recording of information in writing and sending a copy thereof to the superior officer, could be postponed by a reasonable period. The question is one of urgency and experience.



25. In ***Karnail Singh vs. State of Haryana (2009) 8 SCC 539***, a Constitution Bench of the Supreme Court held that while total non-compliance with the requirement of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of the Section. Where a police officer does not record the information at all, and does not inform the officer superior to him at all, then it would be a clear violation of Section 42 of the Act. However, whether there is adequate or substantial compliance with Section 42 or not is required to be decided in each case. [Also refer to ***State of Rajasthan vs. Jagraj Singh @ Hansa (2016) 11 SCC 687; Boota Singh and Ors. vs. State of Haryana (2021) 19 SCC 606***].

26. The evidence in the present case clearly shows that PW-5 did not record the information in writing nor did he send any report to his superior officer ever.



27. The other ground which has caught our attention is that after the seized narcotics were labelled and sealed, those were handed over to PW-1, the Officer-in-Charge of Kaluahi Police Station, who too was part of the raid, but the narcotics were never sent to the *Malkhana* dedicated for keeping such seized narcotics. In fact, the evidence suggests that those were stored in the *Malkhana* of *Kaluahi* Police Station only. That would also not have stalled us for long but very surprisingly, we have found no evidence of the samples taken out of those seized articles under the supervision of the Magistrate as mandated under Section 52A of the Act as also the Standing Instructions No. 1/88 and 1/89 which were applicable at the time of the search and raid.

28. On perusal of the records of this case, we have found that the material exhibits were produced in sealed condition before the Court on 21.05.2015 and were returned on the same day. Later, after about two days, those exhibits/materials were again produced



before the Court and was sealed and marked by the Magistrate. Thereafter, it was handed over to the Investigator. The records only indicate that a Judicial Magistrate, 1st Class was entrusted for overseeing the process of sampling. Whether samples were taken out in his presence remains unknown as the authorized Judicial Magistrate has not been brought to the witness-stand.

29. That apart, we have also found that the samples which appear to have been prepared on 27.05.2015 and dispatched by a special messenger was received in the Muzaffarpur, Regional FSL on 16.07.2015. Obviously then, the memo may have been prepared but there was a delayed dispatch. We say so for the reason that the sample was sent by a special messenger. There could be no explanation for one and half month's delay in the sample reaching the laboratory. Nonetheless, one of the samples tested positive for *charas* which is a crude resinous matter collected from the leaves and flowering top of the cannabis sativa



whose chief intoxicating ingredient is THC.

30. Similarly, the sample of *ganja*, which also tested positive in the result, was dispatched sometimes after 27.05.2015 but it reached the FSL Muzaffarpur on 16.07.2015. This also was sent by the same special messenger, viz., Dharmendra Yadav.

31. Does it not raise grave doubts about the sample not having been drawn in presence of the Magistrate (who has not even been examined), and then sent within reasonable time to the Laboratory?

32. Such delay would only make the prosecution case doubtful, especially when the offences complained against the appellants attract very stringent punishment.

33. Section 52A of the Act reads as follows:-

"52A. Disposal of seized narcotic drugs and psychotropic substances.- (1) *The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances,*



controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances] or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of ⁴[such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or



conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

34. The provisions of Section 52A is aimed at creating a clear mechanism for disposal of seized drugs, both for the purposes of dealing with the particular case as also to safeguard the contraband from being used for any illegal purpose thereafter. The competent officer is required to prepare an inventory of such narcotics with adequate particulars and appropriate application to the Magistrate concerned is required to be made for the purposes of certifying the correctness of the inventory; taking the relevant photographs in his presence and certifying them as true; or drawing samples in his presence with due certification.

35. The objective behind this provision is to have an element of supervision by the Magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrate would constitute a primary evidence.



Whenever there is non-compliance of Section 52A of the Act, the inventory or list of samples would not constitute any primary evidence (Refer to ***Mangilal vs. State of Madhya Pradesh 2023 SCC OnLine SC 862***).

36. The obvious reason behind this provision is to inject fair-play in the process of investigation.

37. In the present case, as noted above, we have serious doubts whether the samples were drawn before the Magistrate authorized for the purpose. True it is that one Block Development Officer (PW-7) was part of the raiding team and also deposed before the Trial Court but his evidence was shaky with respect to weighment of narcotics and its sealing. His being part of the raiding team would not serve any purpose as he is only a signatory to the seizure without any certification by him. The certification had to be given by the designated Judicial Magistrate, 1st Class. On top of it, the material exhibits were also not brought before the Trial Court.



38. We are surprised as to how despite such a clear direction by the Supreme Court in ***Union of India Vs. Mohanlal and Anr. (2016) 3 SCC 379***, such huge quantity of narcotics was kept in the *Malkhana* of a police station. What must have happened to such quantity of narcotics remains unknown. It is only to stop the misuse of those seized narcotics that such mandatory provisions have been made in the Act.

39. These two aspects make the case against the appellants under the NDPS Act very doubtful.

40. Added to all these, without any explanation, Ajit Kumar Rai and Baidnath Rai, the two independent seizure-list witnesses, have not been examined.

41. For all these reasons, the prosecution appears to have periliously abandoned its case so far as allegations under NDPS is concerned.

42. We have also noticed that 650 grams of *Ganja* was recovered from the boot of a motorcycle whose possession could not be established. It was only



on the basis of oral confession of appellant/ Pramod that such recovery was saddled on him. Appellant/ Pramod does not appear to be in any manner related to appellant/ Ramashish. Whether he had gone there as a purchaser of narcotics in small quantity or was on a courtesy visit, can only be guessed.

43. Thus, for all practical purposes, there is no evidence against appellant/ Pramod as well.

44. Now to the cache of firearms recovered from the house of appellant/ Ramashish. The weapons and the ammunition were catalogued, segregated and sealed separately. The ballistic expert's opinion is on record. The Sergeant Major who carried out the test has also proved that the ammunition were live and the firearms were workable. Obviously, those were stored by appellant/Ramashish for sale. There is nothing on record which would discredit the prosecution with regard to the recovery of such huge numbers of firearm weapons from the possession of appellant/ Ramashish.



45. For the aforementioned reasons, we find the conviction of both the appellants under the NDPS Act to be bad in the eyes of law.

46. Appellant/ Ramashish Singh is acquitted of the charges under Sections 20(b)(ii)(C), 22(c), 12 and 24 of the NDPS Act and appellant/ Pramod Rai too is acquitted of the charges under Sections 20(b)(ii)(C) and 22(c) of the NDPS Act.

47. So far as conviction of appellant/ Ramashish Singh under Sections 25(1-B)(A), 25(1-AA) and 26/35 of the Arms Act is concerned, we make no interference.

48. Thus, allowing the appeal of appellant/ Pramod Rai [Cr. Appeal (DB) No. 536 of 2018] in totality, the appeal of Ramashish Singh [Cr. Appeal (DB) No. 548 of 2018] is partly allowed.

49. Appellant/ Pramod Rai is on bail. He is discharged of his liabilities under the bail bonds.

50. Appellant/ Ramashish Singh is in jail since



21.05.2015.

51. He has thus undergone the entire sentence imposed upon him under the Arms Act.

52. For the aforementioned reason, he too is directed to be released on bail forthwith, if not required or detained in any other case.

53. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

54. The records of this case shall also be transmitted to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Sarwar

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.09.2024
Transmission Date	20.09.2024

