

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.589 of 2021**

Arising Out of PS. Case No.-67 Year-2018 Thana- BHANGHA District- West Champaran

1. VINOD DAS, Son of Late Nepal Chandra Das, Resident of Village - Jasauli, P.S. - Bhangaha, District - West Champaran.
2. Brijesh Das, Son of Sri Nivas Das @ Niwash Chandra Das, Resident of Village - Jasauli, P.S. - Bhangaha, District - West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate
Mr. Manoj Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 04-10-2024

We have heard Mr. Bimlesh Kumar Pandey, the learned Advocate for the appellants and Mr. Abhimanyu Sharma, the learned APP for the State.

2. The appellants have been convicted under Sections 20(b)(ii)(C) and 23(c) of the N.D.P.S. Act, 1985 ("the Act" in short) *vide* judgment dated 22.07.2021. By order dated 26.07.2021, they have been sentenced to undergo RI



for 15 years for each offence separately, to pay a fine of Rs. One lakh for each offence and in default of payment of fine to further suffer SI for one year for each default.

3. Shri Ram Kumar, an officer of the S.S.B., received secret information on 18.09.2018 that two persons are coming to India with narcotics in huge quantity and they are likely to cross the border sometimes around 7:30 PM on the same day. This information was communicated to his senior officer, viz., Commandant Rajesh Tikku, who constituted a team to lay a seize which included Shri Ram Kumar as well. Two independent persons were chosen as witnesses in advance. They are Gautam Sah and Ram Janam who have been examined at the trial as PWs. 6 & 5 respectively. Since there was prior information to Shri Ram Kumar, the testing kit and weighing machine was also carried by the team. Two persons, viz., the appellants were found coming from Nepal side who had just crossed the border. They were apprehended. They



were found to be in possession of a bag containing 12 packets of narcotics which tested positive for *charas*, a contraband. Samples were drawn in presence of Rajesh Tikku who, apart from the Commandant of S.S.B. was also a Gazetted Officer. The samples and the rest of the seized narcotics were sealed; the appellants were arrested and the case was lodged.

4. On the basis of his written report, Bhangaha P.S. Case No. 67 of 2018 dated 18.09.2018 was registered for investigation under Sections 20(c), 22, 23, 24 & 28 of the Act.

5. The investigation was conducted by Paras Kumar (PW-4).

6. Before discussing his evidence, we deem it appropriate to first refer to the deposition of Shri Ram Kumar (PW-1) on whose report the FIR was lodged.

7. He has though supported the prosecution case, but has admitted that he had not reduced the secret information into writing even after the raid was



conducted. He simply informed his superior officer, viz., Commandant/ Rajesh Tikku and proceeded to the place from where the miscreants could be apprehended. The samples were drawn by him in presence of Rajesh Tikku.

8. It has been argued on behalf of the appellants that there has been a total violation of Section 42 of the Act and the procedure for sampling.

9. Though, from his deposition, it becomes clear that two of the witnesses were chosen from before to be witnesses to the seizure but during the course of trial, both of them, viz., PW-5 and PW-6 have expressed their complete ignorance about any such recovery having been made in their presence. In fact, they have only deposed that they were made to sign on a blank sheet of paper.

10. From the deposition of PW-1, we also find that some effort was made by him in filling up the proforma of apprehension. This does give rise to presumption that PW-1 had received secret information



and he had shared that information to his superior officer who thought it fit to constitute a team and proceed to the border for apprehending the accused persons.

11. Nonetheless, in accord with Section 42 of the Act, it was necessary for PW-1 to have reduced such information into writing within 72 hours for further confirmation that the provisions contained in the Act were followed.

12. 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.

13. 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.

14. 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 with 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***].

15. There is yet another infirmity in the case. In accord with the Standing Instructions No. 1/88 and 1/89, the samples are required to be drawn before a Gazetted Officer or before an authorised officer. It appears that the samples were drawn in presence of one of the members of the team. Even if one of the members of the team was a Commandant with the SSB and was a Gazetted Officer, the requirements would not



be said to be complied with. Even the officer has not been examined at the trial.

16. That apart, the samples were drawn on 18.09.2018 and kept in the *Malkhana*.

17. There is nothing on record to indicate that the samples as also the left over narcotics were appropriately preserved in the dedicated *Malkhana*.

18. Beyond the disclosure of the members of the raiding team and the Investigator, there is nothing on record to lend credence to such an assertion of the prosecution.

19. Though the samples were drawn on 18.09.2018, but those samples were dispatched to the Forensic Science Laboratory, Muzaffarpur only on 11.01.2019 i.e. after delay of about more than 100 days. Though the parcels were sent by special messenger but it was received in the FSL on 15.01.2019. No doubt, the samples tested positive for *Charas*, which is a crude resinous matter collected from



leaf and flowering top of cannabis plant whose chief psychoactive ingredient is Tetrahydrocannabinol (THC), but such report is of no use, especially when the samples were not drawn in accordance with the procedure prescribed and the unusual delay in sending those samples to the laboratory.

20. Though the material exhibits were produced for the inspection of the Court but that does not cure the defect.

21. We have also examined the evidence of PW-4, who could not specifically investigate about the ownership of the vehicle which was being driven by the appellants at the time of raid. The vehicle in question stood in the name of one Manoj Kumar Das who is said to have informed PW-4 that he had sold it to appellant/ Vinod Das. He also claims to have taken out the material exhibits from the *Malkhana* for its production before the Court.

22. We, of course, have not found anything



adverse about the upkeep of the seized narcotics, but that would be of no consequence so far as compliance of the various provisions of the Act is concerned.

23. Surprisingly, in his cross-examination, PW-4 has claimed to have drawn the samples himself.

24. This is not the prosecution case.

25. The samples were drawn by PW-1 at the place of seizure. Even otherwise, there is no entry anywhere in the records of the case of PW-4 having taken out the samples.

26. Coupled with all this, we have further found that neither PW-5 nor PW-6, the seizure-list witnesses, who had appended their signature on the proforma of apprehension also, have supported the prosecution case.

27. These discrepancies in carrying out the investigation makes the prosecution case highly suspect.

28. For the aforementioned reasons, we are unable to put our imprimatur on the judgment of the Trial Court convicting the appellants for the offence.



29. The judgment of conviction and the order of sentence is thus set aside.

30. The appellants are acquitted of the charges.

31. They are in jail. They are, therefore, directed to be released from jail forthwith, if not required or detained in any other case.

32. The appeal stands allowed.

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

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

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

(Ashutosh Kumar, J)

(Khatim Reza, J)

Rajesh/Premchand

AFR/NAFR	NAFR
CAV DATE	NA
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