

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.110 of 2018**

Arising Out of PS. Case No.-1 Year-2014 Thana- TARABARI District- Araria

Ram Chandra Singh, Son of Khushi Lal Singh, Resident of Village-
Khajurbari, P.S.-Kursakanta, District-Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 125 of 2018

Arising Out of PS. Case No.-1 Year-2014 Thana- TARABARI District- Araria

Gulab Chand Singh @ Gulab Chand Mandal @ Gulabi Singh, S/o Jhabbi
Mandal @ Jhabbi Singh, resident of Village- Khari Tola, P.S.- Sikty Bardaha,
District- Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 110 of 2018)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 125 of 2018)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, 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 : 23-09-2024

Both the appeals (two appellants in all) have
been heard together and are being disposed of by this



common judgment.

2. We have heard Mr. Ajay Kumar Thakur, the learned Advocate for the appellants and Mr. Abhimanyu Sharma, the learned APP for the State.

3. The appellants have been convicted under Sections 20(b)(ii)C of the Narcotic Drugs and Psychotropic Substances Act, 1985, *vide* judgment dated 29.11.2017 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (N.D.P.S. Act), Araria in Special (N.D.P.S.) Case No. 01 of 2014, Tr. No. 08 of 2016, C.I.S. No. 01 of 2016 arising out of Tarabari P.S. Case No. 01 of 2014. By order dated 30.11.2017, they have been sentenced to undergo R.I. for twenty years, to pay a fine of Rs.1,00,000/- each and in default of payment of fine, to further suffer S.I. for six months for the offence under 20(b)(ii)C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

4. It is a peculiar case where we have not been able to find any evidence with respect to the



identity of the appellants, justifying their conviction and saddling on them of extreme sentence upon them.

5. Mr. N. Kesho Singh (PW-1), an Assistant Commandant with the S.S.B., lodged a written report addressed to the Officer-In-charge of Tarabari Police Station in the district of Araria on 06.01.2014 alleging that in the night of 05.01.2014, at about 09:30 P.M., he received a secret information that a big consignment of *Ganja* is to arrive at village Dabhara. On receiving such information, PW-1 acted with swiftness and constituted a team of officers comprising the personnel of S.S.B. and a picket was laid near the village which would be around 12 kilometers from the Indo-Nepal Border. Late in the night, three persons on two motorcycles were seen approaching towards the picket line. Seeing the police party, the motorcycles were left behind and taking advantage of the darkness and dense fog, the miscreants ran away. On reaching near the place where



the motorcycle was abandoned, it was found that there was a sack containing 40 kgs of *Ganja*. Those were seized and handed over to the Officer-In-charge of the concerned Police Station.

6. On the basis of the afore-noted written report, Tarabari P.S. Case No. 01 of 2014, dated 06.01.2014 was registered for investigation for the offences under Sections 20, 23, 24 of the N.D.P.S. Act.

7. In the written report, it was also alleged by PW-1 that he had learnt secretly but reliably that the owner of one of the motorcycles had himself been driving the vehicle.

8. It would be necessary to state here that the secret information received by him was never reduced into writing nor was ever sent to the Superior Police Officer even later so as to make the entire process compliant of the provisions contained under the N.D.P.S. Act, 1985.



9. 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 was under an obligation to record that in writing in the register concerned and send a copy of it to his superior officer in accordance with Section 42 of the N.D.P.S. Act, 1985.

10. In ***Karnail Singh vs. State of Haryana (2009) 8 SCC 539***, a Constitution Bench of the Supreme Court has categorically held that total non-compliance with the requirement of Section 42 of the N.D.P.S. Act, 1985 is impermissible and renders the entire prosecution case redolent with doubt and suspicion.

11. That apart, there is nothing in the statement of PW-1 even during Trial which would indicate anything except the fact that the entire consignment of narcotics which was seized was handed



over to the Officer-in-Charge of the concerned Police Station.

12. Obviously, therefore, there does not appear to be any evidence with respect to sealing of the same.

13. During cross-examination, PW-1 has spoken about two bags of narcotics instead of one as was stated by him in the written report. He has categorically stated that no sample was drawn at his instance. There is no statement in the entire deposition of PW-1 which would indicate about the identity of the appellants except of his having received information that one of the motorcycles was being driven by the owner.

14. It appears that later, the Investigator, viz., Prashant Kumar (PW-6) found out from the DTO office that the vehicle belonged to appellant/Gulab Chand Singh @ Gulab Chand Mandal @ Gulabi Singh.

15. It appears that on the basis of only the afore-noted disclosure, the source of which remains



completely undisclosed and uninvestigated, appellant/Gulab was arrested.

16. What was the basis for roping in appellant/Ram Chandra Singh is but a mystery to us.

17. However, both of them faced Trial where ten prosecution witnesses and two defence witnesses were examined.

18. PWs.- 1 to 5 are the members of the raiding team, who have said nothing except the fact that a picket-line was drawn in village Dabhara and two motorcycles with three persons were spotted coming from Nepal side. The miscreants ran away under the cover of darkness and fog. A plastic bag containing 40 kgs of *Ganja* is said to have been recovered.

19. Very surprisingly, the Investigator has made a casual statement before the Trial Court that he got the samples taken from the seized material.

20. Whether it was under the authorization of the Court or in presence of any Magistrate, remains



completely unknown.

21. It further appears from the deposition of PW-6 that the narcotics were kept in the *Malkahana* of the police station for all this while. The only evidence that we have on record is the report of the Forensic Science Laboratory that the samples sent in connection with this case was found to be *Ganja*, as it contained Tetrahydrocannabinol (THC) which is a chief intoxicating ingredient of *Ganja*. The report itself indicates that the memo was prepared on 07.03.2014, *i.e.*, after about more than two months of the seizure. The same was sent by special messenger which was received in the F.S.L. on 10.03.2014.

22. In the absence of any evidence with respect to drawing of samples from the seized *Ganja* and the reason for the delayed dispatch of the sample to the Forensic Science Laboratory makes the entire story of the prosecution doubtful.

23. But what amazes us is the manner in



which the appellants were charge-sheeted and made to face Trial. Even assuming that appellant/Gulab Chand Singh was the owner of the motorcycle which was seized at the spot, that could not have been the sum all of the evidence that he was one of the persons who was trying to smuggle in *Ganja*. The vehicle could have been lent to someone or could have been used by someone else.

24. There is nothing on record, as we have already noted, about the source of information nor there has been any compliance of Section 42 of the Act. All these suggest that on mere fanciful imagination, both the appellants were put on Trial. No connection at all has been shown to justify putting appellant/Ram Chandra Singh on Trial along with appellant/Gulab Chand Singh.

25. Though, the seizure-list witness, viz., PW-7 has supported the prosecution case but such support does not lend any credence to the prosecution version.

26. The frailties in the prosecution is too



strong for us to believe the case and certify that the prosecution has discharged its obligation of proving the case beyond all reasonable doubts.

27. On these two grounds alone, we find that the judgment of the Trial Court is heavily flawed and cannot be sustained on any account whatsoever.

28. It is lamentable that in a case of this kind, the appellants have remained in jail for about nine years.

29. Finding no material on record to connect the appellants with the offence and the prosecution having miserably failed to prove the prosecution case beyond all reasonable doubts, we set aside the judgment and order of conviction and set the appellants at liberty forthwith.

30. Both the appeals stand allowed.

31. The appellants, viz., Ram Chandra Singh in Cr. APP. (DB) No. 110 of 2018 and Gulab Chand Singh @ Gulab Chand Mandal @ Gulabi Singh in



Cr. APP. (DB) No. 125 of 2018 are directed to be released forthwith from jail, if not required or detained in any other case.

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

33. The records of this case be returned to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Manoj

AFR/NAFR	NAFR
CAV DATE	NA
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