

Harendra Raut Vs. the State of Bihar

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Court : Patna

Decided On : Sep-10-2013

Appellant : Harendra Raut

Respondent : The State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.58
of 2012

===== 1.
Harendra Raut S/O Bhola Raut Resident Of Village- Gonauli, P.S- Bettiah
Muffashil, District- West Champaran Appellant/s Versus 1. The State Of
Bihar Respondent/s

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Appearance : For the Appellant/s : M/S Sanjeev Kumar, U.P. Singh & Shyamal
Prakash. Advocates. For the Respondent/s : Mr. S. N. Prasad (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA ORAL

JUDGMENT

Date:

10. 09-2013 The solitary appellant has preferred this appeal against his conviction for the offence under sections 20 (ii) C, 22 and 23 of the N.D.P.S. Act and sentenced to undergo R.I. for ten years for all the three offences besides a fine of

Rupee one lac for the offence under section 23 , in default of which further R.I. for one year as awarded on 22nd December, 2011 by Ist Additional Sessions Judge-Cum- Special Judge, West Champaran, Bettiah in Trial No. 21 of 2005 arising out of Nautan P.S. Case No. 50 of 2005.

2. The prosecution case as stated in Ext. 3 the self written statement of the Informant C.W.1 dated 30th March, 2005 is that he while returning after concluding investigation of another case through police jeep being driven by P.W 3 at about 16.30 hours he found one Rajdoot motorcycle coming from opposite direction carrying one pillion rider in between there was a gunny bag. On doubt signal was given to stop but they tried to escape However, the Informant jumped and get hold of pillion rider, consequently bag also fell down and came under his control. However, driver of the bike succeeded to escape. The Patna High Court CR. APP (SJ) No.58 of 2012 dt.10-09-2013 2 apprehended pillion rider disclosed his name and also in the bag he was carrying Ganja after obtaining from one Kishori Sah of Hisua Bazar, Nepal and was carrying for one Sudama Yadav of district Gopalganj and he further disclosed about driver of the bike, brother-in-law (Sala) of his villager Manoj Singh. No valid paper was produced for such contraband articles. However, on the bag with red ink name of Sudama was inserted which was seized in presence of two independent witnesses, namely, Gagan Ram and Sukai Ram respectively P.WS 2 and I giving smell of Ganja. It was in 14 packets each of 6 kgs.. Seizure list was prepared, copy handed over to the apprehended accused-appellant and everything was produced to the Officer Incharge, who on getting information already arrived at the spot. The case was investigated by P.W.4 who after obtaining report from the Forensic Science Laboratory and concluding the investigation submitted charge sheet.

3. Initially on 14.11.2005 trial for the offences under sections 20 and 23 of the N.D.P. Act commenced before Ist Additional Sessions Judge, Fast Track Court No.1 at Bettiah where two witnesses, namely, Karim Mian and Salim Mian were examined and declared hostile. Subsequently, case was transferred in routine way to the court where trial concluded and after examination of four prosecution witnesses and one court witness (Informant) charge afresh was framed indicating commission of offence under sections 20 (b) (ii) (c), 22 (c) and 23 (c) of the

N.D.P.S. Act and thereafter one single witness Karim Mian, who had earlier been examined as P.W.1 before the court where trial initially commenced was examined but in defence there is neither any oral or documentary evidence. On consideration of the materials the trial court convicted and sentenced the appellant in the manner stated above.

4. It is contended by learned counsel for the appellant that there Patna High Court CR. APP (SJ) No.58 of 2012 dt.10-09-2013 3 is absolutely no material against the appellant who has not only been falsely implicated with ulterior motive but also non of the mandatory requirement as contemplated under N.D.P.S. Act has been complied with, but ignoring every such thing the appellant has been convicted.

5. The learned Additional P.P. tried to support findings of the court below but agitatedly concedes that requirement of law relating to seizure, ceiling, keeping articles etc. were not observed.

6. At the out set, it is relevant to mention that first two witnesses examined before the first trial court and declared hostile have not been considered by the trial court as the witnesses examined in view of un-reported decision of this court in the case of Md. Sattar Vs. The Union of India decided on 7th July, 2011 in Criminal Appeal (SJ) No. 402 of 2006, holding that the Fast Track Court are not empowered to deal with the cases under N.D.P.S. Act and accordingly the court below renumbered the witnesses examined before it and also permitted fresh examination of original P.W.1 as P.W.5 and perhaps taking into consideration the same decision it thought framing the charges afresh.

7. Out of five witnesses examined besides C.W.1 the Informant P.W.1 Sukhai Ram the seizure list witness declared hostile. P.w.2 Gagandeo Ram another witness of seizure list proved his signature Ext.1 with assertion that he used to sign only after going through the contents, but in cross-examination in very first line admits he put his signature on the blank sheet. P.W.3 Md. Nasrullah, driver of police jeep has come to state the prosecution case with addition that while returning after concluding investigation the Informant got information by one person in the way and thereafter every exercise was done to apprehend the appellant and contraband articles. He is not in a position to say about proper

weighing of the recovered articles etc. Patna High Court CR. APP (SJ) No.58 of 2012 dt.10-09-201

8. C.W.1 the Informant has stated the prosecution version and proved Ext. 3 dated 30.3.2005. And also seizure list and handing over copy of the same to the appellant. In cross-examination he denies receiving any confidential information as stated by the driver. In Para-9 of the cross-examination he states after completing all formalities he intimated his superiors. He has not recorded confessional statement of the appellant nor he tested the bag containing 14 packets which were found of 6 kgs each on weighing and in Para-14 he admits personal search of the appellant but without intimating about his right to be searched before a Magistrate and also there was no such authority at the time of personal search.

9. Last witness P.W.4 Lakhi Chand Ram, the Investigating Officer admits in cross-examination that he was not a member of the raiding party but arrived at the P.O. roughly after half an hour of search and seizure etc. were made by the Informant. He did not seize anything. Even recovered articles were not sent to the court on the following day along with the accused-appellant who was placed there rather after five days and articles were sent to the court where sample etc. were taken of and transmitted to the Forensic Science Laboratory returned with an endorsement of being of insufficient quantity. Thereafter in the same packet it was sent and report was received.

10. From the material discussed above it is crystal clear that even search was not made in accordance with law as contemplated under section 50 of the Act since the Informant admits personal search of the appellant as it was incumbent upon him to make the appellant aware of his right and proceed accordingly. The contraband article was not kept as per provisions of law at the proper place nor sample was taken nor everything was seized rather as per statement of the Investigating Officer roughly five days after it was produced Patna High Court CR. APP (SJ) No.58 of 2012 dt.10-09-2013 5 before the court. This statement also does not find support from the order sheet apart from being contrary to the provisions of law. There appears nothing from the record to substantiate statement of the Investigating Officer about sample being insufficient and in second time any

required quantity was transmitted.

11. Due to non observations of the provisions as contemplated under sections 42, 50, 52 A and 55 of the Act, the prosecution case cannot be held to be established and this appeal is squarely covered under the decision dated 22.08.2013 of this Court in Cr. Appeal (SJ) No. 1021 of 2010 Harendra Paswan Vs. Union of India after going through apart from other decisions in Khet Singh Vs. Union of India reported in 2002 (4) SCC 380. Karnail Singh Vs. State of Haryana reported in (2009) 8 SCC 53. and Birendra Kumar Sharma Vs. Union of India reported in 2013 (3) PLJR 87 Consequently, conviction of the appellant is not at all sustainable.

12. In the result, appeal is allowed and conviction and sentence is set aside and the appellant is ordered to be released at once, if not wanted in connection with any other case. (Akhilesh Chandra, J) Abhay/-

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