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Court : Patna

Decided On : Jan-08-2008

Judge : Shyam Kishore Sharma, J.

Acts : Narcotics Drugs and Psycotropic Substances Act - Sections 20B; Excise Act - Sections 47A; Probation of Offenders Act; Code of Criminal Procedure (CrPC) - Sections 360

Appeal No. : Criminal Appeal No. 100 of 1993

Appellant : Gorakh Ram

Respondent : State of Bihar

Advocate for Def. : Rambrish Singh Panepuri, Adv.

Advocate for Pet/Ap. : Ram Chandra Singh, Jitendra Kumar Singh, Shankar Kumar and Nandlal Singh, Advs.

Disposition : Appeal dismissed

Judgement :

Shyam Kishore Sharma, J.

1. The sole appellant Gorakh Ram has filed this appeal against the judgment of conviction and order of sentence passed by Sri Biswanath Singh, Sessions judge,

Bhojpur at Ara in N.D.P.S. Case No. 69 of 1991 whereby the appellant was found guilty for the offence under Section 20(B) of the N.D.P.S. Act and 47 A of the Excise Act and was sentenced to undergo R.I. for two years and to pay fine of Rs. 2,000/- and in default of payment to further undergo R.I. for six months under Section 20(B)(i) of the N.D.P.S. Act and no separate sentence was passed for the offence under Section 47A of the Excise Act.

2. Brief facts leading to this appeal are relating to an occurrence dated 20th May, 1990 when the informant, the Officer In Charge of the Jagdishpur Police Station recorded the statement alleging therein that while he and others were going for investigation of some cases, they saw a man passing through the Bharsara Pakka Road by a bicycle containing a bag on the carrier and on seeing the police party that person became nervous and his act raised suspicion. He was caught by the constables in presence of Hare Ram Pandey and Triyogi Sah. He was searched and 16 Kg. of Ganja was recovered from the bag which was kept on his bicycle. Ganja and bicycle were seized for which seizure list was prepared upon which the witnesses signed and also put their L.T.I. which has been marked as Exhibit 3. The case was registered. The matter was investigated and police after investigation submitted charge sheet. Cognizance was taken, thereafter, the trial proceeded. The appellant denied his implication. Thereafter, the prosecution witnesses were examined. The prosecution in order to prove its case has examined oral as well as documentary evidences. Altogether six witnesses have been examined on behalf of the prosecution. PW 1 is the Dafadar of the village Bharsara, PW 2 Brij Bihari Yadav who is the chowkidar, PW 3 is Triyogi Sah and PW 4 is Hare Ram Pandey. PW 3 and 4 were examined as two seizure list witnesses, PW 5 was the S.I. of Jagdishpur Police Station and the last witness of the prosecution was PW 6.

3. PWs 3 and 4 are the seizure list witnesses. PW 3 in his statement has stated in examination in chief that on 20.5.1990 in the morning nothing was seized from the appellant thereafter he was declared hostile. Later, his attention was drawn that he has made statement before the I.O. On this point I. O. has been examined who has stated that such statement was made by the witness. That witness has proved his signature on the seizure list which was marked as Exhibit-1. He then proved

that he made endorsement which was marked as Exhibit-2. Perusal of the signature and Exhibits 1 and 2 go to show that there was recovery in presence of the witnesses but due to lapse of time, they have tried to save the accused by saying that nothing was recovered from him. Simultaneously, PW 4 has proved his signature which has been marked as Exhibit 1/1. He stated that nothing was recovered from his possession but the I.O. PW 6 has stated that after seizure of Ganja, this witness PW-4 has put his signature in proof of token of the fact that there was recovery on the date and time of the occurrence and only after being satisfied, he has put his signature. This witness has also tried to save the accused. Seizure witnesses going hostile is nothing new and in many of the cases, the seizure list witnesses who are well known to the accused from before, turn hostile though they support the fact that they put their signature or L.T.I. on the seizure list. Such tendency is common and so their evidence that there was no seizure in presence of him cannot be accepted in the facts and circumstances of the case, specially when their signature are available on the record and their statement have already been recorded in course of evidence which has been stated by the I. O. also. PW 1 is the Dafadar of the village Bharsara who in his statement has stated that on 20.5.1990 the police officials and raiding party reached on Bharsara Pakka Road and they saw a person going on his bicycle and that person was looking nervous at the sight of the police, thereafter, they asked him as to why he was doing so. Then he tried to escape but he was caught by the constables and chowkidar. In his presence, search was made of the bag from which 16 Kg. of Ganja was seized. This witness has supported that on the date and time of occurrence, there was search and seizure though the defence has tried to cross examine him in detail but his evidence has remained intact and he has fully supported the case.

4. PW 5 has also supported that on the date and time of occurrence while he along with police personals were going then there was search and seizure and in that seizure, Ganja was recovered from the bag being carried away by the appellant. So on the point of search and seizure this witness also remained intact during his cross examination.

5. The I. O. has stated that on the date and time of occurrence, there was search and seizure of Ganja and bicycle. The seizure has been marked as Exhibit-3 and the written report of the case has been marked as Exhibit-4. Formal FIR has been marked as exhibit-5. Plastic bag containing the said Ganja was marked as material exhibit-5.

6. There are consistency in evidence of PWs 1 and 5 that on the date and time of occurrence there was search and seizure of Ganja from the persons of the appellant.

7. It has been argued on behalf of the appellant that the seizure witnesses have not supported the prosecution version and in absence evidence of independent seizure list witnesses, the case has not been substantiated. Not only that, it has been argued that those witnesses also become hostile.

8. In the present case, the witnesses who have been declared hostile have been examined and they have identified their signature and have stated that the signatures were of their own. This statement of the witnesses that the signature was their own on the seizure list goes to show that they were the actual witness of the seizure. I. O. who came later on and was asked as to whether those witnesses have supported the factum of seizure or search on the date and time of occurrence or not stated that those witnesses have made their statement. There was valid seizure on the date and time of occurrence. So far the statement of those witnesses that there was no seizure, does not come to the rescue of the appellant. In this case, as they have identified their signature on the seizure list so, in my view, the prosecution has been able to prove its case beyond all reasonable doubts that on the date and time of occurrence, there was seizure of 16 Kg. Ganja from the appellant. The trial court has rightly found the appellant guilty and sentenced him.

9. So far question of sentence is concerned, the Sessions Judge has also taken very lenient view by awarding sentence of two years R.I. and fine of Rs. 2,000/- and on default further R.I. for six months. That sentence is minimum sentence which can be granted if valid search and seizure has been proved in this case.

10. This is not the case in which the accused can be granted benefit of Probation of Offenders Act or of Section 360 of the Cr.P.C. Such offence needs substantive sentence. The trial court has rightly passed the order of sentence. Therefore, in my view, the judgment of the court below is correct. In the result, this appeal is dismissed. Bail bond of the appellant is cancelled and the court below is directed to take steps to ensure that the appellant serve out his sentence.

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