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**SooperKanoon Citation : [sooperkanoon.com/136811](http://sooperkanoon.com/136811)**

**Court : Patna**

**Decided On : May-08-2007**

**Judge : Chandramauli Kr. Prasad and Abhijit Sinha, JJ.**

**Acts : Narcotic Drugs and Psychotropic Substance Act - Sections 8, 23, 24 and 27A; Code of Criminal Procedure (CrPC) - Sections 313; Narcotic Drugs and Psychotropic Substance Rules, 1965 - Rule 64**

**Appeal No. : Criminal Appeal Nos. 525 and 496 of 2006**

**Appellant : Sayed Farid Mian @ Farid Mian, Javed Alam and Md. Aslam**

**Respondent : The Union of India (Uoi)**

**Advocate for Def. : Ravi Ranjan, Assistant Solicitor General and Sudhir Singh, Adv.**

**Advocate for Pet/Ap. : Anjana Prakash, Sr. Adv. and Syed Alamdar Hussain, Adv.**

**Disposition : Appeal allowed**

**Judgement :**

**Chandramauli Kr. Prasad and Abhijit Sinha, JJ.**

1. Md. Aslam (sole appellant in Cr. Appeal No. 496 of 2006) and Sayed Farid Mian @ Farid Mian and Javed Alam (appellants in Cr. Appeal No. 525 of 2006), being aggrieved by the judgment dated 13.4.2006 and order dated 28.4.2006 passed by the 4th Additional Sessions Judge, Muzaffarpur in Trial No. 18 of 2006 holding them guilty of offence under Section 23(c) of the Narcotic Drugs and Psychotropic Substance Act and inflicting on them the sentence of rigorous imprisonment for 15 years and further a fine of Rs. 1,00,000/- each, in default, of payment, of fine to undergo rigorous imprisonment for further two years, have preferred these appeals.

2. Both the appeals which arise out of the same judgment and under were heard together and are being disposed of by this common judgment.

3. According to the complaint lodged by P.W.2 R.K. Srivastava, Intelligence Officer, Directorate of Revenue Intelligence, Muzaffarpur on receipt of secret information, he alongwith other officers intercepted the three appellants on 10.5.2002 near Government Bus Stand at Imali Chatti in the town of Muzaffarpur. On search of the person of Md. Aslam before independent witnesses he was found carrying one packet of heroin weighing 500 Grams in a plastic packet, which was seized. On search of other two appellants, namely, Sayed Farid Mian @ Farid Mian and Md. Javed Alam visiting cards and other papers etc., were recovered. According to the complainant taking into account their confessional statement and on a reasonable belief that appellant Md. Aslam is involved in trafficking of heroin and appellants Sayed Farid and Javed were his accomplice, all the three appellants were arrested. Md. Aslam admitted his guilt in trafficking of heroin and also stated that the other two appellants were his associates in trafficking/illicit trade of heroin. He gave the addresses of the other two appellants. The address disclosed by appellant Md. Aslam could not be verified and it was reported that he was not known to local inhabitants. According to the complainant, although appellants Farid Mian and Md. Javed Alam did not admit their guilt but were found familiar to Md. Aslam and believed to be associated in trafficking of heroin.

4. Sample of seized heroin, according to the complainant was drawn before the independent witnesses and sent for analysis to Government Opium & Alkaloid

Works Undertaking, Ghazipur and Neemuch. It was found that the seized articles was heroin within the meaning of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act').

5. The complaint was filed on 9.8.2002 alongwith the statements of all the appellants and the case ultimately came up for trial before the Court of 4th Additional Sessions Judge, Muzffarpur, where appellant Md. Aslam was charged for possessing a packet of heroin weighing 500 Grams of the value of Rs. 50,00,000/- in contravention of Section 8 of the Act punishable under Sections 23/24 and 27A of the said Act. The other two appellants were charged for assisting Md. Aslam in trafficking of packet of heroin weighing 500 Grams of the value of Rs. 50,00,000/- in contravention of Section 8 of the Act punishable under Sections 23/24 and 27A of the said Act. All the appellants were further charged for possessing 500 Grams of heroin worth Rs. 50,00,000/- in contravention of Section 8 of the Act and Rule 64 of the NDPS Rules, 1965 punishable under Section 23 of the said Act.

6. Appellants pleaded not guilty and claimed to be tried.

In order to bring home the charge, prosecution examined altogether four witnesses and also brought on record seizure/detention memo (Ext.1), Panchnama (Ext.2), self statement of the appellants (Exts.3, 4 and 4/1), test report (Ext. 5), forwarding letter of the Joint Director (Ext.6),test memo (Ext.7),analysis report of the Chemical Examiner (Ext.8) and the complaint petition (Ext.9).

7. P.W.1 Indradeo at the relevant time was Constable and he has stated in his evidence that on 10.5.2002 the complainant R.K. Shrivastava (P.W.2) and P.W.3 Rakesh Ranjan, Intelligence Officer in the Directorate of Revenue Intelligence, Muzffarpur apprehended the three appellants at Muzffarpur Bus Stand and brown Sugar was recovered from appellant Md. Aslam.

8. P.W.2 Rajesh Kumar Srivastava is the complainant of the case and according to him on 10.5.2002 he alongwith other Custom Officers went to the Government Bus Stand, Imalichatti, Muzaffarpur on the basis of a secret information and apprehended the three appellants. According to him, appellant Md. Aslam was

searched in presence of independent witnesses and from his possession one packet of brown sugar (heroin) was recovered and from the possession of appellant Sayed Farid Mian and Md. Javed Alam visiting cards as well as some other papers were recovered. The contraband found in possession of Md. Aslam was seized in presence of the independent witnesses and seizure list (Ext.1) was prepared. Thereafter the appellants were brought at the office of the Directorate of Revenue, Intelligence where the panchnama was prepared and the statements of the appellants recorded. Sample of the seized article was taken and sent to the Government Opium & Alkaloid Works Undertaking, Ghazipur & Neemuch. He has proved the seizure/detention memo (Ext.1), Panchnama (Ext.2), self statement of the appellants (Exts.3, 4 and 4/1), test report (Ext.5), forwarding letter of the Joint Director (Ext.6), test memo (Ext.7), analysis report of the Chemical Examiner (Ext.8) as also the complaint petition (Ext.9).

9. P.W.3 is another Intelligence Officer posted at Muzaffarpur and according to him on 10.5.2002 500 Grams of heroin was seized from the possession of appellant Md. Aslam. According to him, Md. Aslam disclosed that the owner of heroin is appellants Sayed Farid Mian and appellant Javed Alam. The appellants did not produce any paper justifying possession of the heroin and, as such, it was seized in presence of independent witnesses and panchnama was prepared.

10. P.W.4 Braj Bhushan Kumar is a seizure list witness and he stated in his evidence that on 10.5.2002 brown sugar was recovered from the possession of the three appellants.

11. Appellants denied to have committed any offence and pleaded false implication.

The Court below on appraisal of evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt and accordingly, convicted and sentenced the appellants as stated above.

12. We have heard Mr. Syed Alamdar Hussain on behalf of the appellant In Criminal Appeal No. 496 of 2006, whereas the appellants of Criminal Appeal No. 525 of 2006 are represented by Mrs. Anjana Prakash, Senior Advocate.

13. Dr. Ravi Ranjan, Assistant Solicitor General as also Mr. Sudhir Singh, appear on behalf of the Union of India.

14. Learned Counsels for the appellants had drawn our attention to the seizure/detention memo (Ext.1) and contend that from the seizure/detention memo, it is evident that the heroin was recovered from possession of Sayed Farid Mian. Our attention has also been drawn to the panchnama and it has been pointed out that the same shows that the recovery of heroin was made from appellant Sayed Farid Mian. They point out that according to the allegation made in the petition of complaint and witnesses examined during trial recovery is alleged to have been made from the appellant Md. Aslam. This vital contradiction in regard to the person from whom the recovery was made, renders the case of the prosecution doubtful, contend learned Counsels.

15. Mr. Sudhir Singh, however, contends that the seizure list as also the panchnama were handed over to all the three appellants and they have acknowledged their receipt and from this it has to be assumed that recovery was made from all the appellants.

16. Having appreciated the rival submission, we find substance in the submission of the learned Counsel for the appellants. From the seizure/detention memo and the panchnama it is evident that the recovery of heroin was made from the possession of appellant Sayed Farid Mian, whereas according to the complaint and the witnesses examined during the trial recovery was made from Md. Aslam. The explanation put forth by Mr. Singh that because all the appellants had signed the aforesaid documents it shall be assumed that recovery was made from all of them is noted to be rejected. The seizure/detention memo and the panchnama clearly show that the recovery was made from appellant Sayed Farid Mian and simply on the ground that those documents were signed by other appellants cannot mean that in fact recovery was made from all of them. This argument infact justify sarcasm of the Counsels for the appellants that if it be so the witnesses had also signed the said document and, hence recovery shall also be deemed to have been made from them also. From the documents on record, it is evident that recovery of heroin was made from appellant Sayed Farid Mian, whereas according

to the complaint and the witnesses examined during the trial, same was recovered from Md. Aslam. This vital contradiction in regard to the person from whom the recovery was made leaves us in doubt and we are of the opinion that the prosecution has not been able to prove the recovery from the appellants beyond all reasonable doubt.

17. Learned Counsels for the appellants then, submit that the prosecution witnesses in their evidence have not stated in their evidence the date on which the sample was sent for examination by the Chemical Examiner. However, they draw our attention to Column Nos. 3, 4 and 5 of test memo (Ext.7) meant for use in the Laboratory, same reads as follows:

For the use of Seizing Officer:

xxx xxx xxx

(3) Alleged description of Drug and the weight of the sample/samples-heroin/brown sugar, 5 grams

(4) Date and place of seizure 10.5.2002 at Muzaffarpur (Bihar).

(5) Date of drawal & despatch of samples 10.5.2002.

For the use in the Laboratory

Date of receipt in the Laboratory 25.1.2002.

Weight as found in Laboratory 1.83 grams.

18. They point out that according to this document sample was sent on 10.5.2002 but the Forwarding Officer had signed the said document on 11.5.2002 which was received on 21.5.2002. They further point out that the weight of sample sent, according to the complainant is 5 Grams whereas only 1.83 Grams was received in the Laboratory, where the same remained between the period it was sent and why there is difference of weight between the sample when sent and received in the Laboratory have not at all been explained. The aforesaid infirmities, according to the learned Counsels, clearly go to show that the prosecution has not been able

to prove beyond all reasonable doubt that the sample taken of the articles alleged to have been recovered from the possession of the appellants, infact was tested by the Chemical Examiner. In support of the submission reliance has been placed on a Division Bench judgment of this Court in the case of Lala Tiwary v. Union of India 2007(2) PLJR 379 and our attention has been drawn to paragraph 14 of the judgment which reads as follows:

Having found that the conviction of the appellant cannot be based on their confessional statement, I have to revert as to whether prosecution has brought home the charge against them beyond all reasonable doubt from the other materials adduced during the trial. The prosecution having not proved as to where the sample was kept from 11th of January, 2001 to 2nd of February, 2001 i.e. date in which it was taken and sent for chemical examination respectively and further being variance in the weight of the same sent and received in the Chemical Laboratory, I am constrained to observe that the prosecution has not been able to prove its case beyond all reasonable doubt that the sample collected from the appellants is the same which was tested by the Chemical Examiner. That being the position, appellants deserve to be given the benefit of doubt and I grant that to them accordingly.

19. Mr. Singh, however, contends that it seems that the Forwarding Officer and the Chemical Examiner had given approximate weight of the Heroin and, as such, the infirmity aforesaid cannot be said to be fatal.

20. We are aghast at this stand of Mr. Singh. Neither the Seizing Officer nor the Chemical Examiner had stated that the weight of the heroin is approximate. The Act has made possession of even 005 grams of some drugs and Psychotropic Substance punishable. Value of one gram of heroin, according to the valuation of the prosecution shall be Rs. One lack. It is costlier than gold. In such circumstance, the loss in weight of the heroin cannot be lightly ignored. The view which we have taken finds support from the judgment of this Court in the case of Lala Tiwary (Supra).

21. Mr. Singh, submits that the confessional statements of the appellants are good enough to sustain their conviction. In support of the submission reliance has been

placed on the decision of the Supreme Court in the case of Madan Lal and Anr. v. State of U.P : 2003 CriLJ3868 and M. Prabhulal v. Assistant Director, Directorate of Revenue and Intelligence : 2003 CriLJ4996 . In answer thereto, learned Counsels for the appellants point out that the confessional statements cannot be made the basis of conviction as the appellants were not given any opportunity to explain the same in their examination under Section 313 of the Code of Criminal Procedure. They also point out that the alleged confessional statements suffer from inherent defect and not fit to be relied on as the same although alleged to be recorded on 10.5.2002 but were submitted to the Court for the first time on 9.8.2002 along with the complaint. They point out that other documents, namely, the Seizure memo (Ext.1) and the Panchnama (Ext.2) were sent to the Court on that date itself and hence there is no earthly reason to withhold the confessional statement from the Court.

22. Mr. Singh, submits that in the confessional statement such informations had been divulged that its disclosure would have adversely affected, the investigation of the case, and hence it was not filed alongwith the seizure memo, panchnama etc.

23. Even if we accept this plea of Mr. Singh nothing prevented the prosecution to submit the confessional statement in a sealed cover with a request to the Court to protect its confidentiality. This would have inspired confidence. In any view of the matter, the confessional statement having not been put to the appellants in their examination under Section 313 of the Code of Criminal Procedure, prosecution cannot be permitted to rely on that in order to bring home the charge. The view which we have taken finds support from paragraph 13 of the Division Bench judgment of this Court in the case of Lala Tiwary (Supra) which reads as follows:

Having appreciated the rival submission, I am of the opinion that the alleged confessional statement of the appellants cannot form basis of conviction as undisputedly the appellants in their examination under Section 313 of the Code of Criminal Procedure were not asked to explain this circumstance appearing against them. It is well settled that examination of the accused under Section 313 of the Code of Criminal Procedure is not a mere formality and it imposes a heavy duty on

the Court to take great care to ensure that the incriminating circumstances are put to the accused and his response solicited. In my opinion as the confessional statement was not put to the appellants in their examination under Section 313 of the code of Criminal Procedure, prosecution cannot be permitted to rely on that in order to bring home the charge.

24. Mr. Singh, submits that in such a situation, the matter may be remitted back with a direction to the Court below to proceed with the trial from a stage earlier to the stage of examination of the accused under Section 313 of the Code of Criminal Procedure.

25. We would have considered this plea, had we on fact had come to the conclusion that in fact recovery was made from the appellants and further the Chemical Examiner report related to the article seized from the appellants. We are of the opinion that no useful purpose shall be served by remitting the case back to the trial Court.

26. Ordinarily, after adjudicating the merit of the appeal we would have closed the chapter but the casual perverse and lackdaisical manner in which the entire prosecution seems to have been conducted, compels us to observe that all does not seem to be well with the Directorate of Revenue Intelligence. Illicit/trafficking of Narcotic drugs affects the youth and is potent enough to destroy the Nation. Documents show recovery from appellant Sayed Farid Mian, but the complainant and the witnesses say it was recovered from appellant Md. Aslam. Five Grams of heroin was sent for analysis but 1.83 Grams reaches the destination. We expressed our anxiety to the Commissioner of Central Excise, Commissioner of Customs and Deputy Director, Directorate of Revenue Intelligence who are in attendance in response of our order and they have assured us that appropriate action shall be taken against all the persons found wanting and remedial steps shall be taken to contain the menace. We record their undertaking.

7. In the result, both the appeals are allowed, impugned judgment of conviction and sentence is set aside. Appellants Sayed Farid Mian and Javed Alam are on bail, they shall be discharged from the liabilities of their respective bail bonds. Appellant Md. Aslam is in jail, he shall be set at liberty forthwith, unless required in

any other case.

Let the case be listed under the heading to be mentioned on 6.8.2007, for communication by the Union of India, the action taken in the matter.

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