

(2011) 05 PAT CK 0038

Patna High Court

Case No: Criminal Appeal (SJ) No. 1018 of 2008

Bhushan Kumar Singh

APPELLANT

Vs

State of Bihar and
Another

RESPONDENT

Date of Decision: May 3, 2011

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, 25, 52A, 52A(1), 52A(2)

Citation: (2011) 3 PLJR 804

Hon'ble Judges: Dharnidhar Jha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dharnidhar Jha, J.

The two Appellants were charged of committing offences under Sections 20 and 25 of the N.D.P.S. Act by the learned Additional Sessions Judge-IX, Patna in Special Case No. 43 of 2006. By judgment dated 20th day of September, 2008 the learned Judge found the Appellants Shyamdeo Singh guilty of offences under Sections 20(b)(ii) and 25 of the Act and directed him to suffer rigorous imprisonment for ten years as also to pay a fine of Rs. 1,00,000/- in default of which he had to undergo rigorous imprisonment for further period of one year under each of the two counts. As regards Appellant Bhushan Kumar Singh, he was held guilty of an offence u/s 20(b)(ii) of the Act and was sentenced to rigorous imprisonment of ten years as also to pay a fine of Rs. 1,00,000/- else to suffer rigorous imprisonment for one year.

2. The case emanated from the petition of complaint (Ext.-6) filed by P.W. 1 Sri Dharmesh Kumar Srivastava, who was the .Intelligence Officer, Directorate of Revenue Intelligence, Regional Unit, Patna in which it was stated that a definite information was received by him that a consignment of ganja smuggled from Nepal

was being brought by a truck bearing registration No. HR-55B-3400 and it was being transported from Sugauli (Motihari) to Jethuli (Patna). A group of officers including P.W. 1 the complainant and others put on at ambush near Ramashish Chowk, Hajipur and waited for the arrival of the truck on 25.8.2006. They saw a truck coming from direction of Muzaffarpur and as such they signalled the driver to stop the vehicle. But, the driver attempted to dangerously speed away the truck. The truck had itself to be stopped at the tax-toll near Mahatma Gandhi Setu, Patna and the two Appellants who were the drivers and the cleaners respectively attempted to run away, but they were chased by the complainant and his companions and were arrested and questioned. The Appellants revealed their identities. However, they pointed out to the complainant and his companions that they could not pick up the signal and as such did not stop the vehicle.

3. The complainant and his companions checked the truck and on removing the tarpoline it was noticed that 16 bundles of ganja in rectangular packets were kept in the body of the truck. The recovered ganja was found weighing 326 K.Gs. In fact, the search and recovery was made in the D.R.I. Office, Patna because the Appellants requested the complainant to do so due to the assemblage of persons who might have done something dangers (sic-dangerous?) to their lives and properties.

4. It appears that Appellant Shyamdeo Singh was also the owner of the truck as he was pointing out to the complainant in his written statement Ext.-2 that he had purchased the truck in an auction from the B.S.F. through some middleman, who had also obtained for him all the necessary documents regarding the ownership of the vehicle. Besides, being the owner of the vehicle he was also driving the vehicle himself. Appellant Bhushan Kumar Singh was the cleaner of the vehicle. It appears further from the record, like the certification of inventory prepared by the officials that a prayer was made before the appropriate court for deputation of a Magistrate, as per the provisions of Section 52A of the Narcotic "Drugs and Psychotropic Substances Act and accordingly, Sri B. Tiwary, Judicial Magistrate, Civil Court, Patna visited the office of the D.R.I., Patna and found the quantity of ganja stored there and, accordingly, issued the certification which is part of the complaint petition as its Annexures which has been duly mentioned in the list of annexed documents at the foot of the complaint petition. Likewise, the same Magistrate also oversaw the destruction and sampling of the seized article and he certified these legal formalities u/s 52A of the NDPS Act besides the destruction of the article and the drawl of the samples also which evidence has also come from P.W. 1 and other witnesses. The samples were sent to Government Opium and Alkaloid Works, Ghazipur (UP.) for chemical analysis and the chemical examiner submitted the report, Annexure-6. It may be noted that the seizure memo in connection with the seizure of 326 K.Gs. of ganja has been marked Ext.-4.

5. As regards the evidence coming orally through the four witnesses, they supported the factum of the case as narrated by me just now. There might be some

difference or variance on one or the other details, but when I was perusing the evidence of the four witnesses, namely, P.Ws. 1 to 4 they appear consistent on the material parts of the prosecution case and they do not appear stating any fact which could materially affect the central theme of the case. P.W. 5 Anil Kero was the Inspector of Customs and he had spoken to the storage of the ganja in the go-down of the customs headquarters and certification of the same under a judicial order by the Magistrate Sri Bharat Tiwary. Not only that he has also stated that the reports about the certification and drawl of the samples were duly prepared in presence of Sri Tiwary and those reports appeared duly marked as Exts.-8/1, 8/2 and 8/3 which are primary evidence of the acts performed by Sri Tiwary on compliance with the provision of Section 52A(1) and (2) of the NDPS Act which evidence is admissible u/s 52A(4) of the said Act. Thus, the oral evidence gets support from the official records indicating the discharge of official and statutory duties not only of the officials of the Directorate of Revenue Intelligence, Patna Region, Patna but the supporting documents have also been placed on record of the case which leave no room to doubt the veracity of the storage as was propounded by the complainant in Ext.-9 which was supported by his evidence besides by the evidence of P.Ws. 2 to 4. I find on perusal of the evidence on record that this could be the only case which could have been prosecuted by properly observing the provisions of the Narcotic Drugs and Psychotropic Substances Act. The date of dispatch and the submission of the report for chemical analysis and dispatch of the report by the Chemical Laboratory also appears reasonably done in due time. There might a delay of a week and two in submission of the report but that appears explained by one circumstances that the samples were sent after being drawn to the Government Opium and Alkaloid Works, Ghazipur (U.P.) and the dispatch of the same to the laboratory and the receipt of the report could have taken some reasonable time.

6. On going through the evidence on record both oral and documentary, the court finds that the learned Trial Judge was not wavering in passing the judgment of conviction but what appears from the facts of the case and the quantity of ganja which was recovered is that the learned Trial Judge was inflicting the sentence on a bit lower side of his jurisdiction. When the offences were being proved under Sections 20(b)(ii) and 25 of the N.D.P.S. Act and the offence related to the recovery of 326 K.Gs. of ganja then taking into consideration the manner of its concealment and further considering that the registration number of the vehicle, on verification, was found forged and fabricated as the same was allotted to a bus, the court below ought to have inflicted some exemplary sentence which could have acted as deterrent not only to the two Appellants but also to his other companions and offenders who could have indulged in same cross border import of a narcotic substance. But, the difficulty is that the State has not appealed against the lenient sentence which was passed upon the two Appellants, as such, not much could be done on that. However, the court desires prosecuting officers of all departments, who had the occasion of inquiring into or investigating the case to be alert in such

cases and to suggest filing of appeal in appropriate cases where the Trial Judge could have passed a lenient or lesser sentence than required.

7. After having said the above, I find no merit in the two appeals. The same are dismissed. Appellant Bhushan Kumar Singh (Cr. Appeal No. 1018 of 2008) is on bail, his bond is hereby cancelled. He is directed to be taken into custody and remanded to jail for serving out his sentence.