

IN THE SPECIAL COURT, BAKSA :::::::::::::::::::::AT MUSHALPUR



Present : Shri C. Das,
Judge,
Special Court, Baksa,
Mushalpur

SPECIAL NDPS CASE NO.05/18

u/s 20(b)(ii)(B) of NDPS Act

State

versus

Sri Ganesh Boro

..... Accused

Appearance : for the State : Mr. R. Chetry, PP
: for the accused : Mr. G. C. Nath Advocate

Date of recording evidence : 13/12/16, 4/2/17, 18/2/17, 17/3/17

Date of argument : 23/4/18

Date of judgment : 7/5/18

JUDGMENT

1. The case of the prosecution briefly, is that on 5/7/16, the informant Naren Chandra Rabha, SI of Police, attached to Barama police station, lodged a FIR, alleging inter-alia that on the basis of GD Entry No.533 dated 27/5/16, an inquiry was conducted and found that on 27/5/16, while the accused was moving towards Barama from Dhamdhama side on a motor-cycle, carrying with 15 kgs. of ganja, the local public suspected him and after apprehending the accused at Hahkota chowk, informed the police. Accordingly, the O/C, of Barama police station entrusted him to make inquiry. Hence, he went to the spot with staff and saw the apprehended accused with 15 kgs of suspected ganja in a plastic bag. He thereafter, took the weight of the contraband articles and collected samples thereof and seized in presence of local persons. The samples of the suspected contraband articles were sent

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to DFS, Kahilipara for chemical examination. The accused was arrested as per law. After collection of the FSL report, it was known that seized articles were contraband ganja.

2. Accordingly, the police registered the Barama PS. Case No.98/16 and started the investigation. During the investigation, the I/O visited the place of occurrence, drew a sketch map of the place of occurrence and examined the witnesses and sent the samples of contraband articles for FSL examination. The FSL report was subsequently, collected by the I/O. The motor-cycle of the accused along with its documents and mobile set of the accused in addition to electronic weighing instrument were seized. After completion of the investigation, the I/O having found a prima-facie case well established, submitted the charge-sheet against the accused to stand trial in the court.

3. The accused was when produced in the court, furnished with the copy of the case. After hearing the parties, the charge u/s 20(b)(ii)(B) of NDPS Act was framed against the accused. The charge so framed, was readover and explained to the accused who pleaded not guilty and claimed to be tried.

4. During the course of trial, the prosecution examined as many as, 8 witnesses including the I/O to support its case. Thereafter, in the statement recorded u/s 313 CrPC., the accused denied all accusations made against him in the evidence of the prosecution. However, the accused declined to adduce any evidence. The argument of the parties was heard at length.

POINT FOR DETERMINATION :

5. Whether on 27/5/16 at Hahkota chowk, under Barama police station, the accused was found in possession of 15 kgs of ganja(cannabis) in contravention of provisions of NDPS Act ;

DICISION AND REASON THEREFORE :

6. At the outset of argument, learned Public Prosecutor submitted that the evidence of the prosecution witnesses particularly the



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testimony of the I/O clearly shows that the accused was found in possession of huge quantity of cannabis while carrying from one place to another on a vehicle and accordingly, the same was seized after observing due procedure of law. He submitted that on the basis of the evidence of the prosecution, it is clearly proved that the accused is guilty of offence of illegal possession of contraband articles and as such, the accused is liable to be punished as per provisions of law.



7. Per contra, learned counsel for the accused submitted that the provisions under NDPS Act is stringent law which requires that the prosecution must prove its case against the accused by observing all provisions of the Act, failing which the accused is entitled to get benefit. He submitted that in the instant case, the prosecution failed measurably to prove its case against the accused beyond doubt. Pointing out to the evidence of the independent witnesses of the prosecution, learned counsel for the accused submitted that all the independent witnesses did not lend support to the prosecution case, leading to create doubt over seizure of contraband articles from the possession of the accused. It is further submitted that the authorisation letter so issued to the I/O, has no lawful substance to confer any valid power of the I/O to conduct the investigation of such case in the eye of law as well as, the provisions u/s 41/42/52-A/57 of NDPS Act was not complied by the I/O which invalidated the entire investigation process. Apart from that, it was submitted that if the FSL report is perused carefully, it would suggest that the exhibit was of 2015 but the case was detected in the year 2016 and thus, such FSL report cannot be reliable to accept.

8. After hearing the views of both sides, it is pertinent to go through the evidence on record. At first, it is necessary to go through the evidence of forensic expert although there is no dispute over the nature of contraband so examined by him. PW5 Dr. Dhrubajyoti Hazarika is the said forensic expert who deposed inter-alia that on 30/5/16, he was working as Deputy Director, Drugs & Narcotics Division of Directorate of Forensic Science, Guwahati and on that day, he received the sealed parcel consisting of 3 exhibits in connection with Barama PS. GDE No.533 dated 27/5/16 including a sealed envelope, facimile of the seal was Ashok Emblem. The description of the articles are – three sealed envelopes, marked as exhibit-A1, Exhibit-A2 and Exhibit-A3, having three closed polythene packets, containing

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