

NON-REPORTABLEIN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**CRIMINAL APPEAL No. 2104 OF 2017**
(arising out of SLP (Crl.) No.7588 of 2016)

GORAKH NATH PRASADAppellant(s)

VERSUS

STATE OF BIHARRespondent(s)

JUDGMENT**NAVIN SINHA, J.**

Leave granted.

2. The Appellant assails his conviction and sentence under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, “NDPS Act”), for fifteen years, arising out of Dehri P.S. Case No.216 of 2009 by the Additional Sessions Judge Vth, Rohtas at Sasaram, affirmed by the High Court.

3. The police on information received, are stated to have raided the house of the appellant on 16.05.2009 leading to recovery of 59 kilograms of “Ganja”. The Additional Sessions Judge held that the FSL Report, Exhibit 8, confirmed that the seized material was Ganja.

The search and seizure was in accordance with Sections 42 and 50 of the NDPS Act. The High Court declined interference with the conviction.

4. We have heard Shri Nagendra Rai, learned Senior Counsel for the Appellant and Shri Manish Kumar, learned counsel for the State, at length. Though several arguments have been raised by the parties to assail the conviction and in support of the same, it is not considered necessary to deal with all of them since the present appeal can be decided on a single issue alone.

5. PW-1, Brij Nandan Mehta, the S.H.O. of Dehri (T) Police Station, who carried out the raid, in his evidence acknowledged that neither the seized Ganja, nor the sample drawn from the same at the time of seizure, was placed in evidence before the Court during the course of the trial. Similar is the evidence in confirmation of PW-4, Prema Nand Choudhary, the Sub-Inspector of Police. While the latter deposed of MR entry number on the seized Ganja, the Investigating officer PW-7, Inspector Hemant Kumar deposed that there was no MR number on the sealed materials, and he was not sure whether the seized material had been kept at the Malkhana and also that it had not been produced in the Court.

6. The NDPS Act provides for a reverse burden of proof upon the accused, contrary to the normal rule of criminal jurisprudence for presumption of innocence unless proved guilty. This shall not dispense with the requirement of the prosecution to having first establish a prima facie case, only whereafter the burden will shift to the accused. The mere registration of a case under the Act will not *ipso facto* shift the burden on to the accused from the very inception. Compliance with statutory requirements and procedures shall have to be strict and the scrutiny stringent. If there is any iota of doubt the benefit shall have to be given to the accused.

7. In the facts of the present case, the independent witnesses with regard to the search and seizure, PW-2 and PW-3, having turned hostile deposing that their signatures were obtained on blank paper at the police station, the mere fact of a FSL Report (Exhibit 8), being available is no confirmation either of the seizure or that what was seized was Ganja, in absence of the production of the seized item in Court as an exhibit. The non-production of the seized material is therefore considered fatal to the prosecution case. The issue whether there has been compliance with Sections 42 and 50 of the NDPS Act loses its relevance in the facts of the case.

8. The remaining prosecution witnesses being police officers only, it will not be safe to rely upon their testimony alone, which in any event cannot be sufficient evidence by itself either with regard to recovery or the seized material being Ganja. No explanation has also been furnished by the prosecution for non-production of the Ganja as an exhibit in the trial. The benefit of doubt will, therefore, have to be given to the Appellant and in support of which learned Senior Counsel Shri Rai has relied upon ***Jitendra and Another vs. State of M.P.***, (2004)10 SCC 562, and reiterated in ***Ashok alias Dangra Jaiswal vs. State of Madhya Pradesh***, (2011) 5 SCC 123, as follows:

"12. Last but not the least, the alleged narcotic powder seized from the possession of the accused, including the appellant was never produced before the trial court as a material exhibit and once again there is no explanation for its non-production. There is, thus, no evidence to connect the forensic report with the substance that was seized from the possession of the appellant or the other accused.

13. It may be noted here that in [Jitendera v. State of M.P.](#), (2004) 10 SCC 562, on similar facts this Court held that the material placed on record by the prosecution did not bring home the charge against the accused beyond reasonable doubt and it would be unsafe to maintain their conviction on that basis. In *Jitendra* (supra), the Court observed and held as under:-(SCC pp. 564-65, paras 5-6)

"5. The evidence to prove that charas and ganja were recovered from the possession of the accused consisted of the evidence of the police officers and the panch witnesses. The panch witnesses turned hostile. Thus, we find that apart from the testimony of Rajendra Pathak (PW 7), Angad Singh (PW 8) and Sub-Inspector D.J. Rai (PW 6), there is no independent witness as to the recovery of the drugs from the possession of the accused. The charas and ganja alleged to have been seized from the possession of the accused were not even produced

before the trial court, so as to connect them with the samples sent to the Forensic Science Laboratory. There is no material produced in the trial, apart from the interested testimony of the police officers, to show that the charas and ganja were seized from the possession of the accused or that the samples sent to the Forensic Science Laboratory were taken from the drugs seized from the possession of the accused.....

6.The best evidence would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the [NDPS Act](#). In this case, we notice that panchas have turned hostile so the panchnama is nothing but a document written by the police officer concerned.....”

9. The facts of the present case are markedly similar. We find no reason to come to any different conclusion as to why the Appellant ought not to be given the benefit of doubt. The conviction of the Appellant is, therefore, held to be unsustainable and is set aside. The Appellant is set at liberty forthwith unless wanted in any other case.

10. The appeal is allowed.

.....J.
(R.K. Agrawal)

.....J.
(Navin Sinha)

New Delhi,
December 05, 2017

ITEM No. 1501
(For Judgment)

Court No. 12

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. of 2017 @ SLP(Crl.) No. 7588 of 2016

GORAKH NATH PRASAD

Appellant(s)

VERSUS

STATE OF BIHAR

Respondent(s)

Date : 05.12.2017 This matter was called on for pronouncement of judgment today.

For Appellant(s) Mr. Shantanu Sagar, Adv.

For Respondent(s) Mr. Gopal Singh, Adv.
Ms. Vimla Sinha, Adv.
Mr. Rituraj Biswas, Adv.
Mr. Manish Kumar, Adv.
Mr. Praanab Prakash, Adv.
Mr. Shivam Singh, Adv.
Mr. Aditya Raina, Adv.
Mr. Shreyas Jain, Adv.
Mr. Kumar Milind, Adv.
Ms. Ambika Gautam, Adv.

Hon'ble Mr. Justice Navin Sinha pronounced the judgment of the Bench comprising Hon'ble Mr. Justice R.K.Agrawal and His Lordship.

Leave granted.

The appeal is allowed in terms of the signed non-reportable judgment.

(Shashi Sareen)
AR-cum-PS

(Saroj Kumari Gaur)
BRANCH OFFICER

(Signed non-reportable judgment is placed on the file)

