

GAHC010128652017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./160/2017

NAVRATAN LAL SONI
S/O LATE MOTHU RAM, R/O SUKLABAS, PHRAGPURA, KOTPUTLI,
JAIPUR-303105, RAJASTHAN

VERSUS

SUPERINTENDENT OF CUSTOMS PREVENTIVE UNIT
CUSTOMS HEADQUARTER, PREVENTIVE UNIT, CUSTOMS HOUSE, 110 MG
ROAD, SHILLONG-793001, MEGHALAYA. CAMP-SILCHAR.

Advocate for the Petitioner : MR Y.S. MANNAN

Advocate for the Respondent : MR. S C KEYAL, SC, CUSTOMS DEPARTMENT

Date of hearing : 08.11.2021

Date of Judgment/Order : 07.02.2022.

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

JUDGMENT & ORDER

Date : 07-02-2022

Heard Mr. Y.S. Mannan, learned counsel appearing on behalf of Mr. T. Thakuria, learned counsel for the appellant. Also heard Ms. P. Das, learned counsel appearing on

behalf of Mr. S.C. Keyal, learned Standing Counsel, Customs Department.

2. This appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is filed for setting aside and quashing the impugned judgment and order, dated 02.03.2017, passed by the learned Special Judge (NDPS Act) cum Sessions Judge, Cachar, Silchar in NDPS Case No. 11/2014 convicting the accused appellant u/s 20(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentencing him to undergo R.I. for 10 (Ten) years along with fine of Rs.1,00,000/- (Rupees One Lakh) and in default, to undergo R.I. for a period of 2 (two) years.

PROSECUTION CASE & INVESTIGATION:

3. The prosecution case was instituted by way of a complaint lodged by the Customs Department u/s 36A against the accused appellant. It is alleged that the complainant, the then Inspector of Customs while posted in the H.Q. Customs Preventive Unit, Office of the Commissioner, North Eastern Region Shillong having jurisdiction over all North Eastern States to investigate offences under the NDPS Act, on 03.08.2014, received an information to the effect that a consignment of ganja (cannabis) was being transported from Imphal to Uttar Pradesh via Silchar by one truck bearing Registration No. RJ-14-GB-6731 being hidden in a specially built chamber on the roof top of the driver's cabin.

4. On the basis of the aforesaid information, the officers of the said Customs unit proceeded to Silchar Jiribam road and kept surveillance on the road and nearby areas. While vigilant near ISBT, Rongpur (near Silchar), at around 1400 hours on 05.08.2014, the officers intercepted/detected one Tata truck bearing the said Registration No. being parked wherein the accused appellant was found.

5. On a detailed examination of the said truck, the Officers found smell emanating

from the roof top of the driver's cabin. On a thorough search, a secret chamber was found built on the roof of the truck and it was opened in presence of the accused appellant wherein a number of packets of suspected ganja wrapped with newspapers and black polythene packets were noticed. After taking possession of the said truck and goods, on query by the searching Customs officers, the accused replied that the driver along with the helper had gone to Silchar for some work. As they did not return, the truck was brought to the Customs office, Silchar along with the accused. At around 1500 hours in presence of the accused appellant and witnesses, the secret cavity built on the roof of the cabin was opened and therefrom, 47 packets of suspected ganja compressed in rectangular shape wrapped with newspapers and black polythene sheets and tied with plastic rope were found, which weighed about 475.610 kgs. in gross and 470.900 kgs. net.

6. Samples were drawn in random and mixed homogenously and divided into two halves of 30 gms. each. Accordingly, panchanama was drawn, photographs were taken, vehicle documents were seized and inventory was prepared in presence of witnesses. They seized 47 packets of suspected ganja (cannabis) approximately valued at Rs.23,78,050/- and the truck valued at approximately Rs.8,75,000/- as per the insurance documents. It is stated that the accused appellant was found to have knowledge and was in full physical control of the seized contraband. The accused appellant was found to be the owner of the truck which was plied on Manipur-Rajasthan Road being driven by the driver one Chatar Singh of Amritsar with helper one Abed of Kotputli. Accordingly, the accused appellant was arrested for committing an offence punishable u/s 20(b)(ii)(c) read with Sections 23 and 25 of the NDPS Act, 1985 for violating the provision of Section 8(c) of the Act. Thereafter, the sample was sent to the Director, FSL, Govt. of Assam, Kahilipara, Guwahati for chemical analysis and the FSL report gave positive test for cannabis. Therefore, a complaint was lodged against the accused appellant enclosing list of witnesses and other relevant

documents including photographs.

7. Subsequently, after completion of investigation, an offence report was submitted and the Court of learned Special Judge (N.D.P.S. Act), Cachar, Silchar framed charges against the accused appellant u/s 20(ii)(c) of the NDPS Act. The charge was read over and explained to the accused appellant to which he pleaded not guilty and claimed to be tried.

8. To prove the case, the prosecution examined as many as seven witnesses including the then C.J.M., Cachar. After completion of trial, the learned trial Court convicted and sentenced the accused appellant as stated above.

ARGUMENTS:

9. Mr. Y.S. Mannan, learned counsel appearing for the appellant, submitted that the accused/appellant has been convicted merely on surmises and conjectures drawn from uncorroborated testimony of the prosecution witnesses. Mr. Mannan further submitted that the weight of the seized contraband itself is not established beyond doubt in view of the evidence of P.Ws 1 and 2. Mr. Mannan also submitted that the accused/appellant has not been given opportunity to explain his circumstances to all the material aspects that emerged from the evidence and on the other hand, the prosecution did not examine the forensic expert, who tested sample of the seized contraband, to prove the F.S.L. report. Therefore, Mr. Mannan vehemently submitted that the impugned judgment and order of conviction of the accused/appellant is liable to be set aside.

10. ***Per contra***, Ms. P. Das, learned counsel appearing on behalf of Mr. S.C. Keyal, learned Standing Counsel for the Customs Department/respondent, submitted that the impugned judgment and order of conviction of the accused/appellant is well-reasoned and on sound principles of law and as such, no interference in appeal is called for. Ms. Das further submitted that P.Ws 3, 4, 5 and 6, who are responsible and fair customs

officers, have tendered convincing corroborative testimony in support of the incriminating documentary evidence exhibited during trial and they withstood the test of cross-examination by the accused/appellant. It is also submitted by Ms. Das that commercial quantity of contraband ganja was seized from the truck of the accused, which was in his exclusive possession at the time of seizure and after chemical analysis of its sample, the F.S.L., Assam reported that the same gave positive test for cannabis and further, that the aforesaid report itself is a substantive piece of evidence under Section 294(3) Cr.P.C.

ANALYSIS:

11. In view of the above rival submissions made by both sides, let us analysis the evidence, oral and documentary, available on the case record.

12. On scrutiny of the evidence of the P.W.3, Inspector Bharat Roy, Customs Preventive Unit, Shillong, P.W.4 Inspector Ram Ekbal Roy of Customs Preventive Unit, Shillong-cum-investigating officer, P.W.5 Manindra Sarania, Superintendent, Customs Preventive Unit, Shillong and P.W.6 Inspector Sarwan Kumar Gerari of Customs Preventive Unit, Shillong, it is revealed that acting on a secret information on 03.08.2014 to the effect that one 10 wheeler truck which was on from Imphal, Manipur via Jiribam and bound for Uttar Pradesh was transporting cannabis, P.W.3 reported the aforesaid information in writing to the P.W.5 vide Ext.5 and as per the latter's direction vide Ext.5(2), P.W. 3 along with P.Ws 4, 6 and subordinate staff proceeded towards Jiribam. They intercepted one truck bearing registration No. RJ-14GB6731 near ISBT, Ramnagar, Silchar and formally seized it at Silchar Customs Office, on 05.08.2014 on having found transporting 475.61 kgs of suspected ganja (cannabis) in gross in 47 number of packets in a secret chamber specially built in the cabin roof top of the truck vide Ext.21(E), the inventory of goods seized and weighment sheets vide Exts. 21(F)(1) and 21(F)(2).

13. It is noticed that the search and seizure in the said truck were conducted in

presence of witnesses including two independent witnesses namely, PW.-1 Dhrubajyoti Paul and P.W.2 Hari Chandra Nath. Both P.Ws 1 and 2 have corroborated the testimony of the seizing officials and witnesses aforementioned in regard to the place of the seized truck wherefrom ganja was seized, the quantity of seized ganja and also the identity of the accused appellant from whose exclusive and conscious possession was seized.

14. It is further noticed that initially, the accused/appellant, who was found sleeping inside the truck, claimed to be the owner thereof and that it was empty, but in course of search the aforesaid seized ganja was found being transported in the secret chamber specially built on the roof top of the cabin of the truck. Accordingly, vide Ext.4 panchanama was prepared in detail and the voluntary statement of the accused/appellant was recorded under Section 67(c) of the NDPS Act vide **Ext.9 where he unequivocally confessed about his direct complicity and disclosed the names of his associates.** Therefore, the appellant's statement can be relied on being not hit by Section 25 of the Evidence Act.

15. It is further revealed from evidence that 2 (two) samples of the seized suspected ganja were drawn from 6(six) number of packets and sealed the same with departmental seal in presence of the accused/appellant, two independent witnesses (P.Ws 1 and 2) and official witnesses, whereon their signatures were also obtained for the purpose of chemical analysis by the F.S.L., Assam. After keeping in safe custody, the sealed samples were forwarded to the Director, F.S.L., Assam, on 07.08.2014, for chemical analysis vide Ext.16 with facsimile of the seal used on the sample packets.

16. The evidence of P.W.7 Ramen Boruah, the then Chief Judicial Magistrate, Cachar at Silchar deposed to have issued authentication certificate certifying the correctness of the inventory on 08.08.2014 as required under Section 52A (2) of the N.D.P.S. Act.

17. The F.S.L. report on chemical analysis of the sample of the seized substance showed that the same gave positive tests for Cannabis (ganja) vide Ex.17(1) is the

forwarding letter of the report vide Ext. 17(2) exhibited through the evidence of P.W.5, the Superintendent, Customs Preventive Unit, Shillong. The chemical examiner of the F.S.L. was not examined in the case. However, in view of section 294 Cr.P.C., the report of the Government scientific experts as specified therein being admissible without examining him as a witness, the F.S.L. report vide ext.17(2) may legally be accepted and relied on.

18. With regard to the statement of the accused/appellant recorded under Section 313 Cr.P.C., it is noticed that the learned Trial Special Judge had given opportunity to him to explain all the adverse circumstances in evidence that appeared against him but, he has not led any defence evidence and as such, being not cryptic this Court is of the opinion that no prejudice has been caused in any manner to him.

19. Situated thus, in absence of any evidence to the contrary, this Court is of the opinion that as the prosecution has proved beyond all reasonable doubt that, the accused/appellant was found in conscious and exclusive possession of contraband ganja (cannabis) weighing 470.900 kgs (net) by transporting in the seized truck's secret chamber specially built on top of its driver's cabin and the aforesaid quantity was being more than the commercial quantity as per schedule appended to the N.D.P.S. Act, the learned Trial Court has rightly held him to be guilty of the charge aforementioned warranting no interference in the impugned well-reasoned judgment and order.

CONCLUSION:

20. Accordingly, the appeal being devoid of any merit, the same stands dismissed.

Return the L.C.R.

This disposes of the appeal.

JUDGE

Comparing Assistant