

# **BEFORE THE SPECIAL JUDGE AT DHUBRI**

## **Special Case No.11/2011**

U/s. 22 (c) of N.D.P.S. Act

**State of Assam**

**-Vs-**

- 1. Zahirul Islam**
- 2. Fajar Ali**

Present : Mr. A. Bhattacharyya, AJS  
Special Judge, Dhubri

Sri M. Zaman, Public Prosecutor for the State  
Sri Samad Miah, Advocate for the accuseds

Evidence recorded : 21-07-2012, 04-08-2012, 18-08-2012, 15-09-2012,  
08-10-2012, 20-10-2012 and 02-01-2013.

Date of Argument : 09-01-2013  
Date of Judgment : 10-01-2013

## **J U D G M E N T**

Mr. K.S. Adhikari for Commandant SBN B.S.F. vide an ejahar dated 27-06-2011 states before the Gauripur Police Station that while his party was going for duty, enroute they got an information from their source that two persons were moving on National Highway No.31 with some packets of drugs. Immediately they rushed to the place which was told to them by their source. As there was less time to contact any other sister agencies like police, custom etc. they directly went to the spot and apprehended two persons on National Highway No.31 near Goibazar at about 2040 hours. The apprehended persons were searched and during search operation they recovered a closed packets suspected to be brown sugar made in Thailand and one sample packet of the same from the possession of the accused Fazar Ali. The approximate weight of the closed packets of suspected brown sugar and sample packets of the same is 450 gms and 9.60 gms.

It is, further, stated that at about 2045 hours Gauripur Police Station was informed about the incident. Immediately police party arrived at the site at about 2055 hours. Accordingly police seized closed packets of suspected brown sugar along with one sample packet suspected to be brown sugar as per the procedure. The apprehended persons alongwith seized articles were handed over to the police for taking further legal action.

2. The Gauripur Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid the charge sheet U/s.22 (c) of N.D.P.S. Act.

3. After production of the accused persons and after furnishing copies to the accused persons, the charge sheet U/s.22(c) of N.D.P.S. Act is framed against the accused persons. The charge so framed was read over, explained and interpreted to the accused persons to which they pleaded not guilty.

4. During trial the prosecution side after examining as many as 7 (seven) P.Ws closed their side. Statements of the accused persons are recorded. I heard the arguments of the case from both the parties.

5. Now, the point for determination in this case will be as to whether the materials surfaced during trial and in the testimonies of the P.Ws would justify the conviction of the accused persons U/s.22 (c) of N.D.P.S Act?

### **DECISION AND REASONS THEREON**

6. P.W-1, Md. Dilbar Ali was declared hostile by the prosecution. He was cross examined by the prosecution and as such it appears that the P.W-1 did not support the allegation of the prosecution.

7. P.W-2, Monowar Hussain states during trial that one year ago one evening at 8/8:30 p.m. He went to the house of Anamul to distribute Bidi manufactured by him. On his way to return, police met him on the road and obtained his signature under Exhibit – 1 wherein Exhibit – 1(1) is his signature.

From the perusal of the testimonies of the P.W-2, it appears that the aforesaid witness also did not support the story of the prosecution.

8. P.W-3, Mr. Kundan Singh Adhikari is the informant of the case. During examination-in-chief the P.W-3 disclosed the prosecution story as he unfolded in the ejahar under Exhibit-2 wherein Ext-2 (1) is his signature.

During cross examination, the P.W-3 states that accused persons were not known to him prior to the incident. On the date of incident and at the relevant point of time the number of B.S.F. personnel including himself were ten. Mr. N.K. Gupta received the secret information. At that time he was the immediate superior officer of the then Inspector Mr. N.K. Gupta. Mr. N.K. Gupta informed him about the secret information orally not in the written form. No private persons were present at the place of occurrence at the time of recovery excepting accused persons. At the time of search he had informed both the accused persons that he was the Gazetted Officer and they had the right to be searched in the presence of Gazetted Officer or Magistrate and accordingly both the accused persons conceded to his proposal.

9. P.W-4, Mr. Navin Kumar Gupta during trial states that in the year 2011 he was posted at Panbari Headquarter of B.S.F. At the relevant point of time he was performing duty in the capacity of Inspector (G). On that day, he got one secret information from their source to the effect that trafficking of drugs or fake currency notes (FICN) might took place in an around Goibazar under Gauripur Police Station. After getting the aforesaid information, he immediately informed the matter to his Senior Mr. Kundan Singh Adhikary. He furnished the aforesaid information verbally and not in the written form. Thereafter, he went to Goibazar and awaited for Mr. Kundan Singh Adhikary. After ½ an hours, Mr. Kundan Singh Adhikary arrived at Goibazar. Thereafter, they found two persons and on suspicion they apprehended the said persons. The accused persons in the dock were those persons. Thereafter, Mr. K.S. Adhikary took search of their bodies and recovered one box made of hard board and one polythene bag. The aforesaid polythene bag contained some white powder and the same was suspected to be brown sugar. Subsequently, they informed the Gauripur Police Station wherefrom police personnel came and arrived at the scene and they apprehended the said persons along with the articles. Articles were seized vide Ext-1 wherein he put his signature under Ext-1 (2).

During cross examination, the aforesaid witness states that he did not tell the I.O. of the case that he had received one secret information from his source and he had informed about the secret information to his superior officer Mr. K.S. Adhikary. He also did not tell before the police during investigation that he awaited for Mr. K.S. Adhikary for a period of ½ an hours at Goibazar. He put his signature at the place of occurrence. Accused persons were not informed about their right that search operation may be conducted in the presence of Gazetted Officer or Magistrate. During search operation they requested the independent persons to witness the occurrence.

From a joint perusal of the testimonies of the P.W-3 and P.W-4, it appears that the secret information in regard to the commission of the offence alleged of was not furnished in the written form. Also it is revealed from the testimonies that at the time of recovery of articles in question from the possession of the accused persons, no independent person was present. Further, from the aforesaid testimonies it has not been established that the accused person were informed about their right to be searched in the presence of Gazetted Officer or Magistrate.

10. P.W-5 Dr. D.J. Hazarika being the Senior Scientific Officer, Drugs and Narcotics Division, F.S.L. examined exhibit in this case. According to him on examination, the same gave positive test for propoxyphene. Thereafter, he prepared report under Exhibit-3 wherein Exhibit-3 (1) is his signature. His report was forwarded to the Superintendent of Police, Dhubri vide forwarding letter under Exhibit-4 wherein Exhibit 4 (1) is the signature of the then Director I/c, Kumud Ch. Sarma.

11. P.W-6 Md. Nur Zaman Hoque during trial states that on 27-06-2011 he was posted at Gauripur Police Station in the capacity of S.I of Police. On that day he was asked to investigate into the information received vide G.D. Entry No.1903 dated 27-06-2011 of Gauripur Police Station. The place of occurrence is situated at the Goibazar, National Highway No.31. He proceeded to the place of occurrence and after arrival at the place of occurrence, he prepared the Sketch Map. Exhibit – 5 is the sketch map wherein Exhibit – 5 (1) is his signature. He also met the informant Kundan Singh Adhikary belonging to B.S.F, who handed over two persons to them alongwith

some articles suspected to be brown sugar. He seized the aforesaid packets vide Exhibit-1 wherein Exhibit-1 (2) is his signature. For taking weight of the aforesaid articles he seized one electric weight measuring instrument. He also took the weight, which was estimated 450 grams in one packet and 9.60 milligram in another packet. He collected the samples there from and sealed the same. Thereafter, Kundan Singh Adhikary, Asstt. Commandant of B.S.F. in the place of occurrence itself laid the ejahar. He received the same and forwarded to O/c. for registration of a case. The accused were arrested U/s.42 of N.D.P.S. Act also he recorded statement of the witnesses. Thereafter, He brought the arrested accused alongwith the seized articles to Police Station and he had reported the matter to O/c. of Gauripur Police Station. The sample were sent to F.S.L. vide forwarding letter issued by the then Superintendent of Police, Dhubri. Exhibit-6 is the said forwarding letter wherein Exhibit-6 (1) and Exhibit - 6 (2) are the signatures of the then Superintendent of Police, Dhubri, which is known to him for long association. He was authorized by the then Dy. S.P. (HQ) vide authorization letter under Exhibit -7 wherein Exhibit-7 (1) is the signature of the then Dy. S.P.(HQ). Thereafter, in the event of his transfer he handed over the C.D. to the then O/c. Gauripur Police Station.

During cross examination the aforesaid witness states that he was orally directed to go to the place of occurrence by the then O/c. without receiving the written ejahar. He arrived at the place of occurrence at about 9 p.m. The seized articles were recovered by Mr. Kundan Singh Adhikary. He cannot say as to wherein Kundan Singh Adhikary conducted the search operation upon the body of accused persons. The aforesaid Adhikary and officer of B.S.F. handed over the aforesaid articles and accused persons to him. The then O/c. got the information from Mr. Kundan Singh Adhikary over telephone. He prepared the arrest memo after the arrest and seizure. He had informed his superior officer not in the written form but over telephone. He did not prepare inventory nor took any photograph of the seized articles nor took step to bring Magistrate. He seized the articles in question at the place of occurrence. Place of occurrence is thickly populated area. At that time a numbers of non-official persons were present. Two non-official persons were asked to witness the seizure and accordingly he obtained their signatures in the seizure list.

The aforesaid witness during trial states that he recorded the statement of Mr. N.K. Gupta. The aforesaid witness did not state before him that he has informed his superior officer about the receipt of secret information also the aforesaid witness did not state before him during investigation that he awaited for about 30 minutes for Mr. K.S. Adhikary at Goibazar.

12. P.W-7 S.I. Samir Bhusan Banik states during trial that on 06-08-2011 he was posted at Gauripur Police Station in the capacity of S.I. of Police. Thereafter, on 14-08-2011 he was entrusted with the investigation of the case by the then O/c. After getting the charge of the investigation, he perused the C.D. and found that his previous I.O. has examined the witnesses also sent the seized articles to F.S.L. for examination. Accordingly he collected the F.S.L. Report. On completion of the investigation he laid charge sheet under Exhibit-8 wherein Exhibit-8 (1) is his signature.

During cross examination, the P.W-7 admitted that he had not re-examined the P.Ws nor he packed and sealed the seized articles.

So these are all about the evidence of P.Ws

13. I have carefully gone through the entire evidences on record. From a perusal of the same, it appears that on the date of incident one B.S.F. personnel namely Mr. N.K. Gupta received one secret information to the effect that drugs trafficking might took place in and around the Goibazar Market. Accordingly, he informed about the secret information to his superior officer Mr. K.S. Adhikary of B.S.F. Thereafter, both of them alongwith other B.S.F personnel apprehended the accused persons and accordingly Mr. K.S. Adhikary and Mr. N.K. Gupta had recovered the articles similar to brown sugar from the possession of the accused persons. Thereafter, they informed Gauripur Police Station. The police personnel from Gauripur Police Station came to the scene and B.S.F. personnel handed over both the accused persons along with the articles suspected to be brown sugar to the police. The Gauripur Police Station after getting the formal ejahar, registered a case and investigated into the same. During investigation seizure was made, sample were taken from the seized articles and ultimately after getting the examination report from F.S.L, the case was charge sheeted and trial was launched against the accused persons under the relevant provisions of the law of the land.

14. From the aforesaid facts and circumstances so also the testimonies of the P.Ws as have been discussed here in before, it is vividly clear that Mr. N.K. Gupta did not furnish written report as to the receipt of secret information to his immediate superior officer, Mr. K.S. Adhikary. Also recovery of articles in question was not witnessed by independent and disinterested persons. The seizure as has been revealed from the testimonies of the witnesses does not appear to be supported by seizure witnesses. The I.O. of the case did not inform about the seizure and arrest to his superior officer in the written form. It is further revealed from the testimonies of the P.Ws that accused persons were not informed about their right to be searched in the presence of Gazetted Officer or Magistrate. The concerned I.O did not make any inventory during investigation.

15. I have carefully gone through the aforesaid facts and circumstances in the light of the relevant provision of the Sections 42, 50, 52 (A) and 57 of N.D.P.S. Act. Also I have considered the infirmities of the investigation of the instant case as has been pointed out in the light of the observations recorded in the following decided case laws:

(2002) 2 Gauhati Law Report 78  
 (2011) 3 Supreme Court Cases (Cri) 366  
 (2010) 3 Supreme Court Cases (Cri) 1255  
 2011 (6) Gauhati Law Journal 319  
 (2012) 4 Gauhati Law Report 573  
 2005 Supreme Court Cases (Cri) 641

16. After careful examination of the entire facts and circumstances, it can be concluded that during investigation of the instant case a nos. of mandatory requirements incorporated in the Sections 42, 50, 52 (A) and 57 of N.D.P.S. Act have not been complied with. This apart, recovery and seizure of the articles in question have not been established by the independent persons. For the non compliance of the mandatory requirements of the relevant provision of the law of the land, so also non establishment of recovery and seizure of the seized articles from the possession of the accused persons, it is felt not safe to convict the accused persons under the offence alleged of. As such, due to the insufficiency of the evidences and non establishment of the recovery and seizure of the seized articles from the possession of the accused persons, accused are entitled to get the benefit of doubt.

17. In the result, accused are acquitted on benefit of doubt and set at liberty forthwith. The seized articles shall be destroyed in due course of law. Accordingly, P.I, Dhubri be informed. Judgment is delivered in open court.

Given under my hand and seal of the Court on this 10<sup>th</sup> day of January, 2013.

Dictated & Corrected by me

Special Judge, Dhubri

Special Judge, Dhubri.