

BEFORE THE SPECIAL JUDGE AT DHUBRI

Special Case No.9/2014

U/s.20 (b) of N.D.P.S. Act

G.R. No. 2425/2014

State of Assam

- Vs -

Narayan Das

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

Sri A.R. Khan, Public Prosecutor, Dhubri for the State.
Sri Kazi Motahar Hussain, Advocates for defence.

Date of Evidence : 30-09-2014, 22-10-2014, 19-11-2014 and
03-12-2014,

Date of Argument : 09-12-2014

Date of Judgment : 10-12-2014

J U D G M E N T

Sri Bhaskar Barman, S.I. and in-charge of Crime Unit, Dhubri vide an ejahar dated 17-06-2014 states that on 17-06-2014 at about 6 p.m. received a secret information to the effect that at the Narayan Drugs & Distributor situated at Nuniapatty, Dhubri some phensedyl medicines were being stored and also sold. The aforesaid information was informed to the Addl. S.P. (H.Q), Dhubri and on being authorized by the Addl. S.P. (H.Q), Dhubri he alongwith T.S.I, Sri Jayanta Kr. Das and other staffs visited the aforesaid Narayan Drugs & Distributor. After arrival at the aforesaid shop, it was found that some cough syrups were stored and arrangements were made to sell the same. By this time the Addl. S.P. (H.Q) , Dhubri also arrived at the scene and on being authorized by him, search operation were carried out in the aforesaid shop wherefrom a Air bag 96 numbers of Rin Koff Cough Syrup were recovered. The same were seized in the presence of witnesses and the accused name above was arrested and thereafter, seized articles alongwith the accused were handed over to the police station.

(2) The Dhubri Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid the charge sheet under Section 20 (b) of N.D.P.S. Act against the accused. The accused was in the custody. After furnishing the copies and on perusal of the documents as referred to under Section 173 Cr.P.C, the

charge under Section 22 (b) of N.D.P.S. Act is framed. The charge so framed is read over and explained to the accused to which he pleaded not guilty.

(3) During trial the prosecution side after examining as many as 6 (Six) P.Ws closed their side. Statement of the accused is recorded. I heard the arguments of the case from both the parties.

(4) Now, the point for determination in this case will be as to:

Whether the material particulars surfaced in the testimonies of the P.Ws would be sufficient enough to convict the accused under the offence charged of or not?

DECISIONS AND REASONS THEREON

(5) To answer the aforesaid point for determination, let us have a look at the entire evidences on record.

(6) P.W- P.W-1 S.I. Bhaskar Barman states during trial and in his examination-in-chief that on 17-06-2014 while he was working in the Crime Unit of Dhubri in the capacity of S.I. of Police, then he received a secret information to the effect that Narayan Drugs Distributor situated a Nunia Patty, Dhubri had stored as many as 100 bottles of Cough Syrups to sell. Getting the information, he furnished the aforesaid information to the Addl. Superintendent of Police, Dhubri verbally, who in turn asked him to visit the place of occurrence alongwith the staffs. Thereafter, he visited the Narayan Drugs Distributor and took the search thereof. During search operation, he recovered as many as 96 bottles of Rin-koff Cough Syrups containing in a bag. Thereafter, he seized the same. He took out the sample of the same there from. He arrested the accused and thereafter, he brought the seized materials alongwith accused to the Police Station and handed it over to the Police Station. Ext-1 is the ejahar wherein Ext-1 (1) is his signature. Ext-2 is the seizure-list wherein Ext-2 (1) is his signature. Thereafter, the O.C, Dhubri Police Station on registration of a case entrusted the investigation of the case to a different I.O. he has done this much only.

During cross-examination the P.W-1 admitted as follows:

“I did not furnish the receipt of secret information to my superior authority in the written form. I did not inform the accused at the time of taking search that he had the right to be searched in the presence of the Magistrate or Gazetted Officer. I was authorized by the then Addl. S.P, Dhubri to investigate into the case. Today I did not find the same in the

case record. I did not prepare the inventory regarding search and seizure. I did not furnish the written report as to the search, seizure and arrest of the accused to my superior authority.”

(7) P.W-2 S.I. Bhaskar Barman states during trial and in his examination-in-chief that on 17-06-2014 while he was detailed on duty alongwith S.I. Bhaskar Barman of Dhubri Police Station and on the said date he visited the Medicine shop of accused in the dock alongwith the aforesaid police official. The aforesaid S.I. took search of medicine shop of the accused and recovered 96 bottles of Cough Syrups from a bag. It was seized by S.I. Bhaskar Barman vide seizure list under Ext-2 wherein he put his signature under Ext-2 (2).

During cross-examination the P.W-2 admitted as follows:

“Today I did not find the seized materials. I do not know about the description of the seized materials. At the time of taking out the search as many as 20 to 25 persons were present. Accused was not known to me prior to the incident. I do not know as to who is the owner of the said Drugs Distributors.”

(8) P.W-3 Sri Khokan Karmakar states during trial and in his examination-in-chief that he knows the accused. He has got one Goldsmit shop in the Dhubri town nearing to the Dhubri Police Station. On the date of incident at about 7/7-30 p.m. while he was proceeding to his shop, he found crowd in the Narayan Drugs Distributor and also found police personnel therein. Then police personnel took his signature on some papers. He cannot say as to why the police personnel took his signature therein. Ext-3 is the said paper wherein Ext-3 (1) is his signature.

During cross- examination the P.W-3 states that he cannot say the contents as to the aforesaid papers and at that time the paper was white and blank.

(9) P.W-4 Sri Gopal Ch. Roy states during trial and in his examination-in-chief that on the date of incident and at the relevant point of time he found crowd in the Narayan Drugs Distributor. After sometime police personnel took his signature in a paper. Ext-3 is the said paper wherein Ext-3 (2) is his signature. He cannot say as to the contents of the Ext-3 nor can he say as to why police personnel took his signature.

During cross-examination the P.W-4 states that at that time he did not find the accused Narayan Das in the shop. He did not find the crowd on the road itself.

(10) P.W-5 Sri G.N. Deka states during trial and in his examination-in-chief that on 19-08-2014 he was working as Dy. Director in the Drugs & Narcotics Division of F.S.L, Assam. He received the parcel of exhibits in connection with Dhubri P.S. Case No.689/2014 for examination through their Director. He examined the aforesaid exhibits

about which he has mentioned in his report as per U.N. Laboratory Manual. During examination of the aforesaid exhibits gave positive tests for Codeine and the amount of Codeine in each exhibit was found to be 134.6 mg. Ext-4 is his report wherein Ext-4 (1) is his signature. Ext-5 is the forwarding report wherein Ext-5(1) is the signature of the then Director i/c, Sri M.N. Bora, which is known to him.

(11) P.W-6 S.I. Jayanta Das states during trial and in his examination-in-chief that on 17-06-2014 he was posted at Dhubri Police Station in the capacity of Sub-Inspector of Police. On that day he accompanied in-charge, Crime Unit of Dhubri to Nuniapatty. At that time the in-charge of the Crime Unit was Mr. Bhaskar Barman. Mr. Barman checked up the Narayan Drugs Distributor situated at Nuniapatty and accordingly they recovered one Airbag from Narayan Drugs Distributor, wherefrom 96 bottles of Rin Koff Cough Syrup were recovered. Mr. Barman asked Narayan Das to submit the documents but Mr. Narayan Das could not submit any document. Thereafter, on being authorized by Sri D. Borah, the then Addl. Superintendent of Police, Dhubri, cough syrup in question were seized in the presence of witnesses and were brought to Police Station. Thereafter, in-charge of the crime Unit laid ejahar. The then O.C. of Dhubri Police Station registered a case and entrusted him with the investigation of the case. During investigation, he recorded statement of the informant Mr. Bhaskar Barman and interrogated the accused. He also sent the sample of seized articles to FSL. He collected the report from FSL. After receipt of the report from FSL, he laid the charge sheet in this case. Ext-6 is the charge sheet wherein Ext-6 (1) is his signature. Neither he himself nor Bhaskar Barman told the accused Narayan Das that he had the right to be search in the presence of Gazetted Officer or Magistrate. Neither Bhaskar Barman nor he himself prepared the inventory during investigation of this case. Mr. Bharskar Barman was authorized to investigate into the case in the written form by the then Addl. S.P., Dhubri but he was not authorized to investigate into the case. He did not furnish any written report to his superior authority about the search, seizure and arrest of the accused.

During cross-examination the P.W-6 states that at about 6 p.m they visited the place of occurrence. The place of occurrence is situated on a busy road of Dhubri town and the same is surrounded by a numbers of shops. Seizure was made in the presence of a numbers of persons. He did not record the statements of the aforesaid persons. He did not take out the sample and it was taken by Mr. Bhaskar Barman. He did not bring the Malkhana register nor did he seize the Malkhana register.

So these are all about the evidences on record.

(13) I have carefully gone through the entire evidences on record. From the evidences on record, it is revealed that P.W-1 got the secret information about the storage of 100 bottles of cough syrups by

the accused at the Narayan Drugs Distributor. After getting the aforesaid information the P.W-1 informed the matter to the then Addl. S.P. (H.Q) verbally, who in turn asked him to visit the place of occurrence alongwith the staffs. Thereafter, the P.W-1 carried out the search operation in the aforesaid shop and during search operation, he recovered as many as 96 bottles of Rin Kloff Cough Syrups containing in a bag and he seized the same vide Ext-2. The P.W-2 supported the aforesaid seizure but from the admission of the P.W-1, it is revealed that P.W-1 being the responsible police officer did not furnish the receipt of secret information to his superior officer in the written form also it is revealed that the P.W-1 during search operation did not inform the accused about his right to be searched in the presence of Gazetted Officer or Magistrate. The P.W-1 stated that he was authorized by the then Addl. S.P. (HQ), Dhubri to investigate into the case but the written authorization was not produced before the Court nor it was exhibited during trial. Also it is revealed that the P.W-1, who carried out the substantial part of investigation did not prepare the inventory regarding search, seizure and arrest of the accused nor did he furnish report as to the aforesaid aspect to his superior authority. Likewise, on the other hand, the P.W-6 S.I. Jayanta Das was the I.O. of this case who was also present during the search, seizure and arrest of the accused.

(14) P.W-6 completed the investigation and laid the charge sheet but from his (P.W-6) testimonies, it is revealed that neither he (P.W-6) nor Bhaskar Barman (P.W-1) told the accused Narayan Das that he had the right to be search in the presence of Gazetted Officer or Magistrate. P.W-6 further admitted during trial that neither Bhaskar Barman nor he himself prepared inventory during investigation of this case. The P.W-6 went on to admit that he was not authorized to investigate into the case and he (P.W-6) did not furnish any written report to his superior office above the search, seizure and arrest of the accused. In addition to above, it is also revealed during trial that Malkhana register neither brought to the Court nor it was exhibited.

(15) Referring the infirmity of the prosecution story, learned defence counsel during arguments submitted that here in this case a numbers of mandatory requirements of investigation as incorporated under Sections 42, 43, 50, 52 (A) and 57 were not followed. Therefore, according to learned defence counsel, due to the non-compliance of the aforesaid provisions of the law of the land, entire investigation is vitiated due to which the evidences so far surfaced cannot be taken into

consideration for conviction of the accused and as such accused is entitled to be acquitted.

(16) In support of the aforesaid submissions, learned defence counsel has relied the following decided case laws of Hon'ble Apex Court of the country so also our own Hon'ble Home High Court:

1. *(2012) 5 Supreme Court Cases 226*
2. *1997 (2) Gauhati Law Journal 1*
3. *2001 Supreme Court Cases (Cri) 1048*
4. *(2002) 2 Gauhati Law Reports 78*
5. *(2011) 3 Supreme Court Cases (Cri) 366*
6. *(2010) 3 Supreme Court Cases (Cri) 1255*
7. *2011 (6) Gauhati Law Journal 319*
8. *(2012) 4 Gauhati Law Reports 573*
9. *2005 Supreme Court Cases (Cri) 541*
10. *1980 Supreme Court Cases (Cri) 683*

(17) On a minute perusal of the entire facts and circumstances in the light of the aforesaid judicial authorities, it is found that here in this case, the provision of investigation incorporated under Sections 42, 43, 50, 52 (A) and 57 have not been followed.

(18) Therefore, respectful agreement with the aforesaid judicial authorities, it can be concluded that the due to the aforesaid non-compliance of the mandatory provisions of the law of the land, the investigation for the case is vitiated and as such accused cannot be convicted basing on the evidences surfaced in the aforesaid investigation.

(19) Thus, the evidences surfaced during trial are not at all sufficient to convict the accused under the offence alleged of. In the result, due to the insufficiency of evidences, the accused is entitled to get benefit of doubt. Therefore, the accused is acquitted on benefit of doubt and set at liberty forthwith. Seized articles shall be destroyed in due course of law.

Judgment is delivered in open Court.

Given under my hand and seal of the Court on this 10th day of December, 2014.

Dictated & Corrected by me

Special Judge, Dhubri

Special Judge, Dhubri.