

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRAA No. 9900010/2013

IA No 4/2014

IA No. 12/2014

State of Jammu and Kashmir Through Police
Station Batote

.....Applicant(s)/Petitioner(s)

Through :- Mr. P.D Singh, Dy. A.G

v/s

1. Gurmeet Singh S/o Sharam Singh R/o Simbal
Camp Tehsil and District Jammu.
2. Rajvinder Singh S/o Karan Singh R/o Simbal
Camp, Tehsil and District Jammu.

.....Respondent(s)

Through :- Mr. A..K Shan, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

(ORAL) ORDER

03.04.2025

PER:- SANJEEV KUMAR-J.

1. This appeal by State of Jammu and Kashmir [now Union Territory of Jammu and Kashmir] is directed against the judgment of acquittal dated 09.10.2012 passed by the learned Sessions Judge, Ramban [**“the trial Court”**] in Special Case No. 03/2010 titled State of J&K Vs. Gurmeet Singh and another.

2. The impugned judgment is assailed by the appellant on various grounds, however, before we advert to the grounds of challenge urged by Mr. P.D Singh, learned Dy. A.G for the appellant, we deem it appropriate to narrate briefly the prosecution case as was put up before the trial Court.

3. On 18.02.2012, at about 5 p.m, a Naka Party of Police Station, Batote intercepted and checked an oil tanker which was coming from Srinagar towards Jammu. The Naka Party found in as many as 18 bags containing Poppy Straw look like material in the central chamber of the vehicle. On inquiry, the occupants of the vehicle disclosed their identity as Gurmeet Singh and Rajvinder Singh, the driver and conductor of the vehicle respectively. On this, the head of the Naka Party, S.I Maqsood Ahmad sent a docket to the Police Station through Constable Abdul Rashid.

On the basis of the docket received, the Police Station, Batote registered FIR No. 21/2010 for the commission of offences punishable under Section 8/15 NDPS Act [“the Act”]. The investigation was conducted by Inspector Gulham Nabi Mir, the then SHO Police Station, Batote who proceeded to the place of occurrence and seized the contraband item in question in the presence of the witnesses. Statements of the witnesses under Section 161 and 164 Cr.PC were recorded. Eighteen (18) samples out of 18 bags were taken and got resealed by the Naib Teshildar, Batote i.e. PW-8 Abdul Rashid Rather, Naib Tehsildar Batote. The sealed samples were sent to FSL for chemical examination. In the FSL examination, it was found that the samples contained Poppy Straw. The investigation was, thus, concluded and the charge-sheet presented before the competent Court.

4. The trial Court framed charges against the respondents herein under Section 15 of the Act in terms of its order dated 01.01.2011. The charges were read over to the respondents. The respondents denied the charges and claimed trial. With a view to proving its case, the prosecution examined PW-1 SI Maqsood Ahmad, PW-2 Kuldeep Nath, PW-3 Ct. Mohinder Singh, PW-4 Mohd. Saleem, PW-5 Ct. Abdul Rashid, PW-6 Sham Swaroop, PW-7 Pawan Abrol, PW-8 Abdul Rashid Rather and PW-9 Inspector Ghulam Nabi Mir. On the conclusion of the prosecution evidence, the incriminating circumstances appearing in the prosecution evidence were put to the respondents and their statements under Section 342 Cr.PC were recorded. The respondents denied all the allegations, however, chose not to lead any evidence in defence.

5. The trial Court considered the evidence on record in the light of the rival contentions made by the learned counsel, appearing on both the sides, and came to the conclusion that the prosecution has miserably failed to bring home the charge against the respondents by leading any credible and cogent evidence. The respondents were, thus, acquitted of the charge by the trial Court vide judgment impugned in this appeal.

6. The impugned judgment passed by the trial Court is assailed by the appellant primarily on the ground that the trial Court has not appreciated the evidence in proper perspective and has given too much importance to the minor contradictions appearing

in the prosecution evidence. Mr. P.D Singh, learned Dy. A.G would argue that the prosecution had not only proved the seizure of the contraband but had also proved beyond any reasonable doubt that the same was sealed by the Executive Magistrate and reached FSL with all the seals intact. He would, therefore, urge that the respondents, who are guilty of the charge, deserve to be convicted for the heinous offences under the NDPS Act.

7. Having heard learned counsel for the appellant and perused the material on record, we are of the considered opinion that the judgment passed by the trial Court is legally perfect and in consonance with law.

8. The evidence on record, as is rightly observed by the trial Court, does not connect the respondents with the commission of offence. It has amply come in the prosecution evidence that apart from the police party constituting Naka Party, there were independent witnesses available on spot. As a matter of fact, two labourers were engaged for uploading the Poppy Straw which was found in the central chamber of the vehicle. The two labourers who assisted the police in uploading the contraband have not been named as prosecution witnesses nor their statements have been recorded before the trial Court. That apart, there is also no clarity as to how many samples were taken out of the seized 18 bags of alleged Poppy Straw. As per PW-9, Inspector Ghulam Nabi Mir, who conducted the investigation in the matter, 18 samples were taken out of 18 bags i.e. one from each bag and sent to FSL for examination, however, as per the deposition of PW-7 Pawan Abrol, ASO, FSL, Jammu, he has received only 09 samples. It, thus, remains to be explained as to where the other 09 samples have gone. The I/O is silent on the issue. There is also another aspect which cannot be lost sight of. As per PW-8, Abdul Rashid Rather, Executive Magistrate, who resealed the samples prepared by the I/O, he was present on the spot when the seizures were made. He further submits that he did not resealed the samples on spot and rather, he sealed the samples in his office on the next day. It has though come in the statement of I/O that 18 samples picked up on the spot were deposited in the Malkhana on the same day i.e. on 18.02.2010 but there is no evidence led by the prosecution to produce the incharge

Malkhana or the Malkhana register to substantiate the aforesaid statement. There is nothing on record to show as to how the samples which were deposited in the Malkhana were taken out for resealing by the Executive Magistrate. As a matter of fact, the safe custody of the samples has been put in serious doubt. It remains to be explained by the prosecution as to why the samples which were picked up by the I/O on spot were not got resealed from the Executive Magistrate on spot particularly when the Executive Magistrate was available. It also remains to be explained by the prosecution as to why the Malkhana Incharge was not produced to prove that the samples had remained in the safe custody in the Malkhana. The Malkhana register, if produced and proved, would have indicated the day and time of the deposit of the samples as also the day and time of taking out of the samples. This, too, has not happened in the case. The manner in which the prosecution has been conducted leaves us with no option but to accept the view taken by the trial Court.

9. We are in agreement with the trial Court that the prosecution has miserably failed to prove its case against the respondents by leading any cogent and credible evidence

10. For the reasons given by the trial Court in support of the judgment and the reasons which we have given above, we find no merit in this appeal and the same is, accordingly, dismissed.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

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<i>Whether the order is speaking?</i>	<i>Yes/No</i>
<i>Whether the order is reportable?</i>	<i>Yes/No</i>