



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.345 of 1995

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

Ranjit Kumar Singh ***Appellant***
-Versus-
State of Orissa ***Respondent***

For the Appellant : Mr. B.K. Ragada, Amicus Curiae

For the Respondent : Mr. Sobhan Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 10.02.2026 : Date of Judgment: 19.02.2026

S.S. Mishra, J. The sole appellant has assailed the judgment of conviction and order of sentence dated 22.11.1995 passed by the learned Additional Sessions Judge, Jajpur in 2(a) C.C. Case No.52 of 1994, whereby the appellant has been convicted for the offence punishable under Section 20(b)(i) of the N.D.P.S. Act and Section 47(a) of the Bihar and Orissa Excise Act and sentenced to undergo R.I. for four years and to pay a fine of Rs.5,000/- (Rupees five thousand), in default, to undergo R.I. for six months for the offence



under Section 20(b)(1) of the N.D.P.S. Act and also to undergo R.I. for six months and to pay a fine of Rs.1,000/- (Rupees one thousand), in default, to undergo R.I. for three months for the offence under Section 47(a) of the Bihar and Orissa Excise Act.

2. Heard Mr. B.K. Ragada, learned Amicus Curiae, appearing for the appellant and Mr. Sobhan Panigrahi, the learned Additional Standing Counsel appearing for the Respondent-State.

3. The prosecution case in terse and brief is that on 25.07.1994, P.W.4- S.I. of Excise, Jajpur Road and his staff while performing patrolling duty near Mituani tank area, at that time, they got credible information from reliable sources that the accused was carrying some contraband articles. The Excise personnel apprehended the accused on the way. The accused was detained on suspicion and the Excise personnel recovered three bags, in two bags 6 kgs. of ganja and 4 kgs. of bhanga was found. The seizure list was prepared and the accused was produced before the Court of the learned J.M.F.C., Jajpur Road, where samples were drawn and sent for chemical examination.

4. The plea of the accused is of complete denial. On the said stance, the appellant has been put to trial, after the charges were framed.



5. The prosecution has examined four witnesses in support of its case. Out of them, P.W.1 and P.W.3 were the independent witnesses, who turned hostile and P.Ws.2 and 4 were the A.S.I. and S.I. of Excise Department.

6. The learned trial Court, while appreciating the evidence on record, formed the conclusion, which is largely reflecting in paragraphs-11 and 12 of the judgment of the learned trial Court under challenge. For convenience of ready reference, the said paragraphs are reproduced hereunder:

“11. From the evidence on record as per the version of P.Ws.2 and 4 whose evidence has not been shaken during cross examination clearly proves that M.O.1 to 3 were recovered from the possession of the accused and from M.O.1 to 3 learned Court below extracted the sample which were sent for chemical examination and vide Ext.2 and 4 it is ascertained that the sample content was Ganja and Bhanga. When seizure is proved the presumption can be safely drawn u/s 54 of the N.D.P.S. Act that accused had committed the act under chapter 4 of the N.D.P.S. Act. In this case the accused was charged u/s 20 (b) (i) of the N.D.P.S. Act which comes under chapter 4 of the N.D.P.S. Act. Since Bhanga was seized from the possession of the accused, so the accused violated the provision of section



47(a) of the Bihar and Orissa Excise Act. The accused failed to explain the circumstances as to how they were with his possession. As such he fails to account for the articles seized from his possession. It is also clear that there is nothing on record to disbelieve the version of the P.Ws.2 and 4. As because they were official witnesses they should not be disbelieved, rather it should be presumed that as apex Court has held that unless contrary is proved, the official witnesses have performed their duty honestly, sincerely and properly. Simply the I.O. has stated that he produced the accused on 25th and prepared the documents. But order sheet reveals that he was produced on 26th, the forwarding report reveals that it was done on 25th. Under the circumstances the contention of the learned counsel for the accused cannot be accepted.

12. After going through the entire evidence on record and the submission of the learned counsel for the accused I am fully convinced that the prosecution has brought home the charge u/s 20 (b) (i) of the N.D.P.S. Act and 47(a) of the Bihar and Orissa Excise Act and beyond all reasonable doubt. Hence ordered:

The prosecution has successfully brought home the charge u/s 20 (b) (i) of the N.D.P.S. Act and 47(a) of the Bihar and Orissa Excise Act beyond all reasonable doubt and I found the accused guilty u/s 20 (b)(i) of N.D.P.S. Act and section 47(a) of Bihar and Orissa Excise Act and convict him thereunder.”



7. Being aggrieved by the aforementioned judgment of conviction and order of sentence, the sole appellant has filed the present appeal.

8. Mr. Ragada, learned Amicus Curiae has made three specific submissions:

Firstly, P.W.1 and P.W.3 being, the independent seizure witnesses, have not supported the prosecution case. Therefore, the seizure itself is doubtful.

Secondly, he submitted that in the present case, the mandatory procedural safeguard while search and seizure was made under Section 50 of the N.D.P.S. Act, has not been complied. He has submitted that although the Investigating Officer- P.W.4 has deposed in his evidence that he asked the accused regarding his desire to be searched by and in presence of a Gazetted Officer or Magistrate, however, the accused refused. He further deposed that he conveyed the said right to the accused in writing, but no document to that effect has been brought on record by the prosecution. P.W.4 further deposed that he has taken consent from the accused to conduct search by him. Even to that extent, no document has been placed on record.



The prosecution has exhibited nine documents. However, the written option given to the accused regarding his right to be examined by a Gazetted Officer or a Magistrate or for that matter, the written option for getting himself searched by P.W.4 in presence of the witnesses has not been placed on record by way of exhibit or in any form whatsoever.

Thirdly, Mr. Ragada, learned Amicus Curiae argued that in this case, Section 55 of the N.D.P.S. Act has also been violated. He submitted that the I.O.-P.W.4 on his further recall for cross-examination has stated that the seizure of ganja and bhanga was effected on 25.07.1994 and the sample was drawn on that day itself and produced before the Court. However, on perusal of the proceeding before the learned J.M.F.C. Court in the trial file, it reveals that the contraband ganja alleged to had been seized from the accused was produced before the Magistrate only on 26.07.1994. The Magistrate drew the sample and sent the same for chemical examination. Nothing has come on record to suggest that the seized contrabands were protectively kept in the Malkhana of the Police Station for one day. Rather, on the contrary, it could be safely inferred



from the evidence that the seized contrabands remained in possession of P.W.4. Therefore, compromise with the seized contraband cannot be ruled out. To substantiate his argument, Mr. Ragada, learned Amicus Curiae has relied upon the **judgment dated 09.09.2025** of this Court in the matter of **Niranjan Basantia vs. State of Orissa** d in **CRA No.78 of 1994**. Relying upon the said judgment, he submitted that analysis of the evidence brought on record by the prosecution and the appreciation of the judgment by the trial Court reveals a glaring infirmity besides the statutory non-compliance of provisions of Sections-50 and 55 of the N.D.P.S. Act by the Investigating Officer.

9. In the present case, the learned Additional Sessions Judge, Jajpur, vide its earlier judgment dated 19.01.1995 passed in 2(a)C.C. Case No.52 of 1994, convicted the appellant on charges under Section 20 (b) (1) of the N.D.P.S. Act and Section 47(a) of the Bihar and Orissa Excise Act and accordingly, sentenced him to undergo R.I. for four years and to pay a fine of Rs.5,000/- (Rupees five thousand), in default, to undergo R.I. for six months for the offence under Section 20(b)(1) of the N.D.P.S. Act and also to undergo R.I. for six months and to pay a fine of Rs.1,000/- (Rupees one thousand), in default, to



undergo R.I. for three months for the offence under Section 47(a) of the Bihar and Orissa Excise Act.

10. The appellant assailed the said judgment by filing Criminal Appeal No.35 of 1995. This Court, vide its order dated 01.08.1995 set-aside the aforementioned judgment of conviction and order of sentence and remanded the matter back to the trial Court. While remanding, this Court had observed thus:

“4. The main plank of argument of appellant accused in this appeal is that accused has been prejudiced by not getting opportunity to even cross-examine the witnesses after so called supplementary prosecution report was submitted. It appears from the record that said report submitted by S.I. of Excise was received by learned JMFC on 21.11.1994. The same was sent to learned Additional Sessions Judge on 7.12.1994 and received by the letter dated 8.12.1994. By that time two witnesses viz P.Ws.1 and 2 were examined. In view of the submission of subsequent prosecution report, a prayer was made for grant of opportunity to cross-examine P.W.2 further. Prayer was accepted and matter was directed to be placed on 6.1.1995. Statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure, 1993, xerox copy of challan, original sketch map and intimation to the accused were submitted along with subsequent report. Obviously these were not in record while P.Ws.1 and 2 were examined. Strangely on 6.1.1995 to which date matter was adjourned P.W.2 did not appear. Prosecution examined P.Ws.3 and 4 and its case was closed by the learned



trial Judge. Nothing was indicated about examination of P.W.2. Undisputedly he is a vital witness and considerable emphasis has been laid by learned trial Judge for convicting the accused.

5. In the aforesaid premises, irresistible conclusion is that accused has been prejudiced and fair opportunity to defend during trial has been denied. Judgment of conviction and sentence are accordingly vacated. The matter is remitted to the learned Additional Sessions Judge, Jajpur for fresh trial. He shall make an effort to conclude trial within two months from the date of receipt of records of this Court. If any prayer is made for recalling any witness already examined by prosecution, learned trial Judge shall consider the same in accordance with law. It is made clear that I have not expressed any opinion on the merit of the case.”

11. After the remand, P.W.2 and P.W.4 were recalled to be further cross-examined by the accused persons. After affording sufficient opportunity as directed by this Court in the earlier round, the trial was concluded and finally vide judgment dated 09.11.1995, i.e., the impugned judgment of conviction and order of sentence has been passed. The learned trial Court by reiterating its view and appreciation of evidence has again found the appellant guilty of the charges and confirmed the conviction and sentence passed earlier. The appellant is questioning the same in the present appeal.



12. In the present case, four witnesses have been examined by the prosecution to establish its case. P.W.1 and P.W.3 were the independent witnesses whereas P.W.2 and P.W.4 were the official witnesses. The prosecution has also exhibited 9 documents. The independent witnesses have not supported the prosecution case. P.W.1 was examined by the prosecution as a seizure witness. In his testimony, he has stated that he was standing near Mituani Pond at Jajpur Road and was going for taking bath. At that time, Excise personnel were bringing the accused and many other persons had gathered there. Nothing was seized from the possession of the accused by the Excise staff in his presence. The said witness was declared hostile by the prosecution. Similarly, P.W.3, another independent witness has deposed that about 4 to 5 months back at about 6 to 6.30 A.M., he was taking bath, at that time, police enquired from him regarding the house of the accused. He pointed out to the police showing the house of the accused. At that time, the accused was sleeping in his house. The Excise Officer called the accused from his house. Thereafter, the Excise Officer asked him to sign on number of papers, but he refused to sign. Still then when the Excise Officer



insisted him, he signed on those papers. Ext.2 is his signature. This witness has also been declared hostile. The prosecution has elaborately cross-examined this witness. But he stuck to his version that nothing was seized in front of him and the police has taken the accused from his house while he was sleeping. Therefore, the prosecution case is entirely remained on the shoulders of P.Ws.2 and 4. P.W.2 was serving as an A.S.I. at Jajpur Road. He deposed that on 25.07.1994 at about 9.30 a.m., he had been to Mituani Pond for patrolling duty along with Excise S.I. R.F. Baig P.W.4. While performing the patrolling duty, they got information that the accused was bringing ganja and bhanga. They detained the accused. When they asked the accused, if he desires to be searched before a Gazetted Officer or a Magistrate, the accused refused to be searched before such Officer or Magistrate. Then they called the local witnesses namely, Natabara Das (P.W.1) and another (name not mentioned). S.I. gave his personal search to the witness and searched the person of the accused. The said witness was called for further examination after remand of the case by this Court. In the further cross-examination, he has reiterated his version, however added that the option given to the



accused person regarding his search before the Magistrate was given in writing. It is also eminent on record that the documents, wherein the written notice was given to the accused has not been exhibited. However, the said witness has also stated that they have not mentioned the said fact in the Case Diary except mentioning in the P.R. He further deposed that the offer made by the accused regarding his search before the Magistrate is mentioned in the statement of the accused recorded by him. The signature of the accused is taken immediately after his statement without any gap. The evidence of the said witness in regard to the compliance of procedural requirement of Section 50 of the N.D.P.S. Act stood corroborated with the evidence of P.W.4, who has also narrated the same facts. In that regard, P.W.4 also deposed that he asked the accused his desire to be searched before any Gazetted Officer or Magistrate to which the accused refused. He conveyed this fact to the accused in writing. At that time, the accused was having three bags with him. However, nothing has been brought on record by the prosecution regarding the written notice given to the accused. From the evidence of P.W.2 and P.W.4, it is eminent that they have not strictly complied with requirement of



Section 50 of the Act because no document has brought on record by the prosecution regarding the written notice or consent from the accused regarding his desire not to be searched by a Magistrate or Gazetted Officer and his acceptance to get himself searched by the Police Officer. The I.O. has also not complied with the requirement of sub-section (5) of Section 50 by taking the statement of the accused in presence of two independent witnesses. P.W.2 has disclosed the name of only one witness, the name of the other witness has not been disclosed at all. Therefore, in both the counts, compliance of Section 50 of the N.D.P.S. Act by the prosecution is lacking.

13. P.W.4 also deposed that he intimated the accused in writing regarding the ground of arrest, prepared the seizure list at the spot in presence of the witnesses and the contents of the seizure were read over to the witnesses and the accused. However, he has not mentioned as to how many independent witnesses were present at the time of search. This witness has also mentioned that he although has given in writing to the accused regarding the option to be searched by the Magistrate or Gazetted Officer, but he has not mentioned the same in the Case Diary. Everything according to him was mentioned in the



P.R. and the back side of the seizure list where the accused has signed. He has also admitted in the further cross-examination that the copy of the seizure list was not supplied to the accused.

P.W.4 very emphatically stated that he did not send the seized articles to the O.I.C., Jajpur Road Police Station, rather he sent directly to the Court on the same day. He further deposed that he produced the accused, seizure list and the seized articles before the Court of the J.M.F.C, Jajpur Road on 25.07.1994. But the preliminary report was drawn on 27.07.1994 and sent to the Court later on. He deposed that he sent the forwarding report on 25.07.1994.

Mr. Ragada, learned Amicus Curiae has taken me to the order sheet of the Court of the learned J.M.F.C., Jajpur Road. The order sheet starts from 26.07.1994. The first proceeding was drawn up on 26.07.1994 which reads thus:

“26.7.94 An Advance PR u/s 20(B) N.D.P.S. Act of 1985 and 47(a) B & O Excise Act along with the seizure list and forwarding report submitted by the S.I. Excise Dolipur against the aced Ranjit Kumar Singh aged about 24 years S/o. Late Rameswar Singh of village. Dolipur (Mituan tank) PS. Jajpur Road Dist. Jajpur. The aced is produced being arrested by the S.I. Excise Dolipur. He complains no ill treatment by the Excise personals while in their



custody. This case is exclusively triable by the Special Judge. So the record sent to the Registrar Civil Courts Cuttack. Accd is remanded to custody till 9-8-94.

*Dictated
Sd/-
J.M.F.C.*

Later Further I.O. S.I. Excise Dolipur prays for sending the MOs for chemical examination.

Prayer is allowed.

Three packets in sealed condition are produced before me by the S.I. of Excise- R.A. Baig. One packet containing five K.gs of NDP GANJA, the second packet is containing One K.g of NDP GANJA & the third packet is containing four K.gs of N.D.P. BHANG. All the three packets were opened in my presence. From each packet 50 gms. Of sample property was collected. The sample property were kept separately in three polythene packets & each packet were kept separately in three cloth packets. In each packet, a forwarding letter to the Chemical Examiner to Govt. of Orissa, Excise Deptt. State Drugs Testing & Research Laboratory, BBSR for Chemical Analysis with my seal & signature & signature of R.A. Baig used for sealing the packets has been enclosed. Each packet containing sample was stitched and sealed under my personal seal. The seized properties kept in three packets were again stitched and sealed in my presence.

*Dictated
Sd/-
J.M.F.C.*



Reading of the proceedings dated 26.07.1994 of the Court of the learned J.M.F.C., Jajpur Road as reproduced above, makes it abundantly clear that the sample although was drawn on 25.07.1994 but it was only produced before the Court on 26.07.1994. Nothing is coming on record to ascertain as to where the samples and the seized contrabands were kept by P.W.4 in his custody for one day. The deposition of P.W.4 in regard to the production of contraband and sample before the learned Magistrate is found to be contrary to record. Hence, the statement of P.W.4 belied the proceeding of the Court.

14. On the strength of the aforementioned analysis of the evidence on record, one can safely reach to the inevitable conclusion that the prosecution has failed to comply with the mandatory procedural safeguard provided under Section 50 of the N.D.P.S. Act on two counts:

Firstly, by not involving at-least two independent witnesses as required under sub-section (5) of Section-50 of the N.D.P.S. Act read with Section 100 of Cr. P.C.



Secondly, the written notice/consent obtained from the accused intimating him regarding his right to be searched by a Gazetted Officer or a Magistrate and his consent to get him searched by the Investigating Officer- P.W.4 has not been brought on record. Hence, the prosecution case is vitiated for non-compliance of Section-50 of the N.D.P.S. Act.

It is also emanating from the record that the seized contraband and the sample drawn at the spot on 25.07.1994 was kept under the personal custody of P.W.4 for one day only to be produced before the Magistrate on 26.07.1994. Therefore, compromise with the seized contraband and the sample cannot be ruled out in the present case. In that view of the matter, even compliance of requirement of Section-55 of the N.D.P.S. Act is prominently lacking in the present case. In view of non-compliance of the statutory safeguards by the Investigating Officer and because of failure of the prosecution to prove the same, this Court is prompted to interfere with the impugned judgment.



15. Accordingly, the impugned judgment of conviction and order of sentence dated 22.11.1995 passed by the learned Additional Sessions Judge, Jajpur in 2(a) C.C. Case No.52 of 1994 is set-aside.

16. The CRA is allowed.

17. This Court records appreciation for the effective and meaningful assistance rendered by Mr. B.K. Ragada, learned Amicus Curiae. He is entitled to the honourarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 19th Day of February, 2026/ Subhasis Mohanty