

IN THE COURT OF JUDGE, SPECIAL COURT UNDER NDPS ACT
SURI, BIRBHUM

Present : Sri Arup Kumar Das,
Judge Special under NDPS Act, Birbhum

C. Case No. 25/2016
CNR No.WBBB01-000798-2016
J.O. CODE : WB00625
CIS Reg. No. 10/2016

State of West Bengal

Vs.

Sk. Samirul and 4 others.

..... Accused Person.

Learned Advocate for the State: Sri Tapan Kumar Goswami

Learned Advocate for the accused persons: Sri Nripen Krishna Banerjee.

Charge under Section 15(C) of NDPS Act, 1985
Date of delivery of Judgment : 30.7.2026

J U D G E M E N T

The prosecution case in brief is that on 19.07.2016 at about 18:25 hours S.I. Tapai Biswas, Officer-In-Charge of Illambazar P.S. received a secret source information that 3/ 4 persons were carrying huge amount of poppy straw and poppy husk in a trolley and they were proceeding towards Paikuni village across Ghurisha-Nripatigram pitch road with a view to pound the poppy straw in the husking mill of that village. S.I. Tapai Biswas then informed about the information to his superior officers who permitted him to work out the information and instructed him to contact with the B.D.O. Illambazar and C.I. Bolpur for conducting search. He then informed BDO. Illambazar who expressed his inability to arrive at that time. Thereafter, he requested the C.I. Bolpur, Sri Kalyan Prasad Mitra, a Gazette Officer. C.I. Bolpur assured him to come to the spot. The information was noted in Illambazar P.S. GDE no. 1000 dated 19.07.2016. Thereafter, S.I. Tapai Biswas along with police force and investigation kits left P.S. to work out the information. C.I. Bolpur also accompanied them during raid. At about 19:05 hours they arrived at Paikuni More and hid themselves keeping the vehicle at a distance. On the way, they requested two disinterested witnesses to accompany them in the raid but they refused to do so. At 19:35 hours they

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found that a trolley van loaded with four bulky sacks was coming from Ghurisha side. One person was driving the trolley and three persons were pulling the trolley. Police stopped the trolley and apprehended those four persons. They disclosed their identity as 1) Sk Samirul, 2) Sk Najimuddin, 3) Sk Jairul and 4) Sk Fajai. After observing all legal formalities of search and seizure as provided in the NDPS Act, police searched their body but nothing suspicious substance could be found. Thereafter, the trolley van was searched by the police and total 157.50 kgs of poppy straw @ poppy husk was found in four sacks kept in a trolley. The poppy straw @ poppy husk was seized by S.I. Tapai Biswas under proper seizure list. He took out 500 gms of poppy straw from each of the four sacks of seized poppy straw as sample. The accused persons confessed that they were going to deliver poppy straw to Sk Mofijul Mondal of Sankargacha who was waiting for them. Thereafter, the raiding team went to Paikuni village and arrested Sk Mofijul and arrested him there. After reaching at Illambazar P.S. he lodged a written complaint regarding the incident on the basis of which the instant prosecution case being Illambazar P.S. Case No. 114/2016 dated 19.07.2016 u/s 15(c) of N.D.P.S. Act was started. Investigation commenced and after completion of investigation, a charge sheet was submitted against the accused persons u/s 15(c) of N.D.P.S. Act.

The accused persons were charged for commission of the alleged offence punishable u/s 15(c) of the N.D.P.S Act to which they pleaded not guilty and demanded trial. Hence, the trial commenced. The accused persons were examined u/s 313 Cr.P.C. In their explanation u/s 313 Cr.P.C. the accused persons denied the incriminating circumstances and evidence which have come in the evidence of prosecution. The defence plea is one of innocence and total denial of the prosecution case.

Points for consideration:

The points that arise for my consideration are –

- (1) whether the accused persons have committed the alleged offence punishable under sections 15(c) of N.D.P.S. Act ?
- (2) whether the case against the accused persons stands established beyond reasonable doubt ?

Decision with reasons:

In order to substantiate the charges framed, against the accused persons, the prosecution has partly examined one witness.

PW-1 is S.I. Tapai Biswas. He deposed that on 19.07.2016 he was posted at Illambazar P.S. as O.C. He is the complainant of this case. On 19.07.2016 at about 18:05 hours he received a secret information that 4/5 miscreants were carrying poppy straws and poppy husk with a trolley and were proceeding towards Paikuni village with a view to dust the poppy straw. He further deposed that the information was diarized and brought under the notice of his official superior. Thereafter, as per their direction he intimated the information to BDO Illambazar and C.I. Bolpur over mobile as the information was relating to NDPS Case. The BDO informed him that he was not able to attend as he was busy with other administrative works. Then he informed the C.I. Bolpur and requested him to be present on the spot. Thereafter, he himself and other officers and force accompanying C.I. Bolpur Sri Kalyan Prasad Mitra. They proceeded towards the spot along with investigation kits. On arrival at Paikuni village about 19:05 hours, they laid down and ambush as per guidance of the source. At about 19:35-40 hours they found that one trolley was coming from Ghurisa side loaded with some sacks and tied with rope and also found that trolley was driving by one person and three other persons were pulling the trolley to accelerate the velocity of the trolley. Then they conducted raid and detained the trolley along with four persons. Thereafter, they informed them regarding their cause of apprehension. PW-1 proceeded to deposed that he issued a detention notice to all the apprehended persons regarding their search as the information was relating to carrying of narcotic substance. Then the accused persons gave their consent to search their person and their carrying substance by Gazette Officer only. Then C.I. Bolpur, Inspector K.P. Mitra further issued notice and as per consent of all apprehended persons, they started search and recovered four sacks out of which one was yellow colour and three were white colour. On asking, all the accused persons admitted that all the sacks are loaded with poppy husk and poppy straw and then also admitted that they collected and purchased the same from Kalichalk, Malda District and they were proceeding towards Paikuni village in the

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husking mill of one accused Mofiz Sk. Thereafter, they seized the recovered sacks and all entire weigh men process have been done by taking electricity from nearby submersible and prepared seizure list. Thereafter, they also took sample from the said four seized sacks and prepared label after completing the entire seizure labeling process as per provision of NDPS Act they proceeded towards the village of accused Mafiz Sk and succeeded to arrest him after observation all legal formalities. Thereafter, he brought all seized articles along with the accused persons and prepared a complaint and started specific case. Thereafter, he endorsed the case to S.I. Hasib Hasan for its investigation. PW-1 proved the written complaint which was marked as Exbt. 1. He also proved the formal FIR which was marked as Exbt. 2. He also proved the seizure list which was marked as Exbt. 3. The weigh men chart prepared by P.W-1 was proved him and it was marked as Exbt. 4. PW-1 identified all the accused persons in the Courtroom.

PW-1 was partly examined on 29.07.2019. His examination in chief was not completed on that day. Subsequently, the prosecution could not produce him for his further examination in chief and cross-examination. The defence did not get opportunity to cross-examine this witness. The evidence of a witness, who has not been cross-examination by the defence has got no value at all in the eye of law. The Court cannot rely on the testimony of PW-1 as he has not been cross-examined by the defence. According to prosecution case, search and seizure of the sacks of the accused persons was conducted in presence of C.I. Bolpur, Sri Kalyan Prasad Mitra. The prosecution has failed to examine the said witness. No other members of the raiding team has been examined by the prosecution. The seizure list (Exbt. 3) shows that there are six seizure witnesses. None of those seizure witnesses has been examined by the prosecution. No local witness has been examined by the prosecution. The Forensic Examiner Report regarding the seized contraband articles has not been exhibited by the prosecution. So, it has not been proved that the alleged seized contraband article was Poppy straw or poppy husk. In my considered opinion, the evidence adduced by the prosecution is not sufficient to prove its case. Thus, considering the evidence on record, I hold that the prosecution has not been able to prove the charge against framed against the accused persons beyond all reasonable shadow of doubt. So, the accused persons are entitled to get an order of acquittal on benefit of doubt.

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Accordingly, it is

ORDERED

that the accused persons, namely, 1) Sk. Samirul, 2) Sk. Najimuddin, 3) Sk. Jiarul, 4) Sk. Fajai and 5) Sk. Mafijul Mondal @ Mafiz are found not guilty of the charge punishable u/sec. 15 (c) of the N.D.P.S. Act and as such, they are acquitted under section 258 of Bharatiya Nagarik Suraksha Sanhita, 2023. They be set at liberty forthwith. They are discharged from their respective bail bonds. Their surety are also discharged.

The seized trolley, one Nokia and one Gionee mobile phone, if any, be returned its original owner.

Any other seized alat, if any, be destroyed after the period of appeal.

Dictated & corrected by me

Judge, Special Court under
NDPS Act, Birbhum
WB00625

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