

APPENDIX-12

<p><u>IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR</u></p> <p><u>TEZPUR</u></p> <p>Present:- Sri Nabajit Bhatta. AJS. MA, LL.B. Chief Judicial Magistrate, Sonitpur, Tezpur</p> <p>[Date of the Judgment] 07.10.2022</p> <p>[<u>NDPS Case No-01 of 2018</u>]</p> <p>(FIR NO-2217/2016 DATED-14.12.2016/NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCE CASE AND TEZPUR POLICE STATION)</p>	
COMPLAINANT :	STATE OF ASSAM OR SI Tabibur Rahman, I/C of Kacharigaon Police Out Post S/O:- Late Taher Ali, R/O:- Simelibari, P/S:- Baihata Chariali, Dist:- Kamrup (M), Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSON	Sri Swapan Goswami, S/O:- Sri Haradhan Goswami, R/O:- Balishiha Ward No-6, P/S:- Dhekiajuli, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Imtiaz Ansari, Ld. Counsel

APPENDIX-13

Date of Offence	08.10.2016
Date of FIR	08.10.2016
Date of Charge Sheet	23.12.2016
Date of Framing of Charge	24.03.2017
Date of commencement of evidence	17.04.2017
Date on which judgment is reserved	30.09.2022
Date of Judgment	07.10.2022
Date of the Sentencing Order, if any	NIL

ACCUSED DETAILS :

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Sri Swapan Goswami	09.10.2016	05.01.2017	Sec-20(b) (A) of NDPS Act	Acquitted	NIL	88 Days

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

NDPS Case No-01 of 2018

State of Assam
-Vs-
Sri Swapan Goswami

.....Accused Person

Under section-20(b)(A) of NDPS Act

Present:

*Sri Nabajit Bhatta AJS. MA, LL.B.
Chief Judicial Magistrate, Sonitpur at Tezpur*

07th day of October, 2022

Mr. N. K. Mishra, Addl. P.P
Mr. I. Ansari, Ld. Counsel

..... Advocate for the State
..... Advocate for the Accused

Date of Hearing : 17.04.2017, 24.01.2018, 31.05.2018,
03.08.2022, 31.05.2019 & 24.09.2019
Date of Argument : 16.09.2022 & 30-09-2022
Date of Judgment : 07.10.2022

J U D G M E N T

1. Prosecution story in brief is as follows that on 08.10.2016, the informant SI Tabibur Rahman of Kacharigaon Police Outpost under Tezpur PS lodged an FIR before the O/C of Tezpur Police Station to the effect that on the same date at about 02:00 PM on receipt of a secret information from a reliable source that one person was bringing ganja (cannabis) on a Tata Super ACE from Tezpur town towards Mission Chariali. Accordingly, a NAKA checking was set up in front of Kacharigaon OP and seized the TATA Super ACE vehicle bearing Regd. No-AS-12/AC-1906 along with 250 gms of suspected ganja from the possession of the accused person as he was the driver of the said vehicle. It is also stated that the said seized suspected ganja were sent to FSL where it was reported by

FSL that the sample of the aforesaid ganja gave positive test for cannabis (Ganja). Hence, the prosecution case.

2. The instant case was registered under section-22(A) of NDPS Act and police investigated the same. After completion of the investigation police submitted the charge-sheet against the accused person, namely, Sri Swapan Goswami under section-20(a) of NDPS Act.
3. That Hon'ble Special Judge, Sonitpur, Tezpur took cognizance of the offence against the accused person. On appearance of the accused person copies of relevant documents were furnished to the accused person and the charge under section-20(b)(A) of NDPS Act was framed by Hon'ble Special Judge, Sonitpur, Tezpur against the accused person and the said charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as seven (07) numbers of witnesses including informant and the investigating officer in support of this case. Subsequently, after examination-in-chief of Investigating Officer-cum-informant (PW-5) and considering the nature of offence which attracts punishment of less than 3 years, the Hon'ble Special Judge, Sonitpur, Tezpur vide order dated-26.09.2018 sent back the case record before this Court for trial. Statement of the accused person has been recorded U/S-313 of Cr. P.C after completion of prosecution witnesses. Defence has adduced no evidence in support of this case.
5. **POINTS FOR DETERMINATION:-**
 - (i.) Whether the accused person on 08.10.2016 at Mission Chariali under Tezpur PS found in possession of 250 gms of suspected ganja in his vehicle bearing Regd. No-AS-12/AC-1906 TATA Super ACE, where such contravention relates to Sub-Section (b) of the provision of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), which involves quantity lesser than commercial quantity but greater than small quantity and accordingly the said seized suspected ganja were sent to FSL where it was reported by

FSL that the sample of the aforesaid ganja gave positive test for cannabis (ganja) and thereby committed an offence punishable under section-20(b)(A) of NDPS Act?

6. Heard argument from the Ld. Advocate of the both parties. On perusal of the evidence on record and case diary the very findings are as follows.

DISCUSSION, DECISION AND REASONS THEREOF

7. The prosecution opening the account of examining the witnesses first brought the informant, Sri Bhaskar Das as PW-1. The PW-1 in her evidence-in-chief has stated that on 08.10.2016 he was posted at Kacharigaon Police Outpost under Tezpur PS as UBC and on that day, the then I/C of Kacharigaon OP along with O/C of Tezpur PS along with other police officials conducted NAKA checking opposite to their outpost. While they were in checking the vehicle bearing Regd. No-AS-12/AC-1906 they found one polythene bag containing suspected ganja which was seized by SI Ziaur Rahman.
8. In cross-examination, PW-1 has stated that as UB Constable he was posted at police station and outpost. He also stated that the vehicle was brought from the road to Thana campus and at Thana campus the articles were unloaded. He further stated that then a small packet was found and it was on the back side of the vehicle on the side of the cartoons. He also stated that the backside of the vehicle was open. It was brought in open condition to Thana Campus. He stated that he gave his statement to the police that he signed in the seizure list but in the record he could not find out any seizure list where his signature is there. He also stated that he had not seen the seized articles nor the seizure list bearing his signature.
9. PW-2, Sri Hem Kanta Mahanta has stated in his evidence-in-chief that he knows the accused person of this case. He further stated that the incident took place about one year ago and at the relevant time police checked the vehicle on road. He further stated that his shop is in front of the checking point and at that time he was in his shop and he has asked one police personnel about what happened. Then he replied that some suspected Bhang (ganja) has been recovered from a vehicle look like Tata Mobile which was driven by the

accused. He also stated that police seized one mechanical weighing scale (palla), 200 gms weight, 150 gm weight. He identified the seizure list as Ext-1 wherein he put his signature as Ext-1(1). He further stated that police also seized one Tata Super ACE vehicle bearing Regd. No-AS-12/AC-1906; Polythene packet containing suspected Ganja (cannabis) measuring 250 gms. He also identified the seizure list as Ext-2 wherein he put his signature as Ext-2(1). He stated that he has seen the packet only but he has not seen the content of the packet.

10. In cross-examination, PW-2 has stated that he was inside his shop and he did not come out from his shop to see what happened near the vehicles. He further stated that there were several vehicles, so he could not say from which vehicle what material was recovered. He also stated that the police personnel did not tell him that any contraband article (Bhang) was found from the vehicle of the accused. He also stated that he did not know what was found from the vehicle of the accused. He further stated that he was not shown any seized articles by police. He stated that he could not say what was written in Ext-1 as well as in Ext-2. He further stated that he does not know English. He also stated that police used to take signature in his shop in some papers whenever it was necessary as he has his shop in front of the police station, he complied the request of police officers. In that manner on that day also he signed in Ext-1 & Ext-2 as per request of the police officer.
11. PW-3, Sri Bhaben Kalita stated in his evidence-in-chief that he knows the accused of this case. He further stated that the incident took place in the month of June/July in the year 2017 and at the relevant time a vehicle was parked in front of his pharmacy and the said vehicle look like Mini Truck. He further stated that police apprehended and seized the said vehicle as there were some suspected Ganja. But he has not seen any suspected Ganja in the said vehicle. He further stated that police seized one mechanical weighing machine, one 200 gms weight and 50 gm weight. He identified his signature on the seizure list as Ext-1(2). He further stated that police also seized one Tata ACE vehicle bearing Regd. No-AS-12/AC-1906 and one Polythene packet. He also identified the seizure list as Ext-2 wherein he put his signature as Ext-2(2).

12. In cross-examination, PW-3 has stated that when he saw the vehicle, it was an empty vehicle. He further stated that there was no any driver. He stated that he does not remember the registration number of the vehicle. He further stated that at the time of putting signature in Ext-1 & Ext-2 police did not show any materials to him. He also stated that no material was found in the said vehicle standing in front of any shop. He stated that he does not know anything about the case for which he was summoned.
13. PW-4, Sri Tarun Bora has stated in his evidence-in-chief that on 08.10.2016 he was posted as a constable, UBC at Kacharigaon Police Outpost and on that day, I/C Md. Tabibur Rahman took him to Nakacheck at the front of the police outpost. Accordingly, he along with other police personnel and battalion were on duty at Nakacheck. He also stated that in the said Nakacheck they checked the vehicles and while they were checking vehicles it was detected in a TATA SUPER ACT bearing Regd. No-No-AS-12/AC-1906 one small packet which contained suspected "Ganja" was carrying and after completion of the Naka checking he returned to police Outpost and their I/C of Police Outpost seized the said packet and also took the driver and the vehicle to the police outpost.
14. In cross-examination, PW-4 has stated that at the time of Nakacheck he was posted at the front side of the Nakacheck. But the other police personnel who were posted behind him detected the said packet. He further stated that he has not seen who has detained the said packet and from where. He also stated that he has not seen the contained of the said packet.
15. PW-5, SI Tabibur Rahman has stated in his evidence that on last 08.10.2016 he was posted as I/C of Kacharigaon Police Outpost and on that day at about 2 PM, he along with other police official of their police outpost held a Nakasaki Checking in front of their police outpost by giving GD Entry No-165/16 dated-08.10.2016 at about 2 PM. He also stated that during that time they have noticed a TATA Super ACE bearing Regd. No-AS-12/AC-1906 which was came in excessive speed when they signal, the driver had stopped the vehicle and accordingly, they checked the vehicle and found some grocery items but in the

grocery items it was found conceal some suspected ganja wrapped in polythene paper. He further stated that accordingly, he informed the matter to SP, Sonitpur, Tezpur and accordingly, SP, Sonitpur, Tezpur directed him to seize the aforesaid suspected ganja and also asking him to take proper steps. Then they seized the said plastic packet which contains suspected ganja in presence of the witnesses including Inspector OC, Arun Bora of Tezpur PS. He identified the seizure list as Ext-2 wherein he put his signature as Ext-2(3). He further stated that they have also seized the aforesaid vehicle in presence of the witnesses vide Ext-3. He stated that he has recorded the statement of all the witnesses. He also stated that then they have collected sample in two sealed envelope each containing of said dry plant material from the said Ext-2 in presence of witnesses and sent the same to Director of Forensic Science, Kahilipara, Guwahati. Thereafter, Director of Forensic Science, Kahilipara, Guwahati sent a report after analysis. He also stated that in the report the FSL hold that the sample contains Cannabis. He identified the certified copy of GD Entry No-165/16 dated-08.10.2016 as Ext-4. He stated that after getting the report as per direction of their Inspector of Police, he filed the FIR. He identified the FIR as Ext-5 wherein he put his signature as Ext-5(1). He also stated that on 27.10.2016 he has handed over the case diary to his successor as per direction of O/C, Tezpur PS. Thereafter, on the basis of his investigation, Mr. Abdul Momin, SI of Police filed charge-sheet vide Charge Sheet No-1182/2016 dated-23.12.2016 against the accused person, namely, Sri Swapan Goswami under section-20(1) of NDPS Act. He identified the charge sheet as Ext-6 wherein he identified the signature of Mr. Abdul Momin as Ext-6(1).

16. In cross-examination, PW-5 has stated that on 08.10.2016 he was at Kacharigaon Outpost as I.C. He further stated that he did not bring the register of original GD entry bearing no. 165, dated 08.10.2016 before this court which was prepared him. He also stated that he arrested accused Swapan Goswami on 08.10.2016. He further stated that he prepared seizure list, sketch map and also recorded the statements of the witnesses and on 14.12.2016, he lodged FIR against the accused. He also stated that he investigated the entire part of the investigation of this case except submitting charge sheet. He stated that he

was also the informant of this case. He further stated that he admitted that as per law, he could not be an I.O. as well as complainant of this case. He also stated that he knows the procedure regarding search and seizure of NDPS case. He further stated that as per Act they should search and seized any NDPS articles in presence of Gazetted Officer. He stated that in this case, he did not search and seize the said NDPS articles in presence of any Gazetted Officer. He also stated that he informed verbally to the Superintendent of Police Sonitpur in connection with this case. However, he did not obtain any permission for seize.

17. PW-6, Dr. Dhruvajyoti Hazarika, Deputy Director, Directorate of Forensic Science, Kahilipara, Guwahati-19 has stated in his evidence-in-chief that on 13.10.2016 he was posted as Deputy Director, Directorate of Forensic Science in Drugs and Narcotics Division and on that day, he received a seal parcel in connection with Kacharigaon OP GDE No-165 dated-08.10.2016 from their Director. The parcel he received consisted of 02 exhibits enclosed in a sealed envelope cover. The facsimile of the seal was found to be "S.P. SONITPUR, TEZPUR" and description of articles are as follows:- 02 sealed envelopes having 02 closes polythene packet (one packet in each envelope) containing about 10g dry plant materials each, marked as DN-476/2016(a) and DN-476/2016(b) respectively. Result of examination was found as follows:- Exhibits DN-476/2016(a) and DN-476/2016(b) gave positive tests for cannabis (Ganja). He identified his report as Ext-7 wherein he put his signature as Ext-7(1). He also stated that his report was forwarded by then Director Dr. G. N. Deka. He also identified the forwarding report as Ext-8 and Ext-8(1) is the signature of Dr. G. N. Deka, which he knows.
18. In cross-examination, PW-6 has stated that the exhibits were sent to the office of Director, FSL, Kahilipara. He also stated that he has not submitted any copy of endorsement through which he was endorsed to examine the aforesaid materials. He further stated that in his report he has not specifically mentioned that he has followed United Nation Drug Testing guidelines in Ext-7. He also stated that he has not mentioned the procedure he adopted for examining the Ext-7 in his report.

19. PW-7, H.G. Labana Das stated in his evidence that he knows the informant and the accused of this case. He also stated that the incident took place in the year 2016. He further stated that at the time of incident he was posted at Kacharigaon OP as Homeguard and on that day, he was engaged in a Naka checking duty along with SI Tabibur Rahman, UBC Bhaskar and Battalion party. He further stated that they stopped one white colour Bolero Pickup vehicle and checked the vehicle and on being searched they found sweet cartoons and in between the said cartoons they found one packet wrapped with paper. Thereafter, I/C informed him that they found ganja.
20. In cross-examination, PW-7 has stated that he could not remember in which time the vehicle was checking. He further stated that the checking duty was held from the morning of 10 AM to 2 PM. He stated that the I/O has not interrogated him and he has not given any statement before the I/O as stated before the court. He also stated that he had not seen what kind of material (Packet) was seized from the vehicle and the same was not seized by the police in presence of him. He further stated that his signature was not taken as a witness.
21. I have minutely perused the evidence on record including the cross-examination of witnesses. In this case, prosecution side has examined as many as seven numbers of witnesses including informant, independent witnesses, Deputy Director, Directorate of Forensic Science, Kahilipara, Guwahati-19 and the I.O. In this case the Informant who was the UBC as PW-1 has deposed that on 08.10.2016 I/C of Kacharigaon Out Post along with O/C of Tezpur PS along with other police officials conducted NAKA checking opposite to their outpost. While they were checking the vehicle bearing Regd. No-AS-12/AC-1906, they found one polythene bag containing suspected ganja which was seized by SI Tabibur Rahman. PW-2 who was the shopkeeper and seizure witness has deposed that police seized one Tata Super ACE vehicle bearing Regd. No-AS-12/AC-1906; Polythene packet containing suspected Ganja (cannabis) measuring 250 gms. In cross-examination the PW-2 has deposed that there were several vehicles, so he

could not say from which vehicle what material was recovered. He also stated that the police personnel did not tell him that any contraband article (Bhang) was found from the vehicle of the accused. He also stated that he did not know what was found from the vehicle of the accused. He further stated that he was not shown any seized articles by police. PW-3 who was shopkeeper has deposed that in the month of June/July in the year 2017, a vehicle like a Mini Truck was parked in front of his pharmacy. Police apprehended and seized that vehicle as there were some suspected Ganja. But he had not seen any suspected Ganja in the said vehicle. Police seized this Tata Super ACE vehicle bearing Regd. No-AS-12/AC-1906 and Polythene packet containing suspected Ganja (cannabis) measuring 250 gms. In cross-examination, PW-3 has stated that when he saw the vehicle, it was an empty vehicle. He further stated that there was no any driver. He stated that he does not remember the registration number of the vehicle. He further stated that at the time of putting signature in Ext-2 police did not show any materials to him. He also stated that no material was found in the said vehicle standing in front of any shop. PW-4, who was a constable has deposed that they checked the vehicles and while they were checking vehicles it was detected in a TATA SUPER ACT bearing Regd. No-No-AS-12/AC-1906 one small packet which contained suspected "Ganja" was carrying and after completion of the Naka checking he returned to police Outpost and their I/C of Police Outpost seized the said packet and also took the driver and the vehicle to the police outpost. In cross-examination, PW-4 has stated that at the time of Nakacheck he was posted at the front side of the Nakacheck but the other police personnel who were posted behind him detected the said packet. He further stated that he has not seen who had detained the said packet and from where. He also stated that he has not seen the contain of the said packet. PW-7 who was the Home Guard has deposed that on the day of incident, he was engaged in a Naka checking duty along with SI Tabibur Rahman, UBC Bhaskar and Battalion party, they stopped one white colour Bolero Pickup vehicle and checked the vehicle and on being searched they found sweet cartoons and in between the said cartoons they found one

packet wrapped with paper. In cross-examination, PW-7 has stated that he had not seen what kind of material (Packet) was seized from the vehicle and the same was not seized by the police in presence of him. On other hand the PW-6, Dr. Dhruvajyoti Hazarika, Deputy Director, Directorate of Forensic Science, Kahilipara, Guwahati-19 has deposed that on 13.10.2016 he examined two packet containing about 10g dry plant materials each, marked as DN-476/2016(a) and DN-476/2016(b) respectively and found positive tests for cannabis (Ganja).

22. Although, in this case the PW-6 had found two sample positive tests for cannabis (Ganja) but none witnesses has deposed that the suspected 'Ganja' was recovered from the possession of the accused. They also did not state that the suspected 'Ganja' was recovered from the vehicle of the accused or the vehicle was driven by the accused at the time of the incident. Even the seizure witness PW-2 has deposed that there were several vehicles, so he could not say from which vehicle what material was recovered. He further could not say whether any contraband article (Bhang) was found from the vehicle of the accused. He also stated that he did not know what was found from the vehicle of the accused. He further stated that he was not shown any seized articles by police. Again another seizure witness PW-3 has deposed that when he saw the vehicle, it was an empty vehicle and there was no any driver on that vehicle. He stated that he does not remember the registration number of the vehicle. He further stated that at the time of putting signature in Ext-2 police did not show any materials to him. PW-4 who was also present with PW-5 had not seen who has detained the said packet and from where. He further has not seen the contained of the said packet. Again the PW-7 who was present with the PW-5 had not seen what kind of material (Packet) was seized from the vehicle and the same was not seized by the police in presence of him. So, from the evidence of these witnesses I have not found sufficient incriminatory materials against the accused person for involvement of the alleged offence.
23. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused person beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least

hesitation that the prosecution has failed miserably to establish the guilt of the accused U/S: 20(b)(A) of NDPS Act. Hence, the accused person, namely, Sri Swapan Goswami is not found guilty.

ORDER

Accused person, namely, Sri Swapan Goswami is acquitted from the Charges under section-20(b)(A) of NDPS Act and set at liberty forthwith.

Bail-bond of the accused person is extended for six months in view of section-437A of Cr.P.C.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 07th day of October, 2022 at Tezpur.

Dictated and Corrected by me

(Sri Nabajit Bhatta)
Chief Judicial Magistrate,
Sonitpur: Tezpur

Chief Judicial Magistrate,
Sonitpur: Tezpur

APPENDIX -14**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Bhaskar Das	OTHER WITNESS
PW-2	Sri Hem Kanta Mahanta	OTHER WITNESS
PW-3	Sri Bhaben Kalita	OTHER WITNESS
PW-4	Sri Tarun Bora	OTHER WITNESS
PW-5	SI Tabibur Rahman	INFORMANT CUM I.O.
PW-6	Dr. Dhruvajyoti Hazarika	EXPERT WITNESS
PW-7	H.G. Labana Das	OTHER WITNESS

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1	Ext-1/PW-2	Seizure List
2	Ext-1(1)	Signature of PW-2
3	Ext-1(2)	Signature of PW-3
	Ext-2/PW-2	Seizure List
	Ext-2(1)	Signature of PW-2
	Ext-2(2)	Signature of PW-3
	Ext-2(3)	Signature of PW-5
	Ext-3/PW-5	Seizure List

	Ext-4	Certified copy of GD Entry No-165/16 dated-08.10.2016
	Ext-5/PW-5	FIR
	Ext-5(1)	Signature of PW-5
	Ext-6/PW-5	Charge Sheet
	Ext-6(1)	Signature of SI Mr Abdul Momin
	Ext-7/PW-6	FSL Report
	Ext-7(1)	Signature of PW-6
	Ext-8/PW-6	Forwarding Report
	Ext-8(1)	Signature of Director Dr. G. N. Deka

B. Defence:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

Chief Judicial Magistrate,
Sonitpur: Tezpur