

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 51 of 2010

Md. Shafiqul Islam alias Mokhen

...Convict-petitioner

-Versus-

The State

...Opposite party

No one appears.

...For the convict-petitioner

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan, A.A.G

...For the State

Heard on 11.07.2024

Judgment delivered on 28.07.2024

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 08.02.2009 passed by Additional Sessions Judge, Court No. 1, Naogaon in Criminal Appeal No. 57 of 2007 partly allowing the appeal and reducing the sentence to suffer imprisonment for 2(two) years by modifying the judgment and order of conviction and sentence dated 10.06.2007 passed by the Assistant Sessions Judge, Court No. 2, Naogaon in Sessions Case No. 27 of 2006 convicting the petitioner under Section 19(1) table 7(Ka) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentencing him thereunder to suffer rigorous imprisonment for 3(three) years should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution case, in short, is that the informant Ali Ahmed, Inspector of Police, Badalgachi Thana based on secret information having formed a raiding party on 06.08.2004 at 5.05 pm arrested the accused Md. Shafiqul Islam alias Sokhen from the Baranda of radio cassette repairing shop belonged to one Biplob situated at Gobarchapahat while selling cannabis keeping in the bag

in his hand. Searching the bag kept in his hand recovered 147 purias cannabis and Tk. 120 in the presence of witnesses and prepared the seizure list. Witnesses signed the seizure list.

S.I Mahmudul Alam took up the investigation of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, sent the sample of cannabis for the report of the chemical examiner and thereafter he was transferred. Subsequently, S.I. Md. Musa Alam took up the investigation of the case and after completing the investigation, he submitted charge sheet on 07.09.2004 against the accused under Section 19 table (7)(Ka)/22 of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০.

During the trial, charge was framed on 12.03.2006 against the accused under Section 19(1) table 7(Ka) and 22(Ga) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 7(seven) witnesses to prove the charge against the accused and the defence cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W.

After concluding the trial, the Assistant Sessions Judge, Court No. 2, Naogaon by judgment and order dated 10.06.2007 convicted the accused under Section 19(1) table 7(Ka) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentenced him thereunder to suffer rigorous imprisonment for 3(three) years against which the accused filed Criminal Appeal No. 57 of 2007 before the Sessions Judge, Naogaon. The appeal was heard by Additional Sessions Judge, Court No. 1, Naogaon who by impugned judgment and order dated 08.02.2009 partly allowed the appeal and modified the judgment and

order passed by the trial Court convicting the accused under Section 19(1) table 7(Ka) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ and sentenced him thereunder to suffer rigorous imprisonment for 2(two) years against which the convict-petitioner obtained the instant Rule.

P.W. 1 Sheikh Ali Ahmed is the informant. He stated that on 06.08.2004 he along with the raiding party detained the accused Shafiqul Islam from the Gobarchapahat while he was selling cannabis and recovered 147 purias cannabis. He also recovered Tk. 120 from him. He prepared the seizure list and the witnesses who were present at the time of recovery signed the seizure list. He proved the FIR as exhibit 1 and his signature as exhibit 1/1. He proved his signature on the seizure list as exhibit 2/1. He proved 147 purias cannabis as material exhibits I series.

P.W. 2 Constable Omar Ali stated that on 06.08.2004 at 6.15 pm the accused was arrested from Gobarchapahat and recovered 147 purias cannabis and Tk. 120 from his possession.

P.W. 3 Constable Fazlul Haque was tendered.

P.W. 4 Tasiruddin is a shopkeeper. He stated that the Officer-in-Charge of the Thana brought the accused in front of his shop and cannabis was found in the bag kept in the hand of the accused. He proved his signature on the seizure list as exhibit 2/2.

P.W. 5 Biplob is the son of P.W. 4 Tasiruddin. He stated that the Officer-in-Charge of Thana brought the accused and opening the bag in front of his shop recovered cannabis.

P.W. 6 Anwar Hossain stated that the police detained the accused and searched his body in his presence small purias were recovered from him but he could not say what was kept in the puria.

P.W. 7 S.I Md. Musa Alam is the Investigating Officer. He stated that after completing the investigation he submitted the charge sheet. He proved the sketch map and index as exhibits 4 and 5 and the signatures of S.I Mahmudur Rahman on the sketch map and index as exhibits 4/1 and 5/1.

No one appears on behalf of the convict-petitioner.

Learned Deputy Attorney General Mr. S.M. Golam Mostofa Tara appearing on behalf of the State submits that the P.W.1 informant Sheikh Ali Ahmed recovered 147 puria cannabis from the bag kept in the hand of the accused in the presence of P.Ws. 1, 2, 4, 5 and 6 and the prosecution witnesses proved the charge against the accused beyond all reasonable doubt. The Courts below on proper assessment and evaluation of the evidence passed the impugned judgments and orders. Therefore, the impugned judgments and orders passed by both the Courts below call for no interference by this Court.

I have considered the submission of the learned Deputy Attorney General Mr. S.M. Golam Mostofa Tara who appeared on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the records, it appears that in the FIR it has been alleged that 147 purias cannabis was recovered from the bag of the accused Md. Shafiqul Islam kept in his hand. The informant Sheikh Ali Ahmed is examined as P.W. 1. He proved 147 puria cannabis as material exhibits I series. P.Ws. 4 and 5 are the shopkeepers where from the alleged cannabis was recovered from the alleged possession of the accused. P.W. 1 stated that while the accused was selling cannabis sitting in front of the shop of P.W. 4, he detained the accused along with the cannabis kept in the bag in his hand. P.Ws. 4 and 5 stated that the accused was taken from elsewhere in front of their shop and the police recovered cannabis from the accused kept in his bag. Therefore, the evidence of P.W. 1 that the cannabis was recovered from the bag of the accused while he was selling cannabis in front of the shop of P.Ws. 4 and 5 is contradicted by them. Furthermore, P.W. 1 proved 147 puria cannabis as material exhibits I series which proved that cannabis was not sent for the report of the chemical examiner. In the absence

of any report from the chemical examiner, it cannot be said that the cannabis was recovered from the possession of the accused.

In view of the above evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt. The impugned judgments and orders passed by the Courts below against the convict-petitioner Md. Shafiqul Islam alias Mokhen is hereby set aside.

In the result, the Rule is made absolute.

The convict-petitioner Md. Shafiqul Islam alias Mokhen is acquitted from the charge framed against him.

Send down the lower Court's records at once.