

**SUPREME COURT OF INDIA**

Vijay Jain

Vs.

State of Madhya Pradesh

(2013) 9 SCALE 0439

(A.K. Patnaik and Ranjan Gogoi JJ.)

20.06.2013

**JUDGEMENT**

**A.K. Patnaik, j.**

1. These are appeals by way of special leave under Article 136 of the Constitution of India against the judgment and order dated 21 February, 2011 of the Madhya Pradesh High Court, Indore Bench in Criminal Appeal Nos. 1048 and 1172 of 2007.

2. The facts very briefly are that on 5th May, 2004, R.C. Pathak, Thanedar Incharge (TI) of Police Station Annapura conducted raid at 15:15 hours at Kshitij Apartment, Usha Nagar Square and apprehended Nilesh Suryakant Shah, the Appellant in Criminal Appeal No. 484 of 2013 outside Flat No. 305 of the Apartment as he was alleged to have been carrying brown sugar in a suit case. After seizing the alleged brown sugar from Nilesh, R.C. Pathak entered Flat No. 305 and apprehended the Appellant Vijay Jain as it was alleged that he also had brown sugar in his clothes. R.C. Pathak also seized the alleged brown sugar from Vijay. Thereafter he handed over investigation to his successor, R.D. Bhardwaj, Thanedar Incharge of Raj Nagar Police Station and after investigation charge sheet was filed against Nilesh and Vijay for the offence Under Section 8/21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"). The two Appellants denied the charges and trial was conducted by the Special Judge (NDPS), Indore. At the trial, the prosecution examined as many as 12 witnesses. Shirish Babu Tiwari and Manoj Dubey who witnessed the seizure were examined as P. Ws. 2 and 3. R.C. Pathak was examined as P.W. 11 and Lokendra Singh Yadav who was in charge of the Malkhana in which the brown sugar was said to have been stored was examined as P.W. 5. The learned Special Judge (NDPS), Indore by judgment dated 17th August, 2007, convicted the Appellants and sentenced them both for 10 years rigorous imprisonment and imposed a fine of Rs. 1 lakh on each. Aggrieved, the Appellants filed Criminal Appeal Nos. 1048 and 1172 of 2007 before the High Court, but by the impugned common judgment, the High Court maintained the conviction and sentence and dismissed the appeals. Aggrieved the Appellants have filed these appeals.

3. Mr. Sushil Kumar Jain, learned Counsel appearing for the Appellants raised several contentions to assail the conviction of both the Appellants. For deciding these appeals, we will consider only the contention of Mr. Jain that the contraband goods have not been produced before the trial court. He submitted that this Court has held in *Jitendra and Anr. v. State of M.P.*<sup>1</sup>, that where there is non -production of the contraband goods alleged to have been seized from the accused, the conviction for the offence Under Section 20(b) of the NDPS Act cannot be sustained -He also cited the decision of this Court in *Ashok v. State of M.P.*<sup>2</sup>, in which a similar view has been taken that where the narcotic drug or the psychotropic substance alleged to have been seized from the possession of the accused is not produced before the trial court as a material exhibit and there is no explanation for its non -production, there is no evidence to connect the forensic expert report with the drug or the substance that was seized from the possession of the accused and in such a case the conviction is not maintainable. ;

<sup>1</sup>2004 (10) SCC 562

<sup>2</sup>2011 (5) SCC 123