

IN THE COURT OF THE ADDL. SPECIAL JUDGE-2(FTC), (NDPS), TINSUKIA.

Present : **Sri B. Sutradhar, (AJS),**
Addl. Special Judge-2(FTC),
(NDPS), Tinsukia.

Date of Judgment :- 21.05.2022.

NDPS Case No. 15(T)2016

U/s. 18(b) NDPS Act, 1985.

(Baghjan P.S Case No. 19/2016 Dated 20.07.2016)

Complainant	State of Assam
Represented by	Learned by Sri R.C Das.
Defence Side/Accused	1) Sri Lukheswar Moran @ Lutu, S/o. Lt. Neol Moran, R/o. Karani gaon, Police Station Baghjan, District_Tinsukia, Assam. 2) Sri Rajen Moran S/o. Lt. Veleno Moran, R/o. Karani gaon, Police Station Baghjan, District_Tinsukia, Assam.
Represented by	Sri S. Chetia, Ld. Defence Counsel.

APPENDIX - 13

Date of Offence	20.07.2016.
Date of FIR	20.07.2016.
Date of Charge-sheet	31.10.2016.
Date of Particulars of the Offences Explanation	04.03.2017.
Date of Commencement of evidence	28.03.17, 04.07.17, 02.06.18, 28.06.18, 26.03.19 & 19.02.20.
Date of recording Statement Defence	27.04.2022.
Date of Argument	05.05.2022 & 18.05.2022.
Date on which Judgment is reserved	NA
Date of Judgment	21.05.2022
Date of Sentencing Order, if any	Nil

Accused details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Explained with sections	Whether Acquitted or Convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
Accused No. 1	Sri Lukheswar Moran @ Lutu	21.07.2016	20.09.2016	U/s 18(b) NDPS Act	Acquitted	NA	2(Two) months 1(One) day
Accused No. 2	Sri Rajen Moran	21.07.2016	20.09.2016	U/s 18(b) NDPS Act	Acquitted	NA	2(Two) months 1(One) day
		21.07.2016	20.09.2016		Acquitted	NA	2(Two) months 1(One) day

J U D G M E N T

1. The Prosecution story, is in brief that Sri Partha Pratim Singkon lodged an ejahar that on 20.07.2017 at 4:45 PM on receipt of a secret information from reliable source that two persons brought suspected Opium(Kane) at Kordoiguri. Said information was entered in the G.D entry and immediately Dy. SP(HQ), Tinsukia was informed. Accordingly SP(HQ.) arrived at the Place of occurrence for authentication. Later Sri Partha Pratim Singkon alongwith staff rushed to Kordoiguri Tiniali for Naka-checking and found two persons who brought Opium(Kane). In the mean time Dy. SP(HQ), Tinsukia arrived at the spot and authorized the complainant to take legal action as per NDPS Act. The complainant conducted search among the persons in presence of witnesses. During search total 400 grams of suspected Opium(Kane) in small polythene packets were recovered from the possession of Sri Lakheswar Moran @ Lutu and Sri Rajen Moran and the same were seized and sealed by observing all formalities as laid down in NDPS Act in presence of Gazetted officer and available witnesses. The accused confessed that they purchased the suspected Opium(Kane) from Sri Dondhe Moran of Makum for consuming and sale. Hence, this case.
2. On receiving the FIR, Baghjan P.S. registered a case and investigated the matter. On completion of the investigation, above named accused were charge sheeted and forwarded to face the trial.
3. Copies were furnished to the accused persons for trial. Accordingly upon hearing both sides and considering the materials on record, the charge u/s 18(b) NDPS Act was framed against the accused persons, to which they pleaded not guilty and

claimed to be tried.

4. During trial, prosecution examined eight(8) witnesses. The accused persons were examined u/s 313 Cr.P.C and their total plea is denial of allegation.

5. Arguments are heard put forwarded by the Id. Counsels for both the sides as well as gone through the entire evidence available on record to adjudicate the case.

6. **Point For Determination :-**

(i) Whether the accused persons on 20.07.2017 at 4:45 PM at Kordoiguri under Baghjan PS in the District of Tinsukia in contravention of NDPS Act, 1985 or any rule or order or condition of license granted thereunder found in illegal possession with 400 grms of suspected opium(Kane) which were commercial quantity and thereby committed an offence punishable under section 18(b) of the NDPS Act ?

DISCUSSION, DECISION & REASONS THEREOF :-

7. P.W.1, Sri Partha Pratim Singhkon has deposed that on 20.07.16 at about 4:45 PM he received a secret information that two persons brought suspected opium at Kordoiguri. On receipt of the said information he made a G.D Entry at Baghjan P.S vide Baghjan P.S G.D.E no. 299 dtd. 20.07.16 and informed the matter to DSP, HQ, Tinsukia to arrive at the place of occurrence. Then he alongwith staff made a naka-checking at the Kordoiguri area. Then one passenger magic vehicle came from Doom-dooma to Kordoiguri side. They stopped the vehicle and made search. In the mean time DSP, HQ, Sri Subra Pratimlal Barua arrived at the P.O. Then he authorize him to take legal action as per NDPS Act. Then the two

passengers from the said vehicle were brought down and told them that they can search his body before he search their body in presence of witnesses. They did not search him and raised no objection if he search them. Accordingly, he searched their body. On search, he recovered suspected opium from their pocket wrapped with polythene. They disclosed their names as Rajen Moran and Lukeswar Moran @ Lutu of Kereni Gaon under Baghjan P.S. Then he brought a digital weighing machine from a nearby shop to weigh the suspected opium and after weight it was found 400 grams in total. Then he made three samples containing 25 grams each and sealed the packets with lae. They used a 5 rupees coin for sealing the packets with lae. Then he prepared the seizure-list. Ext. 1 is the seizure-list, Ext. 1(1) is his signature. He also seized the 5 rupees coin which he used in sealing the sample packets. Ext. 2 is the Seizure-list, Ext. 2(1) is his signature. Thereafter he given the zimma of the weight machine and the 5 rupees coin to the person from whom it was brought. Thereafter he brought both the accused persons to the police station and lodged FIR. Ext. 3 is the FIR, Ext. 3(1) is his signature. Being the OC of the PS, he registered a case vide Baghjan PS. 19/16 U/s. 18(b) NDPS Act and entrusted Subhash Kachari, CI to investigate the case. Ext. 3(2) is his signature with his endorsement. Ext. 4 is the Authority Letter and Ext. 4(1) is the signature of Deputy HQ of Tinsukia, Sri Subra Pratimlal Barua. Out of three sample packets, two packets were sent to the FSL for chemical examination and another sample packet was kept at the Malkhana of the P.S. Material Ext. 1 is the remaining sample packet, M. Ext. 1(1) is his signature. The thumb impression of the accused persons were also taken by him on the sample. M. Ext. 1(2) is the thumb impression of accused Lukeswar Moran. M. Ext. 1(3) is the thumb impression of accused Rajen Moran

and M. Ext. 2 & M. Ext. 3 are the remaining parts of the seized suspected opium.

8. In cross-examination the PW.1 has deposed that he has not submitted the Extract Copy of G.D Entry in this case. He has also not mentioned about the G.D entry no. in the FIR. He has not specifically mentioned from whom he recovered what amount of quantity of opium. He has submitted the authorization letter alongwith the C.D. He has not obtained signature of DSP in the Ext. 1 & 2. In Ext. 1 & 2 also it is not specifically mentioned from whom he recovered what amount of quantity of opium. He examined all the seizure witnesses and recorded their statements. He denies the suggestion that he did not search the accused in presence of any Gazetted officer. He denies the suggestion that he falsely implicated the accused persons in this case.

9. P.W.2, Sri Sanjit Moran has deposed that he knows both the accused persons. About a year back police apprehended two accused persons and recovered suspected opium from their possession. Police seized the Ext.1, Seizure-list, Ext. 1(2) is his signature. Police also prepared Ext. 2 and he puts his signature thereon as witness. Ext. 2(2) is his signature. He also puts his signature on Ext. 4. Ext. 4(1) is his signature. M. Ext. 1(4) is his signature. M. Ext. 1 contains the opium.

At this stage the witness was declared hostile with prayer of the Prosecution:

10. Police recorded his statement and he stated before the police that police apprehended the persons at Kordoiguri Tiniali while they were coming from Doom-dooma. On being searched, one packet of suspected opium wrapped with polythene were recovered from their possession. Thereafter the weight of the suspected opium was taken and it was

found 400 grams. Later police seized the same and prepared seizure-list and he puts his signature thereon as witness. Police also obtained 25 grams from the seized opium and prepared a sample packet, M. Ext. 1 and he puts his signature thereon as witness.

11. In cross-examination, the PW.2 has stated that he has not seen from whom the police had seized the suspected opium. As informed by police they went to the P.O. The Ext. 2 & 4 were blank at the time of putting his signature. He has no personnel knowledge about the incident.

12. P.W.3, Sri Anil Moran has deposed that he knows both the accused persons. On the day of occurrence in the evening he alongwith Sanjit Moran were at Kordoiguri Tinali. At that time the OC of the Baghjan PS came to them and told that suspected opium have been recovered from the possession of the accused persons and asked him to put his signature on Ext. 1. Ext. 1(3) is his signature. He also puts his signature on Ext. 4. Ext. 4(2) is his signature and Ext. 2(3) is also his signature. In M. Ext. 1(5) is also his signature.

At this stage the witness was declared hostile with prayer of the Prosecution.

13. Police recorded his statement. He denies the suggestion that he did not state before the police that police apprehended the persons at Kordoiguri Tinali while they were coming from Doom-dooma. On being searched, one packet of suspected opium wrapped with polythene were recovered from their possession. Thereafter the weight of the suspected opium was taken and it was found 400 grams. Later police seized the same and prepared seizure-list and he puts his signature thereon as witness. Police also obtained 25 grams from the seized opium and prepared a sample

packet, M. Ext. 1 and he puts his signature thereon as witness.

14. In cross-examination, the PW.3 has stated that he has not seen the suspected opium seized by police. The Ext. 2 & 4 were blank at the time of putting his signature. As informed by police he came to know about the incident.

15. P.W.4, Sri Dhiren Gohain has deposed that he knows both the accused persons. He has a grocery shop near the Kordoiguri Tiniali. On the day of occurrence the OC of the Baghjan PS came to his shop and asked him for the weighing scale of his shop to take the weight. He gave them his weighing machine and then they took the weight of the suspected opium and found 400 grams suspected opium. Later police seized his weighing machine and he puts his signature thereon as witness. Ext. 4 is the seizure-list, Ext. 4(3) is his signature. Ext. 1 is also seizure list of suspected opium and Ext. 1(4) is his signature. Ext. 2 is the seizure-list of one 5 rupees coin and Ext. 2(4) is his signature. Police obtained his signature on sample packet, M. Ext. 1 and he puts his signature thereon as witness. M. Ext. 1(6) is his signature.

At this stage the witness was declared hostile with prayer of the Prosecution:

16. Police recorded his statement. He denies the suggestion that he did not state before the police that on the day of occurrence, the police apprehended the accused persons at Kordoiguri Tiniali while they were coming from Doom-dooma. On being searched, one packet of suspected opium wrapped with polythene were recovered from their possession. Thereafter the police brought the weighing machine from his shop and the police took the weight of the suspected opium

in his presence and it was found 400 grams. Later police seized the same and prepared seizure-list and he puts his signature thereon as witness. It is a fact that thereafter the Police prepared three sample packets from the seized suspected opium 25 grams each, sealed in his presence and he puts his signature thereon as witness.

17. In cross-examination, the PW.4 has stated that he has not seen from whom the suspected opium were seized by police. He has also not seen the accused persons. The contents of Ext. 2 & 4 were not read over to him. As asked by police, he puts his signature. He came to know about the incident when police came to take the weighing machine from his shop. He has no personnel knowledge about the incident.

18. P.W.5, Kalpa Jyoti Borah has deposed that he does not know the informant of this case. He does not know accused Lukeswar Moran and Rajen Moran. He cannot recollect the date of incident. On the next day of the incident Police asked his name and address.

19. In cross-examination the PW.5 has deposed that he does not know anything about the incident.

20. P.W.6, Sri Bhadreswar Moran has deposed that he does not know the accused persons namely, Sri Lukeswar Moran and Sri Rajen Moran. He does not know the complainant, Partha Pratim Singkon. He has no personal knowledge about the occurrence. Police did not record his statement.

21. The cross-examination of this witness was declined by Defence.

22. P.W.7, Sri Munindra Muchong Singhpho has deposed that on 20.07.16 he was posted at Jhutlibari Police Post under

Baghjan P.S. On that day while they were on Nakachecking duty at Jhutlibari Tiniali, a Magic vehicle came from Doomdooma and going towards Baghjan. Three passengers were on-board the vehicle. His commandos on checking the bags of the accused persons, they found one packet containing some articles. Later he called the O.C of Baghjan P.S. On getting phone call he arrived at the spot. The O.C open up the packet on the spot. The O.C told it is opium (Kani). Then the sample was prepared. Later brought it to the P.S. Police prepared seizure-list, Ext. 4 is the seizure-list, Ext. 4(4) is his signature on Ext. 4. Police also prepared another seizure-list, Ext. 2. Ext. 2(5) is his signature on Ext. 2. He also put his signature on Ext. 1, which is a Seizure memo, prepared by the I.O. Ext. 1(5) is his signature. He has seen the seized article which is M. Ext. 3 at the court premises today and he recognized and the same was recovered from the person, Lokeswar Moran.

23. In cross-examination, the PW.7 has deposed that he has not seen from whom the recovered articles were seized. No Magistrate was present at the time of checking. There were no higher police officer present alongwith the O.C, Baghjan P.S at the time of opening the packet. He puts his signature on the seizure-list at the P.S.

24. P.W.8, Sri Subhash Kachari(Inspector) has deposed that on 20.07.2016, he was at Kakapather as Inspector of Police, Kakapather Circle. The informant himself is a Sub-Inspector of Police of the Baghjan P.S. As such, the charge of investigation was handed over to him by him. After taking the charge of investigation, the complainant, Sri P.P Singkon was examined and recorded his statement. He also recorded the statements of Lukheswar Moran and Rajen Moran. Thereafter they were arrested and forwarded to the judicial custody. Ext. 5 is the

Forwarding report. Ext. 5(1) is his signature. Thereafter he visited the P.O and drew up one sketch map. Ext. 6 is the said sketch map, Ext. 6(1) is his signature. At the P.O he recorded the statements of witnesses namely, Dipen Moran, Kalpajyoti Borah, Bhadreswar Moran. Thereafter he collected the FSL Report. Result of examination on the FSL Report was positive. Ext. 7(1) is the signature of Sri G.N Deka, which he recognized. On completion of investigation he has submitted charge-sheet against the accused persons namely, Lukheswar Moran and Rajan Moran U/s. 18(b) NDPS Act. Ext. 8 is the Charge-sheet, Ext. 8(1) is his signature on the charge-sheet.

25. In cross-examination the PW.8 has deposed that he visited the P.O on 21.07.16 at 10:30 AM. He examined three witnesses at the P.O. All the three witnesses did not disclosed before him the names of the accused persons and from the suspected opium was recovered. His rank is not of a Gazetted Officer and he was not empowered to investigate the case by Superior officer. He denies the suggestion that he has falsely submitted the charge-sheet against the accused.

26. Now on going through the above evidence on record, it appears that P.W.1, in his evidence stated that on receipt of the information he made a G.D Entry at Baghjan P.S and made a naka-checking at the Kordoiguri area. They stopped one Magic vehicle and made search. They searched two passengers and he recovered suspected opium from their pocket wrapped with polythene. In cross-examination he stated that he has not submitted the Extract Copy of G.D Entry. He has not mentioned specifically from whom he recovered what amount and quantity of opium. He has not searched the accused in presence of Gazetted officer. P.W.2 stated that about one year back police apprehended two accused persons and recovered suspected opium from their

possession. He puts his signature as witness on the seizure-list. Thereafter he was declared hostile by Prosecution but in cross-examination he has stated that he has not seen from whom the police had seized the suspected opium and Ext. 2 & 4 were blank while he puts his signature. P.W.3 stated that OC of the Baghjan PS told them that suspected opium had been recovered from the possession of the accused persons and asked him to put his signature on Ext. 1. He puts his signature. This witness was also declared hostile and in cross-examination, the he stated that he has not seen the suspected opium seized by police and Ext. 2 & 4 were blank when he puts his signature. P.W.4 stated that OC of the Baghjan PS went to his shop and asked him for the weighing scale. He gave the same and they took the weight of the suspected opium and 400 grams suspected opium were found. Police seized his weighing machine and took his signature on seizure-list etc. This witness was also declared hostile but in cross-examination he has stated that he has not seen from whom the suspected opium were seized by police. He has also not seen the accused persons. The contents of Ext. 2 & 4 were not read over to him.

27. P.W.5 stated that he did not know accused Lukeswar Moran and Rajen Moran and on next day of the incident Police asked his name and address. In cross-examination he stated that he did not know anything about the incident. P.W.6 stated that he had no personal knowledge about the occurrence and Police did not record his statement. P.W.7 stated that he was on Nakachecking duty at Jhutlibari Tiniali. A Magic vehicle came from Doomdooma. Three passengers were inside the vehicle. His commandos on checking the bags of two persons, found one packet containing some articles. Later he called the O.C of Baghjan P.S. O.C opened the

packet at the spot and told that the same was opium. Sample was prepared. He puts his signature on the seizure-list etc. In cross-examination, he stated that he has not seen from whom the recovered articles were seized. There was no Magistrate at the time of checking or any higher police officer. He puts his signature on the seizure-list at P.S. P.W.8 stated that the charge of investigation was handed over to him. He examined the complainant, recorded the statements of accused. He visited the P.O, drew up one sketch map and recorded the statements of witnesses. On completion of investigation he submitted charge-sheet. In cross-examination he stated that he visited the P.O on 21.07.16 at 10:30 AM. and examined three witnesses and the witnesses did not disclose the names of the accused from whom the suspected opium was recovered.

28. Now on going through the above evidence on record, it is clear that though PW.1 stated that he searched the accused persons and recovered the suspected opium from the pocket of the accused, but said PW.1 clearly stated that in Ext. 1 and Ext. 2 he has not specifically mentioned from whom and what amount, quantity of opium was recovered. The PW.2, PW.3 & PW.4 are the seizure witnesses but these seizure witnesses clearly stated that they have not seen from whom police seize suspected opium. They have also failed to say that their signatures were taken on Seizure-list which was filled up being it appears that they stated that their signatures were taken on blank papers. PW.5 and PW.6 are totally silent. PW.7 also stated that he has not seen from whom the recovered articles were seized. PW.8 is the Investigating Officer and his evidence also fails to depict a clear picture that the seized articles were recovered from the possession of the accused and duly

seized as per provision of NDPS Act. The entire seizure in this case is not found done as per procedure of the NDPS Act. The entire evidence has failed to depict a clear picture that the accused are involved in this case and the alleged opium was seized as per norms of NDPS Act and in that situation no more discussion is necessary to decide the matter in hand.

29. Keeping note of the entire evidence on record, I find nothing to discuss more and hold that prosecution has failed to prove the case against the accused persons. Hence, I am of the considered opinion that the Prosecution has failed to prove the material ingredients of U/s 18(b) NDPS Act against the accused persons. Hence the accused persons namely, Sri Lukheswar Moran @ Lutu and Sri Rajen Moran are acquitted from the charge U/s. 18(b) NDPS Act and set them at liberty forthwith.

30. The bail bonds of the accused persons are extended U/S 437 'A' Cr.P.C.

31. The seized opium be destroyed and other seized articles be handed over from whom seized in due course.

32. The case is disposed of on contest.

Given under my hand and seal of this Court on the 21st day of May, 2022.

Dictated and corrected by me.

(B. Sutradhar),
Addl. Special Judge-2,(FTC),
(NDPS), Tinsukia

(B. Sutradhar),
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(NDPS), Tinsukia

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APPENDIX**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****(i) Prosecution :**

RANK	NAME	NATURE OF EVIDENCE
		(Eye Witness, Police Witness, Expert Witness, Medical witness, Panch Witness, Other witness) Informant Independent witness Seizure witness)
PW.1	Sri Partha Pratim Singhkon	Police Witness
PW.2	Sri Sanjit Moran	Seizure Witness
PW.3	Sri Anil Moran	Seizure Witness
PW.4	Sri Dhiren Gohain	Seizure Witness
PW.5	Sri Kalpa Jyoti Borah	
PW.6	Sri Bhadreswar Moran	
PW.7	Sri Munindra Muchong Singhpho	Police Witness
PW.8	Sri Subhash Kachari (Inspector)	Police Witness

(ii) Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
		(Eye Witness, Police Witness, Expert Witness, Medical witness, Panch Witness, Other witness) Informant Independent witness Seizure witness)
DW.1	Nil	Nil

(iii) Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
		(Eye Witness, Police Witness, Expert Witness, Medical witness, Panch Witness, Other witness) Informant Independent witness Seizure witness)
CW.1	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**1.Prosecution:**

Sr. No.	Exhibit Number	Description
1.	Exhibit - 1	Seizure-list
2.	Exhibit -2	Seizure-list
3.	Exhibit – 3	FIR
4.	Exhibit – 4	Authority Letter
5.	Exhibit - 5	Forwarding Report
6.	Exhibit – 6	Sketch Map
7.	Exhibit - 7	F.S.L Report
8.	Exhibit – 8	Charge-sheet

2.Defence :

Sr. No.	Exhibit Number	Description
1.	Nil.	Nil.

3. Court Exhibits:

Sl. No.	Exhibit Number	Description
1	Nil	Nil.

4.Material Objects:

Sl. No.	Exhibit Number	Description
1	MO1	Opium

Dictated

Addl. Special Judge-2(FTC),
(NDPS), Tinsukia