

insaar Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : Jun-18-2013

Judge : Alok Singh

Appeal No. : Criminal Appeal No. 207 of 2011

Appellant : insaar

Respondent : State of Uttarakhand

Advocate for Pet/Ap. : Ms. Prabha Naithani

Judgement :

Alok Singh, J (Oral).

Present appeal is directed against the judgment and order dated 30.07.2011 passed by Special Judge (NDPS Act), Dehradun, in Special Sessions Trial No. 43 of 2010 whereby appellant was held guilty for the offence punishable under Section 8/15 of the NDPS Act and was sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- and in default of making payment of fine, to undergo one year additional simple imprisonment.

2. As per the prosecution story, PW1 SI Madan Singh, PW2 Devendra Singh Panwar, PW3 Constable Ajay Rautela and Constable Pradeep Negi left the police station on 04.06.2010 vide report no.30 at 12.30 p.m. for maintaining law and order and for checking of vehicles; police party was present on Bridge No.2 of

Shakti Canal for vehicle checking, meanwhile, one white Maruti car was seen, by the police party, coming from Dakpathar side; having seen the police party, driver of the car stopped the car about 50 metres before and tried to take u-turn; having seen the car taking u-turn suspicion arose in the mind of police party, therefore, police party rushed towards the car and caught the driver of the car; on being asked, appellant disclosed his identity and told the police party that he was carrying poppy straw measuring about 80 kgs and he was going towards Muzaffarnagar to dispose of the same, hence, having seen the police party, he was trying to run away from the site; on this, appellant was made aware about his legal right to be searched in the presence of a Gazetted Officer or a Magistrate, however, appellant told the police party that he could be searched by the police party and he did not wish to be searched in presence of any Gazetted Officer or Magistrate; consent of appellant was obtained; police party tried to have independent public witness, however, due to scorching sunlight, none could be found; PW1 tried to make contact with the Magistrate but in vain, consequently, having searched each other, police party inspected the car and recovered four bags from the backside and dickey of the car bearing no. HR 11 9184; stitches of the bags were opened and police party having satisfied that all the four bags were containing the poppy straw, asked the appellant to show his license for carrying 78 kg. of poppy straw; appellant failed to show any license and started apologizing; appellant was informed about the offence committed by him punishable under Section 8/15 of the NDPS Act and was formally arrested at 02.20 p.m.; 500 gm of poppy straw, as sample, was drawn from the bags recovered from the car being driven by the appellant and rest of the contraband was kept under the seal and signature of PW1; sample, so drawn, was also kept under the seal and signature of PW1; sample seal was prepared on the spot; appellant was further asked to show driving license and papers of the car but he failed to produce the same; on the dictation given by PW1, PW2 prepared the arresting memo, seizure memo, on the spot and thereafter, appellant, Maruti car bearing no. HR 11 9184, contraband, so recovered, sample, so drawn and sample seal, so prepared were brought to the police station and handed over to SHO.

3. Investigation was handed over to PW4. Investigating Officer produced the appellant, contraband, so recovered along with sample, drawn on the spot and

sample seal, prepared on the spot, before the Special Judge (NDPS Act) on 05.06.2010. An application was moved before the Special Judge, (NDPS Act), requesting him to permit to draw sample from the bags and samples were drawn in the presence of court. Samples, drawn by PW1, were sent to the Forensic Science Laboratory, Dehradun through Constable Ajay Rautela (PW3). Having received the FSL report to the effect that samples were found to be of poppy straw and having completed the investigation, PW4 submitted charge-sheet against the appellant under Section 8/15 of the NDPS Act. Learned trial court framed the charge against the appellant. Appellant denied the charge and claimed trial.

4. To prove the prosecution story, PW1 Arresting Officer SI Madan Singh, PW2 member of the police party and writer of seizure memo and arresting memo SI Devendra Singh Panwar, PW3 Constable Ajay Rautela, PW 4 Investigating Officer Anurodh Vyas and PW5 Malkhana Moharir Constable Sohan Vir Singh were examined. Statement of accused was also recorded under Section 313 Cr. P.C. and thereafter, accused appellant was examined himself as DW1.

5. Having perused the entire material made available on record, learned trial court was pleased to pass the impugned judgment and order under appeal.

6. I have heard Ms. Prabha Naithani, learned counsel for the appellant, Mr. Raman Kumar Sah, AGA assisted by Mr. S.S. Adhikari, Brief Holder for the State and have carefully perused the record.

7. Learned counsel for the appellant has vehemently argued that there is no compliance of Section 50 of the NDPS Act and floating statement to the effect that PW1 tried to make contact with the Magistrate telephonically is of no use for the prosecution.

8. In the present case, 78 kg of poppy straw was recovered from the back seat and dicky of the car, being driven by the appellant. Honble Apex Court in the case of Ajmer Singh Vs. State of Haryana reported in 2010 (3) SCC 746 has held that provision of Section 50 of the NDPS Act would apply in the case of personal search of a person and does not extend to the search of vehicle, container, bag or premises, therefore, argument of Ms. Prabha Naithani that there is no compliance

of Section 50 of the NDPS Act cannot be accepted.

9. PW1 SI Madan Singh, PW2 SI Devendra Singh Panwar, while appearing in the witness box, have supported the prosecution story. They were subjected to lengthy cross examination but nothing adverse could come out in their statements during cross examination.

10. PW3 Constable Ajay Rautela stated, on oath, that sample, so drawn in the presence of Special Judge (NDPS Act), from four different bags and samples, so drawn by PW1 on the spot, were handed over to him with a request letter under the seal and signature of the court to be delivered to FSL, Dehradun and he delivered the same to the FSL in intact condition. Report of the FSL (Exhibit Ka-14) reveals that 5 packets were handed over to the FSL, Dehradun by Constable Ajay Rautela on 09.06.2010 along with sample seal and on checking and comparison, seals were found intact and tallied with sample parcel. As per report of FSL, samples were found to be of poppy straw.

11. PW5 Head Constable Sohan Vir Singh has produced the certified copy of the Maalkhana Register before the court and has stated that as per entries made in the Maalkhana Register, contraband, so recovered in four bags, sample seal and sample, drawn by the PW1, were kept in the Maalkhana in intact position.

12. Ms. Prabha Naithani, learned counsel for the appellant, submits that appellant was a gardener in Mango grove and he was standing on the road, meanwhile, police came and asked his name and address, the moment, he told that he belonged to Muzaffarnagar, police arrested him and implicated him in the present case; there was no recovery of poppy straw from the possession of appellant and appellant did not know cycling as well as car driving, therefore, entire prosecution story is concocted and incorrect. She further submits that to save the actual culprit, appellant has been falsely implicated in the present case.

13. I have perused statement of accused appellant recoded on oath as well as under Section 313 Cr. P.C. Although accused in his statement under Section 313 of the Code, stated that while he was standing on the road, police came and asked his name and address, the moment, he told that he was resident of Muzaffarnagar,

police arrested him and he was falsely implicated, however, appellant DW1 stated that he had no enmity with the police of police station Vikas Nagar, District Dehradun; he nowhere stated that as to why he has been falsely implicated and on whose instance. Therefore, false implication of the appellant cannot be presumed.

14. In view of the statement that he did not have any enmity with the police, no doubt can be created on the prosecution story. It is true that there is no independent witness in the matter but PW1 has specifically stated that on 04.06.2010 due to scorching sunlight and heat, none was available to become independent public witness, therefore, explanation furnished by PW1 seems to be satisfactory.

15. In view of the above discussion made herein above, I do not find any fault in the impugned judgment passed by the trial court, therefore, appeal fails and is dismissed. Appellant is in jail. He shall serve the remaining sentence as awarded by the trial court.

16. Let a copy of this judgment be sent to the court below for information along with lower court record.

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