

Gujula Ramu Vs. the State

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Court : Andhra Pradesh

Decided On : Oct-28-1998

Reported in : 1999CriLJ982

Judge : Vaman Rao, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18, 42, 50 and 50(3)

Appeal No. : Cri. Appeal No. 31 of 1995

Appellant : Gujula Ramu

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Anji Reddy, Adv.

Disposition : Appeal allowed

Judgement :

Vaman Rao, J.

1. This appeal is directed against the judgment of Special Judge for the cases under Narcotic Drugs and Psychotropic Substances Act, Vijayawada in S.C. No. 13/1993. convicting the accused for the offence under Section 8(c) r/w Section 18

of N.D.P.S. Act.

2. The facts leading to this appeal as brought out by the prosecution may be stated briefly as follows :- On 8-7-1992 at about 8-30 p.m. the Excise Patrolling party consisting of Assistant Superintendent PW-2, Circle Inspector PW-3, Sub-Inspector PW-4 and another Sub-Inspector PW-7 while on patrolling duty near Vijayawada Railway Station found the accused coming from the station side and proceeding towards 'Musafirkhana'. On suspicion, they stopped the accused and searched his belongings including the bag M.O. 2 which the accused was carrying. They recovered 200 grams of opium from his bag M.O. 2. When questioned, the accused was unable to produce any licence or permit for possession or carrying the said opium. Immediately, the recovery of opium was recorded under mediators report Ex. P-1. The F.I.R. Ex. P-2 was issued. 10 grams of the seized opium was sent for analysis to Chemical Examiner at Kakinada who sent his report under Ex. P-5 confirming that it was opium. On this material, charge sheet was laid and the accused was charged for the offence mentioned above. PWs 1 to 7 have been examined and Exs. P-1 to P-5 have been marked on behalf of the prosecution. The accused has not chosen to examine any defence on his behalf. On this material, the learned Sessions Judge held the accused guilty for the offence under Section 8(c) read with Section 18 of NDPS Act and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs. 1,00,000/- and in default to suffer S.I. for two years.

3. The Excise Officers PWs 2, 3, 4 and 7 who were the members of the patrolling party have been examined in support of the case of the prosecution that the incriminating material was seized from the possession of the accused which was seized under seizure panchanama Ex. P-1. PW-1 said to be one of two mediators who were said to be with the patrolling party has not supported the prosecution version and he stated that he was not present at the time of seizure and that his signature was taken at the Excise Police Station.

4. The question for consideration is : Whether the prosecution has succeeded in bringing home the guilt of the accused beyond all reasonable doubt ?

5. It is contended by the learned Counsel for the accused that in as much as the independent mediator examined as PW-1 has not supported the prosecution case, it is unsafe to rely on the evidence of official witnesses PWs. 2, 3,4 and 7. Sri Chandra Shekhar, appearing on behalf of Public Prosecutor contends that there is no rigid rule of law which requires that in every case an official witness should be disbelieved when the mediator has not supported the case of the prosecution. There is no need to go into this controversy in this case as it would be seen that the seizure even if proved must be held to be illegal. Section 50 of NDPS Act mandates that when any duly authorised Officer under Section 42 is about to search any person under the provisions of the Act, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the Departments mentioned in Section 42 or to the nearest Magistrate. Sub-section (3) of Section 50 contemplates that the Gazetted Officer or the Magistrate before whom any such person is brought shall, if sees any reasonable doubt, forthwith discharge the person but otherwise direct that search be made. In this case, obviously the accused was not sought to be taken to any Gazetted Officer or Magistrate as required under Section 50 of the Act. There is nothing on record to show that the accused was informed of his right to this effect under Section 50 of the Act. While interpreting the provisions of Section 50 of the Act, the Supreme Court in the case of Ali Mustaffa Abdul Rahman Moosa v. The State of Kerala : AIR 1995 SC244 held that a Police Officer on receiving information that a person is in possession of contraband (in this case opium), wants to subject him to search, it is the duty of the Police Officer to give option to the person as to whether he desires to be searched in the presence of a Gazetted Officer or a Magistrate as envisaged by Section 50 of the Act. It has been further held that the failure to provide that option to the accused vitiates his conviction. The provisions of Section 50 have been held to be mandatory.' non-compliance thereof vitiates the conviction. As obviously, the above requirement of Section 50 of the Act has not been complied with in this case. The alleged seizure of opium from the possession of the accused having been made in contravention of Section 50 is illegal and the evidence to that effect cannot be used for convicting the accused.

6. In the result, the appeal is allowed. The accused is held not guilty of the charge under Section 8(c) read with Section 18 of N.D.P.S. Act and is accordingly acquitted of the said charge.

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