

Ranjeet Singh Vs. State

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Court : Rajasthan Jodhpur

Decided On : Feb-27-2015

Appellant : Ranjeet Singh

Respondent : State

Judgement :

{1} IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
<><><> :Judgment: Ranjeet Singh versus The State of Raj.S.B.

Criminal Appeal No.370 of 2006 under Section 374(2) of Cr.P.C.against the judgment and order dated 06.03.2006 passed by the learned Special Judge, NDPS Act Cases, Sr.Ganganagar in Criminal Case No.2/2005, whereby the appellant-accused was convicted and sentenced for the offence under Section 8/21 of the NDPS Act.

<><><> Date of Judgment ::: February 27, 2015 Present Hon'ble Mr.Justice Banwari Lal Sharma Mr.KR Bhati].Mr.KS Lodha]., Amicus Curaie, for the appellant.

Mr.LR Upadhyay, Public Prosecutor.

By the Court: The appellant has preferred this appeal under Section 374(2) Cr.P.C.against the judgment and order dated 06.03.2006 passed by the learned Special Judge, NDPS Act Cases, Sr.Ganganagar in Criminal Case No.2/2005, whereby the appellant-accused was convicted for the offence under Section 8/21

of the NDPS Act and sentenced to undergo 12 years rigorous imprisonment with fine of Rs.1 lakh, in default {2} whereof, to further undergo, one year's rigorous imprisonment.

The brief facts of the case are that on 23.11.2014, Vinod Kumar, Incharge SHO, P.S.Sadulshahar received a secret information and on the basis of that information, he along with other police officials, reached near Bagla Hotel and after taking two motorbikes they reached near the gate of Tehsil where they saw one person (appellant-accused).who on seeing them, started running.

The police personnel caught hold of him and after complying the provisions of law, searched him and on search 850.59 gm.

smack was recovered from his possession.

After completing all the due formalities, the appellant-accused was arrested and an FIR was registered against him.

After investigation, the police filed charge-sheet against him.

After hearing, the learned trial court framed charge for the offence under Section 8/21 of the NDPS Act to which he denied and claimed trial.

To substantiate the charges, the prosecution examined as many as 9 witnesses and exhibited documents.

The {3} appellant-accused was examined under Sections 313 Cr.P.C.wherein he stated that one lady was tenant in the house of his neighbour Sultan Singh and on her home, police personnel used to come.

The neighbours objected to it and with the help of the neighbours.the said lady was evicted from that house due to which the false case has been made against him and he has been falsely implicated.

In defence, he examined Sultan Singh as DW-1.

After trial, the learned trial court, vide impugned judgment and order dated 06.03.2006, convicted and sentenced the appellant-accused as aforesaid.

Being aggrieved of the aforesaid judgment of conviction and order of sentence, the appellant-accused has preferred this appeal, which was admitted for hearing by this court vide order dated 01.06.2006.

I have heard Mr.KR Bhati and Mr.KS Lodha, learned Amicus Curiae, for the appellant-accused and Mr.LR Upadhyay, learned Public Prosecutor and perused the available record.

{4} The main contention of learned Amicus Curiae for the appellant-accused is that the search of the appellant-accused was made by Vinod Kumar (PW- 7).who was Incharge SHO at the relevant point of time and was not authorised person to made search and thus the provisions of Section 42 of the NDPS Act were violated and whole proceedings stand vitiated.

He placed reliance upon the judgments delivered in the cases of Criminal Appeal No.513/2005 [State of Rajasthan versus Rajendra Singh & Ors., decided on 06.03.2014]., Raju Munim versus The State of Rajasthan [2006(3) WLC (Raj.) 392].and Bherulal versus State of Rajasthan [2004(1) Cr.L.R.(Raj.) 612].It was also submitted by him that as per recovery memo (Ex.P/10).the contraband recovered was in powder form, whereas as per the FSL Report (Ex.P./27).lumps were there.

It was also contended by him that recovery was made on 23.11.2014 and the sample reached at the FSL on 30.11.2014 and the prosecution has not explained as to where the sample remained for this period.

Thus link evidence is missing.

{5} It was thus prayed that this appeal may be allowed and the appellants-accused may be acquitted.

In the alternative, it was submitted that if this court does not deem it proper to acquit the appellant-accused, then in that case, his sentence may be reduced.

He has placed reliance upon the judgment delivered in the cases of Mukut Sharma & Anr.

versus State of Rajasthan [2013(3) Cr.L.R.(Raj.) 1330].and Nathiya versus State of Rajasthan [2011(2) Cr.L.R.(Raj.) 930].Per contra, the learned Public Prosecutor supported the impugned judgment and order and submitted that the prosecution was successful in proving its case.

It was submitted by him that the learned trial court, after careful scrutiny of the evidence and material available on record, has rightly convicted and sentenced the appellant-accused which does not warrant any interference by this court and prayed that the appeal may be dismissed.

I have considered the rival submissions made at the Bar.

{6} From a careful scrutiny of evidence, it reveals that the learned trial court has rightly relied upon the prosecution evidence and has rightly held that no link was missing.

So far as the fact that as per the recovery memo (Ex.P/10).the material recovered was in powdered form whereas as per the FSL Report, lumps were there, is concerned, the learned trial court has held that the sample remained at FSL for quite a long time and, therefore, some lumps might have developed, which does not warrant any interference by this court.

So far as the contention of the learned Amicus Curiae for the appellant-accused that Vinod Kumar (PW-7) was not authorised to make search is concerned, in the case of State of Rajasthan versus Rajendra Singh & ORS.(supra).the prosecution failed to place notification empowering a person to make search and while observing that since the said point was not raised before the High Court and even not in the appeal before the Hon'ble Supreme Court, dismissed the appeal.

{7} In the case of Raju Munim (supra).the SHO of the concerned police station was busy in another case and, therefore, the search and seizure was made by Sub Inspector.

In this fact situation, the Hon'ble Supreme Court held that the search and seizure of the contraband was not by an authorised officer, which vitiates the trial of the case.

In the case of Bherulal (supra).a Coordinate Bench of this court, while holding that the seizure officer was not authorised for search and seizure as he was holding temporary charge of the SHO and thus conviction was set aside.

The aforesaid judgment was challenged by the State of Rajasthan by way of appeal before the Hon'ble Supreme Court, which was reported in AIR 2013 SC2288[State of Rajasthan versus Bherulal].and the Hon'ble Supreme Court observed as under:- Though the principle was stated in a different context, yet the dictum laid down therein is clear as crystal that there cannot be literal interpretation of Section 42(1) of the Act.

The provision employs the words 'empowered in this behalf by general or special order the State Government'.

The notification has stated 'any Sub Inspector posted as Station House Officer'.

The High {8} Court has acquitted the Respondent solely on the ground that Rameshwar Prasad was posted as the Station House Officer and not Praveen Vyas, who conducted the search, seizure and arrest.

It is the accepted position that Praveen Vyas, PW-2, was given temporary charge of Station House Officer at the relevant time.

He received information from the reliable source.

He complied with the other necessary requirements and proceeded to the spot to trap the accused.

Any delay would have allowed the accused to escape.

As per the notification a Sub Inspector of Police can be posted as Station House Officer and at the relevant time PW-2 was in-charge Station House Officer.

There is no justification to place unnecessary importance on the term 'posted'.

He was, in fact, in-charge of the post of Station House Officer at that juncture.

In our considered view, such a literal and technical approach would defeat the principle laid down by the Constitution Bench in Karnail Singh's case.

Therefore, the search, seizure and arrest carried out by him would not make the trial ab initio void.

Thus, the irresistible conclusion is that the High Court has fallen into grave error by opining that Section 42(1) of the Act was not complied with as the entire exercise was carried out by an officer who was not authorised.

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In the case in hand, the posted SHO of police station was on leave and Vinod Kumar (PW-7) was given the charge of the SHO.

Thus, in view of the above, he was fully authorised to conduct search and seizure and the trial court cannot be held ab initio void.

{9} Thus, in view of the above, I do not find any ground to interfere with the finding arrived at by the learned trial court to set aside the conviction of the appellant-accused.

Now comes the question of sentence regarding which it has been submitted by the learned counsel for the appellant-accused that looking to the over-all facts and circumstances of the case, the sentence may kindly be reduced to already undergone or may be reduced proportionately.

In the present case, the recovered contraband is of commercial quantity.

The legislature has provided maximum sentence of 20 years. The undue sympathy by means of imposing inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law.

It is the duty of the court to award proper sentence having regard to the nature of the offence.

The learned trial court, after considering all the facts and circumstances, has rightly awarded the sentence, which does not warrant any interference.

{10} In view of the above, I do not find any merit in this appeal.

The appeal is, therefore, dismissed.

Record of the learned trial court be sent back with a copy of this judgment.

[Banwari Lal Sharma],J.

/skm/

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