

Ram Kumar Vs. State of U.P.

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Court : Allahabad

Decided On : May-28-2004

Reported in : 2005CriLJ339

Judge : Mukteshwar Prasad, J.

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

Appeal No. : Criminal Appeal No. 1076 of 2000

Appellant : Ram Kumar

Respondent : State of U.P.

Advocate for Def. : Amrendra Nath Singh, AGA

Advocate for Pet/Ap. : Sudhir Kumar and ;Pradeep Kumar, Advs.

Disposition : Appeal dismissed

Judgement :

Mukteshwar Prasad, J.

1. Accused Ram Kumar son of Lakhan a resident of village Agandi P.S. Dataganj, District Budaun has filed this appeal against the judgment and order-dated 14-3-2000 passed by Sri Hakim Ali Khan, the then Additional Sessions Judge, Budaun

whereby he was convicted under Section 18 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to as the 'Act') and sentenced to suffer rigorous imprisonment for a period of 10 years and to pay a fine of Rs. one Lac and in default, he was ordered to undergo additional imprisonment for a term of one year.

2. In brief, the prosecution case is as under.-

A complaint was filed in the Court of Additional Sessions Judge, Budaun by Gauri Shanker, Inspector/Investigating Officer, Central Narcotic Bureau, Bareilly on 8-8-1997. It was urged in the complaint that a secret information was received that accused had concealed opium in his house which could be recovered. After recording this intimation, an authorization under Section 41(2) of the Act was issued by the District Opium Officer, Bareilly and Inspector Sumer Singh was authorised to take personal search and search of the house of the accused. A Preventive Squad was constituted headed by Inspector Sumer Singh.

3. On 12-5-1997 at 7 a.m. Sumer Singh accompanied by P. K. Shah, K. C. Bothara, S. R. Pawar and four constables including a female constable reached village Agandi in two vehicles. They picked up two public witnesses. Angan Lal and Devendra Pal from the same village and surrounded the house of the accused. Ram Kumar was called out. He was found present and Preventive Squad disclosed the purpose of its visit and after showing search warrant obtained his consent and signature. Accused Ram Kumar and Public witnessed signed authorization. Accused was given an option to be searched in the presence of a Magistrate or Gazetted Officer but he did not exercise his option. After obtaining his consent, Sumer Singh, S. R. Pawar, Jeewan Lal, Sipatar Lal and both the public witnesses gave their search to the accused and entered into his house for search. At the pointing out of Ram Kumar, a plastic container was found in the Almirah, which was opened out and two kilograms of opium was recovered. Two samples, each of 24 grams were taken out on the spot and kept in plastic containers and sealed. The remaining opium was placed in same plastic container and was sealed. All the three bundles were signed by the departmental officials, accused and public witnesses. After disclosing the grounds of arrest, accused

Ram Kumar was formally arrested.

4. After completing all the formalities, a seizure memo was prepared which was read over and all the members of Preventive Squad (excluding drivers), accused and public witnesses signed. A copy of the seizure memo was furnished to the accused and house in good condition was handed over to Smt. Omwati, wife of the accused.

5. Accused Ram Kumar along with recovered opium was produced in the Court of Additional Sessions Judge on 12-5-1997 and was sent to Jail. After obtaining orders from the Court, sealed bundle was deposited in the Sadar Malkhana, Budaun.

6. A report regarding arrest of the accused and recovery of opium from his possession was sent to Deputy Narcotics Commissioner, Lucknow on 13-5-1997.

7. Both the samples of opium were deposited in double locks of the department at Bareilly after obtaining orders of the District Opium Officer.

8. A sample was sent to the Government Opium and Alkaloid Works, Ghazipur for chemical examination, which was received there on 17-5-1997. After analysis, the sample was found to be opium within the meaning of Sections 8(c) and 18 of the Act.

9. Deputy Narcotics Commissioner Lucknow appointed Inspector Gauri Shanker as Investigating Officer of the case under Section 53 of the Act. He conducted investigation and ultimately filed a complaint in the Court.

10. Accused Ram Kumar was charged under Section 18 of the Act on 30-7-1997 to which he pleaded not guilty.

11. To prove its case, the prosecution examined PW-1 Sumer Singh, arresting officer, PW-2 Constable Jeewan Lal who accompanied the arresting officer, PW-3 Constable Pan Singh who took the sample of Opium to Government Opium Factory at Ghazipur, PW-4 Devendra Pal Singh and PW- 5 Angan Lal are Public witnesses, PW-6 Inspector Gauri Shanker, the investigating officer of the case and

PW-7 S.I. Jai Kishan Tiwari, Malkhana Moharrir, Sadar Malkhana, Budaun.

12. Accused Ram Kumar in his statement given under Section 313 Cr.P.C. totally denied his arrest as well as recovery of opium from his house and pleaded his false implication in the case at the instance of his co-villager Hukumi. He, however, led no evidence in his defence.

13. After having considered the entire evidence on record led by the prosecution, learned Judge found the accused guilty for possessing 2 kilograms of Opium without any license or permit and convicted and sentenced him as mentioned above.

14. I have heard learned counsel for the appellant at length, learned A.G.A. and gone through the entire evidence on record.

15. Learned counsel for the appellant has urged vehemently that there has been no compliance of the mandatory provisions of Section 50 of the Act and public witnesses who were allegedly associated with the arrest and recovery of opium from the house of the appellant turned hostile and did not help the prosecution. According to him the appellant was employed by Hukami son of Khushali and he used to look after the cultivation of opium by Hukami who had been granted license. The appellant was given opium in question in lieu of labour charges and Hukami got the appellant falsely implicated in the Case and appellant is entitled to be acquitted.

16. Reliance has been placed on two decisions of Supreme Court in *Jitendra v. State of M.P.*, 2003 (47) All Cri C 889 : (2003 Cri LJ 4985), *B.A. Rahiman v. State of Kerala*, 2002 (44) All Cri C 1077 : (2002 Cri LJ 2529). A decision of this Court in *Chutaku Singh v. State of U.P.* reported in 2004 CBC 1976 has also been relied upon.

17. On the other hand, learned counsel for the State has submitted that opium in question was recovered from the almirah of the house of the appellant and as such, the provisions of Section 50 of the Act are not attracted. It was urged that the provisions of Section 50 of the Act are applicable in the case of personal

search only. Moreover, contraband article was recovered from the house of the appellant and as such, he is liable under the law and was rightly convicted by the Court below.

18. I have considered the arguments advanced on behalf of the parties and after going through the record carefully, I find that the contention of learned counsel for the appellant has no legs to stand and cannot be accepted.

19. PW-1 Inspector Sumer Singh testified in very clear words that after receiving secret information, a Preventive Squad was formed and members of Squad rushed to the village in question in two vehicles and took search of the house and succeeded in recovering opium from the almirah. The opium was weighed and was found to be two kilograms. Before taking search of the house, the accused was given an option that his personal search as well house could be done in the presence of a Gazetted officer or a Magistrate if he so desired. The appellant had given his consent for search and signed the authorization. The members of squad and public witnesses gave their search to the accused. Two samples were taken out and sealed on the spot and seizure memo was also prepared there and a copy of the Fard was given to the accused. The witness proved search warrant. The recovered opium was brought to the Court during trial. The witness was cross-examined at length on behalf of the accused but I find nothing in this cross-examination to disbelieve his testimony.

20. PW-2 Constable Jeewan Lal fully supported the prosecution version and corroborated the testimony of Sumer Singh on all material points. He testified that on 12-5-1997 he accompanied Inspector Sumer Singh and had taken search of the house of the appellant along with Constable Sipatar Lal and S. I. S. R. Pawar. He further admitted that seizure memo was prepared and all other formalities were completed in his presence on the spot and recovered opium was sealed. He took the accused along with the recovered opium to the Court at Budaun. In his cross examination, he gave out that the public witnesses were picked up in the village. According to him, both the witnesses had also entered into the house. He further disclosed that both the drivers Ashok Sharma and Santosh Sharma were looking after their vehicles and had not signed the papers.

21. PW-3 Constable Pan Singh gave out that he took sample to Opium Factory at Ghazipur in sealed condition and he did not allow anybody to touch the sample.
22. PW-4 Devendra Pal Singh and PW-5 Angan Lal are public witnesses and were allegedly present during search. It is true that they did not support the prosecution version and turned hostile. They, however, admitted their signatures on Fard recovery and added that their signatures were obtained in the office of the department at Bareilly. It appears that both public witnesses being co-villagers of the appellant did not support the prosecution story and turned hostile.
23. PW-6 Gauri Shanker, was the Investigating Officer of the case and proved several papers. He totally denied that he filed this complaint and falsely implicated the appellant at the instance of Hukami.
24. PW-7 S. I. Jai Kishan Tiwari testified that the opium in question was deposited at Sadar Malkhana at Budaun in a sealed condition.
25. After close scrutiny of the evidence on record, I find that the search warrant was proved by Sumer Singh who was authorised by the District Opium Officer to take search and arrest the appellant. It transpires from perusal of this document that after receiving the information, the District Opium Officer authorised Sumer Singh to enter into the house of the accused and take search. It means the prior information was placed before the superior officers and then he authorised his subordinates to arrest the accused and take search of his house. So far as the compliance of provisions of Section 50 is concerned, the alleged recovery was made from the room of the house of the appellant and not from his personal search. Hence the provisions of Section 50 of the Act are not attracted. I further find that the prosecution had link evidence also by examining Constable Pan Singh who took the sample to Ghazipur for chemical examination and PW-7 Jai Kishan Tiwari, Mallthana Moharrir.
26. There is evidence on record that the accused along with recovered opium was produced in the Court of Additional Sessions Judge and by order of the Court, the accused was sent to Jail. The opium was deposited in the Sadar Malkhana where it remained intact till production in the Court during trial.

27. So far as plea of the appellant is concerned that he was falsely implicated at the instance of Hukami, he led no evidence to prove this fact. It is noteworthy that the arrest and recovery was made by the officials of Narcotics Control Bureau and not by the local police. Therefore, there was no question that the officials of Bureau had any affinity or closeness to Hukami, a co-villager of the appellant.

28. So far as decisions relied upon by learned counsel for the appellant are concerned, I find that there is sufficient compliance of the provisions of Sections 42 and 57 of the Act. The provisions of Section 50 of the Act are not applicable. It is correct that both the public witnesses turned hostile. They, however, admitted their signatures on the seizure memo. Besides, there is reliable testimony of Sumer Singh and Constable Jeewan Lal on record and there is nothing in their cross examination to disbelieve them. It is noteworthy that Hon'ble Apex Court found several discrepancies in the prosecution evidence in Jitendra case, (AIR 2003 SC 4236) (supra) and acquitted the appellant.

29. For the aforesaid reasons and in view of evidence on record led by the prosecution, I hold that the learned Judge committed no error/illegality in appraisal of evidence on record and was wholly justified in convicting the appellant for having two kilograms of opium without any license. It is, therefore, held that this appeal has no merit and is liable to be dismissed.

30. In the result, the appeal fails and is dismissed. The conviction of the appellant under Section 8 read with Section 18 of the Act and sentence there under recorded by the Court below are confirmed. He is in Jail. He is directed to serve out the sentence as directed by the Court below.