

Pappu Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-13-2000

Reported in : 2001CriLJ2096

Judge : S.K. Agarwal, J.

Acts : Narcotic Drug and Pshychotropic Substances Act, 1985 - Sections 8, 15, 20 and 29; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 2008 of 1992

Appellant : Pappu

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : O.P. Singh, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Agarwal, J.

1. The appellant has preferred this appeal against the conviction Under Section 29(ii) of Narcotic Drug and Pshychotropic Substances Act, 1985 (in short called NDPS Act). He was sentenced to 10 years R.I. and a fine of Rs. 1,00,000/ -. In

default of payment of fine, he has to undergo R.I. for 2 more years. At the time of conviction he was in jail. He is on bail in this appeal.

2. The prosecution has come up with a case that on 13-4-1992, S.O. of P.S.. Bakewar was on duty at a school in village Jarara where the High School examination was going on. Along with him some constables were also on duty. His duty was from 3 to 6 P.M. At about 6.15 p.m. when the police party was returning to their respective out post and the police station, on the road leading from Musafa to Shakura from where a road bifurcates to village Jarara in the West, he arrested the appellant on suspicion when on seeing the police party he turned back and tried to run away. After his arrest on a search of his person, from a plastic bag which he was holding on his head. 3 Kg. of charas was recovered . Charas was sealed in some container and memo of recovery , Ex. Ka. 1, was prepared . After completing the formalities , police party came back to the police station. First information report of the incident was got registered by S.O. Nanku Singh at police station at 7.45 pm Under Section 8/15 and 8/20 NDPS Act/

3. The prosecution has examined in support of its case only two witnesses Shanti Prasad, Head Constable, PW 1 and Nanku Singh, S.O.P.S. Bakewar as PW 2. The accused has also examined Smt. Shyama as DW 1 in support of its case. The defence has come up with a case that He had gone to the house of his mother's sister in village Musafa and the police had arrested him from there and falsely involved him in the present offence.

4. The defence contention is that the prosecution evidence falls short of the requisite requirement inasmuch as the arresting officer has not afforded the appellant an opportunity of his search by a Gazetted Officer or a magistrate . A perusal of the statement on this issue of PW 1 and 2 and the first information report indicate unerringly that this fact is not there either the F.I.R. or in their statements. In cross examination when this question was specifically put to PW 1 and PW 2 they attempted to resolve the situation or this anomaly by stating that they had no time. Since the arrest was effected on suspicion, all of a sudden, therefore, they have not asked the appellant whether he will like to get himself searched by a gazetted officer or by a magistrate. In the trial court for the first time

the S.O. PW 2 Nanku Singh had stated in examination in chief that he himself being a S.H.O. in the circumstances for paucity of time did not find it probable to ask to produce him before any gazetted officer or a magistrate and the appellant himself had permitted him to conduct the search.

5. So far this part of his testimony is concerned, it did not find place in the F.I.R. nor in the recovery memo, therefore, this Court has nothing to verify whether such a statement or such a confidence was reposed by the appellant in this witness. Moreover, obligations of law are meant for strict compliance and not for their dilation. It is not permissible that the laws which are in the nature of a safeguard to an accused can be obviated by a police officer in the manner in which it has been attempted to be done in the present case. The examination offered for this failure or non compliance of provisions of Section 50 by the Sub Inspector is only an afterthought and appears a lame excuse on his part to overcome his lathees.

6. The offence under the NDPS Act is not only an economic offence but leaves an incurable impact upon the society . Its lure amongst the members of the society especially the younger generation has left an incurable scar. Tenderness of the youth is beguiled by sinister urge to earn fast buck by crooked people. It is the youth who is the hope of tomorrow. If the appellant was carrying this load of charas this lacuna which entitle him to acquittal are serious and grave. The official who has effected this recovery is guilty of serious laches on his part and his conduct deserves serious condemnation and a thorough enquiry by some superior police officer if he is still in job.

7. In this case yet another informity is available. It is an admitted fact that the police personnel were posted at the school in village Jarara where High School examination was going on. The search and seizure were effected at a public pathway. Virtually it was a main thorough fare. This had happened soon after the examination was over. Large number of students guardians and public men must have been moving on the road yet not a single person as an independent public witness was either called or examined by the prosecution in the case. It is an admitted fact that the arrest and recovery took place at about 6.15 p.m. at a triangular crossing Sub Inspector PW 2 admitted that fields are in the vicinity but

had stated that not a single person was working in these fields. He has denied the existence of any shop at the triangular crossing from where the arrest was effected. He had also said that he did not remember what crop was standing in these fields. He admitted further that within 45 minutes the formalities were completed but during this period according to him not a single person visited the scene of occurrence. It was a busy triangular crossing. School was surrounded by village abadi on three sides. Admittedly the sun had not set till then. He was not in a position to explain even this much that by the time he completed the formalities sun had set or not. He could not disclose the clothes which the appellant was wearing at the time of his arrest. Initially he said that the recovered charas was sealed under his instruction by a constable but he failed to give out his name. He had stated that all the police personnel had signed the sealed bundle but no label was pasted over it. It is beyond comprehension in such a situation that the container signed by them is a plastic bag and the ink will not stay over it. It will vanish. It creates serious doubt in the truthfulness of this version that any signatures were put by police on the bundle in which the recovered charas was sealed. There are no signature on it visible. These circumstances leave a serious doubt in the authenticity of the recovery of charas from the appellant. Its weight is not disclosed in the recovery memo, Sub Inspector had guts to state that all the writings upon the plastic bag was in his own hands.

8. From the statement of PW 1 it appears that the case was investigated by some other inspector but the prosecution has not produced him.

9. The defence has been deprived of the cross-examination of this witnesses about the omission and improvements available in their statements Under Section 161, Cr.P.C. Some cross-examination has been made but for the absence of the investigating officer they could not be proved. In the presence of the above facts and circumstances, I find it difficult to uphold the conviction of the appellant. The appellant has won his acquittal on account of the laches made by the investigating agency in the case.

10. In the result this appeal is allowed. The appellant is acquitted of the charge for which he was convicted i.e. Under Section 29(ii) of NDPS Act. His conviction and

sentence is set aside. He is on bail . He need not surrender. His bail bonds are cancelled and sureties are hereby discharged.

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