

Jeetsingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-07-2002

Reported in : 2002(83)ECC365; 2002(3)MPHT131; 2002(2)MPLJ117

Judge : N.K. Jain, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18, 21, 42 and 55; Code of Criminal Procedure (CrPC) , 1974 - Sections 156

Appeal No. : Criminal Appeal No. 339/93

Appellant : Jeetsingh

Respondent : State of M.P.

Advocate for Def. : Mayank Upadhyay, Public Prosecutor

Advocate for Pet/Ap. : Sanjay Sharma, Adv.

Disposition : Criminal appeal allowed

Judgement :

N.K. Jain, J.

1. Accused-appellant Jeetsingh is aggrieved by his conviction and sentence (10 years rigorous imprisonment with fine of Rs. 1.00 lac), passed under Sections 8/18 of the Narcotic Drugs & Psychotropic Substances Act, (for short, 'the NDPS Act'),

by Additional Sessions Judge, Jaora, District Ratlam, vide his judgment dated 13-7-1993 in Sessions Trial No. 92/1991.

2. The case of the prosecution as unfolded at the trial was that on 19-2-1991, around 10.00 o'clock in the night, Sub-Inspector U.P.S, Chouhan of P.S. Industrial Area, Jaora, acting on tips from some approver, raided a room attached to a roadside hotel called 'Janta Dhaba', situated on Mandsaur Road, 2 Kilometers away from the police station. According to the prosecution the said Dhaba and the room belonged to and occupied by accused appellant Jeet Singh. The said room was searched by Sub-Inspector Chouhan in presence of two panch witnesses and 17.200 Kgs. of Opium kept in four bags was recovered from inside the room. 400 Grams of Poppy Husk was also recovered from that room. One sample each of 50 grams was drawn from the said bags of Opium. The seized Opium was thereafter sealed and a memorandum (Ex. P-1) thereof was prepared on the spot. Accused-appellant was arrested and FIR vide Ex. P-5 was lodged at the police station the same night at 11.05 p.m. The samples of the seized contraband were got analyzed at Government Opium and Alkaloid Works, Neemuch which confirmed that the seized contraband was Opium (vide report Ex. P-6). After other due investigation the accused was charge sheeted and committed for trial which ended into his conviction as aforesaid.

3. I have heard Mr. Sanjay Sharma, learned Counsel for appellant and Mr. Mayank Upadhyay, learned Public Prosecutor for respondent-State.

4. The prosecution examined Radheshyam s/o Bhagirath (P.W. 1) and Radheshyam s/o Udayram (P.W. 2) the two attesting witnesses of the said search, and Sub-Inspector Chouhan (P.W. 3) in evidence before the Trial Court. However, both the aforesaid panch witnesses have turned hostile to the prosecution denying recovery of any Opium in their presence. They explained that their signature on various documents (Exs. P-1, P-2 and P-3) were obtained at the police station. It could, however, be urged that they have suppressed the truth. Accepting this contention the Court has to see whether there is other reliable evidence to prove the charge against the appellant. .

5. This brings me to the evidence of Sub-Inspector Chouhan who as P.W. 3 has narrated the story already stated hereinbefore. He testified to have reached the said Dhaba wherefrom a room, he further stated, four bags of Opium weighing 17.200 Kgs. were recovered.

6. It may be stated here that no other person not even the police officials who accompanied Sub-Inspector Chouhan at the time of the said raid, has been examined in evidence. Under the circumstance, the solitary and uncorroborated testimony of Sub-Inspector Chouhan needs to be scrutinized with more than ordinary caution. Mr. Sharma, learned Counsel for the appellant has severely criticized his evidence. He has dealt with his evidence almost threadbare in his endeavour to show that the learned Trial Judge was altogether wrong in convicting the appellant. He contended that there was no compliance of the mandatory provisions of Sections 42 and 57 of the Act. It was further pointed out that there is absolutely no evidence to show as to where the seized contraband was kept after its seizure and before its production in the Trial Court. He further contended that the investigation in the case was also vitiated as it was conducted by Sub-Inspector Chouhan himself whose position was no better than the complainant in the case.

7. Mr. Mayank Upadhyay, learned Public Prosecutor, on the other hand, has strongly defended the impugned conviction and submitted that the search in question was conducted not under Section 42 but under Section 43 of the Act and as such there was no question of compliance of Section 42. He further contended that there was nothing illegal or even improper in the investigation being conducted by Sub-Inspector Chouhan himself.

8. As per FIR (Ex. P-5) and the facts disclosed in the charge-sheet, Sub-Inspector Chouhan had been acting on the basis of some information given by an approver while conducting the said raid. Although he did not state so in his evidence before the Court but in the FIR as also in the charge-sheet he himself has stated that he had received information about the Opium being kept by the accused in his room attached to the said Dhaba and that the said information was recorded in the daily diary (Rojnamcha) of the police station. He, in para 18 of his cross-examination,

has further admitted that he had in fact, obtained search warrant from the Sub-Divisional Officer (Police) before undertaking the search in question. Although a Hotel is included in the term 'Public Place', as envisaged in Section 43 of the Act, there can be also no quarrel with the legal proposition that in case of search under Section 43, provisions of Section 42 were not attracted. However, in the instant case, the contraband in question was not recovered from the Hotel but from the room attached to the said Hotel and allegedly occupied by the accused. Under the circumstances, provisions of Section 42 were clearly attracted and it was necessary for the raiding officer to comply with the mandatory requirements of Section 42. As per prosecution's own showing Sub-Inspector Chouhan had taken down the information in writing in the daily diary of the police station. However, no such writing is produced or proved in evidence. There is also nothing on record to show that any copy thereof was sent to the superior officer as required by Sub-section (2) of Section 42.

9. The search in question was admittedly made at 10.00 o'clock in the night i.e., between sunset and sunrise. Although Sub-Inspector Chouhan states to have obtained search warrant from the SDO (P), but no such warrant is produced or proved in evidence. The said SDO (P) has also not been examined in evidence. There is also no mention of this fact either in the seizure memo Ex. P-1 or in the FIR (Ex. P-5). It appears that the Sub-Inspector has lied on the point and no such warrant in fact, was obtained by him. Under the circumstance, it was obligatory for him to have recorded grounds of his belief that no such warrant or authorization can be obtained without affording opportunity for the concealment of evidence or facility for the escape of the offender.

10. In the leading case of Mohinder Kumar (AIR 1995 SC 1157) the Supreme Court has held 'that in case of a search after sunset and before sunrise, obtaining of warrant or recording of grounds of belief, as envisaged under the proviso to Section 42(1) is mandatory and contravention of the same would affect the prosecution case and vitiate the trial'. In the instant case, therefore, the search as also the trial against the appellant was vitiated on account of non-compliance of the aforesaid provisions of Section 42.

11. There is also no convincing evidence beyond a casual statement made by Sub-Inspector Chouhan to show that the Dhaba or the room in question belonged to and occupied by the accused at the relevant time. All that the Sub-Inspector Chouhan has stated in this regard is that he had in the past seen the accused on that Dhaba. As conceded by him in his cross-examination, no effort was made by him to collect evidence as to the ownership and occupation of the said Dhaba and the room. On this count also it cannot be said that the contraband in question was in physical and conscious possession of the appellant.

12. There is absolutely no evidence about the custody of the contraband from the date of its seizure till its production before the Court. While no statement in this regard is made by Sub-Inspector Chouhan in his evidence, no other witness was examined to depose of this fact. In *Valsala v. State of Kerala* (AIR 1994 SC 117) the Supreme Court, in a similar fact situation, has held that in absence of any such evidence it becomes highly doubtful that the article produced in the Court is the same seized from the accused and sent for chemical examination.

13. It was also highly improper for Sub-Inspector Chouhan to have himself conducted the investigation of the case and file the charge sheet. Hon'ble the Supreme Court as also this Court has on more than one occasions deprecated this practice of investigation being done by the complainant police officer himself [See : *Bhagwan Singh v. State of Rajasthan* (AIR 1976 SC 985)].

14. I am constrained to observe that the investigation in the case has been perfunctory and on important aspects the evidence of Sub-Inspector Chouhan is either silent or highly discrepant. It does not throw light on the issues involved in the case. It was thus highly unsafe to base any conviction on his solitary testimony without any further corroboration which was totally absent in the instant case. The impugned conviction is liable to be quashed.

15. This appeal thus succeeds and is allowed. The impugned conviction and sentence are set-aside and appellant Jeetsingh is acquitted of the charge under Sections 8/18 of the Narcotic Drugs & Psychotropic Substances Act. He is already on bail and his bail bonds shall stand discharged.

