

Soorajmal Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-17-1992

Reported in : 1992CriLJ3206

Judge : V.S. Kokje, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18 and 54; Code of Criminal Procedure (CrPC) , 1974 - Sections 227 and 228

Appeal No. : M.Cr.C. 1669/91

Appellant : Soorajmal

Respondent : The State of M.P.

Advocate for Def. : P.K. Saxena, Adv.

Advocate for Pet/Ap. : S.C. Shrivastava, Adv.

Disposition : Application allowed

Judgement :

ORDER

V.S. Kokje, J.

1. This is an application for quashing the proceedings in which charge Under Section 8/18 of the N.D.P.S. Act, 1985 has been framed against the applicant.

2. The prosecution alleges that on information being received that opium is going to be brought on the field of the applicant, a raid was arranged and on the spot, Baboo, a servant of the applicant was caught while running away and 10.5 k.g. of opium was recovered from the field.

3. The applicant submits that the charge is groundless and has been framed against him only because he is the owner of the field, without there being any evidence about his knowingly possessing opium.

4. The law on the point is settled. In *State of Bihar v. Murad Ali Khan* AIR 1989 SC 1 : (1989 Cri LJ 1005) it has been observed that inherent powers are to be invoked to prevent abuse of the process of Court or to otherwise secure ends of justice. These powers have to be exercised sparingly and with circumspection. In exercising inherent jurisdiction the High Court has not to embark upon an enquiry whether allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate the inherent jurisdiction, one thing is clear that whenever High Court is called upon to exercise its inherent jurisdiction to quash the proceedings at the stage of Magistrate taking cognizance of the offence, the High Court has to consider whether the allegations in complaint or chargesheet do not in law constitute or spell out any offence and that resort to criminal proceedings would in the circumstances amount to abuse of the process of Court.

5. In the present case, the first information report has been recorded at the instance of an informer. The FIR states that an information was received from an informer that a smuggler is going to bring contraband opium in the Jungle near the village Jamalpura in the field of Surajmal Mahajan. It has also been stated that according to information the opium is to be concealed in the sugar cane field near the electric pole. On this information, a Panchanama was recorded and a raid was arranged. Surajmal was not found on the field and the raid was conducted in his absence. It was found that in the middle of the sugar cane field at a short distance from the electric pole a person was burying something in the field. On hearing the foot-steps of the raiding party, the person ran into the sugar cane field. Ultimately

after a chase, the person was apprehended. He told his name to be Baboo. At the instance of Baboo the contraband opium was recovered, from the spot, Baboo is being proceeded against. The only allegation against Surajmal in the FIR is that the field belongs to him and the accused Baboo is his servant.

6. In the statements recorded on the same day i.e. 31-12-90 Haresingh s/o Raisingh, the owner of the neighbouring field has stated that Surajmal Mahajan comes in the morning and evening on his field. He has also stated that very often outside people came on Surajmal's field and Surajmal and Baboo discussed something with them. Again on 13-2-1991 statement of Ramlal s/o Balaji, Rodmal s/o Balaram were recorded by the police. The statements show that the field belongs to Surajmal Mahajan, sugar cane was sown in it by Surajmal and he used to frequently visit the field. These two statements also show that Surajmal had employed Baboo Bhil about three months prior to the incident and Baboo was looking after the field. It was also stated by these witnesses that outside persons used to come to Surajmal's field and used to talk with Baboo Bhil and Surajmal, Thus, the entire evidence collected against Surajmal is that he is the owner of the field, in which the contraband opium was allegedly found and that Baboo was apprehended on the spot, who was the servant of Surajmal.

7. The trial Court vide its order dated 29-6-91 has framed a charge against Surajmal only on the ground that the contraband opium was found in possession of Surajmal as the field belonged to him. The trial Court has solely relied on Section 54 of the N.D.P.S. Act. It has failed to notice that possession for the purpose of Section 54 of the N.D.P.S. Act has to be a conscious possession and not a constructive possession alone. It is true that it is not necessary that the contraband must be found on the person of an accused person or in his house alone. A person could be held responsible for something which was found on the premises, which are in his control but in such a case there should be something in the circumstances that it was not likely that the accused-person had no knowledge of the existence of the contraband on the premises. In the present case, there is absolutely no evidence collected by the police, which could show that Surajmal had any knowledge of the contraband being concealed in his field. The circumstances do not indicate that the contraband could not have been kept on the

field of Surajmal without his having knowledge of it. It is after all; an open field, to which anyone could have had an access in the absence of the owner and especially when the owner had engaged a servant for looking after the field, the possibility of a servant engaging himself in illegal activities without the knowledge of his master cannot be ruled out. As no evidence to connect the master with the contraband has been collected, it appears that the police have implicated Surajmal solely because he is the owner of the field from which contraband opium was recovered.

8. The question, therefore, is whether ownership and consequent possession of an open field is sufficient to infer that contraband opium found on the field was also possessed by the owner of the field? It must be remembered that possession of contraband opium and not the possession of the field is an offence. For proceeding against a person under the N.D.P.S. Act, it will have to be shown that he was in possession of contraband article.

9. In *Supdt. and Remembrancer of Legal Affairs West Bengal v. Anil Kumar Bhunja* AIR 1980 SC 52 : (1979 Cri LJ 1390), the Supreme Court observed as under (at page 1392; of Cri LJ) :--

'Possession' is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of 'possession' uniformly applicable to all situations in the contexts of all statutes. Dias & Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorizing it is that of 'possession' much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edition, 1966) caused by the fact that possession is not purely a legal concept. 'Possession', implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control.

According to Pollock & Wright 'when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house of land occupied by him or in any receptacle belonging to him and under his control, he is in physical

possession of the thing.

While recognising that 'Possession' is not a purely legal concept but also a matter of fact; Salmond (12th Edition, page 52) describes 'possession', in fact; as a relationship between a person and a thing. According to the learned author the test for determining whether a person is in possession of anything is whether he is in general control of it.

10. In Black's Law Dictionary (fifth Edition) referring to an American case, *Collini v. State* (Tex Cr. App 487 SW 2d 132, 135), it has been observed that the term 'possession' under narcotic drug laws, means actual control, care and management of the drug. Relying on *U.S. v. Craig* (CA Term 522 F 2d 29, 31) it has also been observed in the same dictionary that possession as necessary for conviction of offence of possession of contraband substances with intent to distribute may be constructive as well as actual. However, relying on another case *U.S. v. (Morando-Alvarez)* (CA Ariz 520 F 2d, 882, 884) it has also been observed that the defendants must have had dominion and control over the contraband.

11. In the light of the above discussion, I find that there is not only no material on record but there is not even an allegation that the applicant. Soorajmal was in conscious possession of the contraband. True, in the case of *Anil Kurnar* (Supra) and *Gunvantlal's* case referred therein, it has been observed as in *State of Bihar v. Ramesh Singh* AIR 1977 SC 2018 : (1977 Cri LJ 1606), that at the stage of framing charge the truth veracity and effect of evidence, the prosecution proposes to produce, is not to be judged meticulously, The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure. At that stage even a strong suspicion founded on materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge. But each case has to be decided on its own facts. Those were the cases in which there was material on record to support possession. In *Anil Kumar's* case (Supra) actual physical possession of illegal arms was admitted. The question was about the purpose for which they were

possessed. In the present case there is absolutely no material to connect the applicant with the contraband.

12. In the result, this application is allowed. The impugned order framing charge against the applicant is quashed and the applicant is directed to be discharged.

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