

Ramchandra Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-07-2001

Reported in : 2002(79)ECC451; 2001(3)MPHT302

Judge : Mr. Shambhoo Singh, J.

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

Appeal No. : Criminal Appeal No. 489/96

Appellant : Ramchandra

Respondent : State of M.P.

Advocate for Def. : Shri A. Upadhyay, ;Panel Lawyer

Advocate for Pet/Ap. : Shri Amit Agrawal, Adv.

Disposition : Criminal appeal allowed

Judgement :

Shambhoo Singh, J.

1. This appeal is directed by the accused against the judgment & order dated 4-6-96 passed by A.SJ. Garoth in S.T. No. 111/93 whereby the appellant was convicted for offence under Section 8/18 of the [Narcotic Drugs and Psychotropic](#)

[Substances Act, 1985](#) (for short 'the Act') and was sentenced to 14 years R.I. and to pay fine of Rs. 1,00,000/-, in default of payment of fine, two years further R.I.

2. The prosecution case, in brief, is that on 9-2-93, Constables Ram Kumar (P.W. 1), Indraveer, Dhruvram and Head-constable Naresh Kumar while checking train No. 9019 down, found the appellant standing in the corridor of the general coach having a bag in his hand. On interrogation, he told them that he was having opium in his possession. The appellant alighted from the train at Railway Station, Jhaisawad Road and boarded 56 up train and reached Shyamgarh and produced the appellant before S.H.O. Lal Singh Yadav, G.R.P. Shyamgarh. Shri Yadav asked him whether he wanted to be searched in presence of a gazetted officer or a Magistrate. The appellant consented to be searched by him. Thereupon Lal Singh Yadav took search of his bag Article 'G' in presence of panch witnesses Premsingh (P.W. 4) and Ashok (P.W. 5) wherein bag Article 'F' was found wrapped in Chaddar Article 'H'. Lal Singh Yadav prepared two samples and put the sample into the cigarette packet Article 'D' and packet Article 'B'. He wrapped these packets in the chit Article 'C'. He seized the contraband article vide seizure memo Ex. P-9. The appellant was arrested vide arrest memo Ex. P-10. F.I.R. Ex. P-1 was lodged and offence was registered. The samples and the opium were deposited in police Malkhana. The samples were sent to F.S.L. Sagar on 28-2-93 but were not accepted as new F.S.L. had been established at Indore. The samples were again deposited in police Malkhana on 2-3-93. Thereafter on 16-4-93 the samples were sent to F.S.L. Indore where the chemical examiner examined the sample and opined vide report Ex. P-17 that the samples contained opium. After completion of investigation, charge-sheet was filed. The appellant pleaded not guilty and false implication. The learned A.S.J. on appreciation of evidence convicted and sentenced the appellant as stated above. Hence, this appeal.

3. Shri Amit Agrawal, learned counsel for the appellant, submitted that the panch witnesses Premsingh (P.W. 4) and Ashok (P.W. 5) did not support the prosecution case. The learned Trial Judge committed error in believing the evidence of constable Ram Kumar and S.H.O. Lal Singh Yadav (P.W. 7). He further contended that the provisions of Section 50 of the Act were also not complied with. He also attacked the conviction of the appellant on the ground that S.H.O. Lal Singh Yadav

did not seal the contraband article and the samples properly and, therefore, it could not be proved that the samples sent to the F.S.L. Indore, were the same which were prepared by these searching officer at the time of seizure. On the other hand, Shri A. Upadhyay, learned panel lawyer for the respondent, supported the impugned judgment.

4. I considered the arguments advanced by learned counsel for both sides and perused the record. It has come in the evidence of constable Ram Kumar (P.W. 1) that on 9-2-93 he, Head-constable Naresh Kumar and constable Indraveer that while checking train No. 9019 down, they found the appellant standing in the corridor of the general coach having a bag in his hand. He was perplexed and was trying to conceal the bag. On interrogation, he admitted that he was carrying opium. On this, they got down at Jhalawad Road Station and returned to G.R.P. PS Shyamgarh by train No. 56 up and produced the appellant before S.H.O. Lal Singh Yadav (P.W. 7). The version of this witness and Lal Singh Yadav is that panch witnesses Premsingh (P.W. 4) and Ashok (P.W. 5) were called and in their presence Shri Yadav asked the appellant whether he wished to be searched in presence of a gazetted officer or a Magistrate. The appellant consented to be searched by Lal Singh Yadav. Thereupon Lal Singh Yadav look search of the bag Article 'G' of the appellant wherein he found one plastic packet Article 'F' wrapped in Chaddar Article 'H'. On opening the same, it was found containing opium. Thereafter Lal Singh Yadav prepared two samples Article 'C' and Article 'B' each of 30 gms. and sealed them. He seized the opium vide seizure memo Ex. P-9.

5. The independent witnesses Premsingh (P.W. 4) and Ashok (P.W. 5) did not support the prosecution case. They were declared hostile and were confronted with their police statements. They admitted their signatures on all the panch names prepared at the police station. It is clear that they have been won over by the defence and are telling lie. The evidence of S.H.O. Lal Singh Yadav and constable Ram Kumar cannot be discarded on the ground that they are police officers. In my opinion, the learned Trial Judge rightly put reliance on the testimony of these witnesses and held that contraband article was seized from the possession of the appellant.

6. Learned counsel Shri Amit Agrawal further contended that the searching officer Lal Singh Yadav committed illegality in sealing the samples and the bag in which contraband article was lying as the chits containing signature of the appellant and the panch witnesses were not posted, therefore, the Investigation Officer had full opportunity to substitute the same. In my opinion, this argument has force. It is true that in examination-in-chief Lal Singh Yadav deposed that he seized the bag Article 'G' Chaddar Article 'H' and the bag Article 'F' which contained contraband article and bag Article 'E' in which Article 'F' was put and samples Articles 'D' and 'B' were sealed by him. He also put a chit containing signatures of the appellant and panch witnesses but in cross-examination, in para 8, he clearly admitted that he did not paste chits containing signatures of the panch witnesses and the thumb-impression of the appellant on the bag Article 'E', packet 'F' which contained the contraband article i.e., opium, Article 'G' in which Article 'F' was kept and bag Article 'E' and cigarette packet Article 'D' and Article 'B' in which samples were put. He stated that the sample Article 'D' cigarette packet was wrapped in a chit which contained the signatures of the panch witnesses and thumb-impression of the appellant but he admitted that this chit was not pasted on this packet. It is, thus, clear that no chit containing the signatures of the panch witnesses and the thumb-impression of the appellant was pasted on any Article which are alleged to have been sealed on the spot. Under such circumstances, it cannot be said that the Articles produced before the Court are the same which were seized by the searching officer at the time of incident from the appellant. In the same way, it cannot be said that the samples sent to the F.S.L. Indore for analysis were the same, which were prepared by Lal Singh Yadav on the spot. Lal Singh Yadav and Head Constable Jaspal Singh who was also Incharge of Malkhana admitted that the seized articles were sealed with the seal of the Railway Police Station, Shyamgarh. This seal was not given to Panch or Sarpanch as held in AIR 1976 SC 69, Mahmood v. State of U.P., It remained in possession of the searching officer Lal Singh Yadav. Therefore, the possibility of substituting the samples and contraband article cannot be ruled out and this fact makes the prosecution case doubtful.

7. There is one fact more which makes the prosecution case suspicious. It has come in the evidence of Head-constable Jaipalsingh, who was Incharge of

Malkhana, that the samples deposited in Malkhana by S.H.O. Lal Singh Yadav, were sent on 28-2-93 through Constable Dhruvram to F.S.L. Sagar but these samples were not accepted by F.S.L. Sagar and they were returned on 2-3-93 with the report that F.S.L. has been established in Indore, therefore, the samples be sent there. On this, he sent the samples on 16-4-93 to F.S.L. Indore through Constable Heeramani. The receipt of the F.S.L. Indore is Ex. P-3. He also proved the Roznamcha entries regarding sending of the samples to F.S.L. Sagar and receiving back and again sending it to F.S.L. Indore. The statement of Jaipalsingh and Lal Singh Yadav that the samples were sent to F.S.L. Indore on 16-4-93 stand falsified by the letter of S.P. Ex. P-16. This letter is dated 24-2-93, it is addressed to Regional Chemical Examiner, F.S.L. Indore. The statement of Jaipalsingh is that on 28-2-93 the samples were sent to F.S.L. Sagar alongwith the letter of S.P. but I do not find any such letter written by S.P. Mandsaur to F.S.L. Sagar on 28-2-93. If this letter Ex. P-16 was written to F.S.L. Indore on 24-2-93, then why the samples were sent to Sagar on 28-2-93. This letter Ex. P-16 which was written on 24-2-93 stating that the samples were being sent for analysis to F.S.L. Indore were not sent on that date but were sent on 16-4-93, All these facts and circumstances have created doubt about the genuineness of this letter. In my opinion, under such circumstances, the report of F.S.L. Indore Ex. P-18 which opined that the samples sent to it for examination contained opium, has also become suspicious. The learned Trial Judge committed error in not taking into consideration these facts and circumstances of the case. In my opinion, the prosecution failed to prove beyond reasonable doubt that the appellant was found in possession of opium.

8. In the result, the appeal is allowed. Conviction and sentence imposed on the appellant are set-aside and he is acquitted of the offence under Section 8/18 of the Act. He be set at liberty forthwith if not required in any other case. Fine, if paid, be returned to the appellant.

9. Criminal Appeal allowed.