

Ramsingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-15-2001

Reported in : 2001(3)MPHT317

Judge : Mr. Shambhoo Singh, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18, 38-A and 53; [Narcotic Drugs and Psychotropic Substances \(Amendment\) Act, 1988](#); Code of Criminal Procedure (CrPC) , 1974 - Sections 173, 193, 200 and 202(2)

Appeal No. : Criminal Appeal No. 289/89

Appellant : Ramsingh

Respondent : State of M.P.

Advocate for Def. : Shri V.P. Khare, P.P.

Advocate for Pet/Ap. : Shri Jai Singh, Adv.

Disposition : Criminal appeal allowed

Judgement :

Shambhoo Singh, J.

1. This appeal is directed by the accused-appellant against the judgment & order dated 30-6-89 passed by Ist A.S.J., Mandsaur in S.T. No. 36/88 whereby the appellant was convicted for offence under Sections 8/18 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short 'N.D.P.S. Act') and sentenced to ten 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 17-3-1987 Inspector Shyamrao received information from informant that the appellant Ram Singh and Ramesh Chandra (acquitted accused) were to bring opium from village Gujar Bardiya. The Inspectors Shyam Rao and Abdul Samad Khan and Sub-Inspector Devidin, Panch witnesses Nandlal and Rameshwar came in a Jeep and stayed near Ramlal Patidar's well where path ways of villages Luhari Sheikh and Luhari Shripat meet. At about 10 p.m. one motor cycle came from the side of village Gujar Bardiya. The raiding party gave signal to the motorcyclist to stop by flashing torch. One of the accused Rameshchandra jumped from the motor-cycle and ran away. Ram Singh was caught. A gunny bag was found near the motor-cycle. It had two small packets containing 9 Kg. 800 grams of opium. The searching officer prepared two samples of 30 grams each and sealed the contraband article and the samples. They searched Ramesh Chandra but he could not be apprehended. Offence was registered against the Appellants. The samples were sent to Government Opium & Alkaloid Works, Neemuch for analysis. The Public Analyst opined that the sample contained opium. After completion of investigation the Inspector of Narcotics Department submitted charge sheet under Section 173, Cr.PC in the Court of C.J.M., Mandsaur, who committed the case to the Court of Sessions. The accused pleaded not guilty and false implication. The learned Trial Judge on appreciation of evidence acquitted Ramesh Chandra. However, he convicted the appellant as stated above, hence this appeal.

3. Shri Jai Singh, learned counsel for the appellant, submitted that the offence under Sections 8/18 is alleged to have been committed on 17-3-1987 that is before 29-5-1989, when the amendment N.D.P.S. Act, 1998 came into force. The Narcotic Officers were not Police Officers for submitting final report under Section 173, Cr.PC, therefore, they could not file charge-sheet under Section 200, Cr.PC.

They could file a complaint and under such circumstances it was mandatory for the learned Judicial Magistrate to follow the procedure contemplated under Section 202(2) of the Cr.PC. This case is triable by the Court of Sessions, in view of the Proviso to Section 202(2) Cr.PC, it was mandatory for the Magistrate to examine the prosecution witnesses and thereafter pass committal order. This procedure was not followed, therefore, the Sessions Judge had no jurisdiction. Thus, the impugned judgment is a nullity and liable to be set aside. He put reliance on the decision of this Court in case of Ramesh Chandra v. Union of India and another (1991 MPLJ271) & Division Bench Judgment of this Court in Vagjibhai and another v. Union of India passed in Misc. Criminal Case No. 457/91, decided on 30-11-1995 and a decision of this Court in case of Dyaji bhai and another passed in Misc. Cr. Case No. 467/91, decided on 14-12-1995 and also the decision of the Supreme Court in case of Rajkumar v. Union of India and others [1990 (1) SC409] Shri Desai, in view of above decisions very fairly conceded that the procedure prescribed under Section 202(2) Cr.PC ought to have been followed.

3A. From the perusal of the decisions (supra) it is clear that the C.B.N. Officers who seized the contraband articles from the appellant were not police officers and could not file charge-sheet under Section 173, Cr.PC, the Division Bench of this Court in Misc. Criminal Case No. 457/91 (supra) held that the officers of the Department Narcotics are not police officers under Section 173, Cr.PC, and, therefore, they were required to file complaint under Section 200 Cr.PC, before 29-5-1989 when the N.D.P.S. Amendment Act, 1988 came into force, before this date, the offences, were to be tried according to the provisions of the Cr.PC. The provision for establishing Special Court came into force on 29-5-89. The offence under Sections 8/18 of the N.D.P.S. Act provides minimum imprisonment for 10 years, which may extend to 20 years. Therefore, it was exclusively triable by the Court of Sessions and the Court of Sessions could take cognizance under Section 193, Cr.PC on commitment of the case by the Magistrate. The officers of Narcotics Department have been authorised under Sections 53 & 36A of the Act to exercise the powers of the police officers while inquiring the offence under N.D.P.S. Act but they are not police officers for the purpose of submitting a report & charge-sheet under Section 173, Cr.PC, therefore, they were required to the complaint under

Section 200, Cr.PC and the Magistrate was bound to examine witnesses under Section 202(2), Cr.PC, and thereafter pass committal order. This procedure was not followed, therefore, the Court of Sessions had no jurisdiction to take cognizance of the offence alleged, therefore, the impugned judgment is illegal.

In the result the appeal is allowed, the impugned judgment and order are set aside. The commitment proceedings being illegal or quashed and consequently the Sessions trial is also quashed. The Investigating Officer shall file a complaint in the Court of C.J.M., Mandsaur, who shall follow the procedure prescribed under Section 202(2), Cr.PC and thereafter shall pass committal order.

4. Criminal Appeal allowed.

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