

Mohanlal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-23-1989

Reported in : 1990CriLJ1093

Judge : V.D. Gyani, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 162; ;[Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2, 5, 8, 18, 42, 42(2), 43, 44, 51(1), 52(1), 57 and 58; [Police Act, 1861](#) - Sections 44

Appeal No. : Crl. Appeal No. 352 of 1987

Appellant : Mohanlal

Respondent : State of M.P.

Advocate for Def. : A.H. Khan, Govt. Adv.

Advocate for Pet/Ap. : C.R. Joshi, Adv.

Disposition : Appeal allowed

Judgement :

V.D. Gyani, J.

1. This appeal is directed against the judgment dt. 7-7-87, passed by the IInd Additional Sessions Judge, Mandsaur in Sessions Trial No. 178/86, thereby

convicting the appellant under Section 8/18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the Act), and sentencing him to undergo R.I. for ten years, and pay a fine of Rs. one lac or in default of payment of fine, to suffer a further two years' R.I.

2. The prosecution case stated in brief --was that on 7th Feb. 1986, around 4.00 p.m. in village Ramkoda, within the jurisdiction of the Police Station Bhavgat, District Mandsaur, the appellant was found to be in possession of 10 kgs. 100 gms. of opium.

3. On information received as per Ex. P.13, the Station House Officer, Police Station, Bhavgat, proceeded for raid and on reaching the house of the appellant, searched the same and found a plastic bucket lying in a corner of a room on the first floor of the house. It contained a ragzine bag containing opium. It is said that the accused admitted it to be his.

4. The prosecution examined as many as nine witnesses to prove the charge against the appellant. Out of these witnesses, PW 1 Bapulal, PW 2 Radheshyam and PW 4 Mohanlal were declared hostile by the prosecution. The other witnesses included the Assistant Chemical Examiner K. Satyamurthy, Kannuram PW 3, village Sarpanch Radha-krishnan PW 6, Head Constable Khalikhan PW 7, Constable Narain Singh PW 8 and Sub-Inspector Anilsingh PW 9.

5. Learned counsel appearing for the appellant has assailed the conviction on numerous grounds including -- (i) that the house in question wherefrom opium is said to have been recovered, has, not been proved to be in occupation of the appellant, (ii) there was no compliance of the procedural safeguards as provided by the Act, (iii) the cumulative effect of the evidence of Sub-Inspector Anilsingh, Head Constable Khalikhan and village chowkidar Kaniram, does not positively establish that the house in question either belongs to the appellant or was occupied by the appellant. It was also urged by the learned counsel that it was not proved that the article seized was opium, inasmuch as the presence of maconic acid has not been determined by the Asstt. Chemical Examiner. There was no evidence on record to show that the sample of opium taken from the bag was properly persued at every stage of passing of hand till it actually reached the

chemical analyst. It was strenuously urged that Section 5 of the Act was not complied with.

6. Shri Khan, learned counsel for the respondent on the other hand submitted that the conviction as recorded by the trial Court is well supported by evidence on record, and does not call for any interference.

7. The first point raised by the appellant's counsel was -- whether the house in question from where the opium was recovered --belongs to and occupied by the appellant? As has been noted by the trial Court, in its judgment, para 10, the independent witnesses, Bapulal and Radheshyam, do not support the prosecution case, P.W. 4 Mohanlal has categorically stated that he had sold this house to Radheshyam -- the brother of the appellant, some ten years ago and had also executed a sale deed, although it was not registered. These witnesses were also declared hostile. The trial Court has found that he does not support the prosecution case. The evidence of village chowkidar P. W. 5 has been held by the trial Court, does not support the prosecution in establishing that it was the appellant, who was the owner and occupier of the house in question. Considering the evidence of Anil-singh Rathore P.W. 9 the trial Court has noted that, in para 12 of his evidence, he admitted that it was on the basis of the information given by the Constable Khali-khan, that he came to know that the house-belongs to the appellant. All these witnesses named above, have not been relied upon by the trial Court for the purpose. The only witness, who has been relied upon, on this point, is Khalikhan, who in his evidence; claimed that he had knowledge that the house in question belongs to Mohanlal and it is on the basis of this knowledge, as claimed by P.W. 7 Khalikhan that the trial Court has held that the house in question was in occupation of the appellant. The fact may be noted that Radheshyam -- the brother of the appellant died about three or four years after the present incident. Bapulal and Radheshyam --the Panch witnesses have admitted in their evidence that it was Radheshyam, who was occupying this house, and the appellant's house is about 10-15 house; ahead of the house, wherefrom opium is said to have been recovered. Even village chowkidar, in his evidence does not say that the house was in exclusive possession of the appellant. According to him, it was on the joint occupation of all the three brothers of the appellant. Even

Khalikhan P.W. 7 has in his cross-examination, admitted that the appellant was jointly seen living in the house situated near temple in the bazar. He has further admitted that while starting from the Police Station, it was not decided or determined that the house of the appellant Mohanlal was to be searched. The information received through the informant was regarding Ranchod and not by Mohanlal. The information received Ex. P-13 was to the effect that suspect Ranchod was to go to Mohanlal for making inquiries about his illness. It was Ranchod, against whom a case Under Section 18 of the Act was registered as Crime No. 198/85. It has come in the evidence of Khalikhan P.W. 7 that on the date of incident, Mohanlal's leg was under plaster, and in fact he was likely to be visited by the appellant to inquire about his well being. The earlier version does not in any manner implicate the appellant. It is in this context that occupation of the house, wherefrom opium was recovered, assumes importance. It is not a matter, which can be left to the subjective knowledge of police head Constable. Documentary evidence could well have been collected to show the ownership of the house, as well as its occupation, but the prosecution has produced none.

8. If it is a question of personal know-ledge, naturally the village chowkidar in his evidence has not stated that the house in question was in exclusive occupation of the appellant, although he had supported Mohanlal, who had stated that he had sold the house in question about 10 years back. Kaniram also admits this fact. But according to him, the house was sold to all the three brothers of the appellant. He tried to state that all the three brothers were jointly living in the said house, but he firmly admitted that he does not go to the house of Pandit, and had no occasion to go inside the house. Sarpanch of the village Radhakrishnan P.W. 6 has also been examined. He also supports the fact that the house in question was sold by Mohanlal about ten years back. Kaniram also admits this fact. According to him, the house was sold to all the three brothers of the appellant No. 1. He tried to state that all the three brothers were jointly living in the said house, but he admitted that he does not go to the house of Pandit and had no occasion to go inside the house. Sarpanch of the village has also been examined as P.W. 6 -- Radhakrishnan. He also supports the fact that the house in question was sold by Mohanlal about ten years back. The information given by him to the police, as regards the recorded ownership of the house in question as per Panchyat Record, is palpably

inadmissible in evidence, and is hit by Section 162, Cr. P.C. Learned Judge of the trial Court has completely overlooked as to what the witnesses have stated to the trial Court during the course of investigation, could not have been allowed to go on record. As has been done in this case Sarpanch P.W. 6 Radhakishnan's statement is of no help to the prosecution. No earlier evidence in respect of official records should have been permitted to be adduced much less acted upon by the trial Court. The trial Court has placed reliance on Khalil-khan's statement on the basis that he was a constable posted at Bhavgat Police Station of village Ramkoda or within the jurisdiction of the said Police Station. It was but natural for him to know about the ownership and occupation of the house. He could not even give a rough number of his visits to village Ramkoda. How can such Head Constable's personal knowledge be relied upon for conviction the accused on the basis of occupying a particular house? The inherent infirmities in his evidence as admitted by him, his knowledge was based on inquiries made from other villagers and those other villagers have not been examined. The inference which he claims to have been supplied to the police during the investigation, in writing is obviously hit by Section 162, Cr. P.C, as has already been rioted above and no corroboration as such is available nor can it be sought from the evidence of the Sarpanch. The finding recorded by the trial Court in this behalf, therefore, cannot be maintained; it is accordingly set aside. The other question raised by the learned Magistrate is about the Article Ex. P-7 submitted by the chemical examiner may be noted. Learned counsel for the appellant, placing reliance on the decision of Punjab and Haryana High Court in Inder Singh v. State of Punjab, 1981 Chand LR (Cri) 114.

9. The other point raised by the learned counsel is about compliance of Section 57 of the Act, which reads as follows:

'Section 57 -- Report of arrest and seizure: Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.'

The object behind this provision can well be seen every seizure and arrest made under this Act is required to be submitted to the immediate official superior with

complete report of all particulars, Sections 42, 43 and 44 of the Act give powers of seizure and arrest to certain categories of officers while Section 58 of the Act provides for punishment for vexatious entry, search, seizure or arrest. The report required to be submitted under Section 57 of the Act, it may be noted is forty-eight hours and not two days that signifies the intention and anxiety of the legislature in providing for checks at various stages of investigation. These safeguards undoubtedly have their own value and they are certainly not intended to be flouted.

10. There is not a word in the statement of Anil Singh P.W. 9 to show that he had reported the seizure and arrest to his immediate superior within forty-eight hours of such arrest and seizure. This assumes importance in the context that the information received from the informer pertain to one Ranchod.

11. According to the prosecution case, Sub-Inspector Anil Singh P.W. 9 acting on information, Ex. P-13, received from an informant at 1.30 p.m. proceeded for village Rankoda immediately thereafter.

12. Anil Singh P.W. 3 has neither recorded the ground of his belief nor sent copy of the information received by him to his official superior. Ex. P-13 is the information received at 1.30 p.m. while Ex. P-9 is the entry made in the general diary about his departure for the village and the 3rd entry Ex. P-10, is the report entered in the general diary on return from village at 6.15 evening. The I.O. nowhere stated that he informed his official superior about the information which he had received nor has he recorded the grounds of his belief. He is totally silent about all the things in his evidence. There is not a word by way of explanation, as to what prevented him from putting on record the grounds of his belief before proceeding to the spot and not sending forthwith a copy of the information to his immediate superior. What regard the witness has for truth, can be seen from the fact that, when asked about the fractured leg of accused Mohanlal, he denied it in his evidence, contrary to his own report Ex. P-10, which clearly shows that the accused had a fracture in his leg and the same was plastered. The Supreme Court in *Rahim Beg v. State of U.P.*, AIR 1973 SC 343 : (1972 Cri LJ 1260), has observed as follows:

'The fact that the Sub-Inspector has deviated from truth even on a minor point would show that implicit reliance cannot be placed upon his testimony.'

13. Apart from the violations of procedural safeguards, no intrinsic reliance can be placed on the evidence of such witness.

14. There is yet another aspect of the matter, which relates to the keeping of opium and its samples as admitted by witness, there was no entry made in the Rojnamcha, the general diary of the police station. He has further admitted that ordinarily such entries are made in the general diary. It is not a case of ordinary practice. Section 44 of the Police Act clearly provides as follows:

'Section 44 -- Police Officers to keep diary--It shall be the duty of every officer incharge of a Police Station, to keep general diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.'

15. It was the bounden duty of P.W. 9 Sub-Inspector Anilsingh to have made an entry in the Rojnamcha about keeping of the opium seized and the samples taken. Ex. P-10 contains a reference about the arms being kept in the Malkhana, but there is no reference whatsoever as to where and in what condition and whose custody the opium was kept. Constable Narayansingh P.W. 6 was deputed for taking the sample packets to the opium and Alkaloid Works at Neemuch. The incident is dtd. 7-2-1986 while according to the witness. Narayansingh P.W. 8, it was on 22-2-86 that he had taken the samples to. the Opium and Alkaloid Works at Neemuch; full 15 days after the incident. There is absolutely no evidence in what condition the sample packets were kept and by whom. Narayansingh has been declared hostile on the ground that he had taken two packets to Opium and Alkaloid Works while the prosecution case was that it was only one packet. On being cross-examined by the Public Prosecutor that whether those packets were related to the same or different crimes, the witness stated that he did not know about it. When asked whether he had brought receipt in respect of one or two

packets, he categorically stated that he had brought receipts in respect of both the packets. This witness further admitted that he could not say in what condition and by whom the samples were kept before, till they were actually delivered to the Opium and Alkaloid Works at Neemuch.

16. P.W. 9 Sub-Inspector Anilsingh, who followed the constable Narayansingh P.W. 8, had admitted in his evidence in para 8 that it was on 22-2-86 that he had deputed constable Narayansingh for delivering two packets --one big and the other small, at the Oium and Alkaliod Works at Neemuch. There is also not a word in his evidence about the condition in which opium was kept and the intactness of the packets.

17. The Supreme Court in State of Rajas-than v. Daulatram, AIR 1980 SC 1314 : (1980 Cri LJ 929) has pointed out the importance of adducing evidence on this point. Such evidence is absolutely lacking in this case.

18. Placing reliance on a Division Bench decision of Punjab and Haryana High Court, as reported in Indersingh v. State of Punjab, 1981 Chand LR (Cri) 114, Shri Joshi, learned counsel argued that mere presence of morphine in a substance does not render the substance as opium as defined under the Act. It was essential to establish the presence of meconic acid to opine the substance as opium. Shri Khan, learned counsel for the respondents pointed out that although the chemical examiner was examined as witness P. W. 3, no question has been put to the witness about the presence of meconic acid. In absence of any question being put to the chemical examiner, as regards presence of meconic acid, this judgment howsoever useful, has no application to the present case.

19. The safeguards provided under the Act have been flouted with impunity. No inlimination about the information received was sent to his immediate superior by the Station House Officer. These safeguards are not laid down without any purpose. Their contravention would certainly prejudice the accused. No reason is assigned by P.W. 9, Sub-Inspector as to why a search warrant could not be obtained. No evidence is adduced to show that the seized opium and its samples were kept intact and not tampered with. Sub-section (2) of Section 42 categorically provides that when an officer receives any information, he shall record the ground

of his belief and shall forthwith send a copy thereof to his immediate official superior. Nothing of the sort is even claimed to have been done in the instant case. Section 55 of the Act provides that Officer-Incharge of the Police Station shall take charge of and keep in safe custody, pending the orders of a Magistrate, all articles seized under this Act. Section 44 of the Police Act provides for making an entry in the general diary. There is no corroboration of the prosecution case from independent witnesses. It is not to suggest that such corroboration is a must, but the evidence of Constable Narayan P.W. 8 the Head Constable Khalikhan and Sub-Inspector Anil Singh is full of infirmities. Their conduct being contrary to the statutory provisions of law, fails to inspire confidence.

20. Apart from this state of evidence on record, there is apparent non-compliance of mandatory provisions of law such as Section 51(1) and Section 57 of the Act. There is a purpose behind this provision. 'The reason's that the right to be informed about the grounds of arrest contained in Section 52(1) and the requirement of Section 57 to the effect that any person making arrest or seizure shall make full report to his immediate superior officer within 48 hours, confers valuable right on the accused. When informed about the grounds of arrest at the earliest opportunity, the accused becomes aware of, at the very outset, what he has to meet in the long run. Failure to do so, would certainly prejudice his defence. Similarly, the provision requiring the person making arrest or seizure to make a full report to his immediate superior officer within 48 hours, brings into existence a document which can be used for purposes of cross-examination in defence. The making of such a report within 48 hours will also bring to an end the possibility of improving the prosecution version after that time. If these provisions are not strictly complied with, the prosecution . must fail.' (See 1989 Cri LJ 1412 Him Pra).

21. In the result the conviction and sentence as recorded against the appellant by the trial Court, cannot be sustained. It is liable to be quashed and is accordingly quashed. He is acquitted of the charge framed against him'. Fine if paid, be refunded to the appellant. The appeal stands allowed. His bail bonds stand discharged.