

State of M.P. Vs. Ramkumar

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Court : Madhya Pradesh

Decided On : Feb-17-2000

Reported in : 2000(4)MPHT189

Judge : Fakhruddin, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 378; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 20 and 50; Arms Act - Sections 25

Appeal No. : Criminal Appeal No. 797/95

Appellant : State of M.P.

Respondent : Ramkumar

Advocate for Def. : D.K. Saxena, Adv. and ;Sonali Gupta, Amicus-curiae

Advocate for Pet/Ap. : Girish Desai, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Fakhruddin, J.

1. The State has preferred this appeal under Section 378 of the Criminal Procedure Code, against the judgment dated 30-6-1995, passed in Sessions Trial

No. 459/94, by sixth Additional Sessions Judge, Ujjain against acquittal of the respondent under Section 8 read with Section 20(b)(ii) of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to 'NDPS Act').

2. The brief facts of the case as found by the trial Court are that on 7-10-1994, Shri N.S. Chandrawat, Station House Officer, Central Police Station Kotwali, Ujjain received information through an informant that one person is going from Nazar Ali bus-stand to Kanthal area alongwith 'Charas'. The information was recorded in 'Rojnamcha sanha', and was sent to Shri K.B. Bundeia, C.S.P. in writing. It is alleged that pursuant to this when police party reached near Mankameshwar Mandir, they found a person alongwith attache there. At that time C.S.P. Bundeia also reached there. The person was stopped and asked for his search. He was told that he could get himself searched before a Magistrate or a Gazetted officer. The prosecution alleges that Ram Kumar contended that he preferred to be searched by C.S.P. Panchanama Ex. P-12 was prepared. He was found to be carrying 800 gm. article like that of 'Charas'. It was seized. The search taken vide seizure memo Ex. P-8 and Ex. P-7.50 gm. 50 gm. samples of the article seized was taken out which was sent to the Public Analyst for testing vide Ex. P-20 to Indore, and its report is Ex. P-19.

3. After investigation 'Challan' was filed before the Sessions Judge and thereafter it was transferred to the Special Judge, i.e., sixth Additional Sessions Judge, Ujjain who tried the case.

4. On 6-1-1995, charge under Section 8 read with Section 20(b)(ii) of the NDPS Act was framed against the accused/respondent. Respondent denied the guilt and contended that he has been falsely implicated because of the complaint made by him to the various authorities against Vinita Sharma daughter of Deputy Superintendent of Police, Pyarelal Vashishta who was running a gas agency. The respondent contended that he is a social and political worker, and is a President of 'Gahoi Vaishya Navyuvak Sangh', Datia and in that capacity he had complained against Vinita Sharma to various authorities because of which Shri Vashishta, Dy. S.P. was annoyed with him and he has been implicated by the police falsely at the behest of Shri Vashishta.

5. The prosecution in this case examined Kishor (P.W. 1), Heera Lal (P.W. 2), Gop Naik (P.W. 3), Jainarayan (P.W. 4), Vikram Rao (P.W. 5), N.S. Chandrawat (P.W. 6), R.A. Mahiwal (P.W. 7) and Kamal Singh Bundela (P.W. 8) in support of its case. On the other hand, the accused respondent examined Ratan Lal (D.W. 1) in defence and produced documents.

6. The learned trial Judge after considering material and the evidence acquitted the respondent-accused of the charge under Section 8 read with Section 20(b)(ii) of the NDPS Act.

7. The learned trial Court after considering the prosecution evidence, in Paragraph 23 of the judgment specifically held that the provisions of Section 50 of the NDPS Act have not been complied with. In this connection the trial Court discussed the evidence of P.W. 6 N.S. Chandrawat, P.W. 8 K.S. Bundela in Paragraphs 17 and 18, P.W. 7 R.A. Mahiwal in Paragraph 19, P.W. 5 Vikram Rao in Paragraph 20 and Kishor (P.W. 1) in Paragraph 21 of the judgment and found that there are contradictions in the evidence of Investigating Officer and the statements of the other prosecution witnesses. The search of the accused-respondent was not properly taken. The trial Court further found in Paragraph 23 of the judgment that near Mankameshwar Mandir where the accused-respondent was found, there gazetted officers were available for search but no effort was made to that effect. Even Ex. P-14-B panchanama is merely a ritual formality and there is violation of Section 50 of NDPS Act. The Court below has further found that the prosecution witnesses (P.W. 7) R.A. Mahiwal and Vikram Rao (P.W. 5) have not supported the version regarding seizure of 'Charas' from the attache of the respondent-accused and the said finding has been recorded in Paragraph 24 of the judgment. The Court below has further noted that it is borne out from the documents Exs. P-1, P-3, P-5 and P-8 that the signatures of the accused are not on the place where they should be but his signatures have been taken at the place of witnesses. The Court below has further found that evidence of Kishor (P.W. 1) is at variance with that of police witness. The Court below thus after considering the entire material on record in Paragraph 26 of the judgment found that Exs. P-1, P-3, P-5 and P-8 are doubtful. These documents do not bear the signatures of the accused at the appropriate place and they were not prepared at the spot.

8. The Court below has noted in Para 27 of the judgment the plea of the accused that he had stayed in Bihar Lodge on 5-10-1994 and that there is gas agency at Datia which is in the name of Vinita Sharma daughter of Pyarelal, Dy. S.P. and the accused had made complaint against that gas agency to various authorities including the Indian Oil Corporation Limited regarding extra charging from the customers and in that situation there being no signatures of the accused on the documents at the proper place and on the spot, the Court below found that the explanation given by the accused that he was arrested as soon as he came out from the lodge on 5-10-94 appears to be probable. The Court below thus considered the overall facts and circumstances and found that the prosecution has not been able to prove that the seized articles were recovered from the possession of Rani Kumar, the accused.

9. Shri G. Desai, Government Advocate appearing for the State initially submitted that there has been compliance of Section 50 of the NDPS Act. But, after going through the entire record and having read the entire evidence and documents he fairly stated that the compliance of Section 50 of NDPS Act has not strictly been done.

10. Learned defence counsel Shri D.K. Saxena supported the judgment and contended that the order of acquittal recorded by the learned trial Court is based on appreciation of evidence. The Court below has given cogent reasons and arrived at the findings which are neither perverse nor perfunctory. It is contended that there has been non-compliance of Section 50 of the NDPS Act and further the accused was implicated in this case malafide with ulterior motive.

11. Miss Sonali Gupta, Advocate appearing as amicus curiae in this case submitted that the police somehow or the other wanted to teach the accused a lesson as he had made a complaint. She submitted that sequence of events during investigation also discloses that most of the investigation was complete by 10-10-1994, yet the remand was taken from time to time on the ground that investigation was not complete and ultimately the 'challan' was filed as late as on 8-12-1994 with the purpose of delaying the detention. She further submitted that the documents on record go to show that the action has been taken malafide and

the witnesses to the seizure are not independent witnesses. Kishor (P.W. 1) and Ram Naresh Singh are witnesses. They are accused in the other offence of NDPS Act. Witness Kishor (P.W. 1) is also facing a case under NDPS Act vide Sessions Trial No. 315/93 by Police Mahakal, Ujjain. Another person Chunna alias Ram Naresh was also an accused in S.T. No. 132/93 and S.T. No. 252/93. Certified copies are on record. It was contended that mandatory requirement of Section 50 of the NDPS Act was not complied with and therefore the evidence regarding recovery and seizure is not reliable. She further submitted that the respondent could not have been convicted on the basis of the evidence. She also relied on the decision reported in (1959) 6 SCC 172 (State of Punjab v. Baldev Singh), wherein it has been held that the requirement of informing the accused about his right under Section 50 comes into existence only when the person of the accused is to be searched. She also placed reliance on the decision reported in (1999) 7 Supreme Court Cases 88 (C. Ali v. State of Kerala) which lays down that Section 50 requirement of informing the accused of his right to be searched in the presence of a gazetted officer or a Magistrate is mandatory and non-compliance thereof vitiates the trial.

12. It is pointed out that accused-respondent had submitted representation to the Indian Oil Corporation Limited, the Petroleum Minister, Govt. of India, New Delhi, the Secretary to the Government of India, Ministry of Public Grievances, Nirvachan Bhavan, New Delhi, the General Manager (Sales) Indian Oil Corporation Ltd. Sales Office, Bhopal, M.P., the Sales Officer I.O.C. Gwalior M.P. and the Collector, Datia M.P. regarding various irregularities of Datia I.O.C. Gas service run by Mrs. Vinita Sharma. This complaint was made on 26-1-1988. Indian Oil Corporation conducted an inquiry and some customers were consulted and it was found that there were some defects in the procedure of distributing DEC. The complaint regarding charging Rs. 2.00 in excess was true and warning had been issued to the distributor. M/s. Datia Gas Services was directed to take proper care and attention in future. It was directed that Agency should take proper steps so that the customers may get proper services.

13. It is borne out from the record that Kishor (P.W. 1) and Ram Naresh Singh were shown as independent witnesses; whereas Kishor (P.W. 1) was facing a trial

under NDPS Act in Sessions Trial No. 315/93 by Police Station, Mahakal, Ujjain. Certified copy has been filed on record, to show that Kishor was one of the persons from whom 'Charas' was recovered he was co-accused alongwith one Naseer accused. He was charged for an offence under Section 8 read with Section 20(b)(ii) of NDPS Act. Another person Chunna alias Ram Naresh was also an accused in S.T. No. 132/93 and S.C. No. 252/93. The prosecution has made these persons to be independent respectable and reliable witnesses. The investigating officer N.S. Chandrawat (P.W. 6) was specifically asked question as to whether other independent witnesses were not available. He was again questioned in Para 8 of his deposition as to why Ram Naresh and Kishor who were accused of serious offences and habitual offenders were made witnesses. No satisfactory explanation has been given. The situation is quite alarming, specially when the offence under Section 8 read with Section 20(b)(ii) of NDPS Act is serious one punishable with rigorous imprisonment for a term which shall not be less than ten years and fine to be not less than one lakh rupees and which may extend higher.

14. The Parliament passed the Act No. 61/85 (NDPS Act, 1985). The object and reasons enshrined in the Act show that there was urgent need for enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances which inter alia should consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drugs of abuse, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances. Very sacred duty is entrusted under the Act to the investigating agency while investigating the case under the Act. The entire credibility of the investigating agency shatters when such witnesses facing prosecution under the Act are treated as independent, creditable and reliable witnesses. The investigation must be impartial, fair and strictly in accordance with law. It should not be used as an abuse of the power vested in the officer entrusted to do the investigation. In this case certified copies filed by the defence regarding Kishor and Naresh go to show that they were being prosecuted at the relevant time. The manner in which the prosecuting agency dealt with the matter, in this

case, does not give any credit to the department and on the contrary adversely affects the image.

15. Miss Sonali Gupta, Advocate appearing as amicus-curiae further submitted that after acquittal of the respondent the police again implicated him in a case under Section 25 of the Arms Act and he is in jail in that offence. It is submitted that so long he remains at Datia, police does not arrest him but as soon as he goes out of Datia he is involved and harassed by the police. So far as this aspect is concerned, it is open to the accused-respondent to make a detailed representation to the State through the Principal Secretary, Home, Government of Madhya Pradesh/the Director General of Police and take such other steps which are permissible under the law. This Court has no doubt that the State shall give due protection of law to the respondent which is permissible under the law. If such representation is made the same shall be considered and decided on its own merits in accordance with law. Copy of this judgment be also sent to the State through the Principal Secretary, Home, Govt. of M.P.

16. So far as this appeal is concerned, which is preferred by the State against the order of acquittal, having considered all the facts and circumstances of the case and the material available on record, in the opinion of this Court, there is no merit in this appeal. The appeal fails and is dismissed. The bail bonds of the respondent-accused are discharged. The judgment of acquittal of the respondent passed by the trial Court is well merited and is hereby maintained.

17. Before parting with the case, the Court records its appreciation for the valuable assistance rendered by the counsel for rival parties and specially Miss Sonali Gupta who appeared as amicus-curiae.