

Gurcharan Singh Vs. State of Madhya Pradesh

Gurcharan Singh Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/508603

Court : Madhya Pradesh

Decided On : Nov-12-1991

Reported in : 1992(62)ELT689(MP)

Judge : P.N.S. Chouhan, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20, 22, 41, 42 and 50

Appeal No. : Cr.A. Order No. 341 of 1991

Appellant : Gurcharan Singh

Respondent : State of Madhya Pradesh

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Surendra Singh, Adv.

Disposition : Appeal allowed

Judgement :

P.N.S. Chouhan, J.

1. The appellant challenges his conviction Under Section 20/22 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter the 'Act') and sentence of 10 years R.I. and a fine of Rs. 1 lac awarded by second Additional Sessions

Judge, Rajnandgaon, vide judgment dated 25-3-1991 passed in Sessions Trial No. 71 of 1990.

2. The appellant runs a Dhaba at the outskirts of village Chirchari, which is under the jurisdiction of police-station Bagnadi. As per prosecution, ASI Shri R.S. Singh (PW 4) received information through informer that the appellant is selling opium and therefore PW-4 accompanied by ASI Amar Singh (PW 1), H.C. Sheodayal (PW 3) reached there and in presence of Fakir (PW 2) and Poona Ram (DW 3) he searched and recovered from appellant's pant-pocket 5 packets (Article A-I to A-5) each containing 5 gram of opium vide seizure memo Ex. P. 1. The seized contraband was first sent for expert opinion to the Excise Sub-Inspector Jai Singh (PW 5), who confirmed the article to be opium. Subsequently, the article was sent to Forensic Science Laboratory wherefrom the Analyst's report Ex. P. 7 further reinforced the opinion given by Jai Singh. Consequently, the appellant was charge-sheeted, tried, convicted and sentenced as aforesaid.

3. The defence is that nothing was recovered from the possession of the appellant. The Police Inspectors wanted the appellant to pay them money. He was not prepared to oblige and therefore this concocted case was foisted on him.

4. Independent witness Fakir did not support the prosecution. Another such witness Poonaram was given up by the prosecution on the ground that he was won over by the defence. He was examined as defence witness No. 3. Thus, the conviction is based on the evidence of police officers.

5. The appellant's learned counsel argued that mandatory provisions of Sections 41 and 42 of the Act were not complied with. The ASI who received the information failed to record the same and has admitted this in this statement before the Court. This, contends the learned counsel, is a fatal infirmity. Relying on *State of Bihar v. Kapil Singh*, AIR 1969 SC 53 para 10, it was argued that the police personnel and the witnesses accompanying the search party had not given their own search before entering the Dhaba. From the evidence of Shri R.S. Singh, Amar Singh and the head constable, it is clear that this requirement of law designed to eliminate the possibility of false implication of the accused was not followed. It was then argued that Under Section 50 of the Act, it was obligatory for

the police officer who conducted the search to have informed the appellant of his right to opt for his search being taken in presence of a gazetted officer or a magistrate. From the evidence of prosecution, it is clear that no such information was given to the appellant and therefore he could not exercise his option under the said provisions. This, it was contended is a serious infirmity rendering the impugned conviction and sentence unsustainable. Reliance has been placed on 1990 MPLJ 621 and AIR 1979 SC 711. These lapses could not be explained. Thus, the prosecution suffers from not one but a number of serious infirmities namely, violation of Sections 41 and 42 of the Act and breach of Section 50 of the Act. Even the important fact that the contraband was recovered from the pant-pocket of the appellant has not been mentioned in the seizure memo. In such cases where the minimum penalty is 10 years R.I. and a fine of Rs. 1 lac, an officer who embarks upon an enquiry is expected to be fully conscious of his procedural obligations and is expected to carry them out scrupulously. Under the circumstances, in view of the infirmities aforementioned, it must be held that the procedural lapses committed by PW-4 have resulted in material prejudice to the defence and the conviction is liable to be set aside.

6. Accordingly, the appeal is allowed. Appellant's conviction and sentence as aforesaid are hereby set aside and he is acquitted of the charge.