

Vikram Vs. State of M.P.

Vikram Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/509006

Court : Madhya Pradesh

Decided On : Apr-29-2002

Reported in : 2002(4)MPHT551

Judge : S.P. Khare, J.

Acts : Narcotics Drugs and Psychotropic Substances Act, 1985 - Sections 50;
Narcotics Drugs and Psychotropic Substances (Amendment) Act, 2001

Appeal No. : Criminal Appeal No. 186/2002

Appellant : Vikram

Respondent : State of M.P.

Advocate for Def. : Raj Kumar Verma, Panel Lawyer

Advocate for Pet/Ap. : Manish Datt, Adv.

Disposition : Appeal dismissed

Judgement :

S.P. Khare, J.

1. Appellant Vikram has been convicted under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (as amended in 2001), hereinafter to be referred to as 'the Act', for having been found in possession of 200 grams of opium

on 3-11-2000 at 11.00 P.M. near Village Bhanwra Mugli and sentenced to rigorous imprisonment for two years and to pay a fine of Rs. 3,000/-.

2. During the course of hearing of this appeal the only point which has been raised on behalf of the appellant is that Section 50 of the Act has not been complied with and, therefore, the conviction should be set aside. According to CD. Tiwari (P.W. 4), Station Officer of Ashta Police Station he was talking to Sobhal Singh (P.W. 5) and Gopal Singh (P.W. 10) on his patrolling duty and then he saw a person coming from the opposite direction and on seeing the police vehicle he retraced his steps and started running towards the side from which he was coming. He was caught hold of. He was accused Vikram Kanjar. He was wearing Kurta and Pajama. It was found that he was tying a Gamchha (piece of cloth) on his waist and there was a packet in it which contained 200 grams of opium. The consent of the accused was taken as per Ex. P-10 and the opium was seized as per seizure memo Ex. P-11. Two samples of 25 grams each were taken from the opium and these were sealed. The samples were sent to the Govt. Opium and Alkaloid Factory, Neemuch for analysis and as per report Ex. P-21 the commodity was found to be opium. The two Panch witnesses have not supported the prosecution case and they have been declared hostile. Mansingh (P.W. 7) is the Head Constable and he has supported the testimony of the Police Inspector. From the evidence of these two witnesses it is proved that the accused was found in possession of 200 grams of Opium.

3. The intimation given to the accused as per Ex. P-10 does not comply with the requirement of Section 50 of the Act. The particulars given in this Panchnama show that the accused was informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate after the search had already taken place. As the opium was found on the person of the accused it was no doubt a case of 'personal search'. But it was a case of chance recovery. The Station Officer had no prior information that the accused was coming with the opium in his possession. The Constitution Bench of the Supreme Court has held in State of Punjab v. Baldev Singh (AIR 1999 SC 2378) in para 12 : 'However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or cause arrest of person during the normal course of investigation into an offence or

suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted.' To the same effect was the law laid down by the Supreme Court in the earlier decision in *State of Punjab v. Balbir Singh* (AIR 1994 SC 1872).

4. In the present case the Investigating Officer had no prior information or a reason to believe that the accused is in possession of opium. He was on patrolling duty. He was talking to two persons. He saw the accused coming. He suspected him and on search the opium was found. The search was already complete before there was any opportunity to apprise the accused of his right to be searched in the presence of a Magistrate or a Gazetted Officer. The Investigating Officer was not 'about to search' the accused under the provisions of the NDPS Act but the search of the accused was in exercise of the general right of a Police Officer to search a suspected person and, therefore, it was not a case where the requirement of Section 50 of the Act could be observed. It was a 'chance recovery' during the course of the patrolling duty by the Investigating Officer, and, therefore, Section 50 of the Act is not attracted in the present case. The law as laid down by the Constitution Bench of the Supreme Court referred above is clear on this point.

5. In view of the above discussion the argument of the learned Counsel for the appellant that non-compliance with Section 50 of the Act is fatal, is not acceptable. The conviction of the appellant for the aforesaid offence is unassailable. The sentence of rigorous imprisonment of two years cannot be said to be excessive. However, the sentence of fine of Rs. 3,000/- is reduced to Rs. 1,000/-. With this modification in the sentence, the appeal is dismissed.