

Kameshwar Singh Vs. the State of M.P.

Kameshwar Singh Vs. the State of M.P.

SooperKanoon Citation : sooperkanoon.com/511115

Court : Madhya Pradesh

Decided On : Mar-21-1996

Reported in : 1997CriLJ1284

Judge : R.S. Garg, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20B, 41, 41(2), 42, 42(1), 42(2), 50, 279 and 337; Code of Criminal Procedure (CrPC) , 1974

Appeal No. : M.Cr.C. No. 2071 of 1995

Appellant : Kameshwar Singh

Respondent : The State of M.P.

Advocate for Def. : G.S. Ahluwalia, Adv.

Advocate for Pet/Ap. : S.C. Dutt and ;Y.K. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.S. Garg, J.

1. The applicant has been apprehended in connection with Crime No. 22/95, registered at Police Station, Churhata (Rewa) under Section 20B of the N.D.P.S. Act.

2. According to the case diary, Head Constable Girja Prasad Pandey, No. 623, was deputed to make investigation in relation to a car accident. When the said officer reached the place of occurrence, he found that one man was lying in the car in injured condition. While making investigation, the Head Constable found that one gunny bag containing 18 kgs. of Ganja was lying in the said car. The Head Constable immediately thereafter made a seizure memo, brought the accused and the contraband to the Police Station and gave an application to the Town Inspector that the offence was under the provisions of the NDPS Act, which he could not investigate and as the accused was injured, the contraband and the accused were brought to the Police Station for further action. Shri Dutt submits that according to Section 42 of the NDPS Act, it is only the empowered officer who can investigate and in the absence of seizure and arrest by the empowered officer, the trial would be vitiated, therefore, the applicant be released on bail. He also submits that immediately after finding that the offence under the provisions of NDPS Act has been committed, the Head Constable should have stayed his hands and proceedings and was obliged to call an empowered officer. On the other hand, Shri Ahluwalia submits that immediately after realising that 18 kgs. of Ganja was kept in the said vehicle, the Head Constable made seizure memo and immediately thereafter brought the accused to the Police Station and made a request to the empowered officer to proceed with the investigation. He submits that in a situation like this, the observations of the Supreme Court made in the matter of *State of Punjab v. Balbir Singh*, : 1994 CriLJ3702 on which reliance is placed by Shri Dutt, would not be applicable.

3. Shri Dutt submits that the Supreme Court has clearly observed that when a police officer carrying on the investigation including search, seizure or arrest, empowered under the provisions of the Cr.P.C. comes across a person being in possession of the narcotic drugs or psychotropic substances, then two aspects will arise. If he happens to be one of those empowered officers under the NDPS Act also then he must follow thereafter the provisions of the NDPS Act and continue

the investigation as provided thereunder. If on the other hand, he is not empowered, then the obvious thing he should do is that he must inform the empowered officer under the NDPS Act who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act.

But at this stage the question of resorting to Section 50 and informing the accused person that if he so wants, he would be taken to a gazetted officer and taking to a gazetted officer thus would not arise because by then the search would have been over. As laid down in Section 50, the steps contemplated thereunder, namely, informing and taking him to the gazetted officer should be done before the search. The Supreme Court has further observed that when the search is already over in the usual course of investigation under the provisions of Cr.P.C. then the question of complying with Section 50 would not arise. The Supreme Court has further observed that if a police officer, without any prior information, as contemplated under the provisions of the NDPS Act, makes a search or arrests a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr. P.C. and when such search is completed, at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance, then the police officer who is not empowered should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act.

4. The observations of the Supreme Court are in relation to applicability of the procedure provided under Section 50 of the NDPS Act.

5. According to Section 42, any officer of the department who is so empowered, if has reason to believe from personel knowledge or information given by any person and taken in writing and any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed, or any document or other article which may furnish evidence of commission of such offence is kept or concealed in any building, conveyance or enclosed place, may between sun rise and sun set, enter into and search any such building, conveyance or place. In case of resistance, break open any door, etc., seize such

substance and all material and detain and search and if thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV. Section 42, Sub-section (2) further provides that where an officer takes down any information in writing under Sub-section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediately official superior. A bare reading of Section 42 would show that it applies to a case where the officer who is empowered receives information and records it. Section 42 has no application to a case where while investigating some offences under the provisions of the Code of Criminal Procedure, the investigation officer finds that some contraband are in possession of the accused. The Supreme Court in the above referred observations has clearly stated that in a case where personal search is being made and the officer conducting the search finds contraband on the person of the accused, then in such a situation after finding such contraband if the officer is not empowered shall stay his hands and non-compliance of a Section 50 of the Act would not come in the way of the prosecution. The Supreme Court nowhere says that in a case where some officer is making certain investigation, after finding contraband, he must immediately stop and should not even take the man into custody or should not take the material in his possession. If the argument is accepted, it would lead to a situation where at the time of some search some officer finds that the accused is in possession of some contraband, then the* officer would be helpless, neither he would be in a position to take possession of the narcotic or take the man into custody. I do not find the word 'immediately' between the word 'search' and the 'man should be taken to the empowered officer'. Exigency sometimes compel an officer to take the man into custody and take the contraband in possession. In the instant case, the Head Constable immediately after finding that the accused was in possession of Ganja, made seizure and finding that he was badly injured, brought him to the officer specially empowered, reported him of the matter and immediately thereafter made a request that as Head Constable was not empowered, further investigation be conducted by the empowered officer. The report dated 11-2-1995 clearly reads that as the offence was one under the NDPS Act and as the Head Constable had no authority to proceed in the matter and as the accused was injured in the accident and it was necessary to get him treated,

the accused and the seized ganja was being produced before the empowered officer for further proceedings.

6. As already observed above, Section 42 and 50 are totally different. Section 42 relates to information which is received, while Section 50 refers to personal search. Even assuming that before the Supreme Court, the matter was argued in relation to Section 42, then too, I do not find anything in the said judgment to say that in a situation like the present where an injured is dying or there is nobody to look after the narcotic and the accused, then too the Head Constable was supposed to leave him, giving him a chance to go, inform the officer to take the man and the articles in custody. Shri Dutt referring to Section 41 makes a submission that the power to issue warrant is with a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered and officers described in Section 41(2), are only empowered officers. There cannot be a dispute with this proposition. In the instant case, while investigating the offences under Sections 279 and 337, the Head Constable found that the accused was lying in a Maruti Car in injured condition and was possessed of 18 kgs. of Ganja, then it cannot be expected of him that he would leave the accused and the contraband article and would go to the empowered officer and take him to the spot for further investigation. In the instant case, the manner in which contraband has been seized does not show that it was in furtherance of the investigation, the contraband was already found when the officer was investigating some other offence and, therefore, he seized it and made panchanama, therefore, it cannot be said that he committed breach of Section 42 of the Act. Shri Dutt again says that the observations made above in this judgment may be valid in relation to the officer who is empowered but the present is the case where the officer was not empowered. With due respect to the argument of the learned senior counsel, I am considering the case where an officer who was not empowered has conducted search. If the officer who was not empowered finds himself in the horns of dilemma then law would not permit him to leave the accused unattended or leave the contraband articles on spot, giving opportunity to the accused to escape and even carry away the articles with him. In the instant case, suffice it to say at this stage that the officer who brought the contraband and the accused to the police station acted within the four corners of law.

7. Considering large quantity of Ganja, I do not consider it to be a fit case for releasing the applicant on bail. The application is rejected. One more observation which is required at this stage is that the observations made above are limited for the purposes of bail application.

8. C.C. on payment of charges.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com