

**Ram Bilas Baba Vs. State**

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**Court :** Madhya Pradesh

**Decided On :** Aug-02-2002

**Reported in :** 2003CriLJ3372; 2003(1)MPLJ559

**Judge :** S.P. Khare, J.

**Acts :** Narcotics Drugs and Psychotropic Substances Act, 1985 - Sections 17, 42 and 50

**Appeal No. :** Cr. A. No. 1953 of 1999

**Appellant :** Ram Bilas Baba

**Respondent :** State

**Advocate for Def. :** R.A. Robertson, Govt. Adv.

**Advocate for Pet/Ap. :** Vijay Nayak and ;S.D. Khan, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**S.P. Khare, J.**

1. Appellants-Rambilas Baba and Prabha Shanker Dubey have been convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as 'the Act') and sentenced to rigorous imprisonment

for ten years and to a fine of Rs. 1,00,000/- each.

2. The prosecution case is that on 3-11-1998 S. B. Shrivastava (P.W. 6) received information that two persons are in possession of opium and they are going on Scooter No. M.P.-04-R-7693 from the side of new jail to Gandhi Nagar. This information was recorded in Sanha No. 216 and transmitted to the C.S.P. as per Ex. P-1. He reached the spot and found accused-Rambilas Baba and Prabha Shanker Dubey coming on the scooter. They were stopped and apprised through the notices Ex. P-10 and Ex. P-11 that if they desire they can be taken to a Magistrate or a Gazetted Officer for search. They opted to be searched by him. On their search 200 grams of opium was found on the 'person' of each of them. It was seized as per seizure memos Ex. P-4 and Ex. P-6. The samples of 10 grams each were taken and sealed. The seized opium in sealed condition was deposited in Malkhana of the police station. The crime was registered as per Ex. P-12. The information relating to search and arrest of the accused persons was sent to the superior officer on 5-11-1998 as per Ex. P-2. The sealed samples were sent to the Forensic Science Laboratory and as per report Ex. P-14 the commodity which was seized was found to be opium.

3. The accused persons pleaded not guilty. Their defence is that they have been falsely implicated.

4. The trial Court held that the testimony of the Investigating Officer is reliable and is supported by Onkar Singh Kushwah (P.W. 1) and Rajendra Singh Yadav (P.W. 3), Police Constables, who accompanied him though the two panch witnesses Ramesh (P.W. 4) and Yakub Khan (P.W. 5) have not supported the prosecution case and they have been declared hostile. The trial Court also held that there was full compliance with the statutory provisions in Sections 42, 50, 55 and 57 of the Act and, therefore, convicted and sentenced the appellants as stated at the outset.

5. In this appeal the conviction has been assailed on the grounds that (a) the testimony of the Investigating Officer uncorroborated by panch witnesses is not sufficient for conviction; (b) the accused persons were not apprised of their 'right' to be searched in the presence of a Magistrate or Gazetted Officer; and (c) the specimen of the seal which is said to have been affixed on the sealed samples

was not sent to the Forensic Science Laboratory and therefore it is not unlikely that the samples were tampered with before these were sent there. These are the points which arises for determination.

6. Points (a) to (c) :

The evidence on record has been scanned by this Court. S. B. Shrivastava (P.W. 6) has deposed that on 3-11-1998 he was Assistant Sub-Inspector of Police at Shahjanabad Police Station. He received information on telephone that two persons are in possession of opium and they are going from the side of new Jail to Gandhi Nagar. He recorded this information in Rojnamcha No. 216 and sent this information in writing as per Ex. P-1 to the C.S.P., Shahjanabad through a Constable. It was acknowledged by his Reader. Thus there is compliance with Section 42 of the Act.

7. The Investigating Officer has further deposed that he went to the spot with Rajendra Singh Yadav (P.W. 3) and Onkar Singh Kushwah (P.W. 1) and gave the notices Ex. P-10 and Ex. P-11 to them asking them whether they would give search to him or they want to be searched by some Gazetted Officer or Magistrate. [Vernacular matter omitted) They expressed that they have no objection if they are searched by him. It is argued on behalf of the appellants that this was not sufficient compliance with Section 50 of the Act as the accused persons were not apprised of their 'right' to be searched by a Magistrate or Gazetted Officer and therefore they could not exercise that right. Reliance has been placed on two decisions of the Supreme Court in K. Mohanan v. State of Kerala, (2000) 10 SCC 222 and Koluttumottil Razak v. State of Kerala, (2000) SCC 465. These decisions lay down that the accused should be 'informed about his right' to be searched in the presence of a Magistrate or Gazetted Officer and if it is not done the requirement of Section 50 is not satisfied. These were the decisions of 'two-Judge Bench'. In Joseph Fernandez v. State of Goa, (2000) 1 SCC 707 : (2000 Cri LJ 3485), a three-Judge Bench of the Supreme Court had laid down the law as under :--

'According to us the said offer is a communication about the information that the appellant has a right to be searched so. It must be remembered that the searching

officer had only Section 50 of the Act then in mind unaided by the interpretation placed on it by the Constitution Bench. Even then the searching officer informed him that 'if you wish you may be searched in the presence of a Gazetted Officer or a Magistrate. This according to us is in substantial compliance with the requirement of Section 50. We do not agree with the contention that there was non-compliance with the mandatory provision contained in Section 50 of the Act.'

8. The view taken by the larger Bench must prevail. Section 50 provides that the searching officer about to search any person, 'if such person so requires' shall take such person to the nearest Gazetted Officer or Magistrate. In this case the accused persons were given option to be searched either by the Investigating Officer or by a Magistrate or Gazetted Officer and the accused exercised the option of being searched by the Investigating Officer. Literality must be eschewed. There was substantial compliance with the provision in Section 50 of the Act. In a later decision *Sajan Abraham v. State of Kerala*, (2001) 6 SCC 692 : (2001 Cri LJ 4002), the Supreme Court has observed : 'In construing any facts to find, whether the prosecution has complied with the mandate of any provision which is mandatory, one has to examine it with a pragmatic approach. The law under the aforesaid Act being stringent to the persons involved in the field of illicit drug traffic and drug abuse, the legislature time and again has made some of its provisions obligatory for the prosecution to comply with, which the Courts have interpreted it to be mandatory. This is in order to balance the stringency for an accused by casting an obligation on the prosecution for its strict compliance. The stringency is because of the type of crime involved under it, so that no such person escapes from the clutches of the law. The Court however while construing such provisions strictly should not interpret them so literally so as to render their compliance, impossible'. From this decision it is clear that substantial compliance with a statutory provision is enough. The decision of the Supreme Court in *Joseph's case* (2000 Cri LJ 3485), which is of larger Bench lays down that substantial compliance with Section 50 meets the statutory requirement. Following this decision it is held that in the present case there was substantial compliance with Section 50 of the Act.

9. S. B. Shrivastava (P.W. 6), the Investigating Officer, has deposed that on search of accused-Prabha Shanker Dubey he found a polythene in left side pocket of his trouser in which there was opium weighing 200 grams. He took out the sample of 10 grams and sealed it. He took search of accused-Rambilas Baba also and he found that he had also 200 grams of opium below his shirt in a polythene bag. The weight of that opium was 200 grams. He took out sample of 10 grams and sealed it. The seizure memos are Ex. P-4 and Ex. P-6. He brought the accused persons and the sealed opium to the police station. He deposited opium in the sealed condition in Malkhana. He registered the crime as per Ex. P-12. He sent the information relating to search and seizure to the C.S.P. as per Ex. P-2. He sent the samples of opium in sealed condition to Forensic Science Laboratory on 14-11-98, as per letter Ex. P-13. His letter shows that the specimen of the seal was also sent to the Forensic Science Laboratory. The report of the laboratory is Ex. P-14. According to this report two samples were received in sealed condition. On analysis it was found that there was opium in those samples. The two samples of opium were produced in the Court which are Articles 'A' and 'B' and the remaining quantity of opium was also produced in the Court in sealed packets and these are Articles 'C' and 'D'.

10. Onkar Singh Kushwah (P.W. 1) is the Constable and Rajendra Singh Yadav (P.W. 3) is the Head Constable who had accompanied the Investigating Officer. It is pointed out that in para 9 of his deposition Onkar Singh Kushwah (P.W. 1) has stated that the sample of opium which was taken was 50 grams. That appears to be a mistake on the part of this witness. The testimony of the Investigating Officer that the sample of 10 grams was taken is trustworthy. That is also supported by the documents on record. Rajendra Singh Yadav (P.W. 3) has deposed that the sample of 10 grams was taken. These two witnesses have fully supported the testimony of the Investigating Officer. The panch witnesses, as already stated, have turned hostile.

11. The evidence of the Investigating Officer is corroborated by the two Constables and the documents which were prepared on the spot. Therefore, the accused persons could be convicted on the basis of the evidence which was found to be fully reliable. In P. P. Beeran v. State of Kerala, AIR 2001 SC 2420 : (2001

Cri LJ 3281), it has been held by a three-Judge Bench 'of the Supreme Court that the evidence of the Sub-Inspector, even if not corroborated by any other, can be made the sole basis for conviction.

12. The report of the Forensic Science Laboratory mentioned above discloses that the sample was in sealed condition and letter Ex. P-13 shows that the sample of the seal was also sent to the Forensic Science Laboratory. It has been held by this Court in *Jitendra v. State of M.P.*, (2002) 2 MPLJ 157 : (2002 Cri LJ 3211), that the presumption under Section 114, illustration (e) of the Evidence Act that all official acts have been done rightly and regularly attaches to the acts of the Police Officers also as in respect of other officers. It is not proper approach to proceed with doubt or disbelief unless there is something to excite suspicion. The Supreme Court has also recently observed in *Devender Pal Singh v. State of NCT of Delhi*, (2002) 5 SCC 234 : (2002 Cri LJ 2034), that there is a statutory presumption under Section 114 of the Evidence Act that judicial and official acts have been regularly performed. The accepted meaning of Section 114(e) is that when an official act is proved to have been done, it will be presumed to have been regularly done. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration. Similarly in *State, Govt. of NCT of Delhi v. Sunil*, (2001) 1 SCC 652 : (2001 Cri LJ 504), it has been observed that it is an archaic notion that actions of the Police Officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the Legislature. Hence when a Police Officer gives evidence in Court that a certain articles was recovered by him on the strength of the statement made by the accused it is open to the Court to believe the version to be correct if it is not otherwise shown to be

unreliable.

13. The learned Counsel for the appellants have cited the decision of this Court in *Amar Bahadur v. State of M.P.*, (1999) 1 MPLJ 67, but in that case there were several infirmities and the sample was sent to the Forensic Science Laboratory after 37 days. That case is not applicable to the present one.

14. The conviction of the appellants for the aforesaid offence is unassailable. The sentence imposed by the trial Court is the minimum prescribed by law.

15. The appeals are dismissed.

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