

**Devisingh Vs. State of M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Apr-03-2002

**Reported in :** 2002(5)MPHT267

**Judge :** N.K. Jain, J.

**Acts :** Narcotic Drugs and Psychotropic Substance Act, 1985 - Sections 8, 18, 52, 55 and 57; Code of Criminal Procedure (CrPC) - Sections 374

**Appeal No. :** Criminal Appeal No. 238/99

**Appellant :** Devisingh

**Respondent :** State of M.P.

**Advocate for Def. :** M. Upadhyay, Public Prosecutor

**Advocate for Pet/Ap. :** Vivek Singh, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**N.K. Jain, J.**

1. This appeal under Section 374 of the Code of Criminal Procedure is directed against the judgment dated 11-2-99 passed in S.T. No. 106/96 by 6th Addl. Sessions Judge, Ujjain, convicting appellant Devisingh under Section 8/18 of the

Narcotic Drugs and Psychotropic Substance Act (for short 'the Act') and sentencing him to ten years RI with fine Rs. 1,00,000/- and in default of payment of fine to suffer additional R.I. for two years.

2. According to the prosecution, on 16-3-96, Sub-Inspector S.R. Dandotiya of Police Station, Ghatiya accompanied by some other subordinate police officials was on search of an absconding accused when on way near Village Kherkheri, he noticed that some opium plants were grown in a field and that accused appellant Devisingh was present in the field. He, thus summoned two Panch witnesses Bhera (P.W. 1) and Motisingh (P.W. 2) and recovered the said opium plants, total 1037 in number, from inside the said field. Before recovery, the field with accused present therein, was got photographed. A few samples of the said plants were drawn and sealed separately. A FIR (vide Ex. P-11) was lodged and scribed by Sub-Inspector Dandotiya the same day at Police Station, Ghatiya. Sample plants were got analysed at FSL, Sagar, which revealed that they were poppy plants. After other due investigation, the accused was charge sheeted and committed for trial which ended into his conviction and sentence as aforesaid.

3. I have heard Shri Jaisingh, learned Sr. Counsel appearing with Shri Vivek Singh for the appellant and Shri M. Upadhyay, learned Public Prosecutor for respondent-State.

4. As regards recovery, Sub-Inspector, Dandotiya (P.W. 9), Head Constable Biharisingh (P.W. 5) and Head Constable Santram (P.W. 8) have deposed of the same and testified that while they were on way in search of an absconding accused, they found many opium plants grown in a field near Village Kherkheri and that accused was also present in the said field. Since the accused had no licence to cultivate the plants, the plants were got uprooted and seized. Three samples of ten plants each were drawn and sealed and the remaining plants were also seized duly vide Panchnama (Ex. P-2). Sub-Inspector Dandotiya further deposed to have lodged report (Ex. P-10) on the spot itself which was subsequently produced at Police Station, Ghatiya where regular FIR (Ex. P-11) was registered. He further stated that one of the seized samples was got analysed at FSL, Sagar and as per report (Ex. P-13) received from there it was found that

the plants carried fruits (capsules) which were found to be opium poppy capsules.

5. Two other Panch witnesses Bhera (P.W. 1) and Motisingh (P.W. 2) in whose presence the aforesaid recovery was allegedly made, have however turned hostile to the prosecution and stated that their signatures on various documents were obtained at Police Station, Ghatiya. Similarly photographer Pradeepkumar Sharma (P.W. 3) denied that he photographed any such field. He denied that the photo (Ex. P-6) was taken by him.

6. It will be, thus, seen that the evidence of the three police officials above, is not supported by any independent evidence. The same is, therefore, required to be examined with more than ordinary caution, particularly when the offence charged against the appellant accused is grave in nature providing for a minimum sentence of ten years' R.I. with fine of Rs. 1,00,000/-.

7. Shri Jaisingh, learned Counsel for appellant has severely criticised the evidence of the aforesaid police officials and submitted that their evidence fell short of proof of the fact that the field from where the plants in question were recovered belonged to the appellant. It is further pointed out that there is no evidence whatsoever to show that the seized plants were kept in proper seal and custody and that they are the same plants sent to Court while filing the charge-sheet. No evidence is also adduced to show that the plants were sent to FSL under proper seal and cover. There was no compliance of Section 57 of the Act either.

8. Village Patwari Vikramsingh (P.W. 4) has been examined to depose that land Survey No. 57 belonged to accused Devisingh and recorded in his name in Village Revenue Papers (vide copies Exs. P-8 and P-9). There is, however, no further evidence on record to pin point that the plants in question were recovered from this very land Survey No. 57. In absence of any such evidence, the evidence of Patwari Vikramsingh is of no avail to the prosecution. It is not a case, where this Patwari was taken to the spot and shown the field wherefrom the said recovery was made. He has given the Certificates (Ex. P-8) and (Ex. P-9) on the basis of office record. The prosecution evidence, thus, fell short of the proof of the ownership of the field from where the recovery in question was made,

9. Section 55 of the Act mandates that an officer-in-charge of the Police Station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act. within the local area of his police station. In the instant case although Station House Officer Prafulla Kshotriya (P.W. 7) has been examined in evidence but no question was put to him by the prosecution as to whether any seized article was delivered to him and what arrangement he made for safe custody thereof. Although copy of the Malkhana Register was produced in evidence but the same was not got proved either by the S.H.O. or any other police official in-charge of that Malkhana. It is significant to note that the seized articles were forwarded to the Court as late as on 18-11-96, i.e., after about eight months of the seizure. There is no evidence whatsoever to show with whom the seized articles were lying. There was no compliance of Section 55 inasmuch as the articles were never handed over to the S.H.O. nor any seal was put on them by the S.H.O. Under the circumstance, even though Section 55 is held to be directory, it becomes doubtful that what was seized alone was sent to the Court and the Chemical Examiner. [See Valsala v. State of Kerala, AIR 1994 SC 117]. All this also makes the interested testimony of Sub-Inspector Dandotiya and his two companions Head Constables unreliable, particularly when they are not supported by independent witnesses.

10. There was no compliance of Section 57 of the Act either. No evidence has been led to show that a report in terms of Section 57 was sent by Sub-Inspector Dandotiya to his immediate Superior Officer. The Supreme Court in Gurbax Singh v. State of Haryana, AIR 2001 SC 1002 = 2001 SCC (Cr.) 426; has held that Sections 52, 55 and 57 though directory in nature, non-compliance thereof makes the investigation faulty and it would not be safe to convict the accused of serious offence under the Act.

11. From the foregoing discussions it therefore, inevitably follows that the charge under Section 8/18 of the Act was not brought home fully to the appellant and in any case he was entitled to benefit of doubt and consequent acquittal.

12. This appeal, thus, succeeds and is allowed. The impugned conviction and sentence are set-aside and the appellant Devisingh is acquitted. He be set at

liberty forthwith, if not required in any other case.

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