

Mohan Singh Vs. State of Bihar

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Court : Jharkhand

Decided On : Nov-30-2000

Reported in : 2001(49)BLJR243; 2001CriLJ578

Judge : D.N. Prasad, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20, 41, 42, 43, 50 and 50(1); [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : Cr. Appeal No. 235 of 1998(R)

Appellant : Mohan Singh

Respondent : State of Bihar

Advocate for Def. : N.N. Mahto, Additional Public Prosecutor

Advocate for Pet/Ap. : M.M. Banerjee and; A.K. Das, Advs.

Disposition : Appeal allowed

Judgement :

D.N. Prasad, J.

1. This appeal is directed against the Judgment of conviction dated 24.8.1998 and order of sentence dated 27.8.1998 passed by the learned Sessions Judge-cum-Special Judge, Dhanbad, in G.R. Case No. 2950 of 1996, whereby and where-

under, he convicted the appellant under Section 20 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to as 'the N.D.P.S. Act') and sentenced him to undergo rigorous Imprisonment for four years.

2. The prosecution case in brief as stated is that on 27.9.1996 at about 2.00 p.m. while the informant was passing through Balika Vidyalaya near Bagan Dhowra with a constable noticed that a person was coming on a bicycle from the side of Kumardhubi Market and he had a Jhola on his bicycle and on seeing them, he started fleeing away but he was chased and caught. On search, four kilograms of ganja was recovered from his jhola but he failed to produce any document in respect of the said ganja. accordingly, seizure list was prepared in presence of the independent witnesses. The first information report was lodged accordingly. The police investigated the case and submitted charge-sheet against the appellant.

3. The appellant appeared before the Special Judge and charge under Section 20(b)(1) of the N.D.P.S. Act was framed which was read over to which he pleaded not guilty.

4. Witnesses were also examined in the Court below and after hearing both sides, the learned trial Court convicted and sentenced the appellant in the manner as stated above.

5. On being aggrieved by the impugned judgment of conviction and sentence passed by the learned court below, the appellant preferred this appeal on the grounds that the learned court below committed serious error in convicting the appellant though there is an illegality in preparation of seizure list and the provision of Section 50 of the N.D.P.S. Act has not been complied with. It is also claimed that the informant i.e. the police official lodged the first information report and he also took up investigation and submitted charge-sheet which is quite illegal and Improper in the eyes of law and. as such, the impugned judgment is fit to be set aside.

6. Learned counsel appearing on behalf of the appellant submitted at the very outset that Section 50 of the N.D.P.S. Act, which is mandatory has not been complied with in the instant case. In this connection he relied upon the decisions of

the Supreme Court in the case of C. Ali v. State of Kerala. (1999) 7 Supreme Court Cases 88 and Babu v. State of Kerala, (1999) 8 Supreme Court Cases 499. It is further submitted that the police official is himself the informant of the case and lodged first information report against the appellant and he also investigated the case which is not proper and on this score, learned counsel for the appellant also relied upon the decision of the Supreme Court in the case of Megha Singh v. State of Haryana, 1995 Cri LJ 3988.

7. It is further argued that the alleged ganja has never been weighed in presence of the seizure list witnesses and as such, the said recovery is also very suspicious and, in the above circumstances, the impugned judgment is fit to be set aside.

8. Obviously provision of Section 50 of the N.D.P.S. Act which is mandatory, has not been complied with. It is well settled that the officer concerned is obliged to inform the accused of his right to be searched in presence of the Gazetted Officer or the Magistrate and there is no material to show that the accused-appellant was ever informed to this effect. Section 50 of the N.D.P.S. Act reads as follow :

'50. Conditions under which search of persons shall be conducted.--(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought, shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.'

9. PWs. 1 and 2 are the seizure list witnesses and they have admitted in their cross-examination that the said ganja was never weighed in their presence. PW 3

is also a Constable who is said to have accompanied with the informant are the relevant time. It is also clear from their evidence that the said ganja was never produced in the court during their evidence.

10. PW 4 is the informant/Investigating Officer. He also admitted in his cross-examination that he had not seen the report of Forensic Science Laboratory. He further admitted that he had not written the word garya in the seizure list and as such the seizure list does not indicate that actually the said ganja was recovered and seized at the relevant time.

11. The appellant/accused was examined under Section 313 of the Code of Criminal Procedure and he denied the allegation. Obviously the appellant was not informed by the police officer/informant that he had right to be searched in presence of the Magistrate or a Gazetted Officer. It is the obligation of the Police Officer to inform the appellant of his right to be searched in presence of a Gazetted Officer or a Magistrate if the person of the accused is to be searched. Since the mandatory provision was not complied with as well as there appears much Infirmity in conducting the case as the informant being the complainant has lodged the First Information Report, he should not have proceeded with the investigation of the case. In the above facts and circumstance, I find that the prosecution has totally failed to establish the charge levelled against the accused-appellant beyond all reasonable doubt and the appeal is bound to succeed on the above score.

12. In the result, I find merit in this appeal which is, accordingly, allowed. The judgment of conviction and sentence passed by the learned court below is set aside. The appellant, namely. Mohan Singh, is hereby acquitted and set at liberty. He is discharged from the liability of his ball bonds.

13. Appeal allowed.