

Bachu Singh Vs. State

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Court : Jharkhand

Decided On : Dec-19-2000

Reported in : 2001(49)BLJR975

Judge : D.N. Prasad, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20, 20(A) and 50; Excise Act - Sections 47

Appeal No. : Crl. Appeal No. 238 of 1998 (R)

Appellant : Bachu Singh

Respondent : State

Advocate for Def. : N.N. Mahto, Adv.

Advocate for Pet/Ap. : A. Srivastava, Adv.

Disposition : Appeal allowed

Judgement :

D.N. Prasad, J.

1. This criminal appeal is directed against the order of conviction passed in Narcotic Case No. 7/94 by the Special Judge, NDPS Act, Palamau at Daltonganj, whereby and whereunder, the learned Judge convicted and sentenced the appellant to undergo RI for three years and also sentence to a fine of Rs. 50,000/- and in case of default to suffer further rigorous imprisonment of one year under Section 20(A)(i) of the NDPS Act.

2. The case of the prosecution in brief is that the official of Excise Department raided the house of the appellant and seized two plants of ganja from the courtyard of the appellant which was yielded 500 grams. Accordingly, the seizure-list was prepared and thereafter, the prosecution report was submitted under Section 47(b) of the Excise Act.

3. The appellant appeared in the Court below and the charge was framed under Section 20 of the NDPS Act which was read over and explained to him to which he pleaded not guilty. Witnesses were examined in the trial Court. After hearing both sides, the learned trial Court convicted the appellant and sentenced him in the manner as stated above.

4. On being aggrieved by the judgment and sentence passed by the Court below, the appellant preferred this appeal on the ground that the learned trial Court committed error in convicting the appellant without appreciating the evidence on record as well as the mandatory provisions as laid down under Section 50 of the NDPS Act has not been complied with. It is also stated that no copy of the seizure-list was handed-over to the appellant and the prosecution case is false.

5. The learned advocate for the appellant, at the very outset submitted that the Court below framed charge under Section 20 of the NDPS Act which is illegal as the case does not come under the preview of said Section and the official of Excise Department has submitted the prosecution report under Section 47 of the Excise Act. It is further contended before me that the mandatory provision as laid down under Section 50 of the NDPS Act has not been complied with and for the sole ground, the judgment of conviction and sentence is fit to be set-aside. There is allegation about seizure of two plants of ganja which has never been chemically examined nor any such report was brought on record. PWs 1, 2 and 3 have said nothing about the prosecution case rather they are of normal nature. PWs 4, 5 and 6 claimed to have seized the plant which is said to be the ganja.

6. Apparently, the provision as laid down under Section 50 of NDPS Act has not been complied with in the instant case which is mandatory. It has been observed in the case reported in 1995 Cr. Law Journal page 2662 (SC) that the provision under Section 50 of the NDPS Act is mandatory. The officer concerned is obliged to inform the accused of his right to be searched in presence of the Gazetted Officer or Magistrate. Officer concerned has not discharged his duty for compliance of mandatory procedure. In the instant case, the officer concerned has not complied the mandatory provision. It has again been reiterated in the case reported in 1999 (Vol. VI) SCC page 172.

Non-compliance of the said mandatory provision is sufficient for setting-aside the impugned judgment and as such this appeal is bound to succeed. Moreover, no any chemical report or test in regard to the said green plant has been brought on record to establish that the said green plant was actually ganja. Thus, in my view, the accused cannot be convicted only on mere presumption.

7. Having regard to the facts and circumstances of the case, I find merit in this appeal which is accordingly allowed. The judgment of conviction and sentence passed by the Court below is hereby set-aside. Thus, the appellant is acquitted and set at liberty. It appears that the appellant is on bail and as such he is discharged from the liability of his bail-bond.

8. Appeal allowed.

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