

Rajiv Kumar Vs. State

Rajiv Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/682613

Court : Delhi

Decided On : Apr-06-1992

Reported in : 1993CriLJ293; 1992(40)ECC446

Judge : V.B. Bansal, J.

Appeal No. : Crl.A. No. 164 of 1988

Appellant : Rajiv Kumar

Respondent : State

Advocate for Def. : Mr. S.K. Aggarwal and ; Mr. M.Z. Khan, Advs.

Advocate for Pet/Ap. : Sanjeev Kumar and; Ms. Aisha Karim, Advs

Judgement :

ORDER

1. On 30th July, 1988 Rajiv Kumar s/o Shri Jatinder Singh was convicted under S. 20 Part II of the Narcotic Drugs and Psychotropic Substances Act (for short the Act) by Addl. Sessions Judge, New Delhi. He was sentenced to R.I. for 10 years with a fine of Rs. 1 lac with a further direction that in case of default in the payment of fine he would undergo further R.I. for two years.

Feeling aggrieved from his conviction and sentence Rajiv Kumar has filed this petition.

2. Briefly stated the facts as contained in rukka sent by S. I. Balram Solanki which forms the basis of the FIR No. 286 dated 26th October, 1986 are as under :-
3. On 26th October, 1986 S. I. Balram Solanki had a secret information that about 20 days earlier two boys resident of Bihar had taken on rent a room in Bapudham and their activities indicated that they had been dealing in some drugs after bringing the same from Bihar and that they had gone to Bihar about 4-5 days back and were expected to return that day. Accordingly a raiding party was organized by the S.I. in which he joined HC Bhup Singh, Constable Ram Niwas, Constable Nand Kishore and Constable Rajvir Singh and held a nakabandi near Jesus & Marry College opposite Bapudham at about 10.00 a.m. A request was made to 5-6 passers-by to join in the raiding party but they all went away without disclosing their names and expressing their inability to render assistance to the police officers.
4. On that day about 2-00 p.m. two persons were noticed coming from the side of DESU Officer having one brief case each and they were apprehended at the instance of the informer. The petitioner after being apprehended gave his name as Rajiv Kumar. The petitioner was informed that there was a secret information with S. I. Balram Solanki about his being in possession of some drugs and that if he wanted, his search could be taken in the presence of a Gazetted Officer. However, Rajiv Kumar declined this offer, Rajiv Kumar readily agreed to be searched and the brief case on opening was found to contain 14 packets wrapped in polythene paper. These packets on checking were found to contain Charas and each packet weighed 500 grams. Sample of 10 grams was taken from each packet and thereafter the samples and the packets were sealed with the seal of 'HCR' belonging to the SHO Police Station, Chankyapuri. The 14 packets were kept in the brief case which was also sealed with the seal of 'HCR'. CFSL form was filled up and these were taken into possession by the Investigating Officer after preparing the seizure memo. A rukka was sent to P.S. Chankya Puri through constable Nand Kishore at 3-30 p.m. on the basis of which FIR 286 was recorded at 3-45 p.m. and the I.O. was entrusted with the investigation of this case. Investigating Officer S. I. Balram Solanki recorded the statements of the witnesses and arrested the accused. He deposited the case property with Moharrar

Malkhana and the I.O. arranged to send the sealed samples to CFSL on 5th November, 1986 wherefrom report was received that the samples were of 'charas' and it is in these circumstances that the challan was filed against the petitioner/appellant.

5. Charge under S. 20 of the Act was framed against the accused on 1st April, 1987 to which he pleaded not guilty. In support of his case prosecution examined 7 witnesses. The accused was examined under S. 313 of the Code of Criminal Procedure who denied all the allegations and claimed that nothing was recovered from him and that he has falsely been implicated. He has also claimed that only police officials and interested witnesses have deposed against him and that he was arrested from his room in Bapudham. No evidence in defense was, however, produced. The trial resulted in conviction and sentence of the appellant as referred to above.

6. I have heard Shri Sanjeev Kumar learned counsel for the appellant and Shri S. K. Aggarwal learned counsel for the respondent. I have also carefully gone through the records.

7. Learned counsel for the appellant has submitted that in spite of the fact that there was prior information with the Investigating Officer no serious efforts were made to join persons from the public. It has also been submitted that there has been intentional violation of mandatory provisions of NDPS Act in this case inasmuch as neither the sealed parcels nor the accused were produced before the SHO. He has also submitted that a detailed report about the facts was also not sent to the superior officers by the I.O. and there has been an inordinate delay in sending the samples to the CFSL. He has further submitted that there are discrepancies in the statements of the witnesses with regard to the filling of CFSL form and making of efforts to join persons from the public and so a prayer has been made that the appellant may be given benefit of doubt and acquitted.

8. Learned counsel for the respondent has, on the other hand, submitted that merely because there is no witness from the public would not be a ground to disbelieve the testimony of official witnesses and that there is ample evidence to show that the Investigating Officer did make efforts to join persons from the public.

He has also submitted that the SHO was, in fact, present in the raiding party in the earlier part of the day but had to leave the spot on account of other VIP security arrangements, but the I.O. had used the seal of the SHO. He has also submitted that CFSL form was filled up and the case property was not tampered with by any one and so submitted that the conviction of the appellant is based on reliable evidence and this prayed that the appeal may be dismissed.

9. The first question for consideration is as to whether there was any effort made by the Investigating Officer to join persons from the public. It has clearly been stated by S. I. Balram Solanki (P.W. 4) that the secret information was received by him in the morning at about 10-00 a.m. Nakabandi was held near Jesus & Marry College, Bapudhan and Rajiv Kumar appellant was apprehended at about 2-00 p.m. There was, thus, ample time available with the I.O. to join persons from the public. He has claimed that he asked persons to join him in the raid at about 10-00 a.m. and also after the accused was apprehended. He has also claimed that he made efforts to join persons from Bapudhan Colony and also from the college but did not ask their names. It is pertinent to note that Ext.P. 2/A is the rukka prepared by the I.O. which forms the basis of the FIR and it was mentioned in this rukka that 5-6 passers-by were asked to join in the raiding party but they declined and went away. Thus, there was no mention in the rukka about his having made any effort to call persons from the neighborhood and that he has made improvement in his statement in court to this effect. PW 3 H. C. Nand Kishore has claimed that the SHO and I.O. asked inhabitants of college and shopkeepers to join in the raid but no one agreed. PW 5 ASI Bhoop Singh has claimed that 5-6 persons were called from Bapudhan Colony to be joined in the raid but they declined to join the raiding party and did not give their names. P.W. 7 H. C. Ram Niwas has claimed that only 5-7 passers-by were asked to join but no one was called from Bapudhan College. Inspector Hukam Chand Rana was examined as PW-1 but he has not stated anything with regard to the making of any efforts made by the I.O. to join persons from the public. All that has been stated by him is that a raiding party was organized comprising of the police officials and a nakabandi was held near Jesus & Marry College. It is, thus clear that there are material discrepancies in the statements of the witnesses with regard to the efforts made by the I.O. in joining persons from the public. The only conclusion which could be arrived at from the

prosecution evidence has been that efforts have been made to show that the I.O. tried to join persons from Bapudham Colony and also from the College in the raid while the evidence indicates that may be that a few passers-by were asked to join but not the persons residing in the Bapudham Colony or in the college.

10. According to the prosecution story SHO was present in the raiding party when they reached spot but subsequently the SHO left for police station on account of being required on urgent duty. There is no doubt that the witnesses of occurrence, i.e. P.W. 3, P.W. 4, P.W. 5 and P.W. 7 have stated that the SHO was present at the spot but it is worthwhile to note that there is no mention about this fact in the rukka which forms the basis of the FIR. No valid Explanationn could be given by the prosecution as to why this fact was not mentioned in the rukka if really the SHO was present at the spot at the time of holding nakabandi.

11. The most important question for consideration is with regard to the recovery and the preparation of the sealed parcels and deposit of the property. According to S. I. Balram Solanki (PW 4) the brief case was not locked and it was opened by the accused and key of the brief case was recovered from his personal search after Rajiv Kumar was arrested. He has, however, been contradicted by H. C. Ram Niwas (PW 7) who has stated that the brief case was opened after breaking open its lock. According to the prosecution story the case property was sealed with the seal of 'HCR' which belonged to Inspector Hukam Chand Rana SHO Police Station, Chankyapuri. It is the admitted case of the prosecution that the SHO was not present at the spot when the case property was sealed and seized by the I.O. The police witnesses have stated that the seal was brought from the police station but it may be noted that there was no such mention in the rukka Ext. PW 2/A which forms the basis of the FIR and all that has been stated is that the case property was sealed with the seal of 'HCR'.

12. It is the admitted case of the prosecution that the case property was deposited with H. C. Harbir Singh Moharrar Malkhana, P.S. Chankyapuri (P.W. 6) by S. I. Balram Solanki without it being produced before the SHO. It has been so stated by the I. O. Balram Singh (PW 4) and he stands corroborated from the statement of Moharrar Malkhana HC Harbir Singh (PW 6) that the case property was deposited

with him by the I.O. It is, thus, clear that neither the case property nor the accused were produced before the SHO by the I.O. and, thus there has been a non-compliance of the provisions contained in the NDPS Act. It may also be noted that the I.O. was required to bring the facts of the case to the notice of the SHO, his superior officer. He has, however, failed to do so and claimed in his statement as PW 4 that he explained all the facts of this case to A.C.P. and on the same day a detailed report of this case was prepared and sent to the Senior Officer. It may be noted that the SHO was the immediate superior of the I.O. and all the facts were required to be brought to the notice of the SHO which was not done by the I.O. There is nothing on record to prove that any detailed report was prepared by the I.O. about this incident or that such a report was sent to the Senior Officer. It would, thus, clearly mean that it has not been proved on record by the prosecution that such steps were taken by the I.O. in this case.

13. According to the prosecution story the recovery was effected from the accused on 26th October, 1986 and the samples were sent to CFSL on 5th November, 1986 through H. C. Ram Niwas (PW 7). It has been stated by H. C. Ram Niwas that on 5th November, 1986 he took sealed parcels from Moharrar Malkhana and CFSL form from the I.O. and deposited them with CFSL and they remained intact during the period he was in the possession of them. It may, however, be noted that CFSL was not deposited with Moharrar Malkhana. S. I. Balram Solanki (PW 4) has claimed that on 5-11-86 the sample parcels were sent to CFSL through HC Rajbir along with CFSL form and that CFSL report Ext. PW 4/C was received. He has not stated as to where he kept the CFSL form which as per the statement of HC Harbir Singh was not deposited with him. According to the I.O. the seal after use was given to H. C. Bhoop Singh who has corroborated the testimony of the I.O. However, he is silent as to what happened to the seal and up to what time it remained with him. Inspector Hukam Chand Rana (PW 1) has, however, claimed that the seal was returned to him after 10-15 days. It has not been stated by the I.O. that the CFSL form was not tampered with by any one and in fact all other police witnesses have not corroborated the statement of the I.O. with regard to the filling up of the CFSL form. Thus, it cannot be said as to when the CFSL form was filled and where it was kept by the I.O. There is no Explanation as to why there was a delay in sending the samples to the CFSL and why the same were sent to

CFSL immediately after they were deposited with Moharrar Malkhana on 26th October, 1986.

14. It is, thus clear, that none from the public was joined as a witness and there have been contradictory statements with regard to the making of efforts to join persons from the public. There has been lapse on the part of the I.O. to comply with the provisions of NDPS Act inasmuch as he did not produce the case property and the accused before the SHO and there is no reliable evidence on record to show that the I.O. submitted a detailed report about this incident to the Superiors. There is discrepancy in the FIR and statements with regard to the presence of the SHO in the raiding party and when the CFSL form was deposited and where it was kept and whether it was tampered with by anyone or not. The totality of the circumstances creates doubt about the recovery of Charas from the appellant and so he is entitled to get benefit of doubt.

15. In view of my above said discussion appeal is accepted. The conviction and sentence of the appellant are set aside. Giving the benefit of doubt Rajiv Kumar is acquitted. He shall be released forthwith, if not required in any other case.

16. Appeal allowed.

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