

Kishan Lal Vs. the State

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Court : Delhi

Decided On : Feb-26-1969

Reported in : 5(1969)DLT511

Judge : Om Parkash, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 103

Appeal No. : Criminal Petition Appeal No. 165D of 1966

Appellant : Kishan Lal

Respondent : The State

Advocate for Pet/Ap. : P.S. Safeer and; V.D. Misra, Advs

Judgement :

Om Parkash, J.

(1) This revision petition is directed against an order of the learned Additional Sessions Judge, whereby he dismissed an appeal of the petitioner against his conviction and sentence under section 61 of the Punjab Excise Act as extended to the Union Territory of Delhi, hereinafter referred to as the 'Act'.

(2) The prosecution case against the petitioner was that, on the 13th March, 1964, Inspector Dalip Singh P. W. 5 had received secret information that illicit liquor

would be brought in a private car to Delhi from across the Jamuna river via village Ah and Mathura roads, that thereupon Inspector Dalip Singh had organized a raiding party consisting of himself, other police officials Prem Chand P. W. 4, the Excise Sub-Inspector, Jamil Ahmad P. W. 1, Harbans Singh P. W. 2 and Amar Singh P. W. 3 and that the party had waited at the crossing of Mathura road and village Ah road. The further case of the prosecution was that car No. D. L. A. 2/12 driven by the petitioner had arrived at that place at about 4 30 a. m. The car was stopped and on search of the car, 15 tubes wrapped in gunny bags, containing illicit liquor were recovered. The illicit liquor was put into 1593 bottles.

(3) After investigation, the petitioner was challenged and chargesheeted under section 61 of the Act.

(4) The petitioner did not plead guilty. He produced defense evidence to prove that Jamil Ahmad P. W. 1 and Harbans Singh P. W. 2 had been appearing for the police in excise cases previously and also to prove that the case, filed against him was, false as he had not obliged the police by carrying their luggage in the car. The learned Magistrate held that the prosecution had established that illicit liquor measuring 1593 bottles had been recovered from the car which was being driven by the petitioner and that the petitioner was, therefore, in possession of the illicit liquor. The learned Magistrate rejected the plea of the petitioner that he had been falsely implicated in the case as he had refused to oblige the police by carrying the luggage. The petitioner was convicted under section 61 of the Act and was sentenced to undergo rigorous imprisonment for six months.

(5) As already stated, the appeal of the petitioner was dismissed by the learned Additional Sessions Judge. Hence this revision petition.

(6) The first contention of the learned counsel for the petitioner was that the investigating officer had contravened the mandatory provisions of section 103, Code of Criminal Procedure, inasmuch as the witnesses associated with the search of the car were not witnesses of the locality, and that this fact threw doubt on the prosecution case. The learned counsel cited *Public Prosecutor v Pamarti Venkata Chalamaiah*, The head note reads :-

'IT is absolutely essential that the officers conducting investigation bear in mind the provisions of section 103, Criminal Procedure Code. This section contemplates that before a search is made the officer concerned will call upon two or more respectable inhabitants of the locality in which the place to be searched is situate, to attend and witness the search. It does nto mean that the Investigating Officers can have two or three people accompanying them everywhere they go for searches. As far as possible, the provisions of the section should be complied with.'

The learned counsel also cited *A. P. Kuttan Panicker and others v. State of Kerala*'. wherein it was stated : Section 103 was enacted to ensure fair dealing and a feeling of confidence and security amongst the public in regard to this necessary invasion of a private right regarded as most sacred. In order to give effect to this object it is necessary that the persons selected should be unprejudiced and uninterested in the result of what they have to take part in.'

(7) *Jamil Ahmad P. W. 1* had been taken from Lal Kuan and Harbans Singh *P. W. 2* and Amar Singh Public Witness *3* had been. taken from Central Market, Lajpat Nagar, by the police. The witnesses were nto obviously of the locality where the car was intercepted and searched. They belonged to places distant from that locality. In fact, the learned counsel for the State did nto dispute this fact. His contention was that the provisions of section 103, Code of Criminal Procedure, were nto applicable to the search of a motor car, as it was nto a place within the meaning of that section. The learned counsel placed reliance on *Bhagwanbhai Dulabhai Jadev v State of Maharashtra*,'. It was held in that case that a motor car is nto a place and the provisions of section 103 of the Code of Criminal Procedure did nto apply to the search of a motor car. But at the same time their Lordships had said :- 'This is not. however, to say that the practice which is generally . followed by police officers when investigating offences under the Act to keep respectable persons present on the occassion of the search of a suspected person or of a vehicle may be discarded, Even though the statute does nto make it obligatory, the police officers wisely carry out the search, if it is possible for them to secure the presence of respectable witnesses, in their presence. This is a healthy practice which leads to cleaner investigation and is a guarntee against the

oft-repeated charge against police officers of planting articles'.

(8) The question is whether the association of Jamil Ahmad P. W.1 , Harbans Singh P. W. 2 and Amar Singh P. W. 3 exposed the police officers to the charge that the illicit liquor had . been planted with the petitioner. The contention of the learned counsel for the petitioner was that the witnesses associated with the raid. were stock witnesses of the police ready to support any. case which may be put up by the police. Jamil Ahmad and Harbans Singh had no doubt appeared previously in cases for the prosecution but there was nothing on the record that Amar Singh had also done so. The only evidence, against Amar Singh was that he was a friend of Harbans Singh. It was observed by Dua J.. as he then was, in Hazma Singh v. The State that merely because a witness ha? taken part in previous raids does nto necessarily rule out his evidence in the absence of other reasons for disbelieving him. Bedi J. had held in Tarsem Lal v. The State that merely because a person, appears for the police as a witness is nto enough to dub him as a stock witness and make his evidence altogether unreliable unless some structures against such a witness have been passed or at least he has been disbelieved by any competent Court. The matter was again considered by Dua J. in Kesho Parshad v. State and it was observed that each case has to be dealt with on its own peculiar facts In the present case, Jamil Ahmad and Harbans Singh, P. Ws. 1 and 2 had no doubt appeared as witnesses for the police on previous occasions. Amar Singh had nto appeared as a witness in any case. The evidence of Jamil Ahmad and Harbans Singh received support from the evidence of Amar Singh P.W.3. It is to be noted that when a raid is organized on secret information received. It will generally nto be feasible to associate persons of locality with the raid as there will be every likelihood of the secret information leaking out and the purpose of the raid being frustrated in most cases. It is also to be noted that there is a general disinclination on the part of citizens to associate themselves with police raids. A huge quantity of 1593 bottles of illicit liquor was recovered from the car ; it could nto have been planted by the police.

(9) The two lower Courts did nto err, in the circumstances of the case, in placing reliance on the evidence of Jamil Ahmad P. W. 1, Harbans Singh P. W. 2 and Amar Singh P. W. 3. that fiteen tubes of illicit liquor were recovered from the

search of the car.

(10) The defense evidence did not help the petitioner. Besides producing the police officials, who had brought F. I. Rs. showing that Jamil Ahmad and Harbans Singh had appeared on previous occasions for the police, the petitioner had produced Mehar Elahi D. W. 2 and Allah Rakha D. W. 7. Mehar Elahi D. W. 2, the owner of the car, and Allah Rakha D. W. 7 stated that they had gone on a picnic to Okhla in the car and that on return, the car had gone out of order. According to the witnesses, they had come home and had requisitioned the services of the petitioner who was a Mechanic in the D. T. U. Allah Rakha and the petitioner had come to the place where the car was standing. According to Allah Rakha D. W. 7, the petitioner had repaired the car and they had started for Delhi. On the way, the police had asked the petitioner to carry their luggage but the petitioner had refused. It is significant to note that the petitioner had, in his statement, under section 342, Code of Criminal Procedure, not stated that he had refused to carry luggage for the police. The petitioner had even denied that he was driving the car. Not a single question was put to any of the prosecution witnesses that the police had asked the petitioner to carry the luggage. The defense of the petitioner that he had been falsely implicated in the case as he had refused to oblige the police to carry their luggage appears to be an after thought and was rightly rejected by the two Courts below.

(11) The result is that there is no justification for interfering, in revision, with the concurrent finding of the two Courts below, that fifteen tubes of illicit liquor, containing 1593 bottles were recovered from the possession of the petitioner. The petitioner's conviction under section 61 of the Act is to be upheld.

(12) Taking into consideration the large quantity of illicit liquor recovered, the sentence imposed upon the petitioner is not excessive.

(13) The revision petition is dismissed. The petitioner is on bail. His bail-bond is cancelled. He should surrender to his bail for undergoing the remaining sentence.