

Ram Kumar Vs. State

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Court : Delhi

Decided On : Sep-08-1987

Reported in : 33(1987)DLT188

Judge : M.K. Chawla, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21

Appeal No. : Criminal Appeal No. 11 of 1987

Appellant : Ram Kumar

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Satish Tamta,; R.K. Sharma and;

Judgement :

M.K. Chawla, J.

(1) The present appeal is directed against the Judgment of Shri O.P. Dwivedi, Addl. Sessions Judge, Delhi, dated 13.12.86 whereby Shri Ram Kumar, the present appellant, was held guilty of an offence punishable u/s 21 of the N.D.P.S. Act and sentenced to under go R.I. for a period of 10 years and also to pay a fine of Rs. 1lakh. In default of payment of fine, the accused-convict was further directed to undergo R.I. for a period of 2 years.

(2) The facts leading to the apprehension of the accused in brief are that on 18.5.86, Sub-Inspector Krishan Kumar, in charge Police Post Shakurbasti, Along with constables Ranbir Singh and Gurmail Singh, while on patrol duty, were present at Raja Park, Delhi. At about 2 P.M., the Sub inspector received a secret information that one person having smack in his possession will come from the side of Britania factory and would go towards fodder shop situated near the Park. Immediately on receipt of this information, the S.I. organized a raiding party consisting of himself and the Police officials. He also joined one public man Shri Sat Parkash in the raiding party. They took positions near the park. At about 3.20 P.M., the accused was seen coming from the side of Britania factory. The accused was then carrying a bag in his left hand. On the pointing of the informer, the accused was accosted. The S.I. Krishan Kumar then asked the accused if he wanted to be searched in the presence of a Gazetted officer as he was suspected of being in possession of smack. The accused agreed. He was then taken to Police Station Saraswati Vihar where in a room both the Sho and Acp were sitting.

(3) Krishan Kumar then narrated the facts to Acp and on his directions, the accused was searched. On checking, some smack was found in the plastic bag. On weighing, it turned out to be 200 grams. 10 grams was taken out as sample. The sample and the remaining smack were kept in separate packets duly sealed with the seal of the Shoe and taken into possession. The S.I. then prepared. The Ruqua and gave it to the Duty Officer, on the basis of which F.I.R. No. 132/86 under Section 21 of the N.D.P.S. Act was recorded. During the course of investigation, the sample was sent to the office of the C.F.S.L. Its report revealed that the sample gave positive test for heroin. The S.I. after completing the investigation, prepared the challan under Section 17/21 of the N.D.P.S. Act and filed the same in the Court.

(4) The accused was summoned and supplied with the copies of the documents. After hearing the accused and the learned P.P., a charge u/s 21 of the N.D.P.S. Act was framed, to which the accused pleaded not guilty and claimed trial. To prove the charge, the prosecution examined as many as 9 witnesses, including the public witness who did not support the prosecution case in its entirety.

(5) The accused in his statement u/s 313 Cr.P.C. denied his involvement altogether. According to him, he has been falsely implicated by the Police at the instance of his uncle Chiranji Lal Constable whose shop is in his possession as a tenant. Chiranji Lal wanted to get the said shop vacated but on his refusal to do so, he was roped in this case. He, however, did not produce any evidence in support of this plea.

(6) Learned Addl. Sessions Judge placed full reliance on the testimony of the prosecution witnesses, holding the recovery of 200 grams of heroin from the person of the accused as a genuine one and convicted and sentenced the accused as stated above.

(7) The submission of the learned counsel for the appellant is that a false recovery of smack has been shown from the appellant, inasmuch as, the scene of incident was deliberately shifted to the Police Station where there was very possibility of plantation. For that reason, the Public witness did not lend its support to the prosecution version. Moreover, the presence of the A.C.P. at the Police Station is not shown in clear terms. This case according to learned counsel also suffers from the violation of various provisions of the Act which entitle the accused to be acquitted.

(8) Lastly, his submission is that the accused has been deprived of his right to challenge the report of the Chemical Examiner so far as it does not lay down the test which were carried out to arrive at a conclusion that the substance gave a positive test for heroin.

(9) Learned counsel for the State mainly relies upon the evidence of the Police witnesses who were responsible for the apprehension and recovery of the smack from the person of the accused. According to learned counsel, the formalities were completed under the supervision of the S.H.O. of the Police Station, who is defined as a Gazetted Officer under the Act. Further more, the report of the Public Analyst, by itself, is binding on the accused unless and until contradicted by any other cogent evidence. The impugned order of conviction and sentence of the appellant is factually and legally correct and does not call for any interference.

(10) I have given my careful thought to the various arguments advanced at the bar, and do not find any substance in the contentions of the learned counsel for the appellant.

(11) PW-7, Constable Ranbir Siagh, PW-8 Gurmail Siagh and PW-9, S.I. Krishan Kumar have fully corroborated each other and the prosecution case in all its material particulars. In fact they were the persons responsible for the apprehension, arrest and recovery of heroin from the person of the accused. PW-6 Paldan, Acp, PW-I, B.R. Kashyap, S.H.O. of Police Station Saraswati Vihar, are the witnesses of the recovery of the heroin. All these witnesses have been put searching questions in the nature of cross-examination but the learned counsel for the appellant has not been able to point out any single sentence or the circumstance which may go against the case set up by the prosecution. It may be that in the roznamcha register of the Police Station, there is no entry of the arrival of the A.C.P. at the Police Station, when the accused is alleged to have been produced before him in the room of the S.H.O. but this Omission has been duly explained by the prosecution inasmuch as the Gazetted officer of the rank of A.C.P. are not required to make any entries in such like registers. It was, however, desirable on the part of the prosecution to have produced any other evidence showing the presence of the A.C.P. but its non-production will not matter in the face of a positive assertion from A.C.P. that in his presence, the accused was produced and bids search was conducted. If the defense had any doubt about the presence of the A.C.P. at the Police Station at the relevant time, they were at liberty to have summoned any documents in the nature of the Log-book of the jeep in which the A.C.P. is alleged to have travelled from his headquarters to the Police Station, justifying their apprehension. But the defense having failed to take appropriate steps in this direction, there is no reason for this Court to disbelieve the presence of the A.C.P. at the Police Station in view of the categorical statement of the prosecution witnesses.

(12) The necessity for the change of the place of incident arose when the accused expressed his desire to be searched in the presence of a Gazetted Officer as per the Rules framed under the Act. S.I. Krisban Kumar admittedly of his own, was not authorised to carry out the search of the person for the recovery of any

psychotropic substance, he being not a Gazetted Officer defined under the rules of the Act. It is for that reason, S.I. rightly enquired from the accused if he wanted to be searched in the presence of the Gazetted Officer to which he agreed. The nearest place Krishan Kumar could think of was the Police Station where the presence of the S.H.O. was almost certain. It was just by chance that A.C.P. of the area happened to be present in the room of the S.H.O. In the presence of both these Gazetted Officers, the personal search of the accused was carried out which resulted in the recovery of 200 grams of heroin. Under the supervision and directions of the officers, the formalities under the various provisions of the Act were completed there and then. Even if it be assumed for the sake of arguments that the A.C.P. was not present, then the Sho whose presence is not disputed, was within his right to order the search and seizure of the narcotic substance. It was just not possible for any of the Police officers to have planted heavy amount of the psychotropic substance on the accused. All the Police officers could not have joined hands in falsely implicating the accused particularly when he was not previously known to them nor was there any enmity between them.

(13) It is not a case where the Police has failed to perform their duty under the Act to join the independent witnesses of the locality. PW-2 Shri Satpal, a passer-by, was requested and he agreed to be a member of the raiding party. The case of the members of the raiding party as well as that of Satpal is that S.I. Krishan Kumar tried his best to join another independent witness of the locality and in this behalf contacted number of persons but nobody agreed to be a witness. The accused was apprehended at the pointing out of the informer and in the presence of Satpal. It may be that in Court Satpal tried to help the accused by deposing that he was already in the net of the Police officers when he was asked to join the raiding party and that no recovery was effected. He, however, goes to the extent of supporting the prosecution case of the apprehension of the accused at the spot and then being brought before the Sho and Acp at the Police Station and then his search. Though he is a signatory to the recovery memo but he denied his signatures by alleging that he is not conversant with the Hindi language in which the memo. is recorded. That may be no, but the prosecution cannot be accused of not complying with the requirement of the Act in joining an independent witness. It hardly matters whether this witness supports the prosecution or not, but the fact

remains that an attempt was made and it resulted in the joining of an independent person to be a witness of the arrest and recovery of the arrested and recovery of the accused.

(14) Learned counsel for the appellant has not been able to point out as to which of the provisions of the act have been violated. His apprehension appears to be that Krishan Kumar was not authorised to apprehend the accused inasmuch as he was not in possession of any writing of a Gazetted Officer authorising him to arrest and search a particular person, suspected of being in possession of any narcotic drug or psychotropic substance. Further more, the sub-inspector had not recorded the substance of the secret information which allegedly was furnished to him before the time of the apprehension of the accused. This, according to him, is a clear violation of the provisions of Section 41 of the Act. If one carefully peruses the provisions of Sections 41, 42, 43 and 50 of the Act, one would have no doubt that S.I. Krishan Kumar has taken all the precautions required of him in the investigation of this case. Admittedly, he was not specifically authorised by the Gazetted Officer to search and arrest a person suspected of carrying the drug or narcotic substances and this was the precise reason that he asked for and the accused expressed his desire to be searched in the presence of a Gazetted Officer. Otherwise, if he had been duly authorised, then there was no necessity for him to have produced the accused before the Gazetted Officer, He could himself apprehend, search and arrest the accused at the spot and then forward the information to his superiors. As the search was conducted in the presence of his superiors, a Gazetted Officer, then there was no necessity for him to have sent any report. In fact all the formalities were completed in the presence of the SHO who had taken charge of the case by that time. There is thus no violation of Section 41 or for that matter any of the other sections concerned in the apprehension, search and arrest of the accused.

(15) The sample of the recovered psychotropic substance was sent to the office of the C.F.S.L. for examination through PW-4 Constable Parshottam Dass. The report of the analysis is Ex. PW-9/C. The brown paper marked Ex. No. 1 on examination gave positive test for heroin. The report of the Public Analyst has a binding effect on the parties. The report is admissible document on its production.

The prosecution is not required to summon and and examine the Public Analyst. If at all the accused had any grievance, about the result of the analysis, it was-for him to have challenged the report by summoning the Public Analyst and enquiring as to how and under what circumstances or by which particular Chemical examination he arrived at such a conclusion. Having failed to challenge the report at the trial, the accused cannot now be allowed to come forward and challenge its authenticity at this late stage.

(16) Learned counsel for the appellant cited some of the unreported judgment of this Court wherein the non-compliance of provisions have been held to be fatal to the prosecution case. Those Judgments to my mind are based on peculiar facts and circumstances of that case which facts are not applicable to the case in hand. In this case, as held earlier, there is no ground or infirmity in the due compliance of the various provisions of this Act. Once the arrest of the accused and the recovery of 200 grams of heroin is held to have been proved by a convincing evidence, there is no scope for this Court to interfere in the finding of the courts below.

(17) In the result, I do not find any substance in the appeal and the same is hereby dismissed.