Santokh Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/697049

Court : Delhi

Decided On : Feb-26-1990

Reported in : 1991CriLJ147

Judge : P.K. Bahri, J.

Acts : Narcotic Drugs & Psychotropic Substances Act, 1985 - Sections 42

Appeal No. : Criminal Appeal No. 87 of 1989

Appellant : Santokh Singh

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi,; Rajesh Batra,; Kamini Lao and;

Judgement :

Bahri, J.

(1) Vide Judgment daled July 7, 1989, the appellant has been convicted of an offence punishable under Section 21 of N.D.P.S. Act of having been found in possession of 1 Kilogram of heroin and has been sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of rupees one lac and in default in the payment of fine, to undergo further simple imprisonment for a period of three years. Appellant has filed this appeal challenging his conviction and the sentences.

(2) The facts of the case, in brief, are that Swatanter Kumar, S.I., Public Witness -7 and S.I. Joginder Singh Public Witness -6 of the Crime Branch had some secret information that appellant Satnokh Singh, Bhupinder Singh and Varinder Sharma who belonged to Punjab were touring in Haryana and they have been bringing heroin from Punjab and disposing of the same to some customers in Delhi. They had put some secret informer to get some specific information about their movements in Delhi and on January 21, 1986 at about 6 P.M. secret informer came to the Crime Branch and disclosed that the said three persons would be supplying the heroin to some customer near Tirath Ram Hospital and they would be coming from the side of old Police Line at about 7 P.M.

(3) Immediately a raiding party was constituted under the supervision of Inspector Tarsem Pal besides the said two , Inspectors, Head Constable Ram Dass, Constable Balbir Singh, Prem Chand, Risal Singh and lady constable Bimla Devi, were joined and the raiding party came in the police jeep which was being driven by Constable Jaswant Singh and after crossing I.S.B.T. chowk the nakabandi was held. After efforts to join 5-6 passersby proved futile, at about 7.30 P.M. the said persons including the appellant were seen coming and they were, pointed out by the secret informer. Appellant was having in his right hand some plastic bag and Varinder Sharma was also carrying a plastic bag in his right hand. Varinder Sharma had handed over the bag to Bhupinder Singh and was trying to escape when Bhupinder Singh was apprehended by S.I. Jagbir Singh. Swatanter Kumar, S.I. apprehended Santokh Singh and option was given to appellant that as he was suspected of having heroin in possession his search could be got done in presence of a Magistrate or a Gazetted Officer which offer was declined by appellant and 1 Kilogram of heroin was recovered from the bag which was is possession of the appellant. After taking sample of 10 gram, the sample as well as the remaining heroin were converted into seal parcels and were sealed with the seal belonging to letter 'J.S.' Necessary C.F.S.L. form was also filled in. Rukka Ex. PW4/A was prepared at about 10 P.M. and Rukka as well as the case property were sent to the Sho through constable Balbir Singh for registration of the case. Constable Balbir Singh has produced the case property before Ram Singh, the S.H.O. of the Police Station, Public Witness -3 who sealed the case property with his own seal and got deposited the case property in the Malkhana. On 28th

January 1986, Public Witness -2 constable Prem Chand had taken the sample sealed parcel from the Malkhana and had deposited the same in the office of Cfsl and the report of the Cfsl Ex. Public Witness 7/B was received showing that the sample gave positive test for heroin.

(4) The learned Additional Sessions Judge has in his detailed judgment brought home the offence to the appellant believing the statements of the police officials.

(5) The learned counsel for the appellant has vehemently contended that it was not safe to have brought home to the appellant the offence on the statements of police officials inasmuch as certain mandatory provisions of N.D.P.S. Act have not been complied with. He has urged that Section 42 of the Act requires that it is incumbent upon the police officer receiving the secret information to incorporate the same in Daily Diary and in the present case failure of the police to have not done so, should lead this Court 10 conclude that in fact there was no such secret information available with the police officials and as mandatory requirement of law, as contained in Section 42 of the Act has been given a go-bye, the prosecution case should be thrown overboard. The learned counsel for-the appellant has made reference to Ratan Lal versus State 1987(2) Crimes; 29(1) wherein it has been observed by a Single Bench of this Court that in view of the nature of punishment provided for the offence under Act, the Legislature has deliberately made certain provisions to afford safeguards so that innocent persons are not harassed and if the invetigating agency deliberately ignores the compliance with the provisions of the Act, the Court will have to approach their action with reservations. In the said case there were found many lapses committed) by the Investigating Agency and keeping in view the totality of the facts, the learned Judge came to the conclusion that no sincere efforts have been made deliberately to join the public witness and the sample deliberately has not been got sealed with the seal of the Sho and even the report regarding particulars of the seizure and arrest under Section 57 of the Act had not been sent to the superior officer and thus it was held that all these facts taken together have rendered the prosecution a suspect and at least it can be said that the prosecution case is not free from doubt. The case is distinguishable. It is evident that if Investigating Agency deliberately fails to comply with certain statutory provisions introduced in the N.D.P.S. Act the case of the

prosecution would have to be examined with little bit more care and caution before placing reliance on prosecution case. It may be that in peculiar facts of a particular case, non-compliance of such salutary provisions may lead the Court to doubt the prosecution case. It w.U depend on facts of each case to see whether there has been deliberate attempt of the investigating agency to avoid compliance of the statutory provisions of the Act or the compliance has not beep made due to some valid reasons.

(6) Counsel for the appellant has then made reference to Gulam Hussain versus State of Rajasthan; 1988(1) Crimes 51(2) wherein a Single Judge of the Rajasthan High Court in peculiar facts of the said case had come to the conclusion that the investigation in the said case had not been fair as no attempt was made to join any independent public witnesses. Various other peculiar facts were noticed by the learned Judge for coming to the conclusion that the prosecution case was not proved beyond shadow of reasonably doubt. The decision is given on its own facts and is of little assistance to the appellant in the present case.

(7) Then reference has been made to Bhajan Singh versus State of Haryana; 1988(1) Crimes 444(3) where again it was found that mandatory provisions of N.D.P.S. Act have not been deliberately complied with by the Investigating Agency and the Single Judge of the Punjab & Haryana High Court held that the investigation was vitiated. Reference is also made to Hanuman versus State of Rajasthan; 1988(1) Crimes 482(4) where a Single Judge of Rajasthan High Court had opined that it is true that witnesses cannot be discarded merely on the ground that they happened to be police officers but when there are suspicious circumstances staring in the face and no attempt has been made to procure independent witnesses although they were available, the recovery allegedly made from the accused was said to have been not proved beyond shadow of reasonable doubts. These cases have been decided on peculiar facts of each case. So, no universal principle of law has been laid down in these cases that once it is found that a particular statutory provision of N.D.P.S. Act has not been complied with, the prosecution case has to be disbelieved.

(8) Learned counsel for the appellant has then cited Gendalal versus State of Madhya Pradesh; 1989(1) F.A.C. 41(5) wherein a single Judge of the Madhya Pradesh High Court again on the peculiar facts of that case came to the conclusion and held that the offence against the accused was not proved beyond reasonable doubt as the evidence of the witnesses was discrepant and they were not wholly reliable witnesses and no efforts had been made to procure independent witnesses. Similarly, reliance has been placed in Gopal versus State; 1989(1) F.A.C. 57.(6) Learned Single Judge of the Rajasthan High Court found from the facts that the sample which was sent for examination by Chemical Examiner was not shown to have been kept intact. Investigation was not found to be up to the mark. Hence, giving benefit of doubt to the accused, the accused was acquitted. These cases are based on peculiar facts appearing in those cases.

(9) Learned counsel for the appellant has next placed reliance in Rajesh versus The State; : 1989RLR281 .(7) In the said case a Single Judge of this Court had not believed the testimony of Sho that he had put his seal on the sealed parcel or as a matter of fact the sealed parcel had been produced before him. It is true that the learned Judge while construing provisions of Section 55 of the Act, it gave the opinion that the law requires that sampling should also be done in the presence of the Sho but the decision of the case is not based on that particular opinion expressed by the Hon'ble Judge. The prosecution case lies been disbelieved on facts.

(10) The learned counsel for the appellant has also placed reliance on Pradeep Kumar versus State; 1990 C.C. C 69 (HC) (8) wherein a Single Judge of this Court had gone on to examine the various provisions of N.D.P.S.Act wherein on consideration of the peculiar facts of the case which also showed non-compliance of provisions of Section 42 of the N.D.P.S. Act and there were contradictory statements made by the police officials with regard to the compliance of provisions of Section 52 and Section 55 of the Act, the Court concluded that the prosecution case was not free from doubt. He has also placed reliance on Mohd.Shamim versus State; 1990 C.C. C 142 (HC) (9) in which I had held that in absence of public witnesses being joined the statements of police officials are required to be scrutinized with due care and caution in order to see whether the offence 18

brought home to the accused beyond reasonable doubt. Material discrepancies were round in the statements of the police officials which went to the root of the matter and it was held that the prosecution case was not proved beyond shadow of reasonable doubt. It was also found, as a matter of fact, that the case properly was never produced before the S.H.O. for getting the same sealed as required by Section 55 of the Act. So, it is evident that all these cases referred to above were decided on the facts.

(11) Learned counsel for the State has made reference to Mohd. Hussain versus State; 1989(2) DL 51(10) where on facts it was found that the public witnesses could not be joined because of paucity of time available with the police and it was observed that the police must have been anxious to apprehend the appellant without creating any commotion at the spot in making requests to other public persons to join in the raiding party which would have made the accused apprehensive and which might have resulted in failure of the raid. It was laid down that it is true that normally whenever any recovery is to be effected by the police, the police should join public witnesses to ensure that the investigation being done by the police is fair but it cannot be laid down as a broad proposition of law that if two public witnesses are not joined for any reason whatsoever the recovery effected by the police should be held to be doubtful. It was emphasised where failure of the police to join public witness was on account of some good reason and if that is so, the recovery effected by the police cannot be on that score to beheld doubtful.

(12) In K. M. Saleem versus State 1989(1) DL 140(11) a contention was raised that non compliance of mandatory provisions contained in Section 42 of the N.D.P.S. Act should lead the Court to discard the prosecution case. The contention was negatived and on facts it was found that there was little time for the Investigating Officer to have complied with the provisions of. Section 42 of N.D.B.S. Act. So, it depends on the facts of each cage to see whether compliance of the salutary provisions contained in N.D.P.S. Act was not done deliberately by the Investigating Agency or the same could not be done for some good reasons. It is only where the Investigating Agency deliberately forsakes the statutory provisions of N.D.P.S. Act that the Court may come to the conclusion that

prosecution case is not worthy of credence. But where some or other provisions of N.D.P.S. Act were not complied with for some good reason, the prosecution case on that score cannot be held to be doubtful.

(13) In the present case secret informer had come to the Crime Branch at about 6 P.M. and had given the information that at about 7 P.M. suspect would be coming with the contraband for supplying the drag to some customers near Tirath Ram Hospital. The police was not to lose time and was to organize a raiding party immediately so that the culprits could be apprehended. It is also to be kept in view that if at that time secret information is reduced in writing and is recorded in the daily diary being maintained by the Duly Officer, the possibility of the secret information leaking out immediately could not have been overruled which could have resulted in the raid becoming abortive. Hence, I hold that in the present case non compliance of Section 42 of the Act does not vitiate the investigation.

(14) Then it has been contended that there were residential houses from where the public witnesses could have been joined on the way to the spot but as no efforts were made for calling any witness from the residential houses, the prosecution should not be delivered that any 5 or 6 passers-by were requested to join near Isbt chowk. There is no merit in this contention as well. Some sense of urgency which must be weighing with the police officials where they were organizing the raiding party and were proceeding to the spot, they could not have wasted the precious time in making efforts to call witnesses from the residential houses. The police party was supposed to make the necessary nakabandi at the place where the culprits were to come and they could not have wasted the time m searching for public witnesses to join at that time. There is no reason to disbelieve the police officials when they say that efforts were made to join some five or six passers-by but on their refusal the police officials were helpless but to proceed with the apprehension of the culprits I do not think it was necessary for the police to have detained forcibly the passers-by who had declined to join in the raid by giving them written notices as required by the law because that would have resulted in some commotion at the spot which could have made the culprits apprehensive and giving them a chance to make their escape before being noticed by the police party. No wise police official could have taken such unwise step to

cause unnecessary commotion at the spot.

(15) The learned counsel for the appellant has then made reference to a discrepancy appearing in the prosecution case with regard to the exact time the case property was deposited in the Malkhana Malkhana Mohrar, Public Witness -8 Amarpal Singh, Head Constable in cross-examination stated that as far as he remembered the case property of this case was deposited in the Malkhana at about 5-6 P.M. On the face of it this testimony could not be correct because the appellant was apprehended at about 7.30 P.M. and constable Balbir Singh had categorically deposed that he had brought the case property to the Police Station at about 10.30 P.M. and the S.H.O. had also affixed his seal and then got the case property deposited in the Malkhana. There is no time mentioned in the entry made in the Malkhana Register, copy of which is Ex. Public Witness 8/A. It appears that the memory of Head Constable Amarpal Singh with regard to the time of deposit had betrayed him. Obviously, it is not understandable that Malkhana Mohrar would remember orally the timings of deposits of various case property made in the Malkhana Register during the last three years when the present case property was deposited. The witness was examined after three years of the event. So, it was humanly impossible for him to have remembered the exact time of the deposit of the case property in the Malkhana. Certain minor discrepancies which have been also highlighted before the Court below and had been discussed in detail in the judgment of the Additional Sessions Judge, had again been highlighted before me but they do not go to the root of the matter and I entirely agree with the reason given by the Additional Sessions Judge in that regard. After all such like discrepancies with regard to the particular exact time when the Rukka was sent and the constable who took the Rukka came back at what time and as to which particular officer actually had asked 5-6 passers-by to join are not such matters which go to the substratum of the prosecution case.

(16) A huge recovery of I Kilogram of heroin has been effected from the appellant and it has not been suggested to any of the police witnesses as to why they would have falsely implicated the appellant if no recovery has been effected from the appellant. It is only while being examined under Section 313 of the Code of Criminal Procedure the appellant for the first time had come out with the story that

he was lifted from Quarter No F-7, Old Police Line belonging to one S.I. Jagtar Kaur and that he had been falsely implicated at the instance of one Billo of Shahdara who had stood surety for one of the friends of the appellant and was extorting some money from the appellant and his friends. No such story has been put forward in cross-examination of the prosecution witnesses. The story being set up by the appellant for the first time while being examined under Section 313 of the Code, appears to be an afterthought story. No evidence has been led by the appellant in defense in support of his version. So, an irresistible conclusion can be reached that the prosecution witnesses though all are police officials had no animus of any nature against the appellant so as to falsely implicate the appellant in this case. It is an unimaginable thing that huge recovery of one kilogram of heroin would have been nut on the head of the appellant for no reason. I have gone through the statements of the witnesses and find them creditworthy and I agree with the Additional Sessions Judge that there is no reason to disbelieve the straight forward statements of the police officials in support of the prosecution case.

(17) In view of the above discussion I find that the charge against the appellant was proved beyond any shadow of reasonable doubt on the convincing statements of the police witnesses. I find no merit in this petition which I hereby dismiss.