

Ravi Vs. State

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Court : Kerala

Decided On : Feb-11-2002

Reported in : 2002(81)ECC685

Judge : M.R. Hariharan Nair, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 42(1) and 42(2)

Appeal No. : C.R.A. No. 273 of 2001

Appellant : Ravi

Respondent : State

Advocate for Def. : Aloysious Thomas, Public Prosecutor

Advocate for Pet/Ap. : C.N. Usha (S.B.)

Judgement :

M.R. Hariharan Nair, J.

1. In this jail appeal, the challenge is with regard to the conviction entered against the appellant as accused in SC No. 64/1999 of the Sessions Court, (Special Court for the trial of the N.D.P.S. Act cases), Thrissur for the offence under Section 20(b)(i) of the N.D.P.S. Act and the sentence of rigorous

imprisonment for 4 years and fine of Rs. 10,000/- (in default, rigorous imprisonment for six months) imposed therefor.

2. The prosecution case that based on Ext. P4 information passed on by the Dy. Superintendent of Police, Kunnankulam to PW2-Circle Inspector of Police at about 9 a.m. on 29.10.1997 he proceeded to the place mentioned in Ext. P1 search list and seized ganja weighing about 1280 grams in a plastic bag concealed kept inside the rolled up mats found inside the shed occupied by the accused at about 10.30 a.m. on 29.10.1997 found acceptance with the trial court.

3. Smt. C.N. Usha, who appeared for the appellant on State Brief, submitted that there is violation of Section 42(2) of the N.D.P.S. Act justifying acquittal of the accused. She also pointed out that there is no acceptable evidence to conclude that the accused was still in possession of the contraband in so far as the building wherefrom the contraband was seized was neither owned nor possessed by the accused. The failure of the prosecution to cite the relevant records including lease deed or other documents evidencing absolute possession of the premises by the accused was also highlighted.

4. On the arguments advanced in this case, the points that arise for decision are:-

(1) Whether there is violation of Section 42(2) of the N.D.P.S. Act justifying acquittal of the accused?

(2) Whether the building from which the contraband was seized is one possessed exclusively by the accused justifying an inference that the accused was in possession thereof?

(3) Reliefs:-

5. Point No. 1:- PW2, who effected the search and seizure, admittedly, has not complied with Section 42(2) of the N.D.P.S. Act. However, the prosecution has a case that there is no need for compliance with Section 42(2) in so far as the official superior to whom the report is actually due had himself passed on the information to PW2 Circle Inspector of Police and directed him to effect the search and seizure.

6. Section 42(2) of the N.D.P.S. Act would apply to a case where an information is received by an empowered officer, which would indicate that an offence punishable under the Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or forfeiture under Chapter V-A of the Act is kept or concealed in any building, conveyance or enclosed place.

7. The purpose behind Section 42 of the N.D.P.S. Act is to avoid chances of false cases being set up and to ensure that the superior officers are kept informed of the booking of cases under the Act. It gives an assurance to the accused to ensure that a false case is not set up against him in so far as based on the report, it is possible for the official superior to look into such cases and ensure that only genuine cases reach the court. As far as the present case is concerned, the reason why PW2 proceeded to the scene of occurrence itself, is a direction from his official superior. In fact, PW2 was the Circle Inspector of Kunnamkulam and the place of occurrence falls within the jurisdiction of the Chavakkad Police Station. It is clear from the evidence of PW2 that on the particular day, the Circle Inspectors of Chavakkad and Guruvayoor were not available for duty and that was why a direction was issued to PW2 of a neighbouring circle to proceed to the spot and to effect seizure. The oral direction of the Deputy Superintendent of Police as above was followed by Ext. P4 official memorandum issued to PW2 by the said Deputy Superintendent of Police which reads as follows:

'You, Sir V.V. Shashi Kumar, CI of Police, Kunnamkulam is hereby directed to proceed to Chavakkad Police Station and detect case under NDPS Act since there is reliable information of one Ravi @ Pallan Ravi stocking sizable quantity of ganja. Treat this as most urgent. Report signal after search. This is in continuation of my telephonic conversation dated 29.10.1997. You may register a case and investigate'.

8. Thus, here is a case where the direction is contained in written order issued by the Deputy Superintendent of Police himself. In such a case I do not think that

there is need for PW2 to record once again the contents of Ext. P4 or even the telephonic information received earlier and send a report to the same Deputy Superintendent of Police, who is his official superior. Such a procedure would be superfluous and meaningless.

9. The question arises whether the Deputy Superintendent of Police, being an empowered officer under Section 42(1), was himself bound to reduce to writing the information received by him and send it to his official superior viz., Superintendent of Police. I had occasion to consider this aspect in *Somasekharan v. State of Kerala* (Crl. Appeal 671 of 2000) decided on 14.3.2001. That was a case where the information and direction were given to the seizing official by the Superintendent of Police, who had received the information regarding the possession of contraband. I found that Sections 42 (1) and (2) read together would make it clear that the responsibility for recording the information and for conveying it to the official superior is only for the officer who wants to enter into and search any building, conveyance or enclosed place and that there was no need for the Superintendent of Police to record the information and send it to his official superior.

10. As far as the present case is concerned, since the Deputy Superintendent of Police did not propose to enter into and search the building where contraband was suspected to be available himself, it was not incumbent upon him to reduce the information to writing under Sections 42(1) and 42(2). In the circumstances, I agree with the trial court that there was no violation of Section 42(2) of the NDPS Act justifying acquittal of the accused on that ground.

11. Point No. 2:- This is not a case where the contraband was found in the physical possession of the accused. What is clear from the evidence of PW2 and the contents of Ext. P1 search list was also from the evidence of PW1, who is the attesting witness to Ext. P1, is that the bag of ganja was found on the south western room of a hatched building. The accused was not the sole occupant of the house at the time of seizure; another woman was also there. The accused is a person hailing from Sivakasi in Tamil Nadu and there is no case that the building (shed) belongs to him. During examination before the Court, the version of PW2

was that the building was possessed by him on lease. If that is so, PW2 or at least PW4 who investigated the case further was bound to produce before Court the lease deed in question and in case there was no lease deed, at least to prove the aspect of lease through convincing evidence including that of the landlord. In the instant case, no such evidence is forthcoming. The landlord, it appears, was not even questioned by the Circle Inspector of Police. Of course, the details recorded in the search list would show that the structure concerned was being used as a residential house; but that by itself would not show that it was in the absolute possession of the accused. True, he was a person found in the building at the time of search; but then, from this, it is not possible to conclude that it was actually possessed by him in so far as one more person was in the house. It is mentioned in Ext. P2 FIR that the Deputy Superintendent of Police had told PW2 over phone that according to his information the accused herein had transported a plastic bag containing ganja through an autorikshaw bearing registration No. KL-8A/7793 and that it was kept in his house. If that were so, at least the autorikshaw driver, who brought the accused and the contraband to the building in question in his vehicle should have been examined. No attempt was made to examine the said autorikshaw driver or for that matter, any other person including neighbours to show that ganja was actually brought to the building in question in the said autorikshaw or in any other vehicle by the appellant. In the circumstances, I am not satisfied that the prosecution has succeeded in connecting the contraband seized in the case to the accused.

12. The learned Public Prosecutor submitted that the evidence of PW1 is sufficient to prove the nexus between the accused and the contraband in question. I have perused his evidence. All that he stated was that he found a crowd near the house occupied by the accused as tenant, and also saw the Circle Inspector and his police party coming out of the said house with ganja contained in a polythene cover. In cross-examination, he stated that he was residing near the building in question and that he had no close contact with the accused. He had never gone to the building in question prior to the occurrence. Though he stated that the accused was occupying the building as a tenant, he had to admit that he had not seen any record evidencing that fact.

13. In the circumstances, I do not think that the evidence of PW1 is sufficient to enable an inference that the building in which the contraband was found was in the exclusive possession of the accused. It follows that there is no legal evidence to find that the accused was in possession of the ganja in question.

14. Point No. 3:- In view of my finding under point No. 2, the accused is entitled to be acquitted. The conviction entered against the appellant is hence set aside and the accused is acquitted. He will be set at liberty forthwith unless his continued detention is needed in connection with any other case. Fine, if any, paid by him, will be refunded.

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