

**State of Rajasthan Vs. Rahim**

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**Court :** Rajasthan

**Decided On :** Apr-08-2005

**Reported in :** RLW2005(2)Raj1375; 2005(3)WLC618

**Judge :** Satya Prakash Pathak, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 18, 42 and 57; Code of Civil Procedure (CPC) - Sections 313 and 378

**Appeal No. :** S.B. Criminal Appeal No. 156 of 1998

**Appellant :** State of Rajasthan

**Respondent :** Rahim

**Advocate for Def. :** Doongar Singh, Adv.

**Advocate for Pet/Ap. :** Vishnu Kachhawha, Public Prosecutor

**Disposition :** Appeal dismissed

**Judgement :**

**Satya Prakash Pathak, J.**

1. This is a State appeal under Section 378 (iii) & (i), Cr PC against the judgment and order dated 18.11.1987 passed by learned Additional District and Sessions Judge, Barmer in Criminal Case No. 89/1987 (State v. Rahim), whereby the

accused respondent has been acquitted of the charge under Section 18 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter to be referred as 'the NDPS Act').

2. Briefly stated, the facts of the case are that on 14.11.1986 PW. 11 Chandan Singh, SHO, Police Station Gadra Road, Barmer received as secret information while he was on patrolling duty that accused was having opium in his house. The search of the house was made and opium was recovered from a bag in presence of motbir witness. Out of recovered opium, which was 3 Kgs., a sample of 30 gms. was taken out. The sample was seized and sealed and remaining 2970 gms. opium was also seized and sealed separately. The accused was arrested. The sample was sent for chemical examination. On examination, it was found to have contained opium. The FSL Report in Exhibit-P/10.

3. After usual investigation, challan was submitted in the Court of Munsif and Judicial Magistrate, Barmer. After committal, it came for trial before learned Additional District and Sessions Judge. Barmer, who framed the charges against the accused person under Section 18 of the NDPS Act. The accused denied the charges and claimed trial. The prosecution in support of its case examined 12 witnesses and tendered 12 documents in evidence.

4. After close of the prosecution evidence, the accused in the statement under Section 313, Cr PC stated that he has been falsely implicated in the case. The Trial Court after hearing both sides, acquitted the accused of the charges framed against him under Section 18 of the NDPS Act vide its judgment and order dated 18.11.1987. Aggrieved by the judgment and order dated 18.11.1987 passed by learned Additional District & Sessions Judge, Barmer, the present appeal has been filed by the State.

5. I have heard learned Public Prosecutor for the State and learned Counsel appearing for the accused respondent and carefully perused the material available on the record.

6. Learned Public Prosecutor has contended that the Trial Court has not property appreciated the evidence led by the prosecution. It has next been contended that

recovery coupled with FSL report clearly proves the case of the prosecution. It has further been contended that provisions of Section 42 of the NDPS Act provide that when search is made after sunrise and before sunset no warrant is required to be obtained and it is only required when search is made after sunset and before sunrise.

7. On the other hand, learned counsel for accused respondent has argued that in the present case, no compliance of Section 42 and 57 of the NDPS Act, has been made. It has next been contended that no linking evidence has been produced to complete the chain in relation to the recovered articles kept intact in Malkana till it reached to the Forensic Science Laboratory, Jaipur. In the last, it has been contended that the prosecution has not proved that place from where the alleged recovery has been made, was exclusive in possession of the accused.

8. I have carefully considered the rival submissions made before me.

9. In the present case, perusal of statement of PW.11 Chandan Singh shows that a secret information was received through Mukhbir and on the information of Mukhbir while he was on patrolling duty in 'Salam Singh's Basti, SHO, Jaiam Singh and Ranchore Singh met him and informed that accused has opium in his house. This witness nowhere stated that after receiving the above information, he tried to obtain search warrant as provided under the provisions of Section 42 of the NDPS Act. It further appears that in the instant case after arresting the accused respondent and recovery of contraband materials from the possession of the accused the information was not sent to the superior officers.

10. A perusal of Section 42 of the NDPS Act, clearly indicates that provisions of said section are mandatory in nature. This legal position has not been disputed before me. It has nowhere come on the record in the evidence led by the prosecution that 'Dhani' from where alleged contraband material was recovered, was in exclusive possession of the accused respondent. It is also significant to note here that after recovery of contraband materials, it was kept in the Malkana but the evidence, which has been adduced in the Court, clearly indicates that the Malkana registers were not produced in the Court. PW.12 Bhanwar Singh, who is a police witness and is said to have taken the contraband materials upto the FSL,

has stated that from 17.11.1986 to 15.12.1986 the sample was with him which remained in the Malkana without there being any entries in the Malkana register.

11. Learned Trial Court found that there was no compliance of Section 42 and 57 of the NDPS Act and further linking evidence was also missing, in the present case, to prove that the recovered contraband material was kept intact in the Malkana and thereafter it remained intact till it reached to the Forensic Science Laboratory, Jaipur. Learned Trial Court further found that linking evidence regarding forwarding letter issued in this case from the office of Superintendent of Police, has not been produced. It has further been found that on account of some strike the sample packet which was sent to the Forensic Science Laboratory, Jaipur was kept in Malkana of Gadra Road, Barmer but no documentary evidence has been adduced in this behalf. Learned Trial Court has further found that it was also doubtful as to whether the sample sent to the Forensic Science Laboratory, Jaipur contained the same seal which was affixed at the time of recovery. Learned Trial Court also found that regarding exclusive possession of the place from where the recovery of the contraband materials has been effected, was in the exclusive possession of the accused in this regard evidence is missing. Learned Trial Court, thus, acquitted the accused of the charges framed under Section 18 of the NDPS Act.

12. I have also examined the evidence carefully. I find that in the present case, there is no compliance of Section 42 and 57 of the NDPS Act. Further, linking evidence is also missing regarding keeping the contraband material said to have been recovered from the possession of the accused, in intact position till it was deposited in the Forensic Science Laboratory, Jaipur. The evidence reveals that for many days without any entry in the Malkana register, the contraband is said to have been kept in the Malkana. Entries of the Malkana register of the period discussed hereinabove have also not been produced in the Court. The evidence regarding exclusive possession of the place from where the contraband materials alleged to have been recovered from the accused is also missing.

13. The law is also settled on the point that unless it is found that the Trial Court has misread the evidence, or findings arrived at by the Trial Court are perverse in

nature, till then, this Court should not interfere with the findings of acquittal recorded by the Court below. I do not find any reasons to defer from the findings of acquittal recorded by the learned Trial Court. There appears to be no merit in this State appeal and the same deserves to be dismissed.

14. In the result, the State appeal stands dismissed after confirming the judgment and order dated 18.11.1987 passed by learned Additional District and Sessions Judge, Barmer in Criminal Case No. 89/1987 (State v. Rahim).

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