

Pancha Ram and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-18-1994

Reported in : 1995CriLJ1025

Judge : B.R. Arora, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 2, 17, 25, 42 and 50; Code of Criminal Procedure (CrPC) - Sections 2

Appeal No. : Criminal Appeal No. 225 of 1994

Appellant : Pancha Ram and ors.

Respondent : State of Rajasthan

Advocate for Def. : B.S. Bhati, Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg and; M.K. Garg, Advs.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 6-4-94, passed by the Special Judge, N. D. P. S. Cases, Jodhpur, by which the learned Special Judge convicted the accused-appellants for the offence under Section 17, of the Narcotic

Drugs and Psychotropic Substances Act (for short, 'the Act') and sentenced each of them to ten years' rigorous imprisonment and a fine of Rs. 1,00,000/- each and in default of payment of fine further to undergo one year's rigorous imprisonment.

2. Accused-appellants, alongwith one Smt. Keli, were tried by the learned Special Judge, N. D. P. S. Cases, Jodhpur, for contravention of the provisions of the Narcotic Drugs and Psycho-tropic Substances Act. The appellants were tried for the offence under Section 17, of the Act while Smt. Keli was tried for the offences under Sections 17, and 25 of the Act. The case of the prosecution is that on 25-11-1993, at about 1.15 p.m., PW 1 Bhagwat Singh, Station House Officer, Police Station, Soorsagar, Jodhpur, received some secret information from one Mukhbir that Smt. Keli, Pancha Ram and Bhiya Ram are engaged in the illegal business of selling the opium and they are preparing the opium out of the opium milk in the house of Smt. Keli situated in Bhakri Bas, Soorsagar, Jodhpur, recorded the information (EX. P.1) in the Roznamcha, forwarded the same to the Superintendent of Police, Jodhpur, and along with other police personnel, proceeded towards the house of Smt. Keli situated in Bhakri Bas, Soorsagar, Jodhpur. There they found accused Bhiya Ram and Pancha Ram preparing opium in one of the rooms of the house of Smt. Keli. The S.H.O. seized the opium which was lying in a Paarat (shallow-disc of brass) and recovered other articles which were used by the appellants in preparing the opium. The search of the house of Smt. Keli and the recoveries of the articles were made by PW 1 Bhagwat Singh, S. H. O., in the presence of two Motbir witnesses, viz., PW 3 Ram Singh and PW 4 Goverdhan Das. After the arrest of the accused and the recoveries being made, the police party came to Police Station, Soorsagar, Jodhpur, registered an F. I. R. and thereafter the investigation was takenup by PW 9 Rugha Ram - the other Station House Officer posted at Police Station, Soorsagar, Jodhpur. The prosecution, in support of its case, examined nine witnesses. The accused, in their defence, examined two witnesses, viz., DW 1 Munji and DW 2 Bhika Ram. PW 1 Bhagwat Singh, S. H. O., after receiving the secret information, entered the same in the Rozanamcha, forwarded it to the Superintendent of Police, Jodhpur, proceeded towards the scene of the occurrence, arrested the accused, made the recoveries, lodged the F. I. R. and deposited the articles in sealed condition in the Malkhana of the police station with PW 2 Bhika Ram, who was the Malkhana

Incharge at Police Station, Soorsagar. PW 2 Bhika Ram was the Head Constable, who accompanied PW 1 Bhagwat Singh along with other police personnel and was a witness to the recoveries and the arrests of the accused. He is, also, the person, being the Malkhana Incharge, in whose possession the sealed articles were deposited and he sent the same for F. S. L. examination with PW 5 Ganga Ram. He has; also, stated that the seals on the articles remained intact throughout the period since they were deposited in the Malkharia till they were handed-over to PW 5 Ganga Ram for taking them for F. S. L. Examination to the State Forensic Science Laboratory, Jaipur. PW 5 Ganga Ram is the Constable, who took the sealed articles from the Malkhana for F. S. L. Examination firstly to the Office of the Superintendent of Police and after obtaining the forwarding letter from the Office of the Superintendent of Police, he took the samples for F. S. L. examination to the aforesaid Laboratory and deposited the same there. He has, also, stated that the seals on the samples remained intact. PW 6 Virendra Singh was the Constable posted in the Office of the Superintendent of Police, Jodhpur, who, after receiving the articles, got the forwarding letter prepared and signed and handed-over the same to PW 5 Ganga Ram. He has, also, stated that the seals on the articles were found intact. PW 3 Ram Singh and PW 4 Goverdhan Das are the two Motbir witnesses the recoveries made from the accused from the house of Smt. Keli. They are, also, the witnesses to the arrests of the accused but they have not supported the prosecution case and were declared hostile. PW 7 Habib and PW 8 Gumana Ram are the two witnesses, who are the residents of Bhakri Bas, Soorsagar, Jodhpur, and are living in the nearby houses to the house of Smt. Keli. Their statements are to the effect that Deda Ram- the husband of Smt. Keli - along with Smt. Keli and two minor daughters, was living in the adjoining house, from where the recoveries were made. According to them, the boundary wall of the house is 3 1/2 feet in height and the area is in a Kacchi Basti. The main door of the house is broken and could not be closed. It had two rooms. In one room Deda Ram and his family members were living while the other room was occupied by the labourers who were employed in the construction work of a house by DW 1 Munji. PW 9 Rugha Ram was the another Station House Officer, who, after loding the F. I. R., lookup the investigation, recorded the statements of the witnesses and thereafter presented the challan. DW 1 Munji has stated that certain workers were

working in the construction of his house and Pancha Ram and Bhiya Ram (the appellants) were, also employed by him. According to him, while the accused-appellants were doing the construction work, they were taken with them by the police. Similar is the " statement of DW 2 Bhika Ram. The learned Special Judge, after considering the evidence produced by the respective parties, did not believe the defence version and accepted the prosecution case so far as accused-appellants Pancha Ram and Bhiya Ram are concerned; convicted and sentenced the appellants, as stated above, but acquitted accused Smt. Keli of the offences she was charged with. It is against this judgment dated 6-4-1994, passed by the learned Special Judge that the appellants have preferred this appeal.

3. It is contended by the learned Counsel for the appellants that the information from the Mukhbir was received by PW 1 Bhagwat Singh, the S. H. O., at 1.15 p.m. and he recorded the same in the Roznamcha, sent the information to the Superintendent of Police, Jodhpur, at 2.00 p.m. and then proceeded to the place of the occurrence for recovery etc. This shows that there was no urgency in the matter and he could have obtained the warrant and as there was no urgency in the matter, the proceeding of PW 1 Bhagwat Singh without obtaining the warrant to the place of the occurrence, is wholly without jurisdiction. It has, also, been contended by the learned Counsel for the appellants that though it has been mentioned that the investigation was made by PW 9 Rugha Ram, but the statements of the witnesses PW 1 Bhagwat Singh and PW 9 Rugha Ram clearly show that no investigation was made by PW 9 Rugha Ram and as the recoveries were made by PW 1 Bhagwat Singh and he himself has conducted the investigation, therefore, the same vitiates the whole trial as well as the conviction and sentence and as such the appellants deserve to be acquitted. It has, also, been contended by the learned Counsel for the appellants that the mandatory provisions of Section 50, of the Act have not been complied with and the appellants were not informed regarding their right to be searched in the presence of a gazetted officer or a Magistrate and, therefore, they deserve to be acquitted. Lastly, it has been contended by the learned Counsel for the appellants that the evidence of the prosecution witnesses, so far as accused Smt. Keli is concerned, has been disbelieved by the learned trial Court and, therefore, the appellants, also, deserve to be acquitted. The learned Public Prosecutor, on the other hand, has

supported the judgment passed by the Court below and submitted that the compliance of the provisions of Section 50 of the Act has properly been made and there was an urgency in the matter and PW 1 Bhagwat Singh has recorded the reasons and sent the report to his immediate officer superior and has, thus, complied with the provisions of Section 42, of the Act, also. It has, also, been contended by the learned Public Prosecutor that the investigation, in the present case, was conducted by PW 9 Rugha Ram and not by PW 1 Bhagwat Singh and the prosecution has been able to prove the case against the accused-appellants beyond a reasonable manner or doubt and the judgment, passed by the learned lower court, does not require any interference.

4. I have considered the submission made by the learned Counsel for the parties.

5. The first question, which requires consideration in the present case, is: whether the compliance of Section 42, of the Act has been made by PW 1 Bhagwat Singh or not, and whether there was any urgency in the matter to proceed with the search, seizure and arrest of the accused after receiving the information from some Mukhbir that the contravention of the provisions of the Act has been made by the accused. The information was received by PW 1 Bhagwat Singh at about 1.15 p.m. He entered the information in the Roznamcha, made arrangements for two Motbir witnesses and, also, made other necessary arrangements in connection with search, seizure and arrest and thereafter proceeded towards the place of the incident. He, after recording the information, despatched a copy thereof to his immediate officer superior. The time taken by PW 1 Bhagwat Singh in making all such arrangements and forthwith sending the copy to his immediate officer superior and then proceeding towards the place of the incident, was reasonable. He has complied with the provisions of Section 42, of the Act. No contravention of the provisions of Section 42 of the Act has been made by PW 1 Bhagwat Singh. The contention, raised by the learned Counsel for the appellants, is, therefore, devoid of any force.

6. The next contention, raised by the learned Counsel for the appellants is that the provisions of Section 50 of the Act have not been complied with as the appellants were not informed regarding their right to get themselves searched in the presence

of a gazetted officer or the nearest Magistrate. Section 50 of the Act, which is mandatory in nature, deals with the personal search of the accused and not the search of the house. In the present case, the recovery of the opium from the Paraat was made from the room which was occupied by these two appellants and, therefore, the provisions of Section 50, of the Act are not applicable in the present case. The accused-appellants were found preparing opium in the house of Smt. Keli and the opium lying in the Paraat was seized and sealed and, therefore, there was no question of any information being required to be given to the appellants that if they so desired, they may be searched before a gazetted officer or a Magistrate. There was, therefore, no violation of the provisions of Section 50, of the Act as this Section is not applicable in the present case.

7. The next contention, raised by the learned Counsel for the appellants is that it was PW 1 Bhagwat Singh who searched the house of Smt. Keli, seized the opium and other articles, arrested the accused, lodged the F. I. R. and conducted the investigation, and as the search, seizure and arrest and the investigation was made by the same person, therefore, the trial and the conviction stand vitiated and the appellants deserve to be acquitted. I have gone through the statements of PW 1 Bhagwat Singh and PW 9 Rugha Ram. After going through the statements of these two witnesses, I am of the opinion that after the search, seizure, arrest and lodging the F. I. R., the investigation was made by PW 9 Rugha Ram. Slight material discrepancies in the statements of PW 9 Rugha Ram and PW 1 Bhagwat Singh do not make out the case that the investigation was not conducted by PW 9 Rugha Ram. It was PW 9 Rugha Ram, who took-up the investigation after lodging of the F. I. R. and completed the same. Even otherwise, in view of the latest judgment of the Hon'ble Supreme Court in: the State of Punjab v. Balbir Singh JT 1994 (2) SC 108 : AIR 1994 SC 1872, it is clear that the investigation can be conducted by the same person who has made the search, seizure, arrest and lodged the F. I. R. It has been held by the Supreme Court in: the State of Punjab v. Balbir Singh that :--

when a police officer carrying on the investigation including search, seizure or arrest, empowered under the provisions of the Cr PC comes across a person being in possession of the narcotic drug or psychotropic substances then two

aspects will arise. If he happens to be one of those empowered officers under the Act, also, then he must follow thereafter the provisions of the N. D. P. S. Act and continue the investigation as provided thereunder. If, on the other hand, he is not empowered, then the obvious thing he should do is that he must inform the empowered officer under the N. D. P. S. Act who should thereafter proceed from that stage in accordance with the provisions of the N. D. P. S. Act.

The position of law, which emerges from the judgment of Balbir Singh's case is that it is only the empowered officer who can conduct the investigation and if an empowered officer comes across a person being in possession of the narcotic drug or psychotropic substance and had made the search, seizure and arrested the accused under the Act then he can proceed with the investigation. It is not necessary, as per the view taken by the Hon'ble Supreme Court that it is only the other officer who should proceed with the investigation and the person, who has made the search or seized the article or arrested the accused or lodged the report, becomes disentitled to carry on the further investigation. The officer who has seized the article, arrested the accused and lodged the report, can be said to be a 'complainant' only in a technical sense in view of the Explanation appended to Sub-section (d) of Section 2 of the Act, which defines the word 'complainant.'

An inclusive definition of 'investigation' has been given in Sub-clause (b) of Section 2 of the Code of Criminal Procedure, according to which 'investigation' includes all the proceedings under this Code for the collection of evidence, conducted by a police officer or by any person (other than a Magistrate) who is authorised by the Magistrate in this behalf. As per the definition, investigation consists of: (i) proceeding to the spot; (ii) the arrest of the suspected offender; (iii) the collection of evidence relating to the commission of the offence; (iv) the search of the place and seizure of the things; (v) ascertainment of the facts and circumstances and preparation of the site-plan etc.; (vi) recording the statements of various witnesses; and (vii) thereafter to form an opinion whether from the evidence collected by the investigating officer, any case to proceed with against the accused is made out. Thus, if after receiving the information from some secret source when the Investigating Officer proceeded towards the place to arrest the accused and to make the search and seizure and if he found that some contravention of the

provisions of the N. D. P. S. Act has been made then it is in the process of investigation. The Act does not envisage the investigation by two separate persons one, up to the stage of arrest of the accused, search and seizure and thereafter by the another officer. The Investigating Officer, who made the search, seized the article, arrested the accused and lodged the report, who was authorised under the N. D. P. S. Act to investigate, was, thus, competent to proceed with the investigation in view of the latest judgment of the Supreme Court in the case of: the State of Punjab v. Balbir Singh. There is no provision either in the N.D.P.S. Act or in the Code of Criminal Procedure, according to which any illegality or irregularity in the investigation would render the trial illegal. In the absence of any such provision, any irregularity or illegality in the investigation, thus, cannot vitiate the trial or conviction. The learned Special Judge has, therefore, not committed any illegality or irregularity in convicting and sentencing the accused-appellant and the appeal, filed by the appellant, deserves to be dismissed.

8. The last contention, raised by the learned Counsel for the appellants is that the evidence of the prosecution witnesses, so far as Smt. Keli is concerned, has not been believed by the trial Court, therefore, the appellants, also, deserve to be acquitted. The case of Smt. Keli is not before me: whether any appeal has been filed by the State against her acquittal, is not clear and, therefore, I would not like to discuss the case of Smt. Keli here at this stage. It is not a general rule that if the witnesses have not been believed for one accused then their testimony cannot be relied upon so far as the other accused are concerned. The law only requires that the evidence of such witnesses should be examined cautiously and not that the same should be outrightly discarded. After careful consideration of the evidence of the prosecution witnesses implicating the accused, I am of the opinion that the evidence of the prosecution witnesses inspires confidence. The accused-appellants were found preparing opium from the opium milk when the room was searched and the opium was lying in the Paraat which was in their possession, which was recovered and on F. S. L. examination, it was found to be the opium. The prosecution has, therefore, been able to prove the case against the accused-appellants beyond a reasonable manner of doubt and the judgment, passed by the learned lower Court, does not require any interference.

9. In the result, I do not find any merit in this appeal and the same is hereby dismissed.

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