

Jeevraj Ram Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-03-1991

Reported in : 1991(1)WLN537

Judge : B.R. Arora, J.

Appeal No. : D.B. Cri. Appeal No. 66 of 1989

Appellant : Jeevraj Ram

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated December 20, 1988, passed by the learned Sessions Judge, Bikaner, by which the learned Sessions Judge convicted and sentenced the accused-appellant Under Section 8/17 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The incident, which led to the prosecution and trial of the appellant Jeevraj Ram Under Section 8/17 of the Narcotic Drugs and Psychotropic Substances Act, took place on April 29, 1987, at about 11.00 a.m. when the accused-appellant was apprehended near the godown of 965 RD by the police party headed by

Nachhatra Singh, Station House Officer, Police Station, Bajju. The case of the prosecution is that on April 29, 1987, Nachhatra Singh, S.H.O., Police Station, Bajju, at about 10.00 a.m. received an information from one 'MUKHBIR' and this information he entered in the 'ROZNAMCHA' vide Ex. P-11 and went in a jeep alongwith Shashi Raj, Bhanwar Singh, Munshi Ram, Moti Ram, Patt Ram, and the driver Gopi Ram and reached near 961-R.D., from where they took Mohan Ram Motbir witness and proceeded towards 965-R.D. and when they reached near the godown of R.C.P. near 965-R.D. they saw the accused-appellant hiding himself. On seeing this, they stopped the jeep. The accused ran away. They followed the accused and caught-hold of him. On enquiry, the person arrested disclosed his name as Jeevraj Ram. At that time, the accused was carrying a bag and on search it was found that this bag contained five separate polythene bag containing opium. The polythene bags containing opium were weighed and the weight of all these five polythene bags came to 5-130 Kgs. A sample from all these five polythene bags was taken weighting 80 grams and the sample as well as the other opium were sealed and after doing all these formalities and preparing the memos etc., the police party came to Police Station Bajju. On F.S.L. Examination, the article was found as opium and, therefore, the challan against the accused Under Section 8/17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'the Act') was submitted. The accused was tried by the learned District & Sessions Judge, Bikaner. The police, in support of its case, produced eight witnesses and the accused, in support of his case, examined two witnesses. The learned Sessions Judge, Bikaner, after trial, Convicted the accused Under Section 8/17 of the Act and sentenced the accused-appellant to undergo fifteen years' rigorous imprisonment and a fine of Rs. 25,000/- and in default of payment of fine to further undergo two years' rigorous imprisonment. It is against this judgment, passed by the learned Sessions Judge, Bikaner, convicting and sentencing the accused-appellant that the accused has preferred this appeal.

3. I have heard the learned Counsel for the appellant and the learned Additional Advocate General and perused the judgment passed by the learned Sessions Judge as well as the record of the case.

4. The nature of the evidence produced by the prosecution consists of PW 1 Munshi Ram, who, on the relevant date, was posted as F.C. at the Police Station, Bajju and who on May 29, 1987, went with Nachhatra Singh S.H.O. on a jeep and apprehended the accused near the R.C.P. Cement Godown at 965-R.D. PW 2 Shashi Ram H.C., PW 4 Patt Ram F.C. & PW 5 Gopi Ram Driver were, also, posted at Police Station, Bajju, on May 29, 1987, and went with Nachhatra Singh S.H.O. after receiving the information from some 'MUKHBIR'. They were also the members of the police party, which apprehended the accused near R.C.P. Cement Godown at village 965 R.D. PW 3 Jaman Singh is the F.C, who was, also, posted at Police Station Bajju, on May 29, 1987 and he was, also, a member of the police party which went to 965 R.D. where the accused was apprehended near R.C.P. Cement Godown. He also, took samples for examination to the Forensic Science Laboratory, Nimach on June 16, 1987. PW 6 is Mohan Ram, who, according to the prosecution, was taken by Nachhatra Singh, S.H.O., from 961-R.D. This witness has not supported the prosecution case and has turned hostile. PW 7 Bhanwar Singh was the Malkhana Incharge and he was, also, a member of the police party which apprehended the accused on May 29, 1987 near the R.C.P. Cement Godown of 965 R.D. PW 8 is Nachhatra Singh, Station House Officer, who, after receiving the information from one 'MUKHBIR' proceeded towards 965-R.D. and took Mohan Ram from 961 R.D. and apprehended the accused at 965-R.D. The accused examined Dw 1 Dalla Ram and DW 2 Sujana Ram, to show that the accused was not apprehended by the police party near the R.C.P. Cement Godown of 965-R.D. but actually he was taken by the Station House Officer Nachhatra Singh from the house of Jeevraj.

5. This is all the evidence produced by the prosecution. From the evidence produced by the prosecution it is an admitted position that while taking the search of the accused-appellant, he was neither produced before any Gazetted Officer or before the nearest Magistrate. The search of the appellant was not taken in the presence of any Gazetted Officer or the nearest Magistrate. He was not even asked by the Investigating Officer whether he wanted to get himself searched in the presence of any gazetted officer or the nearest Magistrate. Even the S.H.O. did not care to call the independent witnesses from the nearby village to witness the search of the appellant. The S.H.O., also did not care to call the independent

witness to witness, the recovery, also. It is not the case of the prosecution that no independent witness was available there. It has come on record that the R.C.P. Cement Godown, from where the accused was apprehended by the police party, was open at that time. It has, also, come on record that the scale and the measuring weights for weighing the recovered articles, were brought from a hotel at 961-R.D. and there were some persons present at the hotel. When the scale and the weights for weighing the recovered articles, were brought from a hotel at 961-R.D. and independent witnesses were available there, then it has necessary for the prosecution to have called those witnesses from the hotel or from the R.C.P. Cement Godown of the nearby locality. There is, thus a clear contravention of the provisions of Section 50 of the Act, which requires the investigating officer to ask the accused whether he wants himself to be searched in the presence of a Gazetted Officer or as nearest Magistrate and secondly, the Station House Officer has not even cared to call independent witness of the locality to witness the search and seizure. Though it is not obligatory on the investigating officer to keep the independent or respectable persons present at the time of seizure and search if it is not possible for him to secure the presence, but when the witness are available then it is necessary for the investigating officer to call those independent witnesses to show that the search was conducted fairly and there was no plantation and fabrication of any material. As deterrent punishment has been provided for the offences under the Act, the legislature has deliberately made certain provisions to afford safeguard so that the persons are not arrested and if the investigating agency deliberately ignores to comply with the provisions of the matter is to be looked with suspicion by the Court. In the present case the accused-appellant was apprehended near the R.C.P. Cement Godown, which was open at that time and the scale and the weights were brought by the police party from the hotel at 961 RD which was only at a distance of 100 yards and some persons, were, also, present there, but none of the independent witness was called by the investigating officer before the search was made nor has any explanation been given by the prosecution why the independent witnesses were not called and the prosecution wholly relied upon the evidence of the police personnels. The prosecution, therefore, failed to discharge this responsibility of keeping the independent witnesses present while making the search, which makes the prosecution case

unworthy of acceptance and shabby on the face of it. Even the compliance of Section 50 of the Act has not been made. It may further be mentioned that the accused-appellant was apprehended by Nachhatra Singh, SHO, who seized and sealed the articles and lodged the First Information Report at Police Station, Bajju, and he himself conducted the investigation also, which is contrary to the law laid down by this Court in the case of Ronald Marka Goonthar S/o Helmet V The State of Rajasthan (1983 Cr. L.R. (Raj.) 678), In view of the judgment of this Court in the case of Ronald Marka Goonthar (supra), the Station House Officer Nachhatra Singh was the complainant and, therefore, the investigation should not have been done by him. It should have been done by some other agency senior in rank to Nachhatra Singh, SHO.

6. There is another aspect of the case, also, which creates a suspicion in the prosecution case. There is no linking evidence on record, from which it could be gathered that the seals of the sample as well as on the articles, remained intact. There is no complete chain of link to show that the articles remained in a sealed condition from the time they were seized and sealed till they reached the Forensic Science Laboratory and was examined. On this point, the prosecution has produced the evidence of PW 3 Jaman Singh and PW 7 Bhanwar Singh. Nachhatra Singh is the Station House Officer, who conducted the investigation but he has not said even a word on this point. His, only, statement is that he apprehended the accused, weighed the sample and seized and sealed them. Beyond this, he has not said anything whether the seals on the sample remained intact or not. PW 3 Jaman Singh has stated that one sample, which was sealed, was given to him on June 17, 1987 for FSL examination, which was deposited by him at the Forensic Science Laboratory, Nimach on June 18, 1987. He has further stated that the sample was given to him in a sealed condition and it remained in sealed condition till it was deposited in the Forensic Science Laboratory. PW 7 Bhanwar Singh, who was the Malkhana Incharge, has stated that the Station House Officer deposited the sealed packets in the Malkhana. But, the Station House Officer Nachhatra Singh has been said so. The date on which the sample was deposited has, also, not been given by the witnesses. He has further stated that he gave these two sealed packets to Jaman Singh for depositing the same for FSL examination on June 17, 1987 and the entry was made in Ex. P-8. It may,

however, be mentioned here that this entry Ex. P-8 does not contain the name of Jaman Singh. It may, also, be taken note of that this witness had stated that both these sealed packets, which were deposited by the Station House Officer were given to Jaman Singh for F.S.L. examination while this is not the correct position. The main article, which was sealed, was not required to be sent for F.S.L. examination. The article which was seized, was not sealed in the presence of the Motbir witnesses and even the seal, which was placed on the sample, was in the custody of the Malkhana Incharge himself and further-more, the SHO has not stated that on which date he deposited the sample in the Malkhana. Even the letter for sending the sample was issued by the Superintendent of Police on June 8, 1987. All these circumstances, taken together, create a doubt in the prosecution case to the effect whether the seals were intact through out or not.

7. In this view of the matter, I am, therefore, reluctant to up-hold the prosecution case, which is solely based on the recovery made as a result of the search not witnessed by any independent or respectable person as it was not impracticable to procure the independent witnesses. The investigating officer did not try to call the independent witnesses and rest contented with the evidence of the police personnels. He even did not case to comply with the provisions of Section 50 of the Act.

8. In the result, this appeal, filed by the accused appellant, allowed. The conviction and sentence passed by the learned Sessions Judge, Bikaner, is set-aside and the accused-appellant Jeevraj Ram is acquitted of all the charges levelled against him. The accused is in jail he shall be set-forth at liberty if not wanted in any other case.