

Megha Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-28-1997

Reported in : 1997CriLJ3091

Judge : M.A.A. Khan, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18, 50, 52 and 57

Appeal No. : Criminal Appeal No. 302/1992

Appellant : Megha Ram

Respondent : State of Rajasthan

Advocate for Def. : D.S. Rathore, Adv.

Advocate for Pet/Ap. : K.R. Chaudhary, Adv.

Disposition : Appeal dismissed

Judgement :

M.A.A. Khan, J.

1. This is an appeal from the judgment and order dated 25-7-1992 whereby the learned Sessions Judge, Jaisalmer held the EO/GO/R158/97/MPP/USA petitioner guilty of the offence under Section. 8/18 of the [Narcotic Drugs and Psychotropic](#)

[Substances Act, 1985](#) (the NDPS Act), convicted him as such and sentenced him to 10 years' R.I. and Rs. 1 lac fine.

2. Briefly stated the prosecution case is that on Sept. 2, 1989 at about 6-00 p.m. at police station Jaisalmer PW-6 Pratap Singh Station House Officer (SHO) received a secret information to the effect that a short-statured man, who named himself as 'Chaudhary' was loitering around the hotels near the Railway Station and speaks of selling opium. The SHO took some of the members of subordinate staff with him and immediately left for the Railway Station. On reaching the Railway Station the SHO noticed the appellant going towards the back side of a hotel. On being given a call the appellant allegedly tried to run away but was apprehended by the police men accompanying the SHO. On being questioned about his name and contents of the bag with him, the appellant allegedly stated that he was Magha Ram Jat of village Bhiyad but with 4 S.D. Supply Depot at that time and that his bag contained opium. The SHO asked him whether he would like to be searched in presence of a Gazetted Officer or a Magistrate but the appellant expressed his readiness to be searched by the SHO and his men. Two independent witnesses, namely PW-3 Ratan Singh and PW-4 Amar Singh were called and in their presence search of appellant's bag was made. Substance of blackish colour weighing 1 Kg, kept in a 'jalphoo' was recovered therefrom. The substance was suspected as being opium. One sample of 30 Gms. was prepared in a 'tin dibbi' which was duly sealed. The remaining opium was separately sealed. Signatures of the witnesses were obtained on the sealed packets. The appellant was arrested. The police party returned to the police station along with the appellant and the sealed packets. The sealed packets were deposited in the police Mal Khana, Later on, the small sealed packet was sent to the Forensic Science Laboratory, Rajasthan, Jaipur (F.S.L.) for Chemical Examination. The Asstt. Director, FSL on examination of the contents of the sealed packet, certified the same containing 1-78% coagulated juice of opium poppy. After completing the investigation the appellant was charge-sheeted and on trial by the learned Sessions Judge convicted and sentenced in the manner stated above.

3. Mr. K.R. Chaudhary, the learned counsel for the appellant, urged that since the mandate contained in Sections 50 and 57 were not complied with in this case, the

trial of the appellant got vitiated and he was entitled to an acquittal. In support of his arguments, Mr. Chaudhary relied upon a number of decisions of this Court as well as those of the Apex Court. In particular, reference was made to the decisions of this Court in the cases of (1) *Nathiya v. State of Rajasthan* 1991 (2) RLR 15, (2) *Bala Ram v. State of Rajasthan* 1993 (1) RLR 494, (3) *Ram Kumar Singh v. State of Rajasthan* 1994 (1) RLW 11, (4) *Prem Singh v. Union of India* RLW (2) 675 (sic), (5) *Nagendra Singh v. State of Rajasthan* 1996 (3) WLC (Raj) 247, of the Bombay High Court in (7) *Hamid Khan v. State of Maharashtra*, 1996 Cri LJ 2722 and of the Supreme Court in (8) *State of Punjab v. Balbir Singh* (1994) 3 SCC 299 : (1994 Cri LJ 3702) and (9) *S. Mohd. v. State of Gujarat* 1995(2) RLW SC 28.

4. The learned Public Prosecutor, however, submitted that since the mandates of Sections 50 and 57 were complied with in the present case, the ratio decidendi of the cited cases was not applicable to the facts of the instant case. He placed reliance on the decision of the Supreme Court in the case of *State of Punjab v. Balbir Singh* (supra).

5. I have thoughtfully considered the rival submissions and critically examined the evidence on the record of this case in the light of the decisions of the cases cited supra. It seems to me that the provisions contained in Sections 50 and 57 as also several other provisions of the NDPS Act have remained the subject of judicial scrutiny not only by this Court but also by several other High Courts and the Apex Court as well and it is by now fairly well settled that whereas the provisions contained in Section 50 are to be mandatorily complied with for successful prosecutions under the NDPS Act, those of Sections 50 and 57 are not by themselves mandatory in character, but their importance in the scheme of the NDPS Act can also not be minimised.

6. Section 50 pertains to the pre-arrest stage of the proceedings and gives a valuable right to the accused to be searched, with regard to his person, in the presence of a Gazetted Officer or a Magistrate. A corresponding duty has been cast on the officer arresting the accused to apprise the accused of his such right in order to enable him to exercise the same. Such valuable right of the accused cannot be allowed to be taken away from him. Compliance of Section 50 is

mandatory.

7. Section 57 comes into play in the post-arrest period. It enjoins upon the officer, arresting an accused and effecting recovery of a narcotic drug or psychotropic substance from his possession, to inform his superior officers of the actions taken by him. Compliance of this provision is meant to serve a dual purpose. On the one hand it affords an element of authenticity to the action taken by him in the cause of preventing commission of offences against the NDPS Act. The consciousness of compliance of this section puts, in a sense, a sort of check on the arbitrary exercise of his powers of arrest and seizure by him under the Act and creates a sense of responsibility in him to act in accordance with relevant provisions of law so as not to be undermined in the estimation of his superior officers with regard to the discharge of his duties as a responsible officer. On the other hand the communication of the information apprises the superior officers of the position of offences against the NDPS Act and also of the steps taken and compliance of the relevant rules made by their subordinates in the administration of the said Act. If the officer has acted as a vigilant and duty conscious officer in the pre-arrest-stage of the proceedings and his evidence discloses satisfactory compliance of the mandatory provisions relating to that stage of proceedings and inspires confidence in Court, non-compliance or compliance with some irregularity of certain provisions relating to post-arrest period would not be fatal to the prosecution case as that would be a Case of an offence already committed and concluded. The purpose of compliance of Section 57 is to afford further reliability to the action already taken by the subordinate officer. In that sense of the matter compliance of Section 57 is not mandatory but for that reason its importance in the scheme of the Act cannot be minimised (see *State of Punjab v. Balbir Singh*).

8. It is trite law that provisions of a penal statute, imposing penalties and punishment on the subject must be strictly interpreted and construed and where two views of the interpretation of a provision in such statute are possible the one beneficial to the subject should be preferred. (See AIR 1954 SC 496 : (1954 Cri LJ 1333), (1990) 4 SCC 76, (1994) 5 SCC 402 and (1996) 5 SCC 1. The question, however, arises as to what should be the effect of the non-compliance or compliance with some irregularity of a mandatory provision? Should the Court took

at the form or at the substance? is the doctrine of a prejudice to the accused not relevant for consideration in such a situation?

9. The above and similar other questions appear to have been considered by the Apex Court in the case of *State of Punjab v. Balbir Singh* (supra) and it seems to have been held that whereas non-compliance of the mandatory provisions contained in Section 50 would vitiate the trial of the accused, the consideration of prejudice to the-accused by the non-compliance of the provisions of Sections 50 and 57 would be a relevant factor. The same question seems to have again been considered by the Apex Court in the case of *State of H.P. v. Prithi Chand* (1996) 2 SCC 37 : (1996 Cri LJ 1354) wherein it was emphasised that substantial compliance of the mandatory provision satisfies the requirement of law and saves the prosecution case from the fatal blow. The principle which emerges from the later decision of the Apex Court is that if jurisdictional or foundational defect is not there and substantial compliance of mandatory provisions is satisfactorily found proved in a case, then technical defects and irregularities causing no failure of justice do not do away with the effect of substantial compliance of the mandatory provisions and cannot be allowed to defeat the ends of justice. (See *State Bank of Patiala v. S.K. Sharma* (1996) 1 SCC 288. The stress, thus, is on substantial and not formal compliance of the mandatory provisions of the statute.

10. In the instant case I find that the prosecution theory and the evidence led to prove such theory inspire confidence in me. The facts, narrated above, have been stated on oath in sufficient detail, by PW-6 Pratap Singh who, in his testimony, stands fully corroborated on all material points by the testimony of PW-2 Ram Singh. The SHO left the police station at about 6-00 p.m. and returned at 9-00 p.m. along with the appellant and the material seized from his possession in sealed packets. The entries in the General Diary corroborate the previous and subsequent conduct of the witness. In his statement he had further stated that he had apprised the appellant of his right to be searched in presence of a Gazetted Officer or a Magistrate and on appellant's readiness to be searched by the witness, he had searched his person and seized the incriminating material. It was no doubt pointed out by Mr. Chaudhary that in the examination-in-chief the witnesses had stated that he had asked the appellant whether he would like to be

searched by a Gazetted Officer and had not mentioned about the Magistrate and that the communication of that information to the appellant was not separately recorded. But on going through the cross-examination conducted on the witness and the memo of the proceedings (Ex. P-3) prepared by the witness on the spot, I feel satisfied that substantial compliance of Section 50 had been made. In the cross-examination the witness had stated that the appellant was apprised of his right to be searched in the presence of either a Gazetted Officer or of a Magistrate and such a act has also been mentioned in the memo (Ex.P-3). There is thus no force in this argument of Mr. Chaudhary.

11. Regarding compliance of the provisions of Section 57. I find that PW-6 Pratap Singh has stated that in his morning report, submitted to his superior officers within 48 hours of the arrest of the appellant and seizure of the narcotic drug from his possession, he had informed the superior officers of the facts of this case. Though the copy of the information, so given, was not produced at the trial yet there seems to be no reason, in the absence of any evidence to the contrary, to disbelieve the witness on the point. No prejudice occasioned to the appellant and any failure of justice caused to him by compliance of the provisions of Section 57 in that way, was pointed out to me. This objection is overruled.

12. It was next urged by Mr. Chaudhary that the two independent witnesses turning hostile, the prosecution case rests on the testimonies of two witnesses only, namely PW-2 Ram Singh and PW-6 Pratap Singh SHO of whom one is the informant as well as investigator himself and the other is his subordinate and they being Police Officers, should not be believed. I find no substance in this objection too. The worth and value of the evidence of a witness does not depend upon his occupying or not occupying a particular status or position. There is no rule that a Police Officer cannot be a truthful witness and that an informant cannot act as an investigator in a case. The only rule required to be followed in such cases is that of care and caution in the appreciation of the testimonies of such witnesses. On close examination of the testimonies of both these witnesses I find no inherent defect therein or any contradiction on any material point in the case, Their previous and subsequent conducts support their versions. Their testimonies can, therefore, not be discarded on the sole ground that they happen to be Police

Officers.

13. It was next urged by Mr. Chaudhary that whereas in the seizure memo the weight of the sample of the narcotic drug was mentioned as 30 gms., the Asstt. Director, FSL examined the sample of 32 gms. which indicates that it was a different sample which the Asstt. Director examined. On scrutiny of the relevant memo and the certificate of the Asstt. Director, I find that the Asstt. Director had mentioned the 'approximate' weight of the sample examined by him. P.W. 1 Narpat Dan H.C. P.W. 5 Vijay Singh H.C. and PW-7 Hem Singh constable have proved that the very sample prepared from the drug, seized by PW-6 Pratap Singh from the possession of the appellant and kept in sealed container in the Mal Khana and taken to S.P. Office and then to the FSL, was delivered to the Asstt. Director's office. There is thus no force in this argument too.

14. In the end it was submitted by Mr. Chaudhary that specimen impression of the seal, used to seal the packet sent to the Asstt. Director, FSL, was not sent separately to him. P.W. 6 Pratap Singh had stated that he had prepared the memo of specimen of the seal, used to seal the packet, separately. In his certificate the Asstt. Director, FSL has mentioned that he had tallied the seal on the sealed packet with the seal impression forwarded to him. There is no reason to discard the prosecution evidence on this point.

15. To sum up, this appeal has no force and is accordingly dismissed.