

Amar Chand Vs. the State of Rajasthan

Amar Chand Vs. the State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/761403

Court : Rajasthan

Decided On : Jan-08-1991

Reported in : 1991WLN(UC)27

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Appeal No. 201 of 1990

Appellant : Amar Chand

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated June 29, 1990, passed by the Additional Sessions Judge No. 1, Hanumangarh (Camp Sangariya), by which the learned Additional Sessions Judge convicted and sentenced the accused appellant Amar Chand under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act.

2. The incident, which led to the prosecution of the present appellant, took-place on February 16, 1988 when Assistant Sub-Inspector Karnail Singh alongwith the Station House Officer Sant Ram, Constable Mohendra Lal and Constable Paul

Singh went on patrolling duty from the Police Station, Sangariya, at about 3.30 p.m. in a jeep. When they reached near the Railway Station, Dhaba, at about 4.00 p.m. one informant met them there and informed that in Mani Ram's Dhani near Canal bank of Bhagatpura minor, the accused is selling poppy-heads. Upon receiving this information, Karnail Singh, A.S.I., along with the other police personnel, proceeded towards the canal and found Jagroop Singh, Pradeep Kumar and Mahendra Singh selling the poppy-heads. He caught-hold of them, made recovries and in making the recoveries of the poppy-heads from these persons, about 11/2 hours time was consumed. Thereafter he proceeded towards Bhagatpura Minor and on the Northern bank, the accused was found weighing the poppy-heads in a scale and four persons were sitting in front of him. The accused remained sitting there and was caught by the police party while t he four persons managed to ran away. 1/1/2 bags of poppy heads was recovered from the accused Mani Ram which was seized by the police and the accused was arrested. The samples of the poppy-heads from the bags were taken and were sent to Forensic Science Laboratory for examination. On F.S.L. examination, it was found that the samples contained poppy-heads' powder. The police, after necessary investigation, presented the challan against the petitioner under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the N.D.P.S. Act') and the accused appellant was tried under section 8/15 N.D.P.S. Act by Additional Sessions Judge No. 1, Hanumangarh. The Prosecution, in support of its case, produced seven witnesses, namely, PW 1 Subhash Chandra, PW 2 Sant Ram, PW 3 Chunni Lal, PW 4 Jeewan Ram, PW 5 Sobhag Singh, PW 6 Karnail Singh and PW 7, Karnail Singh A.S.I. The accused was examined under Section 313 Cr.P.C. and he did not examine/produce any witness in defence. The learned Additional Sessions Judge, after trial, found the accused-petitioner guilty under Section 8/15 of the N.D.P.S. Act and sentenced him to undergo ten years' rigorous imprisonment and a fine of rupees one lac and in default of payment of fine to further undergo one year's rigorous imprisonment. Aggrieved with this judgment, the accused-appellant has preferred this appeal challenging his conviction and sentence passed by the Addl. Sessions Judge.

3. I have heard the learned Counsel for the appellant and the learned Public Prosecutor.

4. The judgment passed by the learned lower Court convicting and sentencing the appellant has been attacked by the learned Counsel for the appellant on various grounds, but the present appeal can be disposed of only on one ground. It has been contended by the learned Counsel for the appellant that the Assistant Sub-Inspector of Police Shri Karnail Singh, who arrested the appellant made the search and seizure that poppy heads was not authorised by any general or special order of the Central Government to exercise the powers under Section 42 or 43 of the N.D.P.S. Act. This point was, also, agitated before the learned lower Court, but the learned lower Court came to the conclusion that this is not a case under Section 42 of the N.D.P.S. Act, which requires special authorisation, while under section 43 of the Act, no authorisation is necessary. In my view, this approach of the learned Additional Sessions Judge is not correct. Section 43 of the N.D.P.S. Act deals with the power of seizure and arrest in public place and specifically mentions that any officer of any of the department mentioned in Section 42 of the N.D.P.S. Act may seize in any public place or in transit any narcotic drugs of psychotroic substance in receipt of which he has reason to believe that an offence punishable under Chapter IV of the Act has been committed. A plain reading of section 43 makes it clear that power regarding the seizure and arrest under Section 43 of the Act has been given only to those persons who have been mentioned in Section 42 of the Act. Section 42 of the Act requires a special authorisation but the Central Government or the State Government. While Section 42 of the Act empowers the officer of specified departments to carry-out search, seizure or arrest in any building, conveyance or enclosed place. Section 43 deals with their similar power in the public place and the powers given under both these Sections can be exercised by the concerned officer specially authorised by the Central Government or the State Government, who has reason to believe that some offence relating to the Narcotic Drugs and Psychotropic Substances has been committed. Clause (b) of Section 13 of the Act even confers power on such officer to arrest the person who is in the company of some-one who is found to be in unlawful possession of such type of substance. Section 49 of the Act empowers the officer mentioned in Section 42 to stop and search the conveyance. A composite reading of all these Sections clearly shows that only those persons who have been authorised by the Central Government or the State Government to take search and seized in these

places, can conduct the investigation and seize the articles or detain the person until and unless a person is specially authorised, he cannot conduct the investigation or seize the articles. It is not disputed by the learned Public Prosecutor that the Assistant Sub-Inspector Karnail Singh was not authorised at the relevant time by the Central Government or the State Government. As the A.S.I. Karnail Singh was not authorised by the Central Government or the State Governments by general or specific order, as such he could not have exercised the powers regarding the search and seizure under the N.D.P.S. Act.

5. In this view of the matter, the Assistant Sub-Inspector Karnail Singh conducted the investigation in the present case without any proper authorisation by the Central Government or the State Government, which was wholly without jurisdiction and has completely vitiated the whole trial.

6. In the result, this appeal, filed by the appellant, is allowed and the appellant is acquitted of all the charges levelled against him. The appellant is in jail and he be released forthwith if not required in any other case.