

Hardeep Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-14-2000

Reported in : 2001CriLJ593; 2000(3)WLC610

Judge : Sunil Kumar Garg, J.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 8, 15, 42, 42(1), 42(2) and 43; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. A. No. 474 of 1996

Appellant : Hardeep Singh

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, Public Prosecutor

Advocate for Pet/Ap. : Kulwant Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. The abovenamed accused-appellant has preferred this appeal against the judgment and order dated 11-9-1996 passed by the learned Special Judge, NDPS cases, Sri Ganganagar in Sessions case No. 9/93 by which he convicted the

accused-appellant for the offence under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and sentenced to undergo ten years RI and to pay a fine of Rs. 1 lac in default of payment of fine, to further undergo one year RI.

2. The facts giving rise to this appeal, in short, are as follows :-

P.W. 8 Jeevan Ram, SHO Police Station Sadulsahar District Sri Ganganagar registered the FIR Ex. P/13 stating inter-alia that on 23-1-1993 at about 3.00 PM he along with police officials including P.W. 1 Ramjilal and P.W. 5 Pradusingh proceeded in a Government jeep and reached Sadulsahar at about 4.00 pm. where he received a secret information to the effect that one person near the Water Works was carrying katta containing contraband article and that information was reduced in writing by him in Ex. P/11 and, thereafter, he took two motbirs P.W. 2 Harnek Singh and P.W. 3 Malaram and reached near the Water Works and as per information, he found a person sitting there and on being asked, he told his name as Hardeep Singh (accused appellant) and at that time he was having a katta of fertilizer and on being asked, he told that it contained poppy husk. Thereafter, he was informed through notice Ex. P/12 whether he wanted to be searched before a Magistrate or Gazetted Officer and he gave his consent on it that search be made by P.W. 8 Jeevan Ram himself. Thereafter, he made search of the accused appellant in presence of motbir witnesses and on search, a plastic katta was recovered and on opening, it was found that it contained poppy husk and on weighing, its weight was found to be 6 kg. and out of that, sample of 500 gms. was taken and sealed on the spot and the remaining poppy husk was also sealed on the spot. The fard of search and seizure Ex. P/1 was prepared on the spot. Thereafter, P.W. 8 Jeevan Ram handed over the contraband articles recovered from the accused appellant to P.W. 4 Kana Ram, who deposited the same in the Malkhana and copy of Malkhana Register is Ex. P/9. Thereafter, sample was sent to FSL for chemical analysis by P.W. 4 Kanaram through P.W. 6 Kedarnath, who after taking forwarding letter Ex. P/15 from SP Office, Sri Ganganagar, deposited the same in FSL, Jaipur and the report of FSL is Ex. P/16, where it has been stated that the sample contained in the packet marked 'A' gave positive tests for the presence of chief constituents of opium hence the sample is

of dried crushed capsules of poppy.

After usual investigation, the police submitted challan against the accused appellant in the Court of Magistrate and from where the case was committed to the Court of Session and thereafter, the case was transferred to the learned Special Judge, NDPS cases, Sri Ganganagar.

On 6-10-1993, the learned Special Judge, NDPS cases, Sri Ganganagar framed charge for the offence under Section 8/15 of the NDPS Act against the accused appellant. The charge was read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

During trial, the prosecution in support of its case examined eight witnesses and got exhibited several documents. Thereafter, statement of the accused appellant under Section 313, Cr.P.C. was recorded. No evidence in defence was led by the accused appellant. However, three documents were got exhibited in defence.

After conclusion of trial, the learned Special Judge, NDPS cases, Sri Ganganagar through his judgment and order dated 11-9-1996 convicted accused appellant for the offence under Section 8/15 NDPS Act and sentenced in the manner as stated above holding inter alia :-

1. That in the present case, provisions of Section 42 of the NDPS Act are not applicable and on the contrary, provisions of Section 43 of the NDPS Act are applicable as the search has been effected in the public place.
2. That though both motbir witnesses, namely, P.W. 2 Harnek Singh and P.W. 3 Malaram have been declared hostile, but it does not affect the prosecution case as other official witnesses supported the prosecution case.
3. That there is no room to hold that seal of sample in the present case has been tampered with in any manner and from the evidence on record, it has been proved by the prosecution that the seal of the sample remained intact from the date of sealing till it reached in the FSL.

4. That the prosecution has proved its case beyond reasonable doubt against the accused appellant for the offence under Section 8/15 of the NDPS Act.

Aggrieved from the said judgment and order dated 11-9-1996, the present appeal has been filed by the accused appellant.

3. In this appeal, the following submissions have been made by the learned counsel for the accused appellant:-

1. That when P.W. 8 Jeevan Ram had opted to act under Section 42(1) of the NDPS Act by reducing in writing the information received by him from mukhbir, then it was mandatory for him to send the copy of information to his immediate superior under Section 42(2) of the NDPS Act or in other words, since there is no compliance of the latter part of Section 42(2) of the NDPS Act, therefore, whole trial stands vitiated and accused appellant should be acquitted on this ground alone.

2. That FSL report does not show as to with what seal impression the packet marked A was sealed and what seal impression for comparison was forwarded by P.W. 8 Jeevan Ram, SHO to FSL and thus, there is a lacuna and a private seal has been used and furthermore, separate seal impression memo was not prepared nor the seal was deposited in the Malkhana and thus, prosecution case becomes doubtful. Hence, it was prayed that the appeal be allowed and the accused appellant be acquitted of the charge framed against him.

4. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Special Judge, NDPS cases, Sri Ganganagar.

5. I have heard the learned counsel for the accused appellant and the learned Public Prosecutor and perused the record of the case.

Point No. 1

6. On point No. 1, it may be stated that one of the learned Brother Judges of this Court (Hon'ble Mr. Justice A.K. Singh) when he heard this appeal, made a

reference by order dated 17th December, 1998 the following terms :-

Whether the provisions of Sub-sections (1) and (2) of Section 42 of the NDPS Act apply to search of persons in public places as defined in the explanation given in Section 43 of the NDPS Act.

7. The above reference was answered by the Division Bench of this Court vide order dated 4th July, 2000 in the following manner :-

that the provisions of Sub-section (1) and (2) of Section 42 of the NDPS Act does not apply to the search of persons in public places as defined in explanation given in Section 43 of the NDPS Act.

8. It has been held by the Division Bench of this Court that when the search of the person is made at public place, provisions of Section 42 of the NDPS Act do not apply. When this being the position, if the second part of Section 42(2) of the NDPS Act has not been complied with by P.W. 8 Jeevan Ram, it will not affect the prosecution case as in the present case, search was effected in the public place.

9. Therefore, the above argument now stands decided in view of the decision of the Division Bench of this Court dated 4th July, 2000 in the reference referred to by the learned single Judge.

10. In this respect, the learned Counsel for the accused appellant has raised one more argument that this decision of the Division Bench of this Court stands over ruled in view of the decision of the Hon'ble Supreme Court in Abdul Rashid Ibrahim Mansuri v. State of Gujarat, 2000 Cr LR (SC) 373 : (2000 Cri LJ 1384).

11. I have considered this aspect and gone through the order dated 4th July, 2000 passed by the Division Bench of this Court as well as the judgment of the Hon'ble Supreme Court in the case of Abdul Rashid Ibrahim Mansuri (supra).

12. So far as the judgment in the case of Abdul Rashid Ibrahim Mansuri (supra) is concerned, in that case, the Hon'ble Supreme Court held that the provisions of Section 42 of the NDPS Act would be applicable, inasmuch as in that case, accused of that case was carrying charas in his vehicle, meaning thereby, vehicle

in which charas was being carried was a private vehicle. Thus, the facts of the present case stands distinguished as in the present case search has been effected in public place. Therefore, to say that the decision of the Division Bench of this Court dated 4th July, 2000 stands overruled in view of the decision of the Hon'ble Supreme Court in the case of Abdul Rashid Ibrahim Mansuri (supra) is wrong and this argument is not tenable and the same stands rejected.

13. Therefore, the findings of the learned Special Judge that provisions of Section 42 of the NDPS Act are not applicable in the present case are liable to be confirmed.

Point No. 2

14. To decide point No. 2, evidence of the present case has to be seen.

15. P.W. 8 Jeevan Ram, SHO, Sadulsahar has clearly stated in his statement that the weight of the poppy husk recovered from the accused appellant was 6 kg. and out of the said 6 kg., a sample of 500 gms. was taken and the same was sealed on spot in a separate packet and rest of the poppy husk was also sealed on the spot and the said articles recovered from the accused appellant were handed over by him to P.W. 4 Kana Ram, Malkhana Incharge. P.W. 4 Kana Ram corroborated the statement of P.W. 8 Jeevan Ram by saying that P.W. 8 Jeevan Ram handed over to him white katta containing 5 kg. 500 gms. poppy husk, which was sealed and marked-B and another packet of 500 gms. was also handed over to him by P.W. 8 Jeevan Ram and the same was marked as 'A' and both were in good condition and he entered these articles in Malkhana Register Ex. P/9. He has further stated that on 14-2-1993 one sealed packet, as per the directions of the SP, was given by him to P.W. 6 Kedar Nath with a letter for depositing the same in the FSL, Jaipur and for that there is also entry in the Malkhana Register Ex. P/9 and the same is marked at place 'A to B'. He further states that on 21-2-1993, P.W. 6 Kedar Nath gave him receipt Ex. P/10 after depositing the said sample at FSL, Jaipur and the entry of the deposit of the said sample at FSL has also been made by him in the Malkhana Register Ex. P/9. He has further stated that the concerned articles when they were deposited by P.W. 8 Jeevan Ram, they remained in the same condition and in the same condition, he handed over the

sample to P.W. 6 Kedar Nath for depositing in the FSL. The statements of P.W. 8 Jeevan Ram and P.W. 4 Kana Ram further get corroboration from the statement of P.W. 6 Kedar Nath who states that on 14-2-1993, he was F.C. in the Police Station Sadulsahar and he took one sealed packet of sample from P.W. 4 Kana Ram for depositing the same in the FSL and he deposited the same in the FSL and obtained receipt Ex. P/10, which was handed over by him to P.W. 4 Kana Ram. Thus, there is uniformity in the statements of P.W. 8 Jeevan Ram, P.W. 4 Kana Ram and P.W. 6 Kedar Nath and P.W. 6 Kedar Nath has categorically stated that when he took the sample for depositing the same in the FSL Jaipur, he also took a forwarding letter Ex. P/15 from SP office.

16. Thus, there is evidence that the contraband articles recovered from the accused appellant were first handed over by P.W. 8 Jeevan Ram to P.W. 4 Kana Ram, who deposited the same in the Malkhana and made entry in the Malkhana Register Ex. P/9 and thus, it cannot be inferred that articles were not kept in proper custody and proper form. The evidence led by the prosecution is satisfactory on the point that articles from the date of seizure till they were deposited in the Malkhana and sent to FSL, Jaipur remained intact.

17. So far as the argument that seal on separate paper has not been taken by PW 8 Jeevan Ram and the same has not been sent to FSL is concerned, this Court has taken the view in many cases that it is a mere irregularity and it does not affect the prosecution case and on this ground alone, accused appellant cannot be acquitted. Hence, this argument is also not helpful to the accused appellant.

18. No other point was raised before me.

19. Thus, for the reasons stated above, the findings of the learned Special Judge, NDPS Cases, Sri Ganganagar convicting accused appellant for the offence under Section 8/15 of the NDPS Act are liable to be confirmed and the appeal of the accused appellant is liable to be dismissed.

In the result, the appeal filed by the accused appellant Hardeep Singh fails and is dismissed after confirming the judgment and order dated 11-9-1996 passed by the learned Special Judge, NDPS Cases, Sri Ganganagar.

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