

Ashok Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-04-1998

Reported in : 1998CriLJ3985; 1998WLC(Raj)UC526

Judge : G.L. Gupta, J.

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

Appeal No. : Cr. Jail Appeal No. 328/96

Appellant : Ashok Kumar

Respondent : State of Rajasthan

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

Advocate for Pet/Ap. : Mahipal Vishnoi, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

1. Ashok Kumar has preferred this appeal against the judgment and order dated 6-6-1996 passed by learned appeal Judge, Hunumangarh where by he convicted accused appellant under Section 8/15 of the N.D.P.S. Act and sentenced him to under go 10 years R.I. and pay a fine of Rs. one lakh, in default to under go six

months S.I.

2. The prosecution case is that on 16-3-1993 at 5.15 p.m. Richhpal Singh, S.H.O., P.S. Sangaria receiving an information from 'Mukhbir' that a man, wearing cream colour trouser and white sweater was carrying two bags, full of poppy powder, recorded the same and after informing his superiors by wireless message, proceeded towards Tibi Bus Stand along with police party. He accosted the man (Ashok Kumar accused) moving on the 'Kacha' road. After introducing himself Richhpal Singh told that he wanted to search him and if he wanted to be searched in the presence of Magistrate or the Gazetted Officer he would take there. On telling by accused Ashok Kumar, that he could himself search him then and here, Richhpal Singh made a search of his bags. He found that there was poppy powder in the bags. He took out samples from the bags in the presence of the 'Motbirs' and sealed them. He arrested the accused. Thereafter, a case was registered at Police Station Sardulsahar. The police obtaining the report from the Forensic Scheme Laboratory wherein it was opined that the samples contained poppy powder. A challan was, therefore, filed against the accused, who pleaded not guilty to the charge framed against him. The prosecution examined 8 witnesses. Accused in his statement under Section 313, Cr.P.C. denied accusation. After hearing the Public Prosecution and counsel for the accused, the trial Court held that the prosecution has proved that the accused was found in possession of the contraband article. He, therefore, convicted and sentenced him, as stated above.

3. Mr. Vishnoi, learned Amicus Curiae assailed the conviction of the appellant on the following grounds :-

(i) The poppy powder is said to have been recovered from the accused on 16-3-1993 whereas the Malkhana Register Entry Ex. P-9 shows that it had been sent to Forensic Science Laboratory on 23-1 -1993. This shows that the entire case for the prosecution is false.

(ii) There is no evidence of sending the seal impression to the F.S.L. and, therefore, the possibility that the samples were tampered with is not ruled out.

(iii) There was no compliance of Section 42(2) of the N.D.P.S. Act.

4. Learned P.P. on the other hand, supported the judgment of the trial Court.

5. I have carefully gone through the evidence produced in the case. The first contention is based on the entry of handing over of a sealed packet to Sunder Kumar, F.C. A reading of this entry shows that the sample was handed over to Sunder Kumar in compliance of the order of Supdt. of Police, Sri Ganganagar dated 17-3-1993. The date '23-1-1993' written in the endorsement obviously has been written by mistake. The date of sending could not be prior to the date of seizure. The articles were seized and deposited in Malkhana on 16-3-1993 and. therefore, there was no question sending the packet on 23-1-1993. The entry was made by P.W. 4 Anirudh, Malkana Incharge. When he was in the witness box his attention was not drawn to this discrepancy in the record. If the accused wanted to take any advantage of the discrepancy he should have obtained the explanation of Anirudh. It is apparent on the face of record that the date '23-1-1993' was written by mistake in place of date 21 -3-1993.

6. It is relevant to point out that two bags were seized on 16-3-1993 and two samples were taken therefrom. Regarding the first sample there is clear entry that it was handed over to Sunder Kumar on 21-3-1993. Sunder Kumar, P.W. 6 deposes that he had taken both the sealed packets on 21-3-1993 and handed over them to F.S.L. on 22-3-1993. Thus, there is clear evidence on record that the both the samples of the articles were sent to F.S.L. on 21-3-1993. Therefore, there is no substance in the first contention.

7. The report of the F.S.L. Ex. P-25 clearly shows that specimen impression of the seal, which was used to seal the packets at the time of recovery, was sent to the F.S.L. and the seals on the packet tallied with the seal impression forwarded to the F.S.L. Sunder Kumar, P.W. 6 also says that the specimen seal impression paper was also taken by him along with the letter of the S.P. Ex. P-15. In the letter Ex.P-15 also it was written that the specimen seal impression was enclosed with the letter. It is true that on the receipt Ex.P-17 given by the F.S.L. there is no mention of the receipt of the specimen impression but on that ground it cannot be accepted that the seal impression was not sent to the F.S.L. As already stated, there is a clear mention in the report of F.S.L. that the specimen seal impression

was received. Thus the second contention is also without substance.

8. Coming to the third contention, it may be stated that Richhpal Singh, P.W. 8 clearly deposes that he had recorded the information Ex.P-15 received from the 'Mukhbir' in the 'Rojnamcha' Ex.P-19 and thereafter he informed his superiors by wireless message Ex.,P-20. In the message Ex.P-20 addressed to S.P., Sri Ganganagar, Addl. S.P., Hanumangarh and Circle Officer, Sangaria, it was clearly intimated that information was received from Mukhbir and the S.H.O.was proceeding for further action. Therefore, it cannot be said that there was non-compliance of Section 42(2) of the N.D.P.S. Act.

9. It is to be noticed that the seizure in the instant case, was made from the public place. This seizure was not made from any conenyance, building or enclosed place, therefore, the compliance of Section 42(2) was not required to be made. This legal position is stated by their Lordship of the Apex Court in the case of State of Punjab v. Balbir Singh AIR 1994 SC 1872 : 1994 Cri LJ 3702, at para 10.

10. No other point was pressed before me.

11. There is no substance in this appeal which is hereby dismifsd.

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