

Ram Swaroop Vs. State of Rajasthan

Ram Swaroop Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/767446

Court : Rajasthan

Decided On : Jul-03-1996

Reported in : 1996WLC(Raj)UC303; 1996(1)WLN535

Judge : S.C. Mittal, J.

Appeal No. : S.B. Criminal appeal No. 76 of 1996

Appellant : Ram Swaroop

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

S.C. Mittal, J.

1. This appeal is directed against the judgment and order of sentence dt. 15.1.96 passed by learned Special Judge, Narcotic Drugs and Psychotropic Substances Cases District and Sessions Judge, Hanumangarh. The appellant has been convicted under Section 8 of 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'NDPS Act') and sentenced to undergo 10 years R.I. and a fine of Rs. 1 lakh or in default to undergo two years R.I.

2. Briefly stated, the prosecution case is that SHO Antar Singh received a Mukhbir information that a person wearing white shirt and trousers with a bedding and one

bag is sitting in the waiting hall of bus stand, Hanumangarh town and will proceed by Sadulshahar Bus. He is in illegal possession of poppy straw powder. This facormation was taken down as Ex. PI and forwarded to superior officer by wireless message Ex. P-3 and also entered in Rojnamacha 1552 Ex.P.2. Station House Officer Antar Singh proceeded to the place with two motbir witnesses and the appellant was found sitting there who tried to go out but he was detained. After serving notice under Section 50 of the NDPS Act search was conducted and poppy straw powder was recovered from bedding and the gunny bag. Two samples weighing 500 Gms were taken and sealed on the spot marked A and B and remaining articles were also sealed in two packets mark C and D. The seizure memo prepared in the presence of motbirs is Ex. P-6 bearing specimen seal. The specimen seal memo Ex. P-13 was also prepared and a report Ex. P-18 was lodged to police station. The articles were deposited in the Malkhana after making entries Ex. 19 A. The chemical report of FSL, Jaipur Ex. P-21 showed that the article recovered from the possession of the appellant was containing the constituents of opium. Hence a challan was submitted against the appellant for the offence Under Sections 8/15 of NDPS Act and he was convicted as stated above.

3. I have heard learned counsel for the petitioner and learned Public Prosecutor. It is argued on behalf of the appellant that Shri Antar Singh was not posted as SHO, Hanumangarh town on 29.8.94 and therefore he was not empowered to conduct the search and seizure in this case. It is submitted that the prosecution has not produced any Rojnamacha entry also to prove that Shri Antar Singh PW 1 was working as incharge Police Station, Hanumangarh town. It is contended that even if Antarsingh is accepted to have worked as incharge of Police Station he cannot be considered as SHO posted at Police Station. My attention has been drawn to contradictions in the statements of Antar Singh PW 1 S.I. and Surendra Singh PW 7 SHO.

4. Section 42 of the NDPS Act lays down that any officer of the department mentioned in this section superior in rank to peon, sepoy or constable empowered in this behalf by general or special order by the Central Government or State Government as the case may be, may taken action as provided Under Sections 42 of the NDPS Act and conduct search and seize narcotic drugs or psychotropic

substances or any documents or other articles which may furnish evidence of commission of such offence as mentioned under chapter 4 of NDPS Act. State Government has empowered by Notification SO 115 dt. 16.10.86 all the Sub-Inspectors posted as SHO to act under Section 42 of the NDPS Act. I am of the view that the posting of SHO may be by special order or general order also. If a SHO of Police Station is out of the police station and if sub-inspector is working in his absence as incharge SHO Police Station then that sub inspector is SHO for all purposes and he will be deemed to have been posted as such by general order making arrangement for work by Sub Inspector as incharge Police Station. No separate or specific order is again necessary for posting him as Station House Officer. The Sub Inspector though incharge, is SHO as posted there and he is, therefore, empowered to act under Section 42 of the NDPS, Act.

5. Learned counsel for the appellant has, however, argued that it is not also proved that whether Shri Antar Singh was working as incharge Police Station, Hanumangarh Town on 29.8.94 because no documentary evidence Rojnamacha etc. has been produced on record and there is contradiction in his statement and that of Surendra Singh PW. 7. Learned Public Prosecutor has argued that the oral testimony of Antar Singh PW 1 should be believed on this point. I perused the statements of PW 1 Antar Singh and PW 7 Surendra Singh. Shri Antar Singh has stated that he was sub inspector of police station, Hanumangarh Town on 29.8.94 and on that day he was also working as incharge Police Station. But Surendra Singh has deposed that he was SHO on 29.8.94 but, he nowhere states that he was out of police station and Antar Singh Sub inspector was working as incharge police station also. I am of the view that it is very glaring and material contradiction and in the absence of any documentary evidence, I am unable to accept the contention of learned Public Prosecutor that the statement of Antar Singh may be accepted that he was working as incharge of Police Station i.e. SHO.

6. In view of the above discussion, I come to the conclusion that the prosecution has failed to prove that Shri Antar Singh was SHO, Hanumangarh Town by virtue of being incharge in the absence of Surendra Singh SHO PW 7 on 29.8.94. it is not proved that Antar Singh PW 1 was working as SHO and therefore he was not authorised to function and carry out search and seizure Under Sections 42 of the

NDPS Act.

7. The second argument on behalf of the learned counsel for the appellant is that the prosecution has failed to prove that the seal on the sample remained intact throughout since the date on which the samples were sealed and till the samples reached to FSL, Jaipur. No specimen seal impression has been separately sent and therefore the statement in the FSL, report about receiving the specimen seal impression and tailing it with the seal on the samples is not acceptable and does not go to prove that the seal on the sample was the same which was put on the day when samples were sealed at the time of the seizure and recovery of the contraband articles. It is contended that Shri Antar Singh PW 1 Vinod Kumar PW 5 and Surendra Singh PW 7 SHO do not prove that any specimen seal impression was separately prepared and was sent to the chemical analyst. The prosecution has withheld the witness who took the sample from Malkhana to the SP Office and the clerk of SP Office who would have proved that the samples remained intact with them and the separate seal impression was sent to the Public Analyst. It is further contended that the prosecution has also not produced in the court the remaining part of the article in the sample and other articles returned by the FSL, Jaipur after chemical analysis which could have convicted the court that the seal on the sample was the same as was put on the date of taking the sample.

8. I have carefully considered above contentions. PW 1 Antar Singh PW 5 Vinod Kumar carrier of the samples and PW 7 Surendra Singh SHO do not state that any separate seal impression was prepared at the time of recovery and it was sent to FSL, Jaipur. On the other hand, Surendra Singh has deposed in the cross examination that when the forwarding letter was prepared and issued from SP Office, he did not send the samples to SP Office. The forwarding letter Ex. P-18 mentions that the seal on the sample tailors with the specimen seal impression but when the samples were not sent to the SP Office as stated above by PW 7 Surendra Singh then it is not clear as to how seal on the sample was compared with the specimen seal impression in the SP Office prior to the sending of the samples to FSL, Jaipur. In fact, there is contradictory statement about taking the samples to the SP. Office because Vinod Kumar states in cross examination that on receiving the sample from Malkhana he took these samples to SP Office and

got issued forwarding letter Ex. P-18 but PW 7 Surendra Singh says in the cross examination that before the issue of forwarding letter Ex. P-18, he did not send the samples of SP Office. The clerk who prepared Ex. P-18 has not been produced by the prosecution. PW 1 Antar Singh stated on the question by the court that the specimen seal memo is Ex. P-13 by which the samples were sealed and stated in the cross examination that Ex. P-13 was prepared by him on the spot in duplicates and no FIR was lodged by that time. Statement of PW 1 Antar Singh is obviously wrong and cannot be accepted that Ex. P-13 was prepared on the spot. Ex. P-13 has been attested by the Superintendent of Police, Hanumangarh. The date of preparation has not been shown on Ex. P-13. If it was prepared on the spot then it is not clear how it could be attested by SP, Hanumangarh as he did not participate in the proceedings of search and seizure. The necessary conclusion is that the Ex. P-13 has been prepared much afterwards possibly at the time of sending the samples to the Forensic Science Laboratory, Jaipur.

9. On the basis of above discussion, I am of the view that prosecution has not established the specimen seal, if any, was prepared and that specimen seal memo was sent to FSL, Jaipur. I agree with the learned counsel for the appellant that the mere mentioning of the tallying of specimen seal impression with the seal on the sample in the FSL report Ex. P-2.1 does not lead to this conclusion that it was the same seal which was put on the sample at the time of search and seizure of the articles. In this way, possibility of tampering with the sample has not been ruled out and it has also not been proved that the sample remained intact through-out from the date of sealing of the sample to the date of depositing them to FSL, Jaipur. It, therefore, cannot be said that the sample received in FSL, Jaipur contained the same article which is alleged to have been recovered from the possession of the appellant. The petitioner gets support from the decision of *Bharsingh v. State of Rajasthan*, reported in 1995 Cr. L.R. (Raj) 94. I do not find it safe to maintain the conviction of the appellant on the basis of public analyst report Ex. P-21. On the basis of above discussion, I am of the opinion that the prosecution has failed to prove that offence Under Sections 8/15 of NDPS Act against the appellant.

10. Consequently, the appeal is hereby accepted. The judgment of conviction and sentence dt. 15.1.96 passed by learned Special Judge, NDPS Act Cases, (District & Sessions Judge), Hanumangarh is hereby set aside. The appellant is hereby acquitted of the charge Under Sections 8/15 of Narcotic Drugs and Psychotropic Substances Act, 1985. He shall be released forthwith unless required in any other case. The amount of Rs. 150/- to be returned shall be returned to the appellants.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com