

Ram Chandra and ors. Vs. State of Rajasthan and Union of India (Uoi)

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SooperKanoon Citation : sooperkanoon.com/767657

Court : Rajasthan

Decided On : Mar-27-2001

Reported in : 2002(5)WLC134; 2002(1)WLN313

Judge : Sunil Kumar Garg, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18, 42, 42(1), 50, 57 and 67; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : S.B. Criminal Appeal Nos. 49 and 50 of 1996

Appellant : Ram Chandra and ors.

Respondent : State of Rajasthan and Union of India (Uoi)

Advocate for Def. : N.M. Lodha, Adv.

Advocate for Pet/Ap. : J.S. Choudhary, Adv.

Disposition : Appeal dismissed

Judgement :

Garg, J.

1. The above mentioned two appeals being S.B. Criminal Appeals No. 49/96 and 50/96 are being decided by this common judgment as they have arisen from the

same incident, though trial in the lower court has taken place separately and separate judgment has been passed by the lower court.

2. Both the appeals have been filed by the accused appellants Ram Chandra and Birma Ram against the judgment and order dated 13.9.1995 passed by the learned Special Judge, NDPS Cases, Udaipur in Sessions Case No. 241/94 & 242/94 by which he convicted both the accused appellants for the offence Under Section 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') and sentenced each of them to undergo ten years rigorous imprisonment and to pay fine of Rs. one lac, in default of payment of fine, to further undergo two years RI.

Facts of S.B. Criminal Appeal No. 49/96 (Ram Chandra v. The State of Rajasthan & the Union of India)

3. Necessary facts giving rise to this appeal, in short, are as follows:-

On 31.8.1984 at about 11.30 PM, PW6 Prem Raj Rathore, Sub Inspector, Central Bureau of Narcotics, Udaipur lodged a report Ex.P/10 to PW5 Roshanlal, Superintendent, Central Bureau of Narcotics, Udaipur stating inter-alia that on 31.8.1994 PW5 Roshanlal constituted a party of the officials of the Central Bureau of Narcotics consisting of himself, PW4 Rakesh Bhargava, PW3 Heeralal and PW6 Prem Raj Rathore for the purpose of making surprise checking and they all proceeded in a Government Jeep No. MP07/B-0140 towards Check Post on Chittorgarh Road, Udaipur for checking in order to prevent smuggling of contraband articles etc. It is further stated in the report that when they were doing the work of checking, at about 8.30 PM in the night, a Bus bearing No. RJ14P-1136 came from the side of Bhatewar and that Bus was got stopped by PW4 Rakesh Bhargava. When the Bus stopped, the conductor of that Bus told that this Bus is of the Depot of Udaipur and has come from Dhariyawad and going to Udaipur. Thereafter, PW6 Prem Raj Rathore alongwith PW4 Rakesh Bhargava and PW5 Roshanlal entered in the Bus and they found two persons sitting behind the seat of the Conductor and they were found in suspicious condition and on suspicion, two motbirs, namely, PW1 Gurmeet Singh and PW2 Surjeet Singh were called and on being asked, one person told his name as Ram Chandra S/o

Bharuram (present accused appellant) and at that time, he was having a bag of urea. Thereafter, the accused appellant was alighted from the Bus and PW6 Prem Raj Rathore asked the accused appellant that he wanted to search his bag since he had suspicion that it contained opium and he further asked the accused appellant whether he wanted to be searched before the Magistrate or Gazetted Officer. Upon this, the accused appellant denied and said that he could be searched by PW6 Prem Raj Rathore himself. Thereafter, search of the bag, which was found on the person of accused appellant, was made and on search one polythene pouch was recovered and on opening this polythene pouch, one more polythene pouch containing black substance was recovered and it was assessed that it was nothing, but contraband opium. Thereafter, it was weighed by PW3 Heeralal and its weight was found to be 1kg. 250grms., out of which two samples of 24 grms. each were taken and both samples and rest opium were sealed on spot. The record of search and seizure was also prepared on the spot by PW 6 Prem Raj Rathore and the same is Ex.P/1. The specimen seal was taken by PW6 Prem Raj Rathore on separate paper and the same is Ex.P/2 and accused appellant was arrested through Ex.P/3. With letter Ex.P/8 through PW3 Heeralal, sample was sent for chemical analysis to the Manager, Govt. Opium and Alkaloid Works, Neemuch (MP) and the receipt of the sample is Ex.P/9 and the report of the Asstt. Chemical Examiner, Government Opium & Alkaloid Works, Government of India Neemuch (MP) is Ex. P/1 7, where it has been stated that 'the sample is found by qualitative and quantitative analysis to be opium within the meaning of Section 2XV of NDPS Act, 1985.'

PW6 Prem Raj Rathore gave information of the search and seizure through wireless to Dy. Narcotics Commissioner, Kota and copy of the wireless is Ex.P/11 and a detailed report was also sent by PW6 Prem Raj Rathore to the superior officers on 1.9.1994 and the same is Ex.P/12. The copies of Malkhana or Station diary are Ex.P/13 to Ex.P/16. Thereafter, the investigation of the case was taken over by PW7 Girish Chandra, who prepared the site plan Ex.P/18.

After usual investigation, PW7 Girish Chandra submitted challan before the learned Special Judge, NDPS Cases, Udaipur against the accused appellant for the offence under Section 8/18 NDPS Act.

On 9.3.1995, the learned Special Judge, NDPS Cases, Udaipur framed charge under Section 8/18 of the NDPS Act against the accused appellant. The charge was read over and explained to the accused appellant. The accused appellant denied the charge and claimed trial.

During trial, the prosecution in support of its case examined as many as seven witnesses and got exhibited some documents. Thereafter, statement of the accused appellant under Section 313 Cr. P.C. was recorded.

After conclusion of trial, the learned Special Judge, NDPS Cases, Udaipur through his judgment and order dated 13.9.1995 convicted the accused appellant for the offence under Section 8/18 of the NDPS Act and sentenced in the manner as indicated above holding inter-alia:-

- '1. That compliance of the provisions of Section 50 of the NDPS Act has been made by PW6 Prem Raj Rathore at the time of search and seizure.
2. That compliance of Section 57 of the NDPS Act has also been made by the prosecution in the present case.
3. That there is no evidence to suggest that seal has been tampered with.
4. That the prosecution has proved its case beyond reasonable doubt for the offence under Section 8/18 of the NDPS Act against the accused appellant.

Aggrieved from the said judgment and order dated 13.9.1995 passed by the learned Special Judge, NDPS Cases, Udaipur, this appeal has been filed by the accused appellant.

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

1. That whole proceedings of the search and seizure in the present case have been conducted by PW6 Prem Raj Rathore, who was Sub Inspector In the Central Narcotic Bureau on the date of incident i.e. 31.8.1994 and as per the Notification No. 6/85 dated 14.11.1985 Issued by the Government of India, officers above the rank of Sub Inspector are only authorised to make search and seizure and thus,

whole proceedings stand vitiated and on this ground alone, accused appellant should be acquitted.

2. That in the present case, compliance of Section 50 of the NDPS Act has not been made in the manner as it should have been made as per the mandate of Section 50 of the NDPS Act and from this point of view also, the accused appellant is entitled to acquittal.

3. That in the Card of search and seizure Ex.P/1, there is no mention of the fact that PW6 Prem Raj Rathore used his own seal though there are categorical statements of the prosecution witnesses that PW6 Prem Raj Rathore used his own seal and thus, there is difference in the statements of witnesses with regard to using the seal on all the fards.

4. That in the present case compliance of Section 57 of the NDPS Act has not been made by the prosecution and thus, accused appellant is entitled to acquittal on this ground alone.

5. That there is difference in the statements of prosecution witnesses as to in what packet the sample as well as opium was sealed and from this point of view also, suspicion has arisen and benefit of doubt should be given to the accused appellant.

Hence, it is prayed that this appeal be allowed and the accused appellant be acquitted of the charge framed against him.

5. On the other hand, the learned counsel for the respondent- Union of India supported the impugned judgment and order dated 13.9.1995 passed by the learned Special Judge, NDPS Cases, Udaipur.

6. I have heard the learned counsel for the accused appellant and the learned counsel for the respondent Union of India and perused the record of the case.

Point No.I

7. So far as the factual position of the present case is concerned, there is no dispute on the point that proceedings of search and seizure were conducted by

PW6, Prem Raj Rathore in presence of PW3 Heeralal, PW4 Rakesh Bhargava and PW5 Koshanlal and so far as the preparations of fard of search and seizure memo Ex.P/1, taking of specimen seal on separate paper Ex.P/2, arrest memo Ex.P/3 and sending of reports Ex.P/10 and Ex.P/12 to superior officer are concerned, they all have been done by PW6 Prem Raj Rathore. Thus, it is very much clear that the main proceedings were conducted by PW6 Prem Raj Rathore, who was Sub Inspector at the relevant time and on this point there is no dispute.

8. The question that arises for consideration is whether an officer of the rank of Sub Inspector On the present case PW6 Prem Raj Rathore) was authorised to make search and seizure or not.

9. To answer this question, the learned counsel for the respondent Union of India placed on record the copy of the Notification No. 6/85 dated 14.11.1985 issued by the Government of India, which runs as under: -

'Notfn. No. 6/85 dated 14.11.1985 S.O. 822 (E) In exercise of the powers conferred by sub-section CD of Section 42 or the Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby empowers the officers of and above the rank of Sub-Inspector in the department of Narcotics and of and above the rank of Inspector in the Departments of Central Excise, Customs and Revenue Intelligence and in Central Economic Intelligence Bureau to exercise the powers and perform the duties specified in Section 42 within the area of their respective jurisdiction and also authorises the said officers to exercise the powers conferred upon them under Section 67.'

10. The learned counsel for the accused appellant has also placed reliance on this Notification.

11. The case of the learned counsel for the accused appellant is that from perusing the Notification, it should be taken for granted that only the officers above the rank of Sub-Inspector were authorised to make search and seizure. On the contrary, it has been argued by the learned counsel for the respondent Union of India that the words 'officers of and above the rank of Sub Inspector' simply mean

that the officers of the rank of Sub Inspector were also authorised to make search and seizure.

12. I have given my due consideration to the interpretation of Notification made by the learned counsel for the accused appellant and the learned counsel for the respondent Union of India and I am in agreement with the interpretation made by the learned counsel for the respondent Government of India. The words 'officers of' and the word 'and' clearly go to show that the officers of the rank of Sub Inspector are also included and authorised, otherwise the wording of Notification would have been that officers above the rank of Sub Inspector. This type of wordings are missing and which goes to show that it has been deliberately not mentioned in the Notification.

13. Accordingly, it is held that officers of the rank of Sub Inspector are also authorised to make search and seizure under the provisions of NDPS Act and thus, the whole proceedings conducted by PW6 Prem Raj Rathore, who was Sub Inspector on the relevant date, were valid one.

14. The ruling relied upon by the learned counsel for the accused appellant in *Raja Ram v. State of Raj.* (1), would not be helpful to the accused appellant, in view of the clear cut proposition and interpretation of the Notification just made above.

15. Hence, the first argument of the learned counsel stands rejected. Point No.2 with regard to compliance of Section 50 of the NDPS Act.

16. On this point, the case of the learned counsel for the accused appellant is that compliance of the mandatory provisions of Section 50 Of the NDPS Act has not been made in the manner as it should have been made as per the mandate of Section 50 of the NDPS Act.

17. The learned Special Judge, NDPS Cases, Udaipur held that in the present case, the compliance of Section 50 of the NDPS Act has been made by PW 6 Prem Raj Rathore.

18. The question for consideration is whether the findings of the learned Special Judge, NDPS Cases that compliance of Section 50 of the NDPS Act has been

made by PW6 Prem Raj Rathore are correct or not. For that purpose, oral as well as documentary evidence has to be seen.

19. PW4 Rakesh Bhargava, who was present alongwith PW 6 Prem Raj Rathore at the time of search and seizure, has stated in his examination that before conducting search of accused appellant, PW 6 Prem Raj Rathore, after calling two motbirs PW1 Gurmeet Singh and PW 2 Surjeet Singh and in presence of PW5 Roshanlal, has asked the question to the accused appellant whether he wanted to be searched before the Magistrate or Gazetted Officer and upon this, accused appellant gave his consent that he could be searched by PW 6 Prem Raj Rathore himself. In cross-examination, he has admitted that separate notice under Section 50 of the NDPS Act was not given to the accused appellant and question was orally asked.

20. The statements of PW 5 Roshan Lal and PW6 Prem Raj Rathore are also of the same effect.

21. Thus, it is very much clear that in the present case no notice under Section 50 of the NDPS Act was given to the accused appellant before his search, but oral question was put to him keeping in mind the wordings contained in Section 50 of the NDPS Act.

22. The Constitution Bench of the Hon'ble Supreme Court in State of Punjab v. Baldev Singh (2), held that 'such information may not necessarily be in writing.'

23. Thus, it is not necessary that in every case, the compliance of Section 50 of the NDPS Act should have been made in writing.

24. So far as the workings put to the present accused appellant, which have been mentioned above, are concerned, the learned Special Judge, NDPS Cases has come to the conclusion that they comply with the mandatory provisions of Section 50 of the NDPS Act and in my opinion, by doing so, the learned Special Judge, NDPS Cases has not committed any illegality and his findings in this respect are liable to be confirmed.

25. The learned counsel for the accused appellant has relied on the decision of the Hon'ble Supreme Court in K. Mohanan v. State of Kerala (3), and has argued that as the accused appellant was not told about his right in this regard, it should be held that mandatory provisions of Section 50 of the NDPS Act have not been complied with. So far as the position of law is concerned, it is very well explained by the Hon'ble Supreme Court. However, looking to the facts and circumstances of the present case, as question has been put specifically to the accused appellant by PW6 Prem Raj Rathore stating whether he wanted to be searched before the Magistrate or Gazetted Officer, therefore, compliance of Section 50 of the NDPS Act must be held to have been made. Thus, the above ruling would not be helpful to the accused appellant.

26. So far as the decision relied upon by the learned counsel for the accused appellant in Chhagan Lal v. State of Rajasthan (4), is concerned, this ruling would also not be helpful to the accused appellant, as the facts of that case are different from the facts of the present case as apart from no notice in writing, there was no mention about compliance of Section 50 of the NDPS Act even in seizure fard in that case.

27. For the reasons stated above, it is held that compliance of Section 50 of the NDPS Act has been made in the present case by PW 6 Prem Raj Rathore and thus, the findings of the learned Special Judge, NDPS Cases in this respect are liable to be confirmed.

28. Hence, the second argument of the learned counsel for the accused appellant also stands rejected.

Point No. 3

29. So far as the third argument that there is difference between the statements of prosecution witnesses with regard to using of seal on all the fard is concerned, this argument has been very well dealt with by the learned Special Judge in para 12 at page 15 of the impugned judgment and after appreciation of evidence on record and giving cogent reasons, the learned Special Judge has rightly rejected the same.

30. Hence, third argument of the learned counsel for the accused appellant also stands rejected. Point No. 4

31. So far as the argument that compliance of Section 57 of the NDPS Act has not been made is concerned, it does not carry any weight as PW6 Prem Raj Rathore has specifically stated that first wireless Ex.P/11 was sent and on 1.9.1994 a detailed report Ex.P/12 was also sent by him to the superior officers. Thus, compliance of Section 57 of the NDPS Act has been made in the present case.

32. Hence, the fourth argument of the learned counsel for the accused appellant also fails and stands rejected.

Point No. 5

33. So far as the argument that there is minor difference between the statements of prosecution witnesses as to in what manner the articles were sealed is concerned, in my considered opinion, if there is minor discrepancy among the statements of the prosecution witnesses, it would not affect unless any prejudice has been caused to the accused appellant. In the present case, it cannot be said that investigation was not carried out properly and sealed articles were not kept in proper custody and proper form and there is evidence in this respect, which is found in the statement of PW3 Heeralal, who took the sample from PW5 Roshanlal for the purpose of sending it for chemical analysis, that sealed articles from the beginning upto the stage when it was sent to Laboratory for chemical analysis, were found intact and there is no evidence to show that seal in any manner was tampered with. Therefore, from this point of view also, it cannot be said that any prejudice has been caused to the accused appellant.

34. Hence, the decision relied upon by the learned counsel for the accused appellant in Valsala v. State of Karnataka (5) would not be helpful to the accused appellant.

35. Thus, the fifth argument of the learned counsel for the accused appellant also fails and is rejected.

36. For the reasons stated above, the findings of the learned Special Judge, NDPS Cases, Udaipur convicting the accused appellant for the offence under Section 8/18 of the NDPS Act are liable to be confirmed and this appeal is liable to be dismissed.

Brief facts of S.B. Criminal Appeal No. 50/96 Birma Ram v. The State of Raj. & Am.

37. On the same day and place and in the presence of same members of Checking Party as in the aforesaid S.B. Criminal Appeal No. 49/96, one person was also found under suspicion alongwith the accused appellant Ram Chandra in Appeal No. 49/96 and on being asked, he told his name as Birmaram (accused appellant in appeal No. 50/96) and at that time he was having a bag and thereafter PW3 Rakesh Bhargava (whereas PW6 Prem Raj Rathore in appeal No. 49/96) asked the accused appellant Birmaram that he had suspicion that it contained opium and he further asked whether he wanted to be searched before the Magistrate or Gazetted Officer. Upon this, accused appellant gave consent that search could be made by PW3 Rakesh Bhargava himself. Thereafter, search of the bag, which was found on the person of accused appellant Birmaram, was made and on search, one polythene pouch was recovered and on opening it, one more polythene pouch containing black substance was recovered and it was assessed that it was nothing but contraband opium and on the spot it was weighed by PW 7 Heeralal and its weight was found to be 1kg. and out of it, two samples of 24 grms. each were taken and both samples and rest articles were sealed on the spot. The fard of search and seizure was prepared by PW3 Rakesh Bhargava on the spot and the same is Ex.P/1. The specimen seals were taken on separate paper and the same is Ex.P/2. The accused appellant was arrested through Ex.P/3. With letter Ex.P/15 through PW7 Heeralal, the sample was sent for chemical analysis to the Manager, Government Opium and Alkaloid Works, Neernuch (MP) and the receipt of the sample is Ex.P/16 and the report of the Asstt. Chemical Examiner, Government Opium & Alkaloid Works, Government of India, Neemuch is Ex.P/17, where it has been stated that 'the sample is found by qualitative & quantitative analysis to be opium within the meaning of Section 2XV of NDPS Act, 1985.'

38. The investigation, thereafter, was taken over by PW5 G.C. Srivaslava, who prepared the site plan Ex.P/19. After usual investigation, P.W.5 G.C. Srivastava submitted challan before the Special Judge, NDPS Cases, Udaipur.

39. On 9.3.1995, the learned Special Judge, NDPS Cases, Udaipur framed charge against the accused appellant for the offence under Section 8/18 of the NDPS Act. The charge was read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

40. In support of its case, the prosecution examined as many as 8 witnesses and got exhibited some documents. Thereafter, statement of the accused appellant under Section 313 Cr. P.C. was recorded.

41. After conclusion of trial, the learned Special Judge, NDPS Cases Udaipur vide his judgment and order dated 13.9.1995 convicted and sentenced the accused appellant for the offence-under Section 8/18 of the NDPS Act.

42. Aggrieved from the said judgment and order dated 13.9.1995 passed by the learned Special Judge, NDPS Cases, Udaipur, this appeal has been filed.

43. In this appeal, same arguments as in aforesaid S.B. Criminal Appeal No. 50/96 were made by the learned counsel for the accused appellant and the same were rejected and therefore, they need not be repeated here and on the same reasoning, this appeal is also liable to be dismissed.

44. In the result, both the appeals filed by accused appellants Ram Chandra and Birmaram are dismissed, after confirming the judgment and order dated 13.9.1995 passed by the learned Special Judge, NDPS Cases, Udaipur in Sessions Case No. 241/94 and 242/94.