

Ved Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-07-2002

Reported in : 2002CriLJ1463

Judge : O.P. Bishnoi, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 18, 50, 55, 57 and 60

Appeal No. : S.B. Crl. Appeal No. 110 of 1998

Appellant : Ved Singh and ors.

Respondent : State of Rajasthan

Advocate for Def. : S.N. Tiwari and; N.M. Lodha, Advs.

Advocate for Pet/Ap. : Tirthraj Singh and; Anand Purohit, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

O.P. Bishnoi, J.

1. This appeal has been filed by the appellants-Ved Singh and Baru Ram against the judgment dated 24-1-1996, delivered by the Special Judge, NDPS cases,

Chittorgarh, whereby both the appellants were found guilty under Sections 8/18 of the NDPS Act and each one was awarded 10 years rigorous imprisonment and a fine of Rs. 1,00,000/- and in default of payment of fine further rigorous imprisonment for two years.

2. The prosecution story, in nutshell, is to the effect that the personnel of the Central Narcotics Bureau, Chittorgarh carried out the search of a truck No. MWU 4653 on 6-5-1989 at about 5.30 a.m. The truck was stopped near Chittorgarh at 'Chunginaka' No. 4 while it was coming from Udaipur to Chittorgarh. The appellants are said to be the drivers of the said truck and the third accused-Rajendra Singh was the 'Khalasi' of the truck. According to the prosecution story the three persons were informed about the proposed search as they were suspected of carrying some contraband and were given the option to get themselves searched in the presence of a Magistrate or a Gazetted Officer. They offered to be searched by the Narcotics people and thereupon, the search was carried out. Thereafter, the appellant-Ved Singh opened the tool-box under his seat which resulted into the recovery of 2 small bags which contained opium weighing 3.200 kgs. and 850 gms. respectively. Further 25 gms opium was found on the person of Ved Singh. Thereafter, Baru Ram took the narcotics party behind the truck and after opening the lock produced 3 kg. and 7 gms. of opium. Thus in all 7.775 kgs. opium was recovered at the instance of the appellants and all the three, including the Khalasi Rajendra Singh, were arrested for the said offence. The recovered opium was sent for chemical examination and as per the report Ex. P/12 of the public analyst the samples which were received and examined were found to be containing opium after due chemical examination. Ultimately a challan was filed in the Court of Chief Judicial Magistrate, Chittorgarh from where the case was committed to the Court of the said trial Court. All the three accused persons were charged for the offence under the Sections 8/18 of the NDSP Act. The appellant-Ved Singh was charged for possessing 4.75 kg. of opium whereas the appellant-Baru Ram was charged for possessing 3.700kg. illicit opium. The accused-Rajendra Singh was charged for possessing the entire 7.775 kg. opium. All the three accused pleaded not guilty to the said charges. Prosecution then examined 8 witnesses in support of its story. D.W. 1 Sube Singh and D.W. 2 Rajendra Singh were examined by the accused persons in their defence. Sube

Singh stated that Balu Ram was an unemployed person and had come to Bombay in search of employment and had no money to pay for his return fare and he persuaded the appellant-Ved Singh to take Balu Ram back to his native place. D.W. 2 Rajendra Singh has stated that the truck which was driven by the appellant-Ved Singh was completely sealed and locked and no part of it could be opened by the driver, as there were no keys made available to the driver of the truck.

3. The learned trial Court then heard the arguments and delivered the judgment on 24-1-1996, whereby the appellants were found guilty and were convicted in the aforesaid manner. The third accused-Rajendra Singh was acquitted of the charge.

4. I have heard the learned Public Prosecutor for the State and the learned counsel for the Union of India and have perused the record of the trial Court. It is contended by the learned counsel for the appellants that there is no corroboration of the alleged recovery by any independent person and hence, without a reliable corroboration it was not safe to convict the accused persons for such a serious offence. Further, it is submitted that there was no compliance of the mandatory provisions of the NDPS Act during the course of the alleged recovery and soon thereafter. Hence, the conviction of the appellants is not sustainable. The learned counsel for the Union of India has supported the conclusions drawn by the learned trial Court.

5. Regarding compliance of Section 50 of the NDPS Act the learned counsel for the appellants has drawn my attention to the fact that there is zero evidence and still the learned trial Court has not agreed to look into the infirmity. The learned counsel for the Union of India submitted that although no written memo, in compliance of Section 50 of the Act, was given to the appellants but there is satisfactory evidence to the effect that an oral option, for search in the presence of a Magistrate or a Gazetted Officer was provided to the appellants prior to the search and they declined to be searched before a Magistrate or a Gazetted Officer and agreed to be searched by the Narcotics people. After considering the evidence on record I find that there is no proper compliance of Section 50 in this case. As pointed out earlier no notice under Section 60 was given in writing to the

appellants before the search was carried out. In this connection the testimony of P.W. 2 Sanjeev Prasad P.W. 4, Hardayal Singh, P.W. 6 Surendra Singh and P.W. 7 Madan Lal (all departmental witnesses) is highly unsatisfactory. P.W. 6 Surender Singh has stated that a clear option was given and the appellants were specifically asked, as to whether they intended to be searched before a Magistrate or before a Gazetted Officer. However, P.W. 4 Hardayal Singh has limited himself to the extent that they were given the option to be searched before a Magistrate only. He does not say that an offer was made to be searched before a Gazetted Officer. P.W. 2 Sanjeev Prasad gives an altogether different version. He does not say that any offer to be searched in the presence of 'Magistrate' or in the presence of a 'Gazetted Officer' was made to the appellants. According to Sanjeev Prasad they were asked as to whether they wanted to be searched in the presence of an 'Officer.' P.W. 7 Madan Lal does not say that any such offer prior to the search was made. He does not say that they were offered to be searched in the presence of a Magistrate' or a 'Gazetted Officer' or an 'Officer.'

6. There is, thus, no satisfactory evidence to accept the prosecution version that a proper compliance of Section 50 was made prior to the search. The recovery memo Ex. P/2 and the FIR Ex. P/11 do not contain any mention to the effect that any option under Section 50 was provided to the appellants before the search, in question, was made. P.W. 2 Sanjeev Prasad, P.W. 4 Hardayal Singh and P.W. 6 Surendra Singh were examined by the Investigating Officer and their statements Ex. D/2 Ex. D/3 and Ex. D/4 were recorded during the course of investigation. None of these statements make a mention to the effect that the accused persons were given the option to be searched before a 'Magistrate' or a 'Gazetted Officer' or an 'Of-ficer.' There is, thus, no doubt that no compliance of Section 50 was made and the oral tesimony of Sanjeev Prasad, Hardayal Singh and Surendra Singh is a result of an afterthought.

7. There is no evidence to suggest that the compliance of Section 55 of the Act was ever made. The practice and procedure in such cases is that at the time of the recovery the material has to be sealed by the personal seal of the officer making the recovery: Thereafter, the sealed packets are taken to the 'Maal Khana' of the Police Station or to the office of Narcotics Department, where the packets are to

be resealed so that there are no chances of subsequent tampering. In this case there is no evidence to suggest that the packets were resealed when they were deposited in the office. The prosecution has to prove by a positive evidence that the packets were intact after the recovery till they were deposited in the 'Maal Khana.' It has to be further proved by positive evidence that during the course of their stay in the 'Maal Khana' the packets remained intact. It is further to be proved by positive evidence that after taking from the Maal Khana till they were deposited with the Public Analyst they remained intact. But a testimony to that effect is also not on record. At the office of Public Analyst the material received is to be weighed, so that it is clear that there was no major change in the weight of the material. This is a safeguard provided in the interest of the accused persons and there have been number of cases in which the accused persons have been acquitted simply on the ground that the difference between the weight of the sample at the time of the recovery and the same at the time of their deposit with the public analyst was far in excess. In the instant case a precaution has been taken to not to mention the weight of the sample at the time of receipt in the office of public analyst. This is an infirmity, the benefit of which must go to the accused persons.

8. There is no evidence to the effect that any detailed report under the provisions of Section 57 of the NDPS Act was sent to the higher officers after the recovery was affected. Thus there has been no compliance of Section 57 as well.

9. The appeal in this way is liable to be accepted in view of the foregoing discussion. Further I find that there is no independent corroboration of the alleged recovery. The two independent Motbirs P.W. 1 Narayan and P.W. 3 Harbans Singh have turned hostile and they have not supported the prosecution version that any recovery was made, in their presence, from the appellants. Needless to say that in a serious case like this in which the minimum sentence for the offence provided is rigorous imprisonment for 10 years and a fine of Rs. 1 lac it is prudent to insist for independent corroboration. Without slightest independent corroboration it is not safe to convict an accused in a serious case like this.

10. Consequently, the appeal is allowed. The judgment, finding that appellants guilty is set aside. Both the appellants are acquitted of the charges. Amount of fine if deposited by them shall be refunded to them.

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