

State of Rajasthan Vs. Deendayal and ors.

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Court : Rajasthan

Decided On : Aug-01-2008

Reported in : RLW2009(2)Raj1665

Judge : Mahesh Bhagwati, J.

Appellant : State of Rajasthan

Respondent : Deendayal and ors.

Disposition : Appeal dismissed

Judgement :

Mahesh Bhagwati, J.

1. Challenge In this appeal is to the judgment dated 3rd April, 1997 whereby the Special Judge N.D.P.S. Cases (Sessions Judge) Alwar has acquitted the accused respondents Laxmi Narayan and Pusi in the offence under Sections read with Section 20 and the accused respondent Deendayal In the offence under Section 8 read with Section 20 and 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act 1985').

2. The prosecution story is woven thus:

That on 30th January 1996, PW-10 Shri Gaurhari Srivastava, Circle Officer, Alwar City accompanied by Police Officers reached by official vehicles at Mohalla

Dhakpuri situated in Alwar. Shri Gaurhari Srivastava obtained an information from his informer that Laxminarayan and Deendayal were involved in trafficking of smack and 'charas' and recently they have brought the xcharas' and smack for sale. It is alleged that the raiding party reached at the house of Laxminarayan which was found locked. When he was called out by name, the accused Laxminarayan and soon thereafter the accused Deendayal and Pusi came out of the house. On search, nothing was found in the possession of Deendayal. PW-12 Shri Anil Kumar R.P.S. (P) took the search of Laxminarayan and found 68 grams v. charas' in the pocket of his trousers, he was wearing. Similarly, Shri Anil Kumar took the search.of Pusi S/o Balluram and found 15 grams charas' in the right pocket of his trousers, it is further alleged that the raiding party thereafter took the search of the house of Laxminarayan which was on the ground floor in the building. On search the raiding party found 288.grams 'charas' in a Polythin bag lying in an Almirah. The accused Deendayal was residing on third storey of the building and on search one attachi was lying on Godrej Almirah wherein two packets were found. Having opened them, in one packet 757 grams 'charas' waslying and another packet was containing 55 grams 'charas'. In the same room, one attachi was lying under the double bed and on search one packet of white colour was found which contained 360 grams smack. Shri Gaurhari Srivastava took samples from all packets as per details enumerated .in Ex/ P/23 and duly sealed them. On the written report Ex. P/23 of PW/10-Shri Gaurhari Srivastava, the S.H.O. Police Station Kofwali lodged the FIR Ex. P/23 and commenced investigation.

3. The Investigating Officer recorded the statements of the witnesses acquainted with the facts and circumstances of the case, arrested all the three accused persons vide arrest memos Ex. P/2, P/3 and P/4, drew necessary memos, prepared the site plan Ex. P/17 and P/18, P/19, P/20, sent the samples for chemical analysis to Forensic Science Laboratory, Jaipur and after usual investigation filed the charge sheet against them.

4. The accused Laxminarayan, Deendayal and Pusi were charged for the offence under Section 8 read with Section 20 and 21 of the Act, 1985 who pleaded not guilty and claimed trial. In order to further its version, the prosecution examined as

many as 12 witnesses. In their explanation submitted under Section 313 Cr:P.C, all the accused claimed innocence and after completion of trial, the learned trial Court acquitted all the three accused respondents in the aforesaid offence as indicated hereinabove.

5. Heard the submissions advanced by the learned Public Prosecutor for the State, learned Counsel appearing for the accused respondents and with their assistance scanned the relevant material available on record.

6. The learned Public Prosecutor has argued that the trial Court has completely ignored the statements of PW.12 Shri Anil Kumar who has deposed that the houses which were searched by them belonged to the accused Deendayal and Laxminarayan. He has further stated in the cross-examination that these houses were spotted by the informer and the wife of Laxminarayan and wife of Deendayal confirmed that the relevant portions belonged to them respectively. Thus, from the evidence of Anil Kumar it is very well proved that the houses from where the alleged contraband articles are found to have been recovered belonged to the accused Laxminarayan and Deendayal. There is no reason to disbelieve the testimony of PW.12 Anil Kumar who not only has proved the houses to be in their possession but also proved the recovery of the contraband articles from them. The learned Public Prosecutor has further contended that the judgment of the trial Court is illegal and unjust which deserves to be set aside and the accused respondents are liable to be convicted.

7. Per contra, the learned Counsel for the accused respondents has submitted that the judgment of the lower Court is just and, proper and it does not need to be interfered.

8. The learned trial Court has acquitted the accused respondents on three grounds:

(i) that the compliance of the provisions of Section 50 of N.D.P.S. Act has not been made by the recovery officer;

(ii) the possession of the accused Laxminarayan and Deendayal on the said portions of the house is not proved from the evidence available on record; (iii) the independent witnesses PW-1 Kailash Soni, PW-5 Vijay Kumar and PVV-9 Chhote Lal have not supported the prosecution case and have turned hostile. Hence in the absence of the independent evidence, the recovery of the contraband articles from the possession of the accused respondents has not found to be proved.

9. In view of the above finding of the trial Court, the first crucial question springing for consideration in the instant appeal is as to whether the compliance of the provisions of Section 50 of the Act 1985' has been made by the recovery officer in this Case?

10. In the light of the judgments rendered by the Hon'ble Apex Court in the case of Mohinder Kumar v. State of Panaji AIR 1985 SC 1157; State of Punjab v. Labh Singh 1997 Cr.L.R. (SC) 76; All Mustfa v. State of Kerala : AIR 1995 SC244 and State of Punjab v. Balveer : 1994 CriLJ3702 ; it is found mandatory to give a notice in writing to the accused and ask him if he so required he could be taken to the nearest gazetted officer of any of the departments mentioned in Section 42 of the Act, 1985 or to the nearest Magistrate. Sub-section (2) of Section 50 contemplates that if such requisition is made, the officer could detain the accused until he could take him to the gazetted officer or the Magistrate as the case may be.

11. In the case of Beckodan Abdul Rahim v. State of Kerala : 2002 CriLJ2529 , the Hon'ble Apex Court has held that the safeguards mentioned in Section 50 are intended to serve a dual purpose to protect the person against false accusation and frivolous charges as also to lend credibility to the search and seizure conducted by the empowered officer. Section 50 has been introduced with the obvious intent to avoid any harm to innocent persons and to avoid raising of allegation of planting of fabrication by prosecuting authorities. It is now well settled by the catena of judgments of the Hon'ble Supreme Court as also this Court, that the provisions of Section 50 are mandatory in nature and the empowering authority is required to make strict compliance thereof.

12. In the instant case, the memos Ex. P/11, P/12, and P/13 are found to have been written by Shri Heera Lal, ASI and Hawa (sic), LC. PW.10 Shri (sic)

Srivastava himself has stated that these documents were not prepared by him but they were prepared at his instance. As such it cannot be said that an option was given to the accused persons by the witness Shri Gaurhari Srivastava as to whether they wanted to give their search to any gazetted Officer or the Magistrate.

13. From the perusal of the impugned judgment it is found that one argument was advanced by the learned Counsel for the accused that the raiding party comprised of gazetted officer and PW.12 Anil Kumar R.P.S. (P.) who was the gazetted officer, took the search of the accused persons and their houses. Hence, the compliance of the provisions of Section 50 of the Act of 1985 was made.

14. This Court, in the case reported in 1996 Cr LR (Raj.) 471, has held that if any member of the raiding party is a gazetted officer and the search is taken by him then it does not amount to the compliance of the provisions of Section 50 of the Act of 1985. The statements of PW. 10 Shri Gaurhari Srivastava and PW.12 Shri Anil Kumar do not inspire any confidence so far as the, compliance of the provisions of Section 50 of the Act 1985 are concerned.

15. The prosecution has also failed to establish that the houses from where the contraband articles are alleged to have been recovered belonged to the accused respondents namely Deendayal and Laxminarayan. The Investigating Officer did not examine any person of the vicinity of the house in question. He did not collect any reliable documentary evidence also in this respect. The independent persons PW-1 Kailash Soni, PW-5 Vijay Kumar and PW-9 Chhote Lal who have been produced by the prosecution have not supported the prosecution case and turned hostile. Merely, PW-12 Shri Anil Kumar has stated in the cross-examination that the wives of Deendayal and Laxminarayan stated that the said portions belonged to them but they have not been examined to prove the same. The evidence of PW-12 Anil Kumar R.P.S. (P) is not found worthy of credence in this regard as his knowledge is based upon the information offered by the wives of Deendayal and Laxminarayan who are not witnesses of this case. Thus, not even a shred of evidence in this regard is found on record which may prove the said portions of the house to be of accused Laxminarayan and Deendayal. The evidence of the police personnel is laden with contradictions on material particulars. There are

inconsistencies emerging from their evidence which renders the whole prosecution case a farce.

16. In the back drop of the above position, the testimony of PW.10 Shri Gaurhari Srivastava, PW-11 Rohltash Kumar and PW-12 Anil Kumar is not found to be credible as their statements are inconsistent on so many material particulars. The independent witnesses have not supported the prosecution case and they have turned hostile. The said portions of the house wherein the accused Laxminarayan and Deendayal are alleged to have lived are not proved to be in their possession.

17. The impugned judgment of the learned trial Court is cogent and well merited. It does not suffer from any infirmity and I fully concur with the finding of acquittal of the learned trial Court which calls for no interference.

18. For these reasons, the State Appeal being devoid of merits, stands dismissed and the impugned judgment dated 3rd April, 1997 with regard to the acquittal of the accused respondents namely Deendayal, Laxminarayan and Pusi in the alleged offences is upheld.