

K. Leela Vs. State

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Court : Chennai

Decided On : Aug-27-1997

Reported in : 1999(113)ELT398(Mad)

Judge : Jayarama Chouta, J.

Acts : [Customs Act, 1962](#) - Sections 135(1)(A)

Appeal No. : Crl. A. No. 121 of 1989

Appellant : K. Leela

Respondent : State

Advocate for Def. : Shri P.N. Prakash, ;Spl. Public Prosecutor for Shri P. Rajamanickam

Advocate for Pet/Ap. : Mrs. Anita, Adv.

Judgement :

1. The appellant, who has been tried for the offence punishable under Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 21 of the said Act, Under Sections 8(c) r/w Sections 28 & 23 and Rule 53 of the said Act, 1915, and under Section 13 of the Import and Export Control Order, 1962 and Section 135(1)(A)(ii) of the said Act and convicted for the offences under Section 8(c) read with Section 21 and Section 8(c) read with Section 23 and 28

and read with Rule 53 of the Act and sentenced to undergo rigorous imprisonment for ten years under each section and to pay a total fine of Rs. One Lakh, in default to undergo rigorous imprisonment for a period of three years has filed this criminal appeal.

2. The necessary facts for the purpose of disposal of this criminal appeal are as follows :-

On 30-9-1987 morning on previous information, the Officers of the Customs, Circle of Rameswaram intercepted the accused while she was proceeding towards Rameswaram Port with a suitcase. When P.W. 1 questioned her whether she was in a possession of contraband, the accused replied in the negative. At that time, the accused was carrying a bag and a suit case. P.W. 1 summoned an independent witness P.W. 4 and one Sukumar interrogated her. Then the accused told that she is a native of Ceylon and she is returning to ceylon and she has not in a position to smuggle goods or narcotics drugs. Thereafter P.W. 1 took the accused to the baggage hall and asked P.W. 3 Thirumathi Andichi a sweeper of the Customs Department to cause a personal search of the accused. P.W. 3 has taken the accused to a separate room and searched her. P.W. 3 found a polythene packet of 1 foot length and 3 inches breadth tied to her waist and a cash of Rs. 1,700/- and the same was produced by her to P.W. 1 and his party. On opening the polythene packet, it was found to contain a brown powder which was suspected to contain Heroin. On opening the suit case and the bag of the accused, P.W. 1 found, that, there were Indian Textiles worth about Rs. 2,000/- then P.W. 1 summoned P.W. 6 Thiru Ganesan Asari an Appraiser approved by the Government to weigh the brown powder contained in the polythene packet which was marked as M.0. 1. On weighment, the polythene packet with its content was found to have a weight of 155 gms and the net weight of the brown powder is 149 gms. P.W. 1 asked P.W. 3 to take a sample of 10 gms from the polythene packet and covered it and sealed it for the purpose of chemical examination. The remaining 139 gms brown powder was kept separately and sealed. A mahazar Ex P2 was prepared at the spot which contain all the above facts and activities. In the said Ex P2 mahazar apart from P.W. 1 and his party the independent witnesses P.W. 4 and one Sukumar, and P.W. 6 also have signed. The accused was taken

to office of P.W. 1, where the accused gave a confession statement which is marked as Ex P3. Ex P2 and P3 were prepared in the presence of P.W. 1. On the next day on 1-10-1987, P.W. 1 has sent a report to his superiors about the arrest of the accused and seizure of the articles mentioned in Ex. P2 and the seizure report has been marked as Ex. P4. The same day the Inspector of Central Excise and Customs has arrested the accused on the orders of P.W. 1 and the arrest memos has been marked as Ex. P7. The same day P.W. 1 has sent a letter of requisition to the Chief Chemical Examiner Customs House, Madras and has sent the sample of 10 Gms of brown powder for chemical examination whether the powder has contained Heroin. The said sample sent through P.W. 5 along with Ex. P5 mahazar, has answered the test for the presence of Heroin as found in the said letter which is marked as Ex. P6. On the basis of the said materials P.W. 1 lodged a complaint. The accused was produced before the Sessions Court and the Sessions Judge, Ramnad at Madurai had framed charges which have been mentioned above and read out to the accused in the language known to her, she has pleaded not guilty. During the course of the trial, the complainant examined P.W. 1 to P.W. 7 and marked Exs. P1 to P9 and marked M.O. 1 and M.O. 2 and they were produced before the Court. On behalf of the defence no witness was examined but she produced two rough sketches showing the various important places in Rameswaram as Exs D1 and D2. The Sessions Judge, after concluding the trial by Judgment dated 7-2-1989 in S.C. No. 111 of 1988 had convicted the accused for the offence mentioned above. Further he has acquitted the accused, for the offence punishable under Section 13 of the Import and Export (Control) Order, 1962 and Section 135(1)(A)(ii) of the [Customs Act, 1962](#). Being aggrieved by the said conviction and sentence, the present appeal has been filed.

3. I heard learned Counsel Ms. Anita on behalf of the appellant and learned Counsel Mr. Prakash for Mr. P. Rajamanickam, learned Standing Counsel appearing on behalf of the respondent.

4. The learned Counsel for the appellant took me through the evidence of the important witnesses and the judgment of the Sessions Judge and submitted that at the Court below was not justified in convicting the accused for the offence mentioned above. She submitted that the search made by P.W. 1 is in

contravention of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. She invited my attention to Section 50 of the said Act, which reads as follows :-

'Conditions Under which search of persons shall be conducted. -

(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.'

Her second submission was that the lower Court was not justified in placing reliance on the evidence of witnesses of the Mahazar who are under the thumb of P.W. 1 who intercepted the accused and hence the lower Court ought to have discarded the evidence.

5. On these two points, I heard Mr. Prakash, representing the respondent. The learned Counsel submitted that in view of Section 41(2) of the Act the first contention raised by the learned Counsel for the appellant does not survive. He has invited my attention to Section 41(2) which reads as follows :-

'Any such officer of Gazetted rank of the departments of Central Excise, Customs, Revenue Intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of State Government as is empowered in

this behalf by general or Special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under Chapter IV or that any narcotic drug, or psychotropic substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy, or a constable, to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest a person or search a building, conveyance or place.'

6. As far as the second contention is concerned, the learned Counsel submitted that P.W. 1 is a Superintendent of Customs whereas P.W. 3 and 4 are the two witnesses for the Mahazar and there is nothing to discard their evidence. He pointed out that the lower Court has placed reliance on their evidence. Their evidence does not suffer from any legal infirmities. On these grounds, he pointed out that there is no illegality in the judgment passed by the Sessions Judge.

7. After hearing the rival submissions and perusing the evidence and the judgment of the Court below, I am of the opinion that there is no substance in the contentions of the learned counsel for the appellant. P.W. 1 is a Superintendent of Customs. He was given authority to seize contraband. He has also produced a notification issued by the Department. The learned Counsel for the respondent also invited my attention to the Notification No. S.O. 824(E), dated November 14, 1985 wherein in exercise of the powers conferred by sub-section (2) of Section 41 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 Superintendent being Officers of Gazetted rank and working in the executive field, in the Department of Central Excise, Narcotics, Customs and Revenue Intelligence and in Central Economic Intelligence Bureau to exercise the powers specified in sub-section (2) of that section within the area of their respective jurisdiction.

In view of the said notification issued by the authority, P.W. 1 who is the Superintendent of Customs has got power to search. Hence there is no merit in

the contention raised by the learned Counsel for the appellant.

8. As far as the second contention is concerned, I have gone through the evidence of the witnesses, to me, nothing has been elicited from their evidence why they should falsely implicate the accused, if really, the accused was not in a possession of the Heroin, just because P.W. 3 happens to be a sweeper in the office, it cannot be said that her evidence cannot be believed. The appellant/accused being a lady since the Act prescribes that only a lady should search an accused who is lady. P.W. 3 being a lady she searched the person of the accused in his presence. Similarly, he secured the presence of one Murugan who is the Manager of the lodge. In the cross examination of all these witnesses noting particulars have been brought on record to discord their evidence. The Sessions Judge had an occasion to see the witnesses and believed them and placed reliance on their evidence. Under those circumstances, I am not persuaded to discard the evidence of these witnesses. The Sessions Judge has taken into consideration all these aspects while convicting the accused, I am not persuaded to take a different view from the one taken by the lower Court.

9. After assessing the entire evidence on record and considering the contentions on either side, I am of the opinion that there is no merit in this appeal and accordingly this appeal is dismissed.

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