

**Thangam Vs. State**

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**Court :** Chennai

**Decided On :** Oct-18-2000

**Reported in :** 2001CriLJ2272

**Judge :** F.M. Ibrahim Kalifulla, J.

**Acts :** Narcotics Drugs and Psychotropic Substances Act, 1985 - Sections 8, 20(B)(1), 41, 42, 43 and 53; Terrorist and Disruptive Activities (Prevention) Act 1985; [Antiquities and Art Treasures Act, 1972](#); Code of Criminal Procedure (CrPC) ; Indian Penal Code

**Appeal No. :** Cri. Appeal No. 610 of 1994

**Appellant :** Thangam

**Respondent :** State

**Advocate for Def. :** R. Karthikeyan, Govt. Adv. (Cri. side)

**Advocate for Pet/Ap. :** K.S. Ramachandran, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**F.M. Ibrahim Kalifulla, J.**

1. This appeal has been preferred by the accused against the judgment and conviction passed by the Trial Court under Section 20(B)(1) read with Section 8(c) of NDPS Act in C.C.No. 199/94, convicting the appellant for 36 months imprisonment already undergone apart from imposing a fine of Rs. 36,000/-.

2. According to the prosecution, P.W. 2 along with his other Officers was on a General patrolling on 19-4-1994 around 16.45 hours in front of one Gemini Workshop on Arappalayam main Road, that the appellant was proceeding from West to East and crossed the main road by carrying a gunny bag on his head; that at that point of time when two other persons, Malaisamy and Ravi who were also proceeding from West to East, just in front of the appellant were requested by P.W. 2 to act as witnesses, they refused to accept his request; that thereafter the Sub-Inspector Natarajan and one constable Narayanan were called to witness the occurrence; that in the presence of those witnesses, the appellant was stopped, that the appellant revealed his name as Thangam and also disclosed his Address, that when he was questioned as to what was contained in the gunny bag, the appellant admitted that it contained Ganja which was procured from an unknown person near Devaram; that when he was asked as to whether he would like to get himself examined in the presence of the Magistrate or a Gazetted Officer, the appellant expressed in writing that P.W. 2 himself could carryout the search; that the letter was Ex. P. 1, that the gunny bag brought by the appellant was searched which contained Ganja weighing to an extent of 18 kgms; that from and out of the contents found in the gunny bag, two samples weighing about 50 grams each was separately packed and sealed under M.O. 1, that on the same day around 19.00 hours the appellant was brought to the NIB, and a case was registered in Crime No. 21(E) of the Act, that necessary FIR was also registered, that thereafter the appellant was sent for remand along with Form-95. It also transpires that on the basis of the request made under Ex. P4, the Court under Ex. P5 forwarded M.O. 3 for Chemical examination. Based on the evidence of P.Ws. 1 & 2 and Exs. P1 to P7, the Trial Court passed the impugned judgment convicting the appellant to undergo the punishment mentioned above. As against the said conviction the present appeal has been preferred.

3. The learned counsel for the appellant, first and foremost contended that the case of the prosecution is vitiated in view of the following factors viz., (i) that the investigation of the case having been done by the very same Officer who made the search, seizure and arrest, was in contravention of the settled principles of Criminal Law. (ii) that the sample which was forwarded by P.W. 2 to the Court was not sent which would also vitiate the proceedings.

4. As regards the first submission about the lacuna in the investigation having been carried out by P.W. 2, the learned counsel relied upon the judgment reported in *Megha Singh v. State of Haryana*, (1997) SCC (Criminal) p. 267 which was followed by learned single Judge of this Honourable Court reported in *State by Public Prosecutor v. Krishnasami Iyer* 1997 (2) MLW (Cri) 751. In the judgment in *Megha Singh v. State of Haryana* reported in (1997) SCC (Cri.) 267, the Honourable Supreme Court while dealing with the case arising under the provisions of the Terrorist and Disruptive Activities (Prevention) Act 1985, was pleased to hold that the Head Constable who arrested the accused and on search being conducted by him, recovered pistols and cartridges, preferred the complaint based on which FIR was launched and the case was initiated, that when the Head Constable himself was the complainant, he should not have proceeded with the investigation of the case. While dealing with the above stated circumstances, their Lordships were pleased to hold that such a practice should not be resorted to so that there may not be any occasion to suspect the fair and impartial investigation. In the judgment reported in *State by Public Prosecutor v. Krishnasamy Iyer*, (1997) 2 M.L.W. (Cri.) 751 his Lordship Mr. Justice K.P. Sivasubramaniam while dealing with the case arising under [Antiquities and Art Treasures Act, 1972](#) was pleased to follow the judgment of the Honourable Supreme Court referred to above.

5. As against the above stated judgments the learned Public Prosecutor relied upon the judgment of the Honourable Supreme Court in *State of Punjab v. Balbtr Singh* reported in : 1994 CriLJ3702 . In para 5 of the said judgment the lordships of the Supreme Court while dealing with the case arising under two NDPS Act itself have held to the following effect (at page 3709 of Cri LJ) :

Therefore under this section the provisions of the Cr.P.C. are applicable where an offence under the Indian Penal Code or under any other law is being inquired into, tried and otherwise dealt with. From the words 'otherwise' points to the fact that the expression 'dealt with' is all comprehensive and that investigation, inquiry and trial are some of the aspects dealing with the offence. Consequently the provisions of the Cr.P.C. shall be applicable insofar as they are not inconsistent with the NDPS Act to all warrants, searches, seizures or arrests made under the Act. But when a Police Officer carrying on the investigation including search, seizure or arrest empowered under the provisions of the Cr.P.C. comes across a person being in possession of the narcotic drugs or psychotropic substances then two aspects will arise. If he happens to be one of those empowered officers under the NDPS Act also then he must follow thereafter the provisions of the NDPS Act and continue the investigation as provided thereunder. If on the other hand, he is not empowered then the obvious thing he should do is that he must inform the empowered officer under the NDPS Act who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act. (under lining is mine).

The same question arose for consideration before another learned Judge of this Honourable Court and in the said judgment, in *John Kennedy, etc./Ramalingam etc. v. State of Tamil Nadu Rep. by the Inspector of Police etc.*, reported in 1990 (2) MLW 762. His Lordship Justice K. Gnanaprakasam relied upon another judgment of the Rajasthan High Court reported in *Deep Chand v. State of Rajasthan* of 1996 Cri LJ 967 in which the principle set out in the judgment of the Hon'ble Supreme Court in *State of Punjab v. Balbir Singh* reported in 1994 SCC (Cri) 643 was relied upon and it was held that having regard to the principles set out therein, the contention that the empowered officer who effects contraband under the Act cannot continue with the investigation of the case would initiate the proceedings cannot be held to be good law. I am inclined to follow the latter view of the judgment of the Rajasthan High Court in *Deep Chand v. State of Rajasthan* reported in . Which has followed the judgment of the Honourable Supreme Court in *State of Punjab v. Balbir Singh* reported in : 1994 CriLJ3702 which arises directly under the provisions of NDPS Act. The very conclusion was based on the footing that under the NDPS Act, the search, seizure or arrest and investigation could be carried out only by an empowered officer as provided under Sections 41,

42 and 43 read with Section 53 of the Act and the Honourable Supreme Court while dealing with that very question in *State of Punjab v. Balbir Singh* reported in 1994 SCC (Cri) 643 was pleased to approve of the position that an empowered officer, who carried out such search, seizure and arrest could proceed further with the investigation in view of the special provisions empowering them to act as such, In such circumstances the other judgments cited by the learned counsel for the appellant reported in *Megha Singh v. State of Haryana* reported in 1997 SCC (Cri) 267 wherein their Lordships of the Honourable Supreme Court have laid as a general proposition that an Officer who preferred the complaint should not normally proceed with the investigation. Further, the ultimate conclusion in the said judgment was not based on the said factor. In those circumstances, the action of P.W. 2 as an empowered officer having proceeded with the investigation does not, in my opinion, vitiate the case of the prosecution.

6. The only other contention raised by the learned counsel for the appellant is that the sample of the seal, under which the seized contraband was forwarded to the Court was not sent and that the same caused serious lacuna in the case of the prosecution. In the first place, no prejudice is said to have caused to the appellant by virtue of the so called failure of the prosecution in not sending the sample of the seal, under which the contraband sample was forwarded to the Court. In any event, the Court while forwarding the sample for Chemical examination under Ex. P. 5 was stated to have been duly packed and sealed the pocket, Ex. M.O., 1 and the seal of the Court was put over it, apart from affixing the specimen of the seal on the margin of Ex. P. 5 and the chemical analyst in his report Ex. P. 7 confirmed that along with Ex. P. 5, the sealed pocket was received by him intact, for examination on 21-4-1994 that that being the factual position and the forwarding of the sample under M.O. 1 to the Court and the further forwarding of the same to the chemical analyst under Ex. P. 5 was carried on strictly by following the various procedures, there was no scope for causing any temparing of the sample contained in M.O. 1. No prejudice had therefore been caused to the appellant by virtue of negligible deformity pointed out by, the learned counsel for the appellant about the non-forwarding of the sample of the seal by P.W. 2 to the Court along with M.O. 1, therefore, on this hyper technical ground, there is no scope for interfering with the conviction and sentence passed by the Court below. The

judgment of the conviction and sentence is; thus, confirmed and the appeal is dismissed. No costs.

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