

Vasanth and anr. Vs. State by Inspector of Police N.i.B. Crime Branch C.i.D.

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Court : Chennai

Decided On : Aug-26-1997

Reported in : 1997(2)CTC564

Judge : K.P. Sivasubramanian, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20P(1) and 57

Appeal No. : C.A. No. 760 of 1990

Appellant : Vasanth and anr.

Respondent : State by Inspector of Police N.i.B. Crime Branch C.i.D.

Advocate for Def. : P. Venkatasubramanian, Adv.

Advocate for Pet/Ap. : Uthirasamy, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

K.P. Sivasubramanian, J.

1. This appeal arises out of the judgment of the Principal Sessions Judge, Salem District dated 15.11.1990 in S.C. No. 122 of 1990. The accused in the above

sessions case stood charged Under Section 20(p)(1) of Narcotic Drugs & Psychotropic Substances Act, 1985 (NDPS Act) on the allegation that on 10.2.1990 at about 11.25 a.m., the accused was found in possession of kanja worth about Rs. 2,000 without any valid permit or licence.

2. After due trial, the learned Sessions Judge found both the accused guilty under the provisions of the NDPS Act and imposed punishment for one year rigorous imprisonment and a fine of Rs. 200 in default to undergo further imprisonment for two more weeks. It is as against the said judgment, the above appeal has been filed. Even though the evidence in the case undoubtedly point out the guilt of the accused, unfortunately in view of the non-compliance of certain mandatory-provisions in the act, the accused/appellant herein becomes entitled to an acquittal.

3. Before the trial Court, several technical infirmities have been raised such as non-compliance of the requirement Under Section 50(4), of NDPS Act non-compliance of the requirement Under Section 75, City Police Act and the non-compliance of Section 57 of NDPS Act. Section 57 of the Act reads as follows:

'Report of arrest and seizure - Whenever any person makes any arrest or seizure under this Act, he shall, within forty- eight hours next after such arrest or seizure, make full report of all the particulars of such arrest or seizure to his immediate official superior.'

In the present case, the contention of the accused is that no such report was sent to the higher authorities. The stand of the prosecution is that a report has been sent to the higher authorities. But even though the said fact was not mentioned in the First Information Report, the Investigating Officer states that he had recorded in his diary. The learned Sessions Judge has accepted the statement of the prosecution and has also stated further that the accused did not take any steps for summoning the diary of the Investigating Officer. I am afraid that the said reasoning cannot justify the action of the prosecution since the burden of proving the compliance of the mandatory requirements under the Act are on the prosecution and it is not the duty of the defence to call upon the prosecution to prove the compliance of the mandatory requirements.

4. The fact that the requirement Under Section 57 of the Act is mandatory is dealt with in detail in the judgment of the Delhi High reported in Jacob Lawson v. State, 1996 3 Crimes 223. In the said judgment, the Delhi High Court has held that the non-compliance of Section 57 of the Act would result in the prosecution failing on that ground alone. The Delhi High Court has followed the judgment of the Supreme Court report in Mahender Kumar v. State of Panaji Goa, : 1995 CriLJ2074 . The Supreme Court in the said judgment followed the earlier judgments in Balbir Singh's case in : 1994 CriLJ3702 . The Supreme Court has held that the provisions of Section 52 and 57 of the Act dealing with steps to be taken by the Officer after making the arrest or seizure, are mandatory in character and that in that case since the State was not able to show for want material that the mandatory requirements pointed out have been adhered to the accused in that case would be entitled to be acquitted.

5. Therefore, in the present case also, the State not being able to show that the mandatory requirements have been properly complied with, the accused in the present appeal have also to be acquitted.

6. It is very unfortunate that in many of the cases arising out of the NDPS Act, the guilty individuals escape due to the non-compliance of statutory provisions notwithstanding the proof of the facts alleged against the accused. The very Act was passed with the object to make stringent provisions for the control and regulation of operations for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances Act, by incorporating even provisions for the forfeiture of property derived from the illicit traffic in Narcotic Drugs & Psychotropic Substances Act. The Act contains several stringent provisions on the rights of a citizen who is proceeded under the NDPS Act, such as offences being treated as cognizable and non-bailable offences arising out of mere possession of Narcotic Drugs, forfeiture of property of a person who is found guilty of the offence, mandatory death penalty for certain offences after conviction, liability of the owners of premises used for the commission of offence etc. In view of the stringent provisions contained in the Act, certain mandatory requirements are also prescribed as against the State in order to ensure proper prosecution in that, there should be elimination of tardy investigation resulting in prosecution of innocent

person. In order to ensure that the proceedings under the Act are taken very seriously, many mandatory provisions have been incorporated and it is found that in most of the cases, the offenders get freed only due to the non-compliance of the mandatory requirements. In the present case, all that was required for the Investigating Officer was to send the report to the higher authorities within 48 hours as required and to maintain the record of the same and to produce it before the Court in evidence. In view of the non-compliance of such provisions in the manner required, the accused in this case have to be set at liberty.

7. In view of the above situation, there is no other alternative except to allow the appeal and the above appeal is allowed.

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