

Darshan Singh Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Dec-17-2002

Reported in : 2003CriLJ2914

Judge : R.L. Khurana, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Section 464; ;[Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20 and 50

Appeal No. : Crl. A. No. 600 of 2002

Appellant : Darshan Singh

Respondent : State of H.P.

Advocate for Def. : K.D. Batish, Addl. Adv. General

Advocate for Pet/Ap. : Aneesh Garg, Adv.

Disposition : Appeal dismissed

Judgement :

R.L. Khurana, J.

1. The present appeal through Superintendent, Model Central Jail, Nahan, has been directed by the appellant, Darshan Singh, hereinafter referred to as the accused, against the judgment dated 16-8-2002 in Sessions Trial No. 34 of 2002

of the learned Sessions Judge, Kullu, whereby he has been convicted for the offence under Section 20, [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short the NDPS Act) and sentenced to rigorous imprisonment for two and a half years and also to pay a fine of Rs. 10,000/-. In default of payment of fine he has been sentenced to undergo further imprisonment for a period of six months.

2. Briefly, the prosecution story may be thus stated. On 24-12-2001, P.W. 7 ASI Rattan Lal, In-charge Police Post, Sainj accompanied by P.W. 5 HC Harbans Kumar, P.W. 6 HHC Hem Raj and Constables Bhag Chand and Neel Chand was on patrolling in Larji area. At about 3-30 p.m. when he was proceeding towards Banjar from Larji, he noticed the accused coming from the opposite side. The accused who had covered himself with a Chaddar (bed-sheet) on seeing the police immediately turned back and tried to run away. Such conduct on the part of the accused raised a suspicion in the mind of P.W. 7. The accused was chased and overpowered by the police party. The accused on enquiry disclosed his identity. P.W. 7 conveyed his suspicion to the accused that he might be possessing some contraband and expressed his intention to search him. P.W. 7 gave an option to the accused if he wanted to be searched before some Gazetted Officer or a Magistrate. The accused opted for being searched by P.W. 7. During the course of personal search of the accused a polythene bag was recovered from underneath the jacket which the accused was wearing. A further search of such polythene bag, Charas wrapped in polythene was recovered which on weighment was found to be 800 grams. Three samples weighing 25 grams each were separated. Such samples and the remaining part of charas weighing 725 grams were separately sealed with the seal mark 'H' and taken into possession by P.W. 7. Information was sent to the police station vide Ex. P.W. 7/B on the basis of which a case for the offence under Section 20, NDPS Act came to be registered at Police Station, Banjar vide FIR Ex. P.W. 1/A.

3. The accused after having been informed the grounds, was arrested. P.W. 7 then produced the accused along with the Charas recovered and the samples before P.W. 2 Balwant Singh, the then Station House Officer, Police Station, Banjar. P.W. 2 on the case property having been produced before him by P.W. 7 re-sealed the same with his own seal mark 'T' and deposited the same in the

'Malkhana'. Special report Ex. P.W. 8/A was sent by P.W. 7 to the Additional Superintendent of Police, Kullu. One sealed sample was sent to the Public Analyst, Kandaghat who vide his report Ex. P.W. 1/D reported the contents of the sample to be that of Charas.

4. The accused on having been put to trial, pleaded not guilty to the charge. The prosecution in support of its case examined eight witnesses in all.

5. The accused in his statement recorded under Section 313, Code of Criminal Procedure, denied the entire prosecution story. He even denied his apprehension at Larji. His defence was that of denial and false implication. No defence evidence was led by him.

6. The learned Sessions Judge on consideration of the evidence led before him, convicted and sentenced the accused as aforesaid.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. The learned counsel for the accused, at the very outset, has contended that the trial against the accused stands vitiated since there has been an error in the framing of charge against the accused. It was contended that in fact, no charge was framed against the accused and that the charge framed in the present case is against one Gorkhu Ram.

9. The charge framed in the present case on 1-4-2002 by the learned Sessions Judge, reads :

'I, T. N. Vaidya, Sessions Judge, Kullu, hereby charge you accused Gorkhu Ram as follows :--

That on 24-12-2001 at about 3.30 p.m. at some distance from Larji, 800 grams Charas was recovered from your conscious and exclusive possession in contravention of the provisions of NDPS Act and you thereby committed an offence punishable under Section 20 of NDPS Act, 1985 and within my cognizance. And I hereby direct that you be tried by this Court on the said charge.'

10. In the charge, though the name is mentioned as Gorkhu Ram, it was put, read-over and explained to the accused and thereafter the plea of 'not guilty' of the accused was recorded. Such plea of the accused is duly signed by the accused.

11. The question arising for determination, therefore, is as to the effect of the mentioning of the wrong name of the accused in the charge.

12. Section 464, Code of Criminal Procedure, Provides :

'464. Effect of omission to frame, or absence of, or error in, charge -- (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may --

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit :

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.'

13. The Code of Criminal Procedure requires that a charge should be framed. The object of framing of a charge is to enable the accused to know the substantive charge which he will have to meet, where the accused had a fair trial and he was knowing what he was being tried for and he was explained the facts to be established against him fairly and clearly and he was given full and fair chance and no prejudice is shown to have been caused, the conviction of the accused has

to stand whatever may be the irregularities.

14. The Hon'ble Supreme Court in Kantilal Chandulal Mehta v. State of Maharashtra, AIR 1970 SC 359 : (1970 Cri LJ 510) has held that if the omission etc. in the framing of charge appears to have occasioned a failure of justice, an order under Sub-section (2) of Section 464, Code Criminal Procedure, should be made to frame a charge, and the retrial recommenced from the stage immediately after the framing of the charge.

15. A Division Bench of the Kerala High Court in Raghva Nadar Reghu v. The State, 1988 Cri LJ 1364, has held that when there is an error or omission in the charge and whatever, the character of the omission or error, whether it is trivial or serious, it is not to be regarded as important unless two conditions are fulfilled namely :

(a) The accused has in fact been misled by it; and

(b) The omission or error or both have occasioned a failure of justice.

16. In the present case, though the name of the accused has been wrongly mentioned in the charge as 'Gorkhu Ram', such charge was duly explained to the accused. He very well knew the case against him i.e. what he was being tried for. He was given a fair and full chance of defending himself. Nothing has come on the record to suggest that due to the error in the charge any prejudice has been caused to the accused or that there has been failure of justice. The error in charge, on the facts of the present case, has no effect on the trial or the conviction/sentence of the accused.

17. It was next contended on behalf of the accused that there has been non-compliance of the mandatory provisions of Section 50, N.D.P.S. Act, inasmuch as the prosecution has failed to prove by cogent evidence that the requisite option as to search before a Gazetted Officer or a Magistrate was given to the accused.

18. Ex. P.W. 5/C is the memo prepared by P.W. 7 with regard to the option given to the accused if he would like to be searched in the presence of a Gazetted Officer or a Magistrate. Such option was given to the accused in the presence of

P.W. 5 HC Harbans Kumar and Constable Bhag Chand. The accused vide endorsement signed by him on Ex. P.W. 5/C opted to be searched by P.W. 7.

19. The option required to be given under Section 50, NDPS Act in the present case, has been proved to have been given to the accused by P.W. 7 before carrying out the proposal searching the accused. P.W. 5 and P.W. 7 have categorically stated to this effect. Their evidence could not be shattered during the course of cross-examination.

20. In *Sajan Abraham v. State of Kerala*, 2001 (5) Scale 91 : (2001 Cri LJ 4002) option under Section 50, NDPS Act was shown to have been given to the accused orally. The Hon'ble Supreme Court held (Para 10) :

'In the present case we find the High Court recorded a finding that P.W. 5 informed the appellant about his right as provided under Section 50 of the Act, which is established not only by the oral evidence of P.Ws. 1, 3 and 5, but also by the recitals made in Ex.P1, the seizure mahazar prepared by P.W. 5 and the F.I. statement given by the respondent (the appellant before us). The submission, however, is communicating orally to the appellant is not a compliance under Section 50. We cannot agree. The aforesaid Constitutional Bench upholds oral communication also to be valid under Section 50 of the Act. Hence, this submission has no merit.'

21. The testimonies of P.W. 5 and P.W. 7 also find support from the option memo Ex. P.W. 5/C. Therefore, it cannot be said that there has been non-compliance of the mandatory provisions of Section 50, NDPS Act.

22. It was lastly contended by the learned counsel for the accused that no independent witnesses were associated at the time of search and the evidence as to recovery consisting of the statements of police officials cannot be accepted. It was contended that evidence of police officers, namely, P.W. 5 and P.W. 7, constituting the raiding party is highly interested since they wanted the accused to be convicted.

23. There is no force in the contention of learned counsel for the accused. It is by now well settled that public servants must be presumed to act honestly and conscientiously. Their evidence has to be asserted on its intrinsic worth and cannot be discarded merely because they, being public servants, are interested in the success of the case (State of Kerala v. M.M. Mathew, AIR 1978 SC 1571 : (1978 Cri LJ 1690).

24. In Akmal Ahmad v. State of Delhi (1999) 3 SCC 337 : (1999 Cri LJ 2041), it was held that the evidence of search and seizure made by a police officer will not become vitiated solely because such evidence is not supported by independent witnesses.

25. On the basis of evidence coming on record, the accused stands rightly convicted and sentenced by the learned Sessions Judge. No interference therewith is called for by this Court.

26. As a result, the present appeal fails and the same is accordingly dismissed.

27. Let a copy of this judgment be sent to the accused through Superintendent, Jail for information.

28. Before parting, this Court places on record the valuable assistance rendered by Shri Aneesh Garg, Advocate, the learned legal aid counsel appointed for the accused.