

Moti Ram Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Nov-25-2005

Reported in : 2006(1)ShimLC231

Judge : Surjit Singh, J.

Acts : [Narcotic, Drugs and Psychotropic Substances Act, 1985](#) - Sections 13, 20, 20B, 42, 43 and 50; ;Code of Criminal Procedure (CrPC) - Section 173

Appeal No. : Criminal Appeal No. 342 of 2005

Appellant : Moti Ram

Respondent : State of H.P.

Advocate for Def. : D.C. Pathik, Additional Adv. General

Advocate for Pet/Ap. : K.D. Sood, Adv.

Disposition : Appeal allowed

Judgement :

Surjit Singh, J.

1. Appellant Moti Ram is aggrieved by the judgment dated 30.7.2005 of the trial Court, whereby he has been convicted for an offence, under Section 20(B) of the [Narcotic, Drugs and Psychotropic Substances Act, 1985](#), and sentenced to

undergo rigorous imprisonment for six years and to pay fine of Rs. 60,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year.

2. Police instituted a case against the appellant by submitting a report, under Section 173 of the Code of Criminal Procedure, alleging that on 1.2.2003, around 6.30 a.m., when S.I. Laljit Singh, accompanied by HC Harbans Kumar and LHC Sunil Kumar and other police officials, was present at a place called Sambha, within the jurisdiction of Police Station, Banjar, the appellant was seen coming from Niharni side and on seeing the police, he got unnerved and that aroused the suspicion of the said Sub-Inspector. The Sub-Inspector deputed a constable, named Anup Ram, who was accompanying him, to arrange for some independent local witnesses. However, no local witness was available. Thereafter the said Sub-Inspector informed the appellant that he suspected that he (the appellant) was carrying sonic narcotic drug or psychotropic substance and, therefore, it was intended to search his person and that he had a statutory right to be searched in the presence of a Gazetted Officer of the departments specified in Section 42 of the Narcotic Drugs and Psychotropic Substances Act, or some Magistrate and, in case he so desired, the search of his person could be arranged in the presence of any such Gazetted Officer or the Magistrate. The appellant opted for being searched on the spot by the said Sub-Inspector. Thereafter the Sub-Inspector got his own person searched from the appellant in the presence of the above-named H.C. and L.H.C. Nothing was recovered during his (Sub-Inspector's) personal search. Then the person of the appellant was searched and Charas, which on being weighed was found to be 600 grams, was recovered from one of the pockets of his coat, which was wearing. Two samples, each weighing 25 grams, were separated. Search and seizure memo was prepared. A report of search and seizure was prepared and sent to Police Station, Banjar for the formal registration of case. The recovered Charas and the two sealed packets containing the samples, were deposited with, the Station House Officer, Police Station, Banjar, who affixed his own seal on the sample packets as also the bulk Charas and deposited the same with the MHC. One of the two samples was sent to the Chemical Examiner. He gave the report that the contents of the sample were of Charas.

3. The trial Court framed the charge, under Section 20 of the Narcotic Drugs & Psychotropic Substances Act against the appellant and on his pleading not guilty, put him on trial. At the end of the trial, the appellant was held guilty and convicted and sentenced as aforesaid.

4. Appellant's Grievance is that the evidence on record does not prove the charge against him and, therefore, he is entitled to acquittal. The learned Counsel for the appellant, while addressing the argument besides assailing the conviction, argued in the alternative that in case the Court felt that the charge stood proved, the punishment awarded by the trial Court being too harsh, looking to the social background of the appellant and the quantity of the Charas, which was admittedly non-commercial, was required to be reduced substantially.

5. Having heard the learned Counsel for the appellant and the learned Additional Advocate General and gone through the record, I feel inclined to accept the contention of the appellant that the evidence on record does not prove the charge beyond reasonable doubt.

6. It may be stated at the very outset that Sub-Inspector Laljit Singh died before his statement could be recorded by the trial Court. The prosecution examined HC Harbans Kumar (PW-1) and LHC Sunil Kumar (PW-2) to prove the charge. Both the witnesses stated that they reached village Sambha and laid a Nakka there around 6.30 a.m., when the appellant came from Niharni side. They testified that on seeing the police, the appellant got unnerved, which aroused their suspicion and so the appellant was questioned about his name and particulars. They have further stated that one Anup Ram, constable was detailed to call some local independent witnesses, so that personal search of the appellant could be conducted in their presence, but Anup Ram returned after about twenty minutes and informed that no local witness was available. They further stated that thereafter the Sub-Inspector told the appellant that it was intended to search his person, because he suspected that he (the appellant) was carrying some narcotic drug and that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate and in case he so desired, search could be arranged in the presence of some Gazetted Officer or Illaqua Magistrate, but the appellant said

that he was prepared for the search of his person on the spot by the said Sub-Inspector. They also stated that the Sub-Inspector then got his own person searched from the appellant, but nothing was recovered in the course of such search and thereafter the S.I. searched the person of the appellant and 600 gram Charas was recovered, out of which two samples, each weighing 25 grams, were separated and the sample and the bulk Charas were made up into three separate parcels and the parcels were sealed with a seal, which produced the impression of letter 'H' of English alphabet. They also stated that a report of the matter was prepared and it was taken to the Police Station through one of them, namely PW-2 LHC Sunil Kumar.

7. Lekh Ram, ASI, examined as PW-4, stated that on 1.2.2003, when he was officiating as Station House Officer, Police Station, Banjar, Sub-Inspector Laljit Singh of Police Post, Sainj deposited with him the case property and the samples, contained in three sealed parcels, bearing the impressions of letter 'H' of English alphabet and that he affixed his own seal, which produced the impression of letter 'K' and then deposited those parcels with the M.H.C.

8. MHC Bhim Sen was examined as PW-7, who stated that three parcels, one containing the bulk case property and two containing samples bearing seal impressions 'H' and 'K', were deposited with him by ASI Lekh Ram, and that one of the samples was sent to the Chemical Laboratory Kandaghat for analysis, through constable Uggam Singh.

9. Constable Uggam Singh was examined as PW-8 and he corroborated the testimony of MHC Bhim Sen and further stated that he deposited the sample at the Laboratory on 3.2.2003.

10. A leading of the testimony of PW-1 HC Harbans Kumar and PW-2 LHC Sunil Kumar shows that they reached the place where the appellant was allegedly intercepted at 6.30 a.m. and thereafter twenty minutes were spent by constable Aiup Ram to search for some local witnesses and thereafter some-time was consumed in giving the option to the appellant, under Section 50 of the Narcotic Drugs & Psychotropic Substances Act and some more time was consumed in the search of the person of the Sub-Inspector himself. Their evidence also shows that

not only that the option was given to the appellant and the Sub-Inspector got his personal search from but even the record of giving of such option and the personal search of the Sub-Inspector was prepared. The memo of the alleged option, given to the appellant, and the memo of personal search of the Sub-Inspector are there on record, which are Exts. PW-1/A and PW- 1/B, respectively. At least half-an-hour time must have been consumed in these two preliminary stages before the conduct of the search of the person of the appellant. If that is so, the search of the person of the appellant, as per deposition of these two witnesses, could not have been conducted before 7.20 a.m. However, the search and seizure memo Ext. PW-1/C as also the written report, which was sent to the Police Station for formal registration of the case Ext. PW-1/G, show that the search was conducted at 6.30 a.m. This contradiction in the contents of the aforesaid documents and the testimony of the witnesses about the timing of the search, suggests that the prosecution story that Anup Ram was deputed to arrange for independent witnesses, thereafter option was given to the appellant, under Section 50 of the Narcotic Drugs & Psychotropic Substances Act and after that the Sub-Inspector got his own person searched from the appellant, is cooked up and false record has been prepared in the form of memo of option Ext. PW-1/A and memo of search of the person of Sub-Inspector Laljit Singh, to support the aforesaid story.

11. Further when the search and seizure memo and the report sent to the Police Station for the registration of the case show that the search was conducted at 6.30 a.m. and the above-named two police officials say that it was conducted around 7.20 a.m., as demonstrated here-in-above, it can legitimately be presumed that the above-named two police officials might not have been present on the spot.

12. The above stated position apart, from the fact that search was conducted at 6.30 a.m. as recorded in the search and seizure memo and the report sent to the Police Station, it is manifest that the requirement of Section 50 of the Narcotic Drugs & Psychotropic Substances Act was not fulfilled. Needless to reiterate that according to the prosecution version, as also the testimony of the above-named two police officials, the appellant appeared at the spot at 6.30 a.m. The timing of his personal search, as recorded in the search and seizure memo as also the report sent for registration of the case, is also 6.30 a.m. That means, Section 50 of

the Narcotic Drugs & Psychotropic Substances Act, 1985 had not been complied with.

13. Learned Additional Advocate General argued that this was a case of search of a person on suspicion and, therefore, the provision of Section 50 of the Act was not attracted. The argument has been noticed only to be rejected. The search can be said to have been made, under Section 43 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

14. It is the prosecution's own case that the Sub-Inspector suspected that the appellant was carrying some narcotic drug or psychotropic substance and that is why he allegedly gave the option to the appellant for being searched in the presence of a Gazetted Officer or a Magistrate, per memo Ext. PW-LA. The learned Additional Advocate General argued that mere suspicion of the Sub-Inspector would not bring the search within the purview of Section 43 of the Act, For the appreciation of this contention, it is necessary to have a look at the provision of Section 13 of the Act. The provision is reproduced below for ready reference:

43. Power of seizure and arrest in public place.--Any officer of any of the departments mentioned in Section 42 may.--

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession

and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.--For the purposes of this section, the expression 'public place' includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

15. According to the learned Additional Advocate General, a search would fall under the purview of Section 43 of the Act only if the concerned Officer has 'reason to believe' that the person, sought to be searched, has committed an offence punishable under the Act and in the present case, the Sub-Inspector did not have any reason to believe so but he simply had suspicion. I am of the considered view that when the Sub-Inspector, on the basis of the conduct of the appellant in getting unnerved suspected that he might be having some narcotic drug or psychotropic substance, he can legitimately be said to have 'reason to believe' that the appellant had committed an offence punishable under the Act. This is particularly so when he prepared the record in the form of memo Ext PW-1/A of having given an option to the appellant for being searched in the presence of a Magistrate or a Gazetted Officer of any of the departments, specified in Section 42 of the Act.

16. In any case, only S.I. Laljit Singh could have explained that despite his having prepared the aforesaid memo Ext. PW-1 and having written in the report, which was sent to the Police Station for the legislation of the case, as also in the search and seizure memo, that he suspected that the appellant was having some narcotic drug or psychotropic substance, he did not have any reason to believe that the appellant had committed an offence under the Act and so the provision of Section 50 of the Act was not attracted. Unfortunately, he died before his statement could be recorded by the trial Court.

17. As a result of the above discussion, it is held that the charge against the appellant does not stand proved beyond reasonable doubt. Consequently the appeal is accepted, the judgment of the trial Court is set aside and the appellant is acquitted of the charge. He, being in custody, is ordered to be released forthwith, if his detention is not required in connection with any other case.

