

M.A.Jaffar Ali .. Vs. the Intelligence Officer Narcotic Control Bureau South Zonal Unit

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Court : Chennai

Decided On : Jun-07-2010

Judge : T.Sudanthiram, J.

Acts : Narcotics Drugs and Psychotropic Substances (NDPS), 1985 - Sections 8(c), 21, 23, 67; Code Of Criminal Procedure (CRPC) - Section 313

Appeal No. : CRL.A.NO.1169 of 2004

Appellant : M.A.Jaffar Ali ..

Respondent : The Intelligence Officer Narcotic Control Bureau South Zonal Unit

Advocate for Def. : Mr.R. Dhanapal Raj, Adv.

Advocate for Pet/Ap. : Mr.R.John Sathyan, Adv.

Judgement :

1. The appellant herein is the first accused in C.C.No.207 of 2002, on the file of the learned Principal Special Judge, Special Court under NDPS Act Cases, Chennai, and he stands convicted for the offences under Sections 8(c) read with 21(c) and Section 8(c) read with 23 of the NDPS Act and sentenced to undergo ten years rigorous imprisonment and to pay a fine amount of Rs.1,00,000/- for each offence, in default, to undergo six months rigorous imprisonment for each offence. Aggrieved by the said conviction and sentence, the appellant/first

accused has preferred this criminal appeal.

2.The case of the prosecution in brief is as follows:

(i)On 21.01.2002 at about 7.00 p.m. P.W.3, Intelligence Officer, N.C.B., Chennai, received an information over telephone that one person by name M.A.Jaffar Ali, was leaving to Colombu by I.C.573 Flight scheduled to departure at 12.40 hours on 21.01.2002 and also carrying heroin weighing about 2.5 kilograms. P.W.3 recorded the said information in Ex.P.11 and informed the Assistant Director and thereafter proceeded along with other officers to Anna International Airport. On verifying the passport of the accused Jaffar Ali, P.W.3 confirmed the first accused as the person who was named in the information. P.W.3 enquired the first accused /appellant as to whether he had any narcotic substance for which the first accused replied that he had no such substance. P.W.8 another Intelligence Officer who had accompanied P.W.3 had issued summons to the first accused under 67 of the NDPS Act. The Airlines authorities handed over the package of the accused with a letter Ex.P.12. The first accused/appellant accompanied P.W.3 and other officers to the NCB Office. P.W.3 went to the CBI Office, Chennai and required the Inspector Ramadoss and Sub Inspector Saravanan to be witnesses. P.W.6 Sub Inspector of Police Saravanan and the Inspector of Police Ramadoss appeared in the office of P.W.3 at 3.00 p.m. In their presence P.W.3 explained to the first accused about Section 50 of the N.D.P.S Act and informed the accused that he has got the right to be searched either before the learned Judicial Magistrate or before a Gazetted Officer for which the accused opted to be searched by the Intelligence Officer P.W.3 himself. The first accused also admitted that he concealed the heroin in the falls bottom of two black recksin bags. He opened the falls bottom and produced two polythene bags. Heroin was found inside the polythene bags and one packet contained 1.25 kgs and other pocket contained 1.75 kgs. From each packet two samples of each weighing five grams were taken and those sample packets were sealed. The remaining packets were also sealed. Mahazar Ex.P.13 was prepared for seizure of the contraband. At about 7.30 p.m. P.W.8 recorded the confessional statement of the first accused which is marked as Ex.P.26. The first accused was arrested at 2.00 p.m. on 22.01.2002 and he was produced before the Court for remand.

3. On 08.06.2002, P.W.1 received an information from P.W.9-Inspector of Police Kothwalchavadi police station and then went to the Police Station. On enquiring him, the second accused revealed that he was called as Saleem and he also admitted that he had connection with the first accused in the drug trafficking. P.W.1 served summons to the second accused and brought to the NCB Office. The statement of the second accused was recorded by P.W.2 which is marked as Ex.P.4.

4. The prosecution in order to establish its case, examined P.Ws.1 to 9, marked Exs.P.1 to P.33 and produced material objects M.O.1 to M.O.12. When the accused were questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances available against them, they denied their complicity. The trial Court after analysing the evidence, acquitted the second accused and convicted and sentenced the first accused alone as stated above.

5. Mr.R.John Sathyan, learned counsel appearing for the appellant/first accused submitted that though P.W.9 on information gone to the Airport, he did not take any steps to search the first accused at the Airport but conveniently P.W.3 says that the first accused was searched in the N.C.B. Office in the presence of two mahazar witnesses who were CBI Officials and not independent witnesses. Ex.P.25 summons copy issued to the first accused carries the file number, which considerably proves that summons Ex.P.25 was prepared subsequently and it could not have been issued to the accused at the Airport as spoken by P.W.3 and P.W.8.

6. The learned counsel appearing for the appellant has further submitted that even at the Airport, P.W.3 ought to have followed the mandatory provisions under Section 50 of the NDPS Act but he failed to do so. The learned counsel appearing for the appellant further added that Ex.P.26 confessional statement said to have been made by the first accused is not a voluntary in nature and the trial Court having acquitted the second accused erred in convicting the appellant/first accused alone.

7. Per contra, learned Special Public Prosecutor submitted that though P.W.3 had gone to the Airport on a specific information, the first accused had denied the

possession of any narcotic drug and therefore he was issued summons and the first accused voluntarily accompanied P.W.3, the Intelligence Officer. The learned Special Public Prosecutor further added that as the CBI Office was nearer to the NCB Office, P.W.3 had gone to the CBI office, procured P.W.6 Sub Inspector of Police and the Inspector of Police to be the witnesses for the search and seizure.

8. The learned Special Public Prosecutor also submitted that the first accused has not retracted his confessional statement at the earlier stage and it stands as a corroboration to the seizure of the contraband made by P.W.3.

9. This Court considered the submissions made by both parties and perused the records. It is the specific evidence of P.W.3 that he received a specific information about the first accused that he was carrying heroin weighing about 2 1/2 Kilograms and was to leave to Columbo by IC.573. P.W.3 having gone to the Airport with other officials and having noticed the first accused and after retrieving the baggage of the first accused had enquired about the contraband and the first accused had denied about the possession of the contraband. Though the first accused had denied the possession of any narcotic drug, as P.W.3 had specific information, it is not known as to why P.W.3 had not searched the first accused and his baggage in the Airport itself in the presence of the Airport authorities or any other independent witness. P.W.3 ought to have explained about Section 50 of the NDPS Act on the same spot. But, surprisingly P.W.3 or other officials have not searched the first accused at the airport. It is the evidence of P.W.3 and P.W.8 that the first accused was served summons under Section 67 of the NDPS Act and he was taken to the NCB Office. But it is the evidence of P.W.3 even before recording the statement of the first accused on the way he had gone to the CBI Office to get the mahazar witnesses. This part of the evidence reveals that P.W.3 wanted to search the first accused and if so, he could have done it at the airport itself. It is not known as to why P.W.3 picked up the police personnel to stand as mahazar witness. Though there is no specific bar for the police personnel to stand as a mahazar witness, to inspire the confidence of this Court regarding the search and seizure, the Intelligence officer should have made an attempt to get some independent person to stand as witness. P.W.3 in his report Ex.P.19 had stated that the contraband was seized in the presence of two independent witnesses. The names of the

independent witnesses are not mentioned in Ex.P.19, but it is to be understood that the Police personnel are referred to be the independent witnesses. Further in the mahazar Ex.P.13, it is not mentioned that the first accused was brought to the NCB Office after serving summons under Section 67 of the NDPS Act. In Ex.P.19 also it is not explained as to why the first accused was not searched at the airport after being intercepted. Though it is stated by P.W.3 that the first accused had admitted about the possession of heroin in the NCB Office, he himself had given evidence that the first accused had denied about the possession of the drug at the airport. The accused having been brought to the NCB Office on the basis of the summons issued to him, if he had admitted his guilt, then his statement should have been immediately recorded, but according to the evidence of P.W.3 and P.W.8 at that stage, no statement was recorded and Ex.P.26 is said to have been recorded only at 7.30p.m.

10. The manner in which the search and seizure was conducted by P.W.3 and the evidence let in by the prosecution regarding the search and seizure does not inspire the confidence of this Court. The audacity of the NCB Officers is only seen by this Court by procuring the police personnel as mahazar witness, but fair compliance of Section 100 Cr.P.C is missing.

11. As Ex.P.25 summons issued by P.W.8 to the first accused which carries the file number raises a doubt with regard to the time of the issuance of summons to the first accused. Ex.P.25 is a printed copy and the name of the Intelligence Officer Bakthavatchalam only is handwritten. In the facts and circumstances of the case, this Court does not want to place any reliance in Ex.P.26, the statement said to have been given by the first accused.

12. For the above said reasons, the Criminal appeal is allowed. The conviction and sentence imposed on the appellant/first accused in C.C.No.207 of 2002, on the file of the learned Principal Special Judge, Special Court under NDPS Act, Chennai, are set aside and the appellant/first accused is acquitted of all the charges.