

Mintu Mahaton Vs. State of Bihar

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Court : Patna

Decided On : Jun-24-2011

Judge : Shyam Kishore Sharma; Rajendra Kumar Mishra, Jj.

Acts : The Narcotic Drugs and Psychotropic Substance Act - Sections 20, 21, 22, 23, 24; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 100

Appeal No. : CRIMINAL APPEAL (DB) NO.140 OF 2009

Appellant : Mintu Mahaton

Respondent : State of Bihar

Advocate for Def. : Mr. Ashwani Kumar Sinha, Adv.

Advocate for Pet/Ap. : Mr. Neeraj Kumar; Mr. Abhimanyu Sharma, Advs.

Judgement :

1. The sole appellant named above has preferred this appeal against the judgment of conviction and order of sentence dated 4.2.2009 and 9.2.2009 respectively passed in Trial No. 01 of 2003 by the learned Additional Sessions Judge, F.T.C. No. III, West Champaran, Betiah whereby he has been convicted for the offence punishable under Sections 20 and 23 of the Narcotic Drugs and Psychotropic Substance Act and has been sentenced to undergo rigorous imprisonment of 15 years and fine of rupees one lac on each counts and in default of payment of fine to further undergo rigorous imprisonment for three years on each counts.

However, it was ordered that the sentences shall run concurrently.

2. On the basis of self statement of Sub-Inspector of Police -cum-Officer Incharge of Sahodra Police Station dated 2.10.2002 a case vide Sahodra P.S. Case No. 49 of 2002 was registered against Mantu Mahto and Surendra Mahto with regard to an occurrence of 3.45 AM on 2.10.2002. The information was received by the informant at 3.00 AM on 2.10.2002 that Ganja was being kept by Mantu Mahto-appellant and Surendra Mahto. This secret information led the informant to proceed with the police personnel for conducting raid at the house of the appellant. Accordingly, on that date at 3.45 AM the raid was conducted at the house of Mintu Mahto in presence of the witnesses Yognedra Yadav (PW 4) and Baldeo Yadav (PW 3).

On search, 10 packets Ganja kept in a Jute Bag was seized from a room situated on the western side, 10 packets kept in a bag from a room situated in the southern side and 15 packets of Ganja kept in a jute bag from the room situated in the eastern side of the house were seized. Seizure list (Ext. 1/2) was prepared on which two independent witnesses put their signatures (Ext. 1 and 1/1). One seized packet was weighed and it was found to be 25 Kilograms so it was calculated that total weight of 35 packets comes to 8 quintals and 77 Kilograms of Ganja and its price should be rupees eight lac and thirty thousand.

Mintu Mahto was hiding himself in that room and he was nabbed. No explanation regarding possession of Ganja was given. It was suspected that this illegal trade was being carried by which the Ganja imported from Nepal in bulk was being sold in different locations of India. The case was registered under Sections 21, 22, 23 and 24 of the Narcotic Drugs and Psychotropic Substance Act against this appellant- Mintu Mahto, Surendra Mahto and two unknown.

3. On the basis of aforesaid fard-beyan (Ext. 2) formal FIR (Ext. 3) was drawn and the case was entrusted for investigation to Sub-Inspector of Police, Tarkeshwar Prasad Singh (not examined) and after investigation chargesheet was submitted against Mintu Mahto and Surndera Mahto. Accordingly, cognizance was taken

under Sections 21, 22, 23 and 24 and charge under Sections 20 and 23 of the Narcotic Drug and Psychotropic Substance Act was explained to the accused persons. They pleaded their innocence and trial proceeded.

4. In course of trial the prosecution has examined altogether six witnesses. They are: Madan Kumar Yadav, constable (PW 1), Ram Ekbal Sharma, Hawildar (PW 2), Baldeo Yadav @ Laldeo Yadav (PW 3), Yogendra Yadav (PW 4), Jay Narayan Rao, Constable (PW 5) and Arun Rajak, informant (PW 6). Documentary evidences are: seizure list (Ext. 1), signatures of witnesses on the seizure list (Ext.1/1 & 1/2)), fard-beyan of informant (Ext.-2), formal FIR (Ext.-3) and Report R.F.S.L. No. 11/2003 of Director, Forensic Science Laboratory showing that the sent article was found to be Ganja (Ext.-4).

5. On behalf of defence Kapildev Mahto and Moti Ram Mahto were examined as DW 1 and DW 2 to say that the house of the accused was not searched.

6. The trial court after considering the facts and circumstances and after hearing the parties, came to the conclusion that the prosecution has been able to prove the charge only against the appellant Mintu Mahto and another accused Surendra Mahto who was not found present at the time of occurrence and also a handicapped person so he was acquitted.

7. Now this Court is required to see as to whether the prosecution has been able to prove the charge against the appellant beyond the shadow of all reasonable doubts or not.

8. PW 6 is the informant. This witness has stated that on 2.10.2002 he was posted as Officer Incharge of Sahodra Police Station and on that date he had been to make raid in connection with a case and at about 3 AM he received confidential information that Mintu Mahto and Surendra Mahto were possessing large quantity of Nepali Ganja in their house. The informant along with armed police personnel went for raid at village Prem Nagar and raid was conducted in presence of PWs 3 and 4. On search 35 packets of Ganja was seized which were kept in different locations of the house.

One packet was weighed to be 25 Kilograms so the informant guessed that the total quantity of Ganja comes to 8 quintals and 77 Kilograms worth rupees eight lacs and thirty thousand. The appellant- Mintu Mahto hiding himself in the house was apprehended. He has not given any explanation regarding the possession of the seized Ganja.

The informant further stated that Mintu Mahto, his brother Surendra Mahto and others were illegally bringing illicit Ganja from Nepal and were selling it to the different locations in India. Seizure was witnessed by the witnesses and a copy of seizure list was given to the accused. Though this witness has been cross-examined with regard to manner of search and seizure but there is no inconsistency in his evidence and his evidence has remained intact that in the night as alleged the house of appellant- Mintu Mahto was searched and some packets were seized. One packet was weighed and it was found to be 25 kilograms and so it was calculated that the entire packets would be 8 quintals and 77 kilograms in weight.

9. PWs 1, 2 and 5 are the persons who have gone at the time of search and seizure and they were the participants of search. They have supported that the police has searched the house of the appellant and Ganja was seized. There are no major contradictions in their evidences and their evidences remained intact regarding search and seizure from the house of the appellant. Seizure witnesses PWs 3 and 4 have identified their signatures on the seizure list but in cross-examination they have stated that they have put their signatures on the blank paper.

10. Learned counsel for the appellant has submitted that the prosecution has not explained as to why the information received was not recorded in Station Diary and so there was complete violation of provisions of Sections 42 and 43 of the Narcotic Drugs and Psychotropic Substance Act. There is nothing on the record from which it can be guessed that after getting information the Officer has informed his superior officer. Station Diary entry has also not been produced nor any superior officer has been examined to say that he was informed about receiving the secret information. So it has been submitted that the entire case

becomes doubtful. Reliance has been placed on the judgment reported in 2011(2) BBCJ 336 (Akloo Miya @ Akloo Mian v. state of Bihar) and on the judgment reported in 1999 (6) SCC 172 (State of Punjab v. Baldev Singh).

11. Section 41 of the Act is the power to issue warrant and authorization. Section 42 of the Act is the power of entry, search, seizure and arrest without warrant or authorization. In the present case there is no Station Diary entry and the prosecution case is also not that any information was received at the police station rather the prosecution case is that when the informant was to conduct a raid in connection with another case in another village then he received information and he immediately went and made search. Therefore, the facts of the present case are different with the facts of the case which has been relied upon by the learned counsel for the appellant and the same is of no help to the appellant.

12. In the present case the seizure list witnesses have identified their signatures over the seizure list. Thumb impression of the accused is also available on the seizure list. The procedure regarding search and seizure is laid down under Section 100 of the Cr.P.C. Certain circumstances are to be considered so that the search may appear to be valid. One of the conditions is that the copy of seizure list should be delivered to the person when the search is made. Section 100 Cr.P.C. is devisable in three parts. Sub-sections (1) and (2) provide the manner of entry. Sub-section (3) makes provisions for search of the person of an individual who is in or about the place of search and who is suspected to have on his person article for which the search is made.

The third part comprising of sub-sections (4) to (8) deals with the manner and procedure of search. Sub-sections (4), (5), (6), (7) and (8) of Section 100 Cr.P.C. lays down certain salient principles which practically would operate as a safeguard against the arbitrariness and illegal exercise of power of search. Presumption of validity of search arises from the seizure list being signed by the witnesses and the accused.

If search has caused prejudice then it has to be doubted and it could not be relied. But even if there is irregularity in search, it cannot vitiate the seizure of the article. The seizure witnesses, in the present case, have identified their

signatures on the seizure list but in cross-examination they have stated that the search was not conducted in their presence. The very fact that on the seizure list witnesses have put their signatures is indicative of the fact that there was a valid search on the date and time of occurrence. So the search and seizure has been proved by the prosecution. Regarding quantity of seized article it appears that the initial version was that only one packet was weighed and it was containing 25 Kg of ganja and so it was guessed that the entire quantity must be of 8 quintals and 77 Kilograms. The evidence of the informant is that only one packet of Ganja was weighed and it was 25 Kilograms.

On the basis of presumption it cannot be said that the entire seized articles was Ganja and if the prosecution has to establish that the seizure was of 8 quintals and 77 Kilograms of Ganja then it was incumbent upon it to prove beyond the shadow of all reasonable doubt that the seizure was validly made and the weight was correct. Only one packet was weighed so the prosecution has been able to prove that at least one packet of Ganja containing 25 Kilograms was seized and regarding others quantity has not been specifically mentioned, therefore, entire seizure cannot be believed and it could be held that on the date and time of occurrence seizure was at least of 25 Kilograms of Ganja which comes under the category of commercial quantity. Seized Ganja was sent to the Forensic Science Laboratory and exhibit-4 is the report of examination which is as follows:-

“The dry pressed brownish coloured flowry and fruiting vegetable substances, contained in the tin container described above, was found to be Ganja containing Tetra Hydro Cannabinol (T.H.C.) as their chief intoxicating ingredient. „Ganja is the flowring and fruiting tops of the female plant of cannabis sativa.”

13. Learned counsel for the appellant has submitted that the seizure was made on 2.10.2002 and it was received in the office of Regional Director, Forensic Science Laboratory, Muzaffarpur on 10.1.2003 which is after 100 days. There is no explanation as to where the seized article was kept and whether it was intact. On

this point it has been argued that doubt is created and the accused is entitled to get the benefit of doubt.

Non-examination of Investigating Officer has caused grave prejudice to the accused because custody of Ganja during the period on which date seizure was made up to when the seized article was sent for its examination has not been proved. No doubt, Investigating Officer has not been examined and there is some delay in sending the seized articles.

The seized article was sent and it was received in the office of the Regional Director, Forensic Science Laboratory, Muzaffarpur on 10.1.2003. No doubt, there is some delay but all the prosecution witnesses are consistent to the extent that on the date and time of occurrence there was seizure of commercial quantity of Ganja. So, we are of the view that non-examination of the I. O. has not caused any prejudice to the accused/appellant.

14. In view of the aforesaid discussions and from the facts and circumstances available on the record, it is apparent that the prosecution has been able to prove its charge against the appellant beyond the shadow of all reasonable doubts that on the date and time of occurrence, offence was committed by the appellant. Accordingly, the impugned judgment of conviction and order of sentence is justified and needs no interference.

15. In the result, this appeal is dismissed.

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