
(2010) 04 JH CK 0042
In the Jharkhand High Court

Abdul Mazid

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100, 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 51, 57

Citation : (2010) 04 JH CK 0042

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence passed by the Sessions Judge-cum Special Judge, Pakur in Special Case No. 1 of 1998/ 01 of 2001 whereby and whereunder he convicted the appellant u/s 20(b)(ii)(a) of the Narcotic Drug and Psychotropic Substance Act, 1985 (hereinafter to be referred as N.D.P.S. Act) and sentenced him to undergo rigorous imprisonment for a period of one month.

2. The case of prosecution, in short as per the fardbeyan of Maheshwar Singh, officer-in-charge, Pakur, is that he received an information that a criminal is standing by the side of a gumti in the market. On that information, he along with P.W.-3 and P.W.-4 went there and found that the appellant was slowly moving away from his gumti. It is stated that informant stopped him and made some query. It is stated that the activity of appellant was found suspicious, therefore, his gumti was searched by the informant and in course of search, ganja, kept in puriya (wrapped in folded paper) recovered from a small jhola (bag). Thereafter the appellant was arrested. Ganja was seized and seizure list prepared in presence of witnesses.

3. On the basis of aforesaid information, Pakur (T) P.S. Case No. 77 of 1998 instituted u/s 20(b) of the NDPS Act and police took up investigation. After completing the investigation, charge-sheet submitted against the appellant u/s

20(b) of the NDPS Act and cognizance of the offence taken by learned court below vide order dated 30.06.1998. Thereafter court below framed and explained charge to the appellant u/s 20(b)(1)(a) of the NDPS Act, to which the appellant pleaded not guilty and claimed to be tried. Thereafter prosecution examined altogether 6 witnesses in support of its case. After close of the case of prosecution, statement of accused recorded u/s 313 of the Code of Criminal Procedure in which his defence is of total denial. Thereafter the appellant was convicted and sentenced as aforesaid, against that present appeal filed.

4. While assailing the impugned judgment, it is submitted that the seizure of alleged ganja from the gumti of appellant has not been proved. It is submitted that both the seizure list witnesses i.e. P.W.-1 and P.W.-2 have categorically stated that nothing has been recovered in their presence. It is further submitted that P.W.-3, who is a betel shopkeeper, though has stated in his examination in chief that some paper puriya recovered from a jhola, but in his cross examination, he has stated that said jhola has not been recovered in his presence. It is further submitted that other 3 witnesses are police officers. It is submitted that their evidences are also contradictory to each other. P.W.-4 and P.W.-5 who accompanied the informant at the time of occurrence, had stated that from the gumti of appellant, numbers of puriyas kept in a jhola recovered. But the informant (P.W.-6) stated that only one puriya recovered. It is further submitted that all the witnesses stated that in the seizure list, they took the signature of appellant, but seizure list (Ext-3) reveals that signature of appellant was not obtained, which is in violation of Section 100(6) of the Code of Criminal Procedure. It is further submitted that appellant was arrested on 10.04.1998, but officer-in-charge of the police station (P.W.-6) and Investigating Officer (P.W.-4) has not reported the matter to their immediate superior officer, as provided u/s 57 of the N.D.P.S. Act, which casts a serious doubt on the prosecution case. Accordingly, it is submitted that impugned judgment cannot be sustained in this case.

5. Learned Additional PP supports the case of prosecution and submits that since 125 gm ganja recovered from the gumti of appellant, therefore court below has rightly convicted and sentenced him for the charge levelled against him.

6. Having heard the submissions, I have gone through the record of the case. P.W.-1 (Dhruv Gupta) and P.W.-2 (Ujjwal Kumar Dubey) are seizure list witnesses. Both the witnesses categorically stated that nothing has been seized in their presence. Their signatures obtained on the seizure list in police station by officer-in-charge. Thus the seizure of ganja has not been proved by the seizure list witnesses. P.W.-3 is a shopkeeper of betel shop and he in his examination in chief has stated that officer-in-charge, Pakur Police Station searched the gumti of Abdul Mazid (appellant) and took out a jhola which contains some puriyas. However, during cross examination, he stated that he saw officer-in-charge while he was taking away a jhola. At paragraph No. 14, he categorically stated to a court question that when officer-in-charge was searching the shop of Abdul Mazid

(appellant), he was not present at that place. He further specifically stated at paragraph No. 15 of his cross examination that he had not seen the recovered puriyas from his own eyes. Thus P.W.-3 is hearsay on the point of seizure. Therefore the same cannot be relied upon.

7. P.W.-4, P.W.-5 and P.W.-6 are police officers. P.W.-6 in his deposition had categorically stated that only one puriya recovered from the shop of appellant, whereas P.W.-4 and P.W.-5, who are also police officers and accompanied P.W.-6 at the time of search, had stated that all the puriyas were open and ganja found in it were collected and then weighed on a balance. Thus I find material contradiction in the statement of P.W.-4, P.W.-5 and P.W.-6 regarding the seizure of ganja.

8. It is stated by P.W.-6 that he prepared seizure list in presence of seizure list witnesses and on the said seizure list, he obtained the signature of appellant. But from perusal of seizure list (Ext-3) it appears that signature of appellant, in lieu of supplying the copy of seizure list to him, has not been obtained. Section 51 of the NDPS Act provides that provision of Code of Criminal Procedure 1973 shall apply to all searches and seizures made under this Act. u/s 100(6) of the Code of Criminal Procedure, it is mandatory that a copy of seizure list be delivered to the person i.e. occupant of the place where seizure was made. In the instant case, aforesaid mandatory provision as contained in Section 100 of the Code of Criminal Procedure has not been complied with, which also makes the seizure illegal.

9. P.W.-4 who is Investigating Officer has stated that he sent the seized ganja for examination to Sub-Inspector (Excise) and received his report. From perusal of Ext-4, I find that just below the letter of P.W.-4, one Vijay Kumar Singh, Sub-Inspector, Excise, Pakur Circle has written his report that articles sent is a ganja which is a Narcotic Drug. However the said Vijay Kumar Singh has not been examined in this case. From perusal of his report, I find that he has not given any reason for coming to the conclusion that article send to him is ganja. It further appears that said report does not bear the seal of Sub-Inspector (Excise). In this connection, it is worth mentioning that P.W.-4 at paragraph No. 23 had admitted that examination of Excise articles are held at Patna. Thus why the seized ganja had been sent to Sub-Inspector (Excise) for examination has not been answered. Under the aforesaid circumstance, genuineness of said report (Ext- 4) is not free from doubt. Thus, I find that prosecution has not been able to prove that alleged seized articles are Narcotic Substance.

10. I find yet another irregularity and illegality committed by the Police Personnel. Section 57 of the NDPS Act provides that whenever any authority makes any arrest and seizure under NDPS Act, he shall within 48 hours from the time of arrest or seizure, make a full report of search, arrest and seizure to his immediate superior officer. In the instant case, no such report was given by P.W.-4, P.W.-5 and P.W.-6. It has been held by their Lordship's of Supreme Court in Gurbax Singh Vs. State of Haryana, that though the violation of these

provisions would not ipso facto vitiate the trial or conviction, however failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article. As noticed above, in the instant case, the seizure has not been proved by the seizure list witnesses. The mandatory provision regarding supply of seizure list to the appellant has also not followed in this case. Thus, failure of Police Officers in reporting the arrest and seizure to the superior authority makes the case of the prosecution doubtful.

11. In view of the discussions made above, I find that prosecution has not been able to bring home the charges levelled against the appellant beyond the shadow of all reasonable doubts. Thus I find that there is serious illegality and irregularity in the impugned judgment, which cannot be sustained in this appeal.

12. In the result, this appeal is allowed. Impugned judgment of learned court below is set aside. Appellant is acquitted from the charge levelled against him. He is also discharge from the liability of bail bonds furnished by him.