

(1992) 08 BOM CK 0070
In the Bombay High Court
Case No : Criminal Appeal No. 620 of 1990

Antony Sauri Pilley

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-08-1992

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(b)(i)

Citation : (1993) 1 BomCR 153 : (1993) CriLJ 1502

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Kumari Chhaya Deshmukh, for the Appellant; B.R. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

1. The appellant in this case stands convicted for an offence punishable under S. 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The learned Joint District and Additional Sessions Judge, Thane has awarded him a sentence of rigorous imprisonment for 5 years and a fine of Rs. 50,000/-, in default, to suffer rigorous imprisonment for one year. The appellant is in jail.

2. Kumari Deshmukh has been appointed Counsel by the State to appear on his behalf. According to the Prosecution, P.S.I. Jagannath Salunkhe (P.W. 3) received some information that the accused was dealing in Ganja and pursuant to this information, he and members of the raiding party went to the hut of the accused, which is in a Zopadpatti opposite an S.T. bus stand at Vithalwadi. They called out the accused, who is alleged to have emerged from the hut, and they offered search of themselves which he declined. Thereafter the hut was searched and it is alleged that a gunny bag was found under a cot, on examination of which four kilograms of Ganja were detected. A Panchanama was drawn after the contraband was weighed in an adjoining grocery shop. The accused was placed under arrest, subsequently charge-sheeted and put on trial. The learned Additional Sessions Judge convicted the accused and sentenced him as mentioned above. It is against this conviction and sentence that the present

appeal has been preferred.

3. Kumari Deshmukh, learned counsel appearing on behalf of the appellant-accused, has drawn my attention to the oral and documentary evidence on record, all of which is extremely scanty. Her first contention, and to my mind one which is liable to be upheld, is that even assuming the entire Prosecution story were to be accepted, the liability in respect of the contraband that was seized cannot be fastened on the accused because there is no evidence to establish any such nexus. She further submits that there are serious infirmities which would cast some degree of doubt on the question whether at all the gunny bag was recovered from the hut. The Pancha admits in his evidence that he did not enter the hut at any time and this appears to be the position vis-a-vis the P.S.I., Jagannath Salunkhe (P.W. 3). There is a suggestion put forth by the defence that the gunny bag was in the possession of two other persons who ran away on seeing the Police Party and it was this bag that was subsequently recovered. Even accepting the prosecution case at its best, the position that emerges is that no evidence was brought forward before the Court in order to indicate that the premises from where the gunny bag was allegedly recovered belonged to the accused, that he was in possession of those premises, that the contraband had been brought there, that he was dealing in it, that he had handled it or that he was in any manner concerned with it. To my mind, the contention raised by Kumari Deshmukh is indefensible and is liable to be accepted.

4. A subsidiary argument was also canvassed, namely, that the procedure prescribed under the Narcotic Drugs and Psychotropic Substances Act have not been complied with. Regardless of the controversy as to whether those provisions are mandatory or directory, which the learned Additional Sessions Judge has, undoubtedly, debated, the position still remains that the provisions in question are not to be ignored in their entirety. In the present case, the P.S.I., Jagannath Salunkhe (P.W. 3), ought to have recorded the information in the manner prescribed and thereafter followed the procedure as laid down in the Narcotic Drugs and Psychotropic Substances Act. That, however, is a subsidiary issue.

5. Shri Patil, the learned A.P.P., has made a very determined attempt to defend the conviction. Shri Patil relies on the fact that the accused was the sole occupant of the hut, that nothing has come on record to indicate that any other person was residing with him when he was found on the premises at the time of the raid. In these circumstances, it is Shri Patil's contention that the Court must accept the position that he is deemed to have been in exclusive possession of these premises and that the liability automatically fastens on him. Unfortunately, the law cannot accept such short-circuiting. It is essential to establish, particularly in serious cases of the present type that the accused and he alone was the person from whose possession the contraband was recovered. His mere presence on the premises is not good enough. In the present case, the P.S.I., Jagannath Salunkhe (P.W. 3), has recorded the statements of two of the

occupants of the adjoining huts, Ananta and Rajaram. Had these two persons been examined, it could have, perhaps, established that the accused was the person who was clearly the resident of the hut and the Prosecution would have been in a slightly better position.

6. Having regard to the state of the record, to my mind, the inferences drawn by the learned Additional Sessions Judge are wholly unsustainable. The appeal is liable to be allowed and accordingly succeeds. The conviction and sentence recorded against the accused are set aside. It is directed that the accused, who is in jail custody, be released forthwith, if not required in connection with any other offence. Fine, if paid, is directed to be refunded to him. The appeal is allowed accordingly.

7. Before parting with this case, I would like to compliment Kumari Deshmukh, learned counsel who has appeared on behalf of the appellant, for having done a very good job of this brief.

8. Appeal allowed.