
(2007) 07 RAJ CK 0078
In the Rajasthan High Court

Gopilal alias Gopu

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 41, 42, 50, 55

Citation : (2007) CriLJ 4624 : (2007) 4 RLW 3539

Hon'ble Judges : Deo Narayan Thanvi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deo Narayan Thanvi, J.—This is an appeal against the judgment and order dated 24.7.2002 passed by the learned Special Judge, NDPS Cases, Chittorgarh, whereby he convicted the accused appellant Gopilal alias Gopu for the offence u/s 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred-to as "the Act") and sentenced him to undergo ten years" rigorous imprisonment and to pay a fine of Rs. one lac and in default, to further undergo one year"s R.I.

2. The charge against the accused appellant Gopilal alias Gopu was that during the course of raid conducted by Inspector Sanjay Kumar Singh, Central Bureau of Narcotics, Chittorgarh on 8.5.2001 at 5 P.M., opium measuring 6.500 kgs. kept in polythene bag was recovered from the grain storage of his house at Village Bansen. After observing the formalities of taking sample etc., the challan was filed against the accused u/s 8/18 of the Act and he was charged accordingly, to which he pleaded not guilty. The prosecution examined nine witnesses. The statement of the accused u/s 313 CrPC was recorded. He produced five witnesses in his defence and after hearing, the learned Special Judge passed the sentence as above.

3. It has been contended by the learned Counsel for the appellant that there was

non-compliance of Section 41 of the Act because the information received by the raiding officer was not reduced to writing and the so called message received was neither signed nor named. He has also contended that the information regarding the opium was about Village Kosithal and not Bansen, District Chittorgarh, from where the opium has been recovered. In this connection, he has drawn my attention towards Notice Ex.P.1, wherein the name of Village, where the raid was to be effected, is Bansen but the information Ex. P.2 is about Village Kosithal. The next argument of the learned Counsel is that according to Ex.P. 15, the place from where the recovery has been made, is the joint compound of accused and his brothers, which is in village Bansen and not in village Koshithal. He has also submitted about non-compliance of Section 55 of the act, which requires that a person who takes possession of the seized articles, shall affix his seal and take sample and those samples shall also be sealed with a seal of the officer-in-charge of the police station but the seal was not deposited in Malk-hana. Hence, according to him, the learned Special Judge has wrongly convicted the accused appellant. In support of his contention, he has placed reliance on certain decisions of the Hon'ble Supreme Court and this Court in Hanuman Das Vs. Union of India (UOI), Hanuman Das v. Union of India reported in 2004 (2) Cri.L.R.158; Mohd.Alam Khan v. Narcotics Control Bureau reported in 1996 Cri.L.R. 345 and Kailash Vs. State of Rajasthan,

4. In reply, the learned Counsel for the Union of India has submitted that the learned Special Judge has rightly convicted the accused appellant. According to him, the accused is a resident of Village Bansen but his opium cultivation field is in village Koshithal and there was a conscious possession of the accused from where the recovery has been made. The seals were also intact as per the Receipt Ex.P.20 and the analysis report given by the Chemical Examiner vide Ex.P. 19. In support of his contention, he has placed reliance on a decision of this Court in Bhupendra Sahani @ Rudal Sahani Vs. State of Bihar,

5. The first contention of the learned Counsel for the appellant regarding the place of recovery at Village Bansen and the information regarding contraband article to be found at Village Koshithal as stated in Ex.P.2 and not reducing it to writing as required u/s 41(2) of the Act, is devoid of force because Section 41(2) of the Act reads as under:

41. Power to issue warrant and authorisation.-

(1) xxxxx

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para- military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal

knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property 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 is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior, in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

6. Learned Counsel for the appellant has stressed that there was neither any personal knowledge to the seizing officer nor any information given by any person, which is said to have been taken in writing regarding keeping contraband article by the accused appellant. Section 41 of the Act deals with power to issue warrant and authorisation and Section 42 deals with the power of entry, search, seizure and arrest without warrant or authorisation.

7. In the present case, the, seizing officer is Sanjay (Kumar) Singh, PW 3 Inspector, Central Bureau of Narcotics. Of-course, he is not a gazetted officer but he was duly authorised by Shri S.N. Agal (PW 1) vide Ex.P.1 for conducting search on 8.5.2001 and this letter has been proved by S.N. Agal (PW 1). Sanjay Singh, Inspector, conducted the search by giving notice u/s 50 of the Act (Ex.P.3) to accused Gopilal and recovered opium on the same day i.e. 8.5.2001 at 5 P.M. The contention of the learned Counsel that S.N. Agal stated in his examination-in-chief that he received the fax message about adulteration of opium by accused Gopilal on 8.5.2001 at 1.16 PM, cannot be said to be an information given by any person and taken in writing that any person has committed an offence punishable under this Act. It is true that no such information has been reduced to writing and upon the fax message Ex.P.2, Shri S.N. Agal issued authorisation letter Ex. Plunder Section 41(2) of the Act and the person so authorised viz; Sanjay Kurnar Singh issued notice Ex.P.3 to accused appellant and recovered contraband opium measuring 6.5 kgs. vide Ex.P.4 and thereafter he furnished information u/s 57 of the Act to his Superintendent on 9.5.2001 vide Ex.P.5. Though information has not been reduced to writing by Shri S.N. Agal (PW 1) but the requirement of Section 41(2) of the act is not only confined to reducing in writing the information but it can be by personal knowledge or from any other document or article, which may furnish the evidence of commission of an offence. Section 41(2) of the Act cannot be read in a narrow sense. It has five categories through which an officer of the gazetted rank can authorise a subordinate for search. The categories on which the authorisation can be based are - (a) by personal knowledge or (b) on information received or information given by any person and taken in writing or (c) any document or (d) other article which may furnish the evidence of commission of an offence or (e) any illegally

acquired property 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 and is kept or concealed in any building, conveyance or place. Here in the present case, it was not obligatory on the part of Shri S.N. Agal, District Excise Officer to reduce the information to writing because he was holding a document with him and that was fax message Ex.P.2. The words "any document" appearing in the above sub section, are prefixed with the word "or". Since all the five modes, referred-to above, for authorization are independent, an authorization cannot be confined only to personal knowledge or information reduced to writing. The Courts while interpreting the Statutes, should give plain and simple meaning to the words used in the Section as a whole and should not narrow down its scope. Thus, in my view, the compliance of Sections 41 and 42 of the Act has been made by the authorizing officer and the officer who has seized the contraband articles.

8. The second contention of the learned Counsel for the appellant that the place of recovery in Village Bansen is a joint compound of brothers of accused and the information Ex.P.2 is about Village Kosithal, is also without substance. The document Ex.P.2 says that accused appellant Gopilal, who is a licence holder of opium and resident of Village Koshithal, doing the business of taking abstract from liquid opium and action can be taken against him because on 7th May, it was measured. Upon this fax message, authorisation was issued to Sanjay Kumar Singh, who gave notice Ex.P.3 to accused appellant Gopilal in which his Village has been shown as Bansen but at the same time, he has been shown as opium cultivator of Village Koshithal. The accused appellant himself, in his letter Ex.P. 31A, stated that he was the licence holder of opium and permission be given to him to cultivate opium in Khasra No. 244 of Amar Chand, resident of village Koshithal. By this letter, he has obtained permission from the District Excise Officer. This shows that he is cultivating the opium in the said Khasra and storing it and is resident of village Bansen. Both the villages are adjoining to each other and, therefore, the message Ex.P.2 that accused Gopilal belongs to Village Koshithal, cannot be said to be such which may prevent the raiding party from going to Village Bansen, a permanent place of residence of accused appellant.

9. The next contention of the learned Counsel for the appellant that compliance of Section 55 of the Act has not been made, is also devoid of any force because it is clear from receipt Ex.P.20 that the seal was intact, which is also supported by the evidence of Prem Nath (PW 4). Learned Special Judge has rightly discussed the evidence of Jeevan Mai Pamecha (PW6), who examined the sample and stated about the seal being intact.

The other findings of the learned Special Judge regarding the place of recovery to be the residence of accused appellant certified by Sarpanch vide Ex.P.30 and compliance of Section 57 of the Act vide Ex.P.5 etc. also need no interference.

10. The judgments of this Court in the cases of Rajendra Singh, Hanunian Das

and Kailash (supra) cited by the learned Counsel for the appellant, are not applicable in the light of the facts of the instant case as stated above. The case of Mohd. Alam Khan (supra) is also distinguishable from the facts of the present case because in that case, the contraband article was recovered from a residential flat, the ownership of which was questionable on the basis of a document, which is said to have been seized from a person other than the accused and was not held to be admissible for which no presumptive value can be attached with the aid of Section 66 of the Act.

11. In the light of above discussion, the findings of the learned Special Judge require no interference. Consequently, this appeal is dismissed. The judgment of the learned Special Judge, NDPS Cases, Chittorgarh, dated 24.7.2002 convicting the accused appellant Gopilal alias Gopu for the offence u/s 8/18 of the Act with ten years" rigorous imprisonment and a fine of Rs. one lac is maintained. Accused Gopilal is in jail. He will serve out the remaining part of the sentence.