
(1993) 02 RAJ CK 0013
In the Rajasthan High Court
Case No : Criminal A. No. 209 of 1992

Gyan Chand

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 15-02-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 17, 18

Citation : (1993) CriLJ 3716

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Mridul Jain and L.D. Khatri, for the Appellant; Chandralekha, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.—This is an appeal u/s 374, Cr. P. C. against the judgment and order dated 29th May, 1992 passed by Sessions Judge, Jaisalmer in Sessions Case No. 6/91 whereby the appellant has been convicted u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1989 and he has been sentenced to 10 years rigorous imprisonment and a fine of Rupees 1,00,000/- and in default to undergo further rigorous imprisonment for a period of 2- 1/2 years.

2. On 30th March, 1988, Circle Inspector Mr. Pratap Singh of Sadar Kotwali, Jaisalmer received a source information that the appellant keeps unauthorised opium and sells it, the opium was available in his house; in case search is taken immediately, opium can be recovered. Having received this source information, Mr. Pratap Singh recorded above information in Ex. P-10 and proceeded by a jeep to the house of the appellant along with other persons viz. Jeev Prakash P.W. 3, Dal Singh P.W. 4, Ghewar Singh and other constables. The appellant was searched by Mr. Pratap Singh in presence of motbirs Kheta Ram and Palekar. In this search, 350 grams opium was recovered from the room adjacent to the kitchen in the house of the appellant and this opium contained in a black bag in a

bedroll. 30 gms opium out of the 350 gms. was taken for the sample and the rest was placed in sealed cover according to the seizures and the search memo. Thereafter, case was registered, the appellant had been arrested on spot; the sample of the material was sent to F.S.L. and it was reported that the sample contained 2.8 percent morphin.

3. On completion of the investigation, the challan was filed in the Court of Chief Judicial Magistrate, Jaisalmer, it was committed to Addl. Sessions Judge and the trial was conducted by the Sessions Judge, Jaisalmer according to new jurisdiction.

4. The Sessions Court having taken cognizance of the offence under Sections 17 and 18 of the NDPS Act embarked upon the trial. The prosecution examined six oral witnesses as under:-

(1) P.W. 1, Khetaram

(2) P.W. 2, Prayag Singh

(3) P.W. 3, Jeev Prakash

(4) P.W. 4, Dal Singh

(5) P.W. 5, Phool Singh and

(6) P.W. 6, Pratap Singh.

5. P.W. 1, Khetaram who was a motbir denied the factum of the search and the recovery of opium. He has of course admitted his meeting the police people outside the house of the appellant and also admits his signature in Ext. P-1 and Ex. P-2. All other five witnesses have supported the case of the prosecution.

6. The appellant's statement was recorded u/s 313, Cr. P.C. and his case is of total denial. He has stated that in the house in question, he resides with his children and his wife and some tenants are also there. D.W.I, Bhagwandas and D.W. 2m Indra Ram were examined in defence.

7. The learned Sessions Judge, Jaisalmer framed the three questions under:-

(i) Whether the opium was recovered from the house of the appellant?

(ii) Whether the opium was recovered from the possession of the appellant?

(iii) Whether the appellant committed any offence u/s 18 of the NDPS Act?

8. All the three questions have been answered in "affirmative by the learned Sessions Judge resulting into the appellant's conviction u/s 18 of the NDPS Act and looking to the quantity 350 gms. opium the learned Sessions Judge has sentenced the appellant to 10 years" R.I. with a fine of Rs. 1,00,000/- and in default of the payment of the fine to undergo further imprisonment for a period of 21/2 years.

9. It has been submitted by Dr. Mridul Jain and Mr. L. D. Khatri that the appellant is in jail since the date of the judgment i.e. 29th May, 1992 and he is 57 years an old man.

10. Mr. Mridul Jain has assailed the sentence and conviction based on the finding arrived on all the three points on several grounds but neither I am impressed with submission made by Mr. Jain on any of these three questions nor it is necessary for me to adjudicate on these questions for the simple reason that a new point has been raised by Mr. Mridul Jain before me which is a pure question of law as has been raised by Mr. Mridul Jain and Mr. L. D. Khatri. The point raised on behalf of the appellant before me is that according to the prosecution this case was registered on the basis of a source information by Mr. Pratap Singh who was the concerned SHO and he having recorded this source information proceeded to take the search himself; in fact he himself took the search and he himself was the officer who seized the opium and investigated the whole case. The submission made by Mr. Mridul Jain is that Mr. Pratap Singh, himself being the police personnel to record the information, he himself being the officer to recover and seize the opium ought not to have investigated the case by himself and the investigation should have been entrusted to some other agency or the officer of a rank higher than the rank of Pratap Singh. In no case Mr. Pratap Singh himself should have investigated the case. Mr. Mridul Jain has cited before me a judgment of this court rendered in S.B. Cr. Appeals Nos. 105 and 286 of 1989 reported in 1992 (2) EFR 128 (Rajasthan) and 1989 RLR 417.

11. On the basis of the material and the evidence available on record, there is no room for any doubt that the case was registered by PW 6, Pratap Singh on the basis of source information and it is fully established by the statement of other witnesses as well as Pratap Singh himself that he, himself had gone for the search, had effected the recovery had seized opium and had investigated the whole case throughout. This course of action militates against the basic tenets of jurisprudence and fair investigation. In the facts of the case, I find that the status of Investigating Officer, Pratap Singh could not be placed on any pedestal higher than of a complainant and the complainant himself cannot be the sole agency of investigation. In my humble opinion the prosecution in this case suffers from the basic infirmity as aforesaid and it is a question which goes to the very root of the matter and in the facts of the case it must be held to be sufficient to vitiate the whole investigation. Once I find that the whole bedrock of the investigation on the basis of which the appellant has been prosecuted is found to be unfair and against the basic tenets of criminal jurisprudence, the conviction and sentence based on such a highly infirm investigation as aforesaid cannot be sustained in the eye of law and accordingly the whole proceedings based on such investigation as aforesaid deserve to be quashed and set aside, which I hereby do.

12. In the result, this appeal succeeds and is allowed the judgment dated 29th May, 1992 passed by the learned Sessions Judge, Jai-salmer convicting and

sentencing the appellant u/s 18 of the NDPS Act, 1989 in Sessions Case No. 6/91 is set aside and the appellant is acquitted of the charges levelled against him. The accused is said to be in jail; he shall be released if not required in any other case. The record of the court below may be returned without any kind of delay.