
(2010) 09 MP CK 0057

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2280 of 2009

Harigopal Maurya

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 20, 50, 8

Citation : (2011) ILR (MP) 218

Hon'ble Judges : Rakesh Chandra Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.C. Mishra, J.—These appeals are interlinked as preferred against a common judgment dated 24/11/2009 passed by Special Judge (under Narcotic Drugs and Psychotropic Substances) Act, 1985 [for short "the Act"] in Special Case No. 13/08, whereby each one of the Appellants was convicted u/s 8 read with 20(b) (ii)(B) of the Act and sentenced to undergo R.I. for 8 years and to pay fine of Rs. 1,00,000/- and in default, to suffer R.I. for 1 year.

2. For the sake of convenience, the Appellants shall be referred to by their respective names only.

3. Prosecution story, in short, may be narrated thus-

(i) On 19/09/2008 at about 3.20 p.m., Sher Singh Baghel (PW3), posted as Sub Inspector at Kotwali Khandwa, received credible information to the effect that Appellant Harigopal and his companions were proceeding towards the City and were carrying Ganja. After recording the information in the Rojnamcha and communicating the same to City Superintendent of Police, he along with other members of the police force and panch witnesses Anil (PW7) and Dileep (PW8) rushed to spot where the Appellant Harigopal and his companions were expected to arrive. After a while, all the three Appellants, carrying potlies (small bundles) in their hands, were seen coming from the side of Bamangaon. They were

apprehended and were apprised of the legal rights under which they could require presence of a Gazetted Officer or a Magistrate for the purpose of search. Waiving the right, they permitted the police officer to search the potlies. The search revealed Appellants' joint possession of a total quantity of 1.600 Kgs of Ganja as per the following details-

-----	Packet being carried by Found	
to contain- -----	-----	Harigopal 440 gms
-----	Chandrashekar	550 gms
-----	Sabulal	610 gms

(ii) Contents of the bundles were converted into one homogenous mixture wherefrom two samples of 25 gms. each were drawn. One of the samples was forwarded to Forensic Science Laboratory, Sagar. Corresponding report (Ex.P-31) indicated that the sample contained Ganja.

4. The Appellants denied the charge and pleaded false implication at the instance of police constable Dinesh (PW2) and Surendra. According to them, in the midnight intervening 18th and 19th of September, 2008, both the police officials had belaboured gardner and watchman employed by Harigopal as the contractor for maintenance of the cremation ground known as Raja Harishchandra Muktidham, Khandwa. One Yogendra Gangrade (DW1), a Sub-Engineer of Municipal Corporation, Khandwa was also produced to prove the aforesaid status of Harigopal.

5. Although, Detecting Officer Shersingh Bhagel (PW3) substantially reiterated the facts as recorded in the FIR (Ex.P-22) and the Roznamcha report (Ex.P-20) immediately after conclusion of the proceedings relating to raid, search & seizure of the contraband and arrest of the Appellants, yet none of the panch witnesses namely Anil (PW7) and Dileep (PW8) came forward to support his testimony. Moreover, in paragraph 26 after clearly asserting that the potlies were found hidden under the clothes worn by the Appellants, he had taken a sudden yet complete somersault only after perusing the relevant report (Ex.P-20) and deposed that the Appellants were openly carrying the potlies. This self-contradiction assumed significance in view of the safeguards contemplated in Section 50 of the Act. To elucidate, in case, Shersingh Bhagel's first version is accepted to be true, the joint and common notice (Ex.P-10) would have been sufficient to vitiate the proceedings relating to search and seizure of Ganja See. Dharmaveer Lekhram Sharma and Another Vs. The State of Maharashtra and Others,

6. There is yet another significant aspect of the matter that relates to the effect of omission to take sample from each one of the bundles containing the contraband. It is true that the Act as well as Narcotic Drugs and Psychotropic Substances Rules, 1985 are silent with regard to the manner of taking sample of contraband being carried by more than one accused in the course of same

transaction but before a person can be held guilty of being found in possession of contraband, it must be established beyond a reasonable doubt that the sample analyzed was a representative one.

7. Accordingly, the Detecting Officer ought to have seized the contents of potlies being brought by each individual accused separately and drawn representative sample thereof for the purpose of chemical examination. However, the sample forwarded to the FSL was, admittedly, taken from the homogenous mixture.

8. This factual scenario enabled each one of the accused to contend that the Ganja was kept in the potlies held by the co-accused. It was, therefore, not possible to conclude with certainty that contents of each potlies comprised of Ganja i.e. cannabis/hemp within the meaning of Section 2(iii)(b) of the Act. Further, non-production of the wrapping clothes/paper also provided a ground to throw doubt on the evidence as to recovery of the contraband See. *Noor Aga v. State of Punjab* AIR 2008 SCW 5964.

9. For these reasons, the Appellants were certainly entitled to benefit of doubt. As such, learned trial Judge committed serious illegality in holding the Appellants guilty of the offences charged with.

10. Consequently, the appeals stand allowed. The impugned convictions and the consequent sentences are hereby set aside. Instead, the Appellants are acquitted of the offences. Fine amount, if deposited, be refunded.

11. Appellants are in custody. They shall be released forthwith if not required in any other case.

12. Copy of the judgment be retained in the connected criminal appeals.