
(1994) 08 RAJ CK 0011

In the Rajasthan High Court

Case No : Criminal (Jail) Appeal No. 291 of 1993

Jaggan Nath

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 8

Citation : (1994) 2 RLW 34 : (1994) 2 WLN 629

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—This appeal is directed against the judgment dated 16-6-93, passed by the Sessions Judge, Sri Ganganagar, by which the learned Sessions Judge convicted the accused-appellant for the offence u/s 8/18 of the Narcotic Drugs and Psychotropic Substances Act and sentenced him to "undergo ten years" rigorous imprisonment and a fine of Rs. 1,00,000/- and in default of payment of fine further to undergo 2.50 years" simple imprisonment.

2. Appellant jaggannath was tried by the learned Sessions Judge, Sri Ganganagar, for the offence u/s 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, `the Act). The case of the prosecution, in brief, is that on 13-3-92, Umesh Mishra the Station House Officer, Police Station, Sri Ganganagar, alongwith the other members of Police Patrolling Party was on patrolling duty. When they reached near "Andh Vidhyalaya" they saw one person carrying on a bag in his hand. On enquiry, he disclosed his name as "Jaggannath". He was thereafter searched and on earch, 1.250 kgs. of opium was found in the bag which he was carrying in his hand. Out of this 1.250 kgs. of opium, 30 grams was taken as sample. The sample as well as the remaining opium were sealed vide EX.P. 1. Umesh Mishra the Station House Officer, Police Station, Sadar, Sri Ganganagar, thereafter came to the Police Station, logged on F.I.R., deposited the sample and the remaining recovered opium in the Malkhana

of the Police Station, from where the sample was sent for F.S.L. examination to the State Forensic Science Laboratory, Jaipur, which was found containing 4.75% of morphine. The prosecution, in support of its case, examined PW 1 Raghuveer Singh, PW 2 Kartar Singh, PW 3 Moti Ram, PW 4 Umesh Mishra, PW 5 Shivpal Sharma and PW 6 Dhokal Ram. The defence of the accused was that he was sitting in the Court of the Additional District and Sessions Judge No. 2, Sri Ganganagar, in connection with a case, where Police Constable Sukhvindra Singh came on a motor-cycle, took him to the Police Station Sadar, Sri Ganganagar and he was arrested but no recovery was made from him. In support of his, contention, he examined DW 1 Sukhvindra Singh. PW 3 Moti Singh has not supported the prosecution case and he was declared hostile. The learned Sessions Judge, after trial, convicted and sentenced the appellant, as stated above.

3. It is contended by the learned Counsel for the appellant that before making the search of the accused, Umesh Mishra, who conducted the search did not give him own search and, therefore, the search made by Umesh Mishra was made in flagrant violation of the provisions of the law. It was, also, contended by the learned Counsel for the appellant that Krishna Kumar, who prepared the various Memos in the case has not been produced by the prosecution. It has, also, been contended that the investigation in the present case has been conducted by Umesh Mishra, who himself was the complainant in the case, made the search, arrested the accused and lodged the F.I.R., which vitiates the whole trial. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the Court below.

4. I have considered the submissions made by the learned Counsel for the parties.

5. It is not necessary to decide all the questions/points raised by the learned Counsel for the appellant as the appeal can be disposed of only on the single point, i.e., whether PW 4 Umesh Mishra- the. Station House Officer- who, while on patrolling duty, searched the accused, seized the opium, arrested the accused- appellant and lodged the F.I.R., was, at all, competent to conduct the investigation ? He was in the nature of the informant or the complainant as the FIR was lodged by him and, therefore, the investigation should not have been conducted/done by him. In the case of Bhagwan Singh Vs. The State of Rajasthan, , the investigation was conducted by a Head Constable, who himself was the person, to whom the bribe was alleged to be offered. The conduct of investigation by the Head Constable was found a serious infirmity by the Hon''ble Supreme Court and it was held that "this was an infirmity which bound to reflect on the credibility of the prosecution case." The accused, in that case, was, therefore, acquitted by the Supreme Court on this ground alone. In Nathiya and Anr. v. The State of Rajasthan (1992 (1) CRIMES 537), a Single Bench of this Court, after considering the law on the point and taking into consideration the various judgments of this Court as well as that of the Supreme Court, came to

the conclusion" that the investigation suffers from a basic infirmity, in as much as the Officer recovering the contraband Charas, was the self same person who had investigated into the case, the investigation was basically bad and reflected on the credibility of the investigation."

6. Justice and fair-play require that the investigation should be carried out by an independent officer who was not, in any way, a party to the recovery proceedings and it was expected from PW 4 Umesh Mishra, who arrested the accused, seized the opium, lodged the F.I.R. etc, that the investigation should have been done by other agency and not by him, but he did not take care of this and surprisingly he himself investigated into the matter. This is a serious infirmity in the prosecution case as the investigation was conducted by the same person who made the recovery, arrested the accused and lodged the FIR and as such the investigation is bad in the eye of law, which vitiates the trial as well as the conviction of the accused-appellant. Since the trial stands vitiated on this point alone, therefore, it is not necessary to consider and decide the other arguments/points raised by the learned Counsel for the appellant.

7. In the result, the appeal filed by accused-appellant is allowed. The judgment dated 16-6-93, passed by the learned Sessions Judge, Sri Ganganagar, is set-aside and the accused-appellant is acquitted of the offence Under Section. 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The appellant is in jail. He may be released forthwith if he is not required in any other case.