
(2006) 05 JH CK 0102

In the Jharkhand High Court

Case No : Criminal Appeal No. 121 of 1997 (R)

Maresh Singh

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 02-05-2006

Acts Referred:

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

Citation : (2007) 2 CurCrIR 200 : (2006) CriLJ 3934 : (2006) 2 EastCriC 9 :
(2006) 45 AllIndCas 511 : (2006) 2 AIRJharR 729

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Shekhar Prasad Sinha, for the Appellant; T.N. Verma, Assistant
Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—This appeal arises against the judgment dated 24/06/1997 passed by the Special Judge, Dhanbad in C.E. Case No. 459 of 1995, whereby and whereunder the learned Special Judge convicted the appellant for committing the offence u/s 20(B)(i) of the Narcotic Drugs and Psychotropic Substance Act, 1985 and has sentenced him to undergo R.I. for a period of 3 years and to pay a fine of Rs. 2000/- in default to undergo R.I. for a further period of 3 months.

2. The prosecution story is that on 01/09/1995 at about 2.30 P.M. Pavitra Mandal, Sub-Inspector of Excise (PW-4) alongwith Jairam Bhagat, Asstt. Sub-Inspector of Excise (PW-1), Baban Prasad an Excise Constable (PW-2) and Suman Kumar Singh (PW-3), conducted a raid and search of the Gumti of the appellant under the direction, supervision and control of the Assistant Commissioner of Excise, Dhanbad and in course of search recovered 58 small packets (Puria) each containing 2 grams of Ganja and 20 such packets of each containing 2 grams of contraband Ganja were recovered and seized from the "Gumti" of the appellant. A seizure list was prepared in presence of two

independent witnesses namely, Sattar Khan and Madan Kumar Singh. The sample of Ganja seized, was sent for Chemical Analyst, which according to the report of Chemical Analyst was found to be Ganja.

3. The defence of the appellant was total denial of the occurrence and of false implication.

4. In order to establish the charges, altogether four prosecution witnesses were examined. PW-1 is the A.S.I. of Excise Jairam Bhagat. PW-2 is Baban Prasad Excise Constable. PW-3 is Suman Kumar Singh another Excise Constable and PW-4 is the Sub-Inspector of Excise Pavitra Mandal. All the aforesaid four witnesses have stated that from the "Gumti" of the appellant 156 grams of Ganja in 58 small packets (Puria) were recovered and each puria contained 2 grams of Ganja.

On the basis of the evidence adduced by the prosecution the learned Special Judge convicted and sentenced the appellant as stated earlier.

5. Challenging the conviction and sentence passed by the Special Judge, the learned Counsel appearing for the appellant has submitted that the seizure and recovery of the alleged Ganja from the "Gumti" of the appellant was not been established by the prosecution and, therefore, the conviction and sentence passed against the appellant is bad in law. Elaborating his argument, the learned Counsel submitted that according to the prosecution itself the raid and search of the "Gumti" of the appellant was made under the direction, supervision and control of the Assistant Commissioner of Excise, Dhanbad but the said Assistant Excise Commissioner was not been examined on behalf of the prosecution in order to establish the said fact. It is further submitted that even the two independent seizure witnesses namely, Sattar Khan and Madan Kumar Singh, who, according to the prosecution, were present at the time of alleged search and seizure, have also not been examined and, therefore, the search of "Gumti" and seizure of Ganja from the said "Gumti" as alleged by the prosecution has not at all been proved by it. As a matter of fact only the interested witnesses, i.e. Sub-Inspector of Excise, Assistant Sub-Inspector of Excise and Constables have been examined, who are all the interested witnesses and, therefore, on their testimony the appellant could not have been convicted for the alleged recovery of Ganja from his "Gumti" shop.

6. PW-1 Jairam Bhagat, who was the member of raiding party being a Sub-Inspector of Excise as well as PW-2 Baban Prasad Excise Constable and PW-3 Suman Kumar Singh another Excise Constable all have stated in their evidence that the raid was conducted under the leadership/supervision of Pavitra Mandal, Excise Sub-Inspector. They have not stated a word that the Assistant Commissioner of Excise was also a member of the raiding team and the said raid was conducted under the supervision and in the presence of the said Assistant Commissioner of Excise. Whereas PW-4 Pavitra Mandal has stated just contrary to the statement of those aforesaid PWs. 1, 2 and 3 by stating that the alleged

raid was conducted in presence of Assistant Commissioner of Excise, Dhanbad. Therefore, there are clear cut contradictions in the evidence of PWs. with regard to presence of the Assistant Commissioner of Excise at the time of the raid. If the said Assistant Commissioner of Excise would have been examined by the prosecution then he would have been the best person to say as to whether the search and seizure was made on his direction, supervision and in his presence. Even the seizure memo which bears the signature of PWs. 1 to 4, does not bear the signature of any Assistant Commissioner of Excise and, therefore, the statement of PW-4 that the raid, search and seizure was made in presence of Assistant Commissioner of Excise cannot be believed.

7. PW-4 the Excise Sub-Inspector Pavitra Mandal though has stated in his cross-examination that there was a notification of the Government authorizing him to make search and seizure under the NDPS Act but no such notification authorizing him to conduct such raid, has been brought on record on behalf of the prosecution. Therefore, the prosecution has failed to prove that in fact PW-4 Pavitra Mandal was authorized under the law to conduct raid and search of the "Gumti" of the petitioner, therefore, search and seizure, if any, made by PW-4 was absolutely illegal. Consequently, on the basis of such illegal search and seizure, the appellant could not be convicted.

8. In view of the above discussions and findings, I hold that the prosecution has not been able to establish the charge against the appellant beyond all reasonable doubts.

Accordingly, this appeal is allowed. The conviction and sentence passed by the Special Judge against the appellant is hereby set aside and the appellant, who is on bail, is discharged from the liabilities of his bail bonds.