
(2009) 08 BOM CK 0178

In the Bombay High Court

Case No : Criminal Appeal No. 9 of 2008

Manoj Kumar presently lodged in Central Jail

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

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

Citation : (2009) 08 BOM CK 0178

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : J.A. Lobo, for the Appellant; Winnie Coutinho, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—This appeal is filed by the accused who has been convicted and sentenced u/s 20(b)(ii)(c) of the N.D.P.S. Act, 1985, by Judgment dated 18-12-2007.

2. The case of the prosecution was that on 27-12-2005, PSI Shirodkar/PW7 of ANC Police Station, Panaji, had received specific information that a person would be arriving at Hotel Paradiso, Anjuna, Goa, between 08.00 hours to 11.00 hours, and pursuant thereto a raid was conducted during which the accused was found with a multi-coloured bag with black colour substances of different shapes and sizes in it, which when weighed were found to be 4.060 kgs. and which was then seized and sealed under panchanama in the presence of panch witnesses.

3. To support the charge, prosecution examined 7 witnesses which included PSI Shirodkar/PW7 who had conducted the raid, and Anand Kumtekar/PW3, a panch witness. Shri Mahesh Kaissare/PW2, Senior Scientific Officer in the Directorate of Food and Drug Administration examined the seized article and found it to be positive for charas, after conducting various tests as mentioned by him.

4. The case of the accused, was that a false case was filed against him.

5. The learned trial Court, after assessing the evidence produced by the prosecution came to the conclusion that the evidence of the raiding officer Ashish Shirodkar/PW7 and other members of the raiding party inspired confidence, and there was no material on record to show or create any doubt with regard to the procedure followed at the time of conducting the raid till the time the seized article was handed over to the Laboratory. The learned trial Court further held that it was brought on record by all the witnesses that the accused refused to sign the panchanama, the seizure report and even the labels attached to the seized article. The learned trial Court held that the witnesses had deposed that the copy of the panchanama and the seizure report were handed to the accused on the spot and since there was nothing on record to disbelieve the said deposition, the same stood specifically proved. The learned trial Court further held that the material brought on record by the prosecution pointed out the guilt of the accused, beyond doubt. The learned trial Court held that minor discrepancies and omissions would not affect the search and seizure of the seized article from the possession of the accused and as such these discrepancies were bound to occur when the witnesses deposed in the matter on the basis of their memory.

6. As can be seen from the version given by P.I Shirodkar/PW7, he was attached to ANC Police Station when on 27-12-2005 at about 5.55 hours, he received specific and reliable information from his sources that one person aged about 20 years, wearing red colour jacket would be coming near Paradiso Hotel on that day between 8.00 to 9.00 hours to deliver narcotic drugs i.e. charas to his prospective customers, which information he reduced in writing, and forwarded a copy of the same to Allan D'Sa, Dy. S.P., ANC Police Station, at his residence at Betim with Police Constable Shri Kankonkar, and thereafter he secured the presence of two panch witnesses, namely Theodor D'Costa and Anand Kumtekar/PW3, and he informed them about the information which he had received and that the same was forwarded to Dy. S.P. and introduced them to the members of the raiding party consisting of Police Inspector Raut Dessai and others, whose names he has mentioned. He further stated that Constable Morajkar had carried with him the kit box containing weighing, packing and sealing materials, Constable Patil carried a typewriter, and he carried the seal of Anti Narcotic Cell, Panaji, Goa-7 with Ashoka Emblem at the center, and thereafter they left by police jeep and reached the spot at about 7.30 hours; when at about 7.55 hours they saw a person of the stated description coming, and on asking the name and address he gave his name as Manoj Kumar, son of Vishnu Prasad, resident of Kullu, Himachal Pradesh to whom he informed about the information he had received, and his desire to conduct his personal search after informing the accused that he also could be searched in the presence of a Gazetted Officer or a Magistrate, which he declined, and thereafter the accused was told to hand over the bag, and after it was removed, charas weighing 4.060 kgs. was found, and the same was put back and the said bag was thereafter closed with zip, wrapped, tied with jute thread and sealed at seven places with the seal he had carried with

him, and after a paper slip was pasted on it after writing the details and obtaining the signatures of both the panchas. He also stated that during the personal search of the accused he had found a leather wallet containing cash of Rs. 1050/- and a learner's license with the photo of the accused and other details as well as a L.G. mobile hand set. He further stated that a panchanama was prepared and he personally affixed the seal on the said properties whereas the weighing and packing was carried out by Constable Morajkar. He stated that a letter was typed addressed to the Director of Food and Drugs Administration with a request to examine the substance and to submit a report and the seal impression was affixed on it. He also stated that he prepared a letter handing over the seal with the seal impression affixed on it and the same was handed over to Constable Parab to be handed over to the Dy. S.P., Allan D'Sa/PW5 of ANC Police Station, and the said Constable Parab left the spot on a private motor-cycle and they thereafter along with the accused and the property returned to the Police Station where he lodged a complaint against the accused which was registered as Crime No.20/2005, and thereafter he handed over the seized property to P.I. Raut Dessai/PW4 through a covering letter, and thereafter the said seized article-Exh.1 was forwarded by P.I. Raut Dessai for the purpose of analysis. He stated that he recorded the statements of the raiding party members, effected entries in the station diary recording all steps taken during the investigation, and he produced a copy of the station diary dated 27-12-2008 at Exh. 54 colly. He further stated that he carried out the arrest formality and prepared the arrest card.

7. Prosecution had examined the panch witness Anand Kumtekar/PW3 who as stated by him, is a motor-cycle pilot by profession operating near the Immaculate Conception Church at Panaji. He stated that on that day, he had reached his stand at about 6.40 a.m. when at about 6.55 a.m. one Police Constable came at the said spot and told him that there was some information regarding the drugs, and he was called at the Panaji Police Station, Narcotic Cell where he met PI Shirodkar/PW7 who told him about the said information, and requested him to accompany them and he went along with them and reached Paradiso Hotel at about 8.30 a.m. when they noticed a person coming on foot towards the hotel carrying a shoulder bag. What happened thereafter has also been narrated by him in his further deposition.

8. Shri J. A. Lobo, the learned Counsel appearing on behalf of the accused has referred to page 37 of the paper book and has submitted that it can be seen therefrom that the accused was arrested from Mahalaxmi Temple, Panaji, Goa, and with 3.400 kgs. of ganja. However, learned Counsel concedes that the accused was charged and tried with the allegation that he was found near Paradiso hotel, Anjuna, and that too with 4.060 kgs. of charas, and, therefore learned Counsel submits that prejudice has been caused to him.

9. Ms. Coutinho, learned Public Prosecutor submits that an application was filed to correct what is stated at page 37 of the paper book, and this also can be seen

from page 35 where a corrected list of witnesses was enclosed.

10. The records show that the Order dated 31-7-2006 directing framing of charge dealt with the information that raid was conducted on 27-12-2005 between 8.00 hours to 11.00 hours near Paradiso hotel and the accused was caught red handed in illegal possession of 4.060 kgs. of charas. The charge framed is also to the same effect, namely that the accused was charged with the allegation that on 27-12-2005 between 8.00 hours to 11.00 hours near Paradiso, the accused was found in illegal possession of 4.060 kgs. of charas worth Rs. 4,06,000/approximately. The evidence produced by the prosecution is in relation to the said charge. In case the accused was charged with the allegation as contained in the charge and evidence was given in relation to the said charge, in my view, there is no question of the accused having suffered any prejudice because of what is stated on page 37 of the paper book was subsequently corrected by virtue of application dated 27-9-2006 at page 35 of the paper book.

11. Learned Counsel next submits that although it is stated that after sealing, the seal was sent by P.I Shirodkar/PW7 with Constable Parab/PW6 to Dy. S. P. Allan D'Sa/PW5, there is nothing on record to find out as to from where the said seal was obtained, inasmuch as a copy of the requisition was also not produced by the prosecution. In this regard, P.I. Shirodkar/PW7 has categorically stated that he had carried with him the seal of ANC Police Station bearing No. Goa-7, and that has been corroborated by other witnesses including Anand/PW3. However, defence did not seek any information from him as to when he had secured the said seal, and assuming for a moment that after the raid, a seal is sent to the Dy.S.P. concerned, with a view to ensure that the person who has the custody of the seized article does not have the custody of the seal also, in my view, in the absence of any foundation in the cross-examination in that regard, of non production of the requisition letter showing as to when the seal was brought back, does not give any scope to doubt the case of the prosecution. Only P.I. Shirodkar/PW7 could have given the said information as to when he had brought the seal back.

12. Learned Counsel further submits that Constable Parab/PW6, who according to the prosecution, had gone to give the seal to Dy. S.P. Allan D'Sa/PW5 did not state in his statement about handing over of the seal, but that omission has been abundantly made good, by the production of the seal register and the corroboration given to it by Dy. S.P. Allan D'Sa/PW5. In fact, this aspect has been considered by the learned trial Court observing that although the said omission was a material one, the fact that the seal was handed over to the Dy. S.P. has been substantially proved, and, therefore it does not affect the case of the prosecution.

13. Shri Lobo has next submitted that the station diary was produced by Constable Parab/PW6 when it ought to have been produced by the Police Inspector Shri Raut Dessai/PW4. In my view, there is no merit in this submission because the said station diary, if required, could have been produced by any of

the Officers from the Police Station. Next, Shri Lobo submits that one does not know as to who secured the presence of Anand Kumtekar/PW3 at the Police Station when it is not the case of Constable Parab/PW6 that it is he who had gone and called the said Anand/PW3. Learned Counsel further submits that P.I. Shirodkar/PW7 only stated that he secured both the panch witnesses, namely Theodor D'Costa and Anand/PW3 without further elaboration. According to Constable Parab/PW6 he had secured the presence of Theodor D'Costa. In other words, he was silent as regards Anand/PW3. All that he stated is that the other panch came to the Police Station after some time. There is no further cross examination, either to P. I. Shirodkar/PW7 or to Constable Parab as to which Constable had gone and called Anand/PW3 when he stated that the Police Constable had come and called him. It is quite probable that another Constable was sent by P.I. Shirodkar/PW7 and Anand/PW3 was called by him. The evidence of Anand/PW3 has been considered by the learned trial Court, and the learned trial Court has come to the conclusion that it is convincing and even now no reasons have been assigned as to why Anand/PW3 who is otherwise an independent witness should falsely support the case of the prosecution in case he was not present for the raid. A slight divergence regarding timings given by him in relation to other witnesses cannot be given much importance.

14. Learned Counsel further submits that the seized article was sealed by P.I. Shirodkar/PW7 is not borne out by the complaint or as according to the witnesses. Learned Counsel submits that such an important detail ought to have been mentioned in the panchanama. True, the name of the Officer who sealed the seized article is not mentioned but there is a mention in the panchanama that the article was sealed with 7 seals of ANC Police Station and it has been stated by P.I. Shirodkar/PW7 himself that it is he who put the seal after the seized article was weighed and packed by Shri Morajkar. As to who had actually sealed it, is too minor a detail to be recorded in the panchanama, as long as the fact of sealing was recorded.

15. As far as the seizure is concerned, the same has been corroborated by Anand/PW3. The procedures followed thereafter of the seized article being retained by Police Inspector Raut Dessai/PW4 and then forwarded to the Laboratory through Sushant Naik/PW1 who was working as a Scientific Assistant, have been deposed to by the said witnesses. Both Sushant Naik/PW1 as well as the Scientific Assistant Mahesh Kaissare/PW2 had found that the seized article was properly sealed, and, therefore there is no room to doubt that there was any scope for interference from the time the article was seized, and analyzed in the Laboratory.

16. Considering the evidence produced by the prosecution, the conviction of the accused and the sentence imposed upon him cannot be faulted. The learned trial Court on proper appreciation of evidence produced has convicted the accused.

17. I find there is no merit in this appeal and consequently the same is hereby dismissed.