
(2005) 02 MP CK 0006

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 575 of 1999

Mohd. Ishaque

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 52, 55, 57, 8(c)

Citation : (2005) 3 MPLJ 455

Hon'ble Judges : A.K. Awasthy, J

Bench : Single Bench

Advocate : K.K. Gupta, for the Appellant; Manoj Soni, for the Respondent

Judgement

A.K. Awasthy, J.

Appellant/accused has filed the appeal u/s 374 of the Code of Criminal Procedure against the judgment and order dated 19-3-1999 in Special Criminal Case No. 2/1998 by learned Special Sessions Judge, West Nimar, Mandleshwar, of his conviction and sentence u/s 8(c) read with section 21 of the Narcotic Drugs and Psychotropic Substances Act (in short "the NDPS Act") for the rigorous imprisonment of 10 years and fine of Rs. 1 lakh and in default of payment of fine, further simple imprisonment for the period of 2 years.

The prosecution case is that on 23-6-1998 at about 12.45 p.m. in the afternoon when Inspector of CBN Mukesh Khatri (PW-1) along with the Superintendent of CBN Pramod Kumar Sinha (PW-4) with the staff checked the bus of M.P.S.R.T.C. plying from Ratlam to Shirdi near the Khalghat Toll Tax Naka of Police Station Balakwada, the accused was found sitting in a suspicious condition on Seat No. 15 and in the search of his bag, a bottle containing 800 gms of liquid Heroin formula and a packet of 100 gms Heroin was found and it was seized in the presence of driver and conductor of the bus i.e. Shankar Rao (PW-2) and Sharad Gaonkar (PW-3) respectively and the samples of 25-25 gms were drawn and sealed. That the statement of the accused u/s 67 of the NDPS Act was recorded.

That the accused was taken to the office of CBN where seized items were deposited. Government Opium Factory, Neemuch vide report Ex. P/9 opined that the contents of the seized items were Heroin.

The accused has abjured the guilt and denied the statements of prosecution witnesses in his examination u/s 313 of the Code of Criminal Procedure and pleaded false implication. No witness in defence was examined.

The prosecution has examined 7 witnesses and the learned trial Court on the basis of the statement of the Seizing Officers, convicted and sentenced the accused as stated above.

The appellant has assailed the conviction on the ground that the learned trial Court has erred in believing the uncorroborated testimony of the officers of CBN and in view of the infringement of the provisions of sections 42 and 50 of the NDPS Act the conviction of the accused is bad in law and he should be acquitted.

Mukesh Khatri (PW-1) has stated that on 23-6-1998 he was posted as Inspector of CBN and in the leadership of Superintendent of CBN Pramod Kumar Sinha (PW-4) the team of CBN was making search of the vehicle and the bus of M.P.S.R.T.C. going from Ratlam to Shirdi was checked near Toll Tax Barrier. He has further stated that before the driver and conductor of the bus in the search of the bag of the accused the Heroin weighing 100 gms and liquid Heroin formula weighing 800 gms in a bottle was found and seized. Pramod Kumar Sinha (PW-4) has fully corroborated the statement of Mukesh Khatri (FW-1).

The seizure witnesses Shankar Rao (PW-2) and Sharad Gaonkar (PW-3) have not stated a single word about the recovery of the contraband from the bag of the accused. These witnesses have admitted their signatures on seizure and Panchanama marked Exs. P/1 to P/10 and they have not given the explanation about signing the documents. Consequently, it is clear that Panch witnesses were declared hostile and were hiding the truth. However, learned counsel for the appellant has failed to point out any infirmity in the statements of Mukesh Khatri (PW-1) and Pramod Kumar Sinha (PW-4) to create the doubt in their testimonies. There is not a single contradiction in their testimony and they have no reason to conduct a false case against the accused. The seizure officer has conducted the search in the presence of the natural and independent Panch witnesses and they show the fairness of the seizing officer in conducting the search and seizure from the accused.

It is observed in the case of P.P. Fatma v. State of Kerala, 2004 SCC Cri 1 that if the statements of the seizure officer are trustworthy and reliable, then the fact that the Panch witnesses have not supported the case is of no consequence.

From the statements of Mukesh Khatri (PW-1) and Pramod Kumar Sinha (PW-4) it is clear that the accused gave a confessional statement Ex. P/6 during the seizure and in his statement he has admitted the possession of the contraband. Ex. P/6 bears the signatures of witnesses. The accused has not retracted his

statement Ex. P/6. There is no evidence whatsoever to show that Ex. P/6 was given by the accused under the threat, duress or inducement. Consequently, Ex. P/6 supports the reliable statements of the seizure officer Mukesh Khatri (PW-1) and Pramod Kumar Sinha (PW-4) and the recovery of contraband from the possession of accused is proved.

It is contended by the learned counsel for the appellant that in view of the infraction of the provisions of sections 42, 50, 52 and 57 of the NDPS Act, the conviction is bad in law. The contraband was not recovered in the personal search of the accused but it was found in the bag of the accused. It is laid down in the case of *Megh Singh v. State of Punjab*, AIR 2003 SCW 4536 that the provision of section 50 of the NDPS Act are not applicable in case of the recovery of the contraband from the bag of the accused. The question of noncompliance of section 42 of the NDPS Act does not arise in this case. In case of recovery of the contraband from public place, the provisions of section 43 of the NDPS Act are applicable. In the case of *Narayanaswamy Ravi Shankar v. Directorate of Revenue Intelligence*, 2003 Cri. L.J. 27 (SC) it is laid down that the provisions of section 43 of the NDPS Act are applicable in case of search conducted in public place.

From the statements of the seizing officer and Constable Jagdish Chandra Kachhava (PW-6) it is clear that on 23-6-1998 the seized items were deposited in the Malkhana and on the same day the sample packets were taken from the office of the CBN by Constable Jagdish Chandra Kachhava (PW-6) to Government Opium Factory, Neemuch. The accused has not asked any question in the cross-examination of Jagdish Chandra Kachhava (PW-6) to challenge the fact that the sample packets were not kept in the safe custody or they were not properly packed or sealed. However, from the report of the Government Opium Factory, Neemuch marked Ex. P/9, it is clear that the seals were compared with the sample seals and the packets were found duly sealed. It is clear from the report Ex. P/9 that the contains were Heroin. The seizure officer has stated that the information regarding the seizure of the contraband from the accused was immediately sent to the Higher Authority. Consequently, it is proved that the provisions of sections 52, 55 and 57 of the NDPS Act were duly followed and all the precautions were taken by the seizing officer to keep the seized items in safe custody and duly intact till they were sent to the Government Opium Factory, Neemuch for their examination. The learned trial Court has rightly held the accused person guilty of offence punishable u/s 8(c) read with section 21 of the NDPS Act.

The appeal is devoid of merits and it is, hereby dismissed.