
(2019) 07 UK CK 0237

In the Uttarakhand High Court

Case No : Criminal Appeal No. 45, 30, 46 Of 2006

Nagender Singh @ Negi Singh & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8/20(b)(ii)(B)/, 8/20(b)(ii)(C), 50, 52(a)

Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 07 UK CK 0237

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : B.S. Negi, Prabhakar Joshi, A.K. Sah, Sachin Panwar

Final Decision : Allowed

Judgement

R.C. Khulbe, J

1. Since all these appeals have been filed by the appellants for challenging the impugned judgments and orders dated 15.02.2006 and 21.02.2006 passed by the court below, hence these are taken up together and decided by this common judgment.

2. Criminal Appeal No. 45 of 2006 is directed against judgment and order dated 21.02.2006 passed by the Special Judge, Uttarkashi in Special Trial No. 6 of 2003 whereby appellant was found guilty for the offence punishable under Section 8 read with 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") and was sentenced to undergo ten years rigorous imprisonment and to pay fine of Rs.1,00,000/- and in default of making payment of fine, to undergo additional imprisonment of three years.

3. Criminal Appeal No. 30 of 2006 is directed against judgment and order dated 15.02.2006 passed by the Special Judge, Uttarkashi in Special Trial No. 5 of 2003 whereby appellant was found guilty for the offence punishable under Section 8

read with 20 (b) (ii) (C) of the Act and was sentenced to undergo ten years rigorous imprisonment and to pay fine of Rs.1,00,000/-and in default of making payment of fine, to undergo additional imprisonment of three years.

4. Criminal Appeal No. 46 of 2006 is directed against judgment and order dated 15.02.2006 passed by the Special Judge, Uttarkashi in Special Trial No.2 of 2003 whereby appellant was found guilty for the offence punishable under Section 8 read with 20 (b) (ii) (B) of the Act and was sentenced to undergo three years rigorous imprisonment and to pay fine of Rs.5,000/-and in default of making payment of fine, to undergo additional simple imprisonment of six months.

5. Brief facts of the present case, inter alia, are that Sub Inspector Seth Pal Singh lodged a chik FIR on 14.02.2003 at 4.00 p.m. with police station Purola, District Uttarkashi stating therein that on 14.02.2003 at about 09.45. a.m., one informer passed a secret information that some persons carrying charas, would pass from Yamuna bridge near Kyara Chhani area between 02.00 p.m. and 02.30 p.m.; receiving this information, Seth Pal Singh requested the Tehsildar, Badkot Sri S.S. Panwar to accompany them for search of accused; Tehsildar Badkot arrived at the police station with his driver; thereafter, SI Seth Pal Singh, Tehsildar Sri S.S. Panwar, Constable Praveen Kumar, Constable Virendra Singh Chauhan, Constable Pradeep Kumar, Constable Jagmal Singh, Constable Sandeep Kumar, Constable Bhopal Singh and informer went to the spot; SI Seth Pal Singh took measuring scale and measurements from the shop of Narendra Singh @ Bobby situated in Damta market; police party tried to have independent witnesses, however, none could agree to become independent witness; thereafter, members of the police party, searched each other and having satisfied that none of them was carrying any illegal thing proceeded towards Kyara Chhani; they stood behind one shop; after some time, they saw five persons were coming across the Yamuna bridge; police informer pointed out towards them and told the police party that these were the persons, who were carrying charas with them; having pointed out the police informer left the place; police party encircled them; on search, pieces of black substance were recovered from each of the five accused and they had disclosed their names as Bhola, Raj Singh, Sandeep, Nagendra, Dinesh. Seth Pal Singh smelled the black substance recovered from the polythene bags carried by the five accused and found that the black substance was charas; he asked for license but they failed to produce it; 1.500 kilogram of charas was recovered from the bags carried by each of the appellants namely Nagendra Singh and Dinesh whereas from the possession of appellant Bhola, 500 grams of charas was recovered from the right pocket of the jacket worn by him; 50-50 grams of charas was taken out from each of the contraband recovered for the sample purpose and were kept in different seal covers and rest of the contraband, so recovered from the appellants, was kept in different seal covers; seizure memo and arrest memo were, accordingly, prepared on the spot; all the accused were brought to the police station and thereafter, Chik FIR was registered at the police station.

6. PW5 Layak Singh Yadav conducted investigation in the matter, who submitted the charge-sheets against the appellants.

7. The trial court framed charges against the appellants-accused for the offence punishable under Section 8/20(b)(ii)(B)/ 8/20(b)(ii)(C) of the Act, to which they pleaded not guilty and claimed trial.

8. To prove the prosecution story, SI Seth Pal Singh, Constable 139 Jagmal Singh, Tehsildar Badkot Sabbal Singh, Constable 7 C.P. Atar Singh and SI Layak Singh Yadav (Investigation Officer) were examined as prosecution witnesses. Thereafter, the statements of appellants-accused were recorded under Section 313 of Cr.P.C.

9. The trial court, having perused the entire material made available on record, vide judgment and order under appeals, convicted and sentenced the appellants, as mentioned hereinabove. Feeling aggrieved, appellants have preferred present appeals.

10. Heard learned Counsel for the respective parties and perused the entire material available on the record.

11. As per the statement of Sub Inspector Seth Pal Singh, examined as the prosecution witness, he had searched and arrested the appellants; he kept the contraband, so recovered from the appellants and sample thereof, in different seal covers, sample seal was also prepared on the spot. PW3 Sabbal Singh, Tehsildar no where stated that sample seal was prepared before him. Five accused were arrested; all of them were carrying contraband in blue polythene; as to how S.I. Seth Pal Singh could differentiate the contraband recovered from five accused is not known.

12. Moreover, the Court also could not find on the record any entry of Maalkhana register or the sample seal, said to be prepared by S.I. Seth Pal Singh.

13. It seems that Maalkhana register was not produced on record. It also appears that vide order dated 05.03.2003, the sample, so drawn by the witness S.I. Seth Pal Singh on the spot, was sent for chemical examination through Constable Ram Niwas, but that constable was not produced so as to prove that he carried the samples under the seal and signature of S.I. Seth Pal Singh. Finding this lacuna in the prosecution story, co-accused-Sandeep Kumar has been acquitted by the Co-ordinate Bench of this Court vide its judgment and order dated 03.05.2019 passed in CRLA No.24 of 2006.

14. From the impugned judgments and orders passed by the Special Judge Uttarkashi, it is clear that till the date of judgment, the said contraband was not disposed of by any authority as per the procedure laid down under Section 52(a) of the Act and it was lying with the police without any cause.

15. From the record, it is also clear that the inventory has not been prepared as per the mandate of Section 52(a) of the NDPS, inasmuch as, the certificate and

photocopy etc. of the recovered contraband has not been done in the present case.

16. The Hon'ble Apex Court in Union of India Vs. Mohan Lal & Anr. (2016) 3 SCC 379, has held that:-

"19.... There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section (3) of Section 52A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions."

17. From a perusal of record, it is clear that in the present case, the prosecution did not comply with the directions issued in the case of Mohan Lal (Supra).

18. In view of the foregoing discussion, I have come to the conclusion that the compliance of the mandatory provisions of Act has not been done in the instant case.

19. From a perusal of recovery memo, it is clear that the informer had given prior information to the police party about the incident. On that information, the police party along with S.S. Panwar, Tehshildar reached at the spot and intercepted the accused. After the search the accused 1.500 kilograms of charas was recovered each from the bags of accused-Nagendra Singh and Dinesh Singh while 500 grams of contraband was recovered from the right pocket of jacket worn by accused Bhola.

20. The Hon'ble Apex Court in S.K. Raju Vs. State of West Bengal, reported in (2018) 9 SCC 708 has held that search and seizure was done in public place besides bag of the accused being searched, personal search of accused was also conducted, which resulted in recovery of cash from the pocket of the accused, in that situation, the compliance of under Section 50 of N.D.P.S. Act is mandatory.

21. In the present case, witness S.I. Seth Pal Singh conducted the search of the

bag of the appellants as well as of the appellants' trousers. Therefore, the search conducted by the prosecution witness was not only of the bag which the appellants were carrying, but also of the appellants' person. Since the search of the person of the appellants was also involved, Section 50 would be attracted in the present case also.

22. While as per the evidence, before conducting search, the police party did not inform all the appellants about their rights as envisaged in Section 50 of the Act, which was mandatory. Moreover, the Tehsildar, before whom the accused were searched, did not inform the accused about their rights as envisaged under Section 50 of the Act.

23. In view of the above observations, this Court is of the opinion that the compliance of the mandatory provisions of NDPS Act has not been done by the prosecution and the prosecution has miserably failed to prove its case against the appellants beyond reasonable doubts. Consequently, all the three appeals are allowed. The judgments and orders, under challenge, are set aside. Appellants need not to surrender before the Court below. Their bail bonds are cancelled and sureties are discharged from their liabilities.

24. Let a copy of this judgment along with the LCR be transmitted to the Court concerned.