
(2008) 03 CHH CK 0003
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 381 of 2006

Poonam Kochar and Another

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 41, 41(2), 42, 42(1)

Citation : (2009) 1 MPJR 12

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dhirendra Mishra, J.—This appeal is directed against the judgment dated 2nd May, 2006 passed by learned Special Judge under N.D.P.S. Act, Bastar at Jagdalpur in Sessions Trial No.44/05 whereby the appellants have been convicted u/s 20 (b) (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act) and each of them has been sentenced to undergo R.I. for 10 year and to pay a fine of Rs. 1,00,000/- in default of payment of fine to undergo additional R.I. for 03 years.

2. Case of the prosecution, in brief, is that on 26.08.2005 Deputy Ranger Mr. R.K. Netam, was in the night patrolling duty in the Forest Range, Sarona, Ranker. At about 6.00 a.m. he received information that illegal forest produce is being transported by a white Maruti Van bearing registration number CG07/5857. He recorded the information in the presence of witnesses vide Ex. P-4 Around 6.00 a.m. they saw a white Maruti Van and tried to stop it near barrier, however, the vehicle did not stop. They chased the Maruti Van by government vehicle and stopped it near Bhanupratapdeo College, Ranker, After obtaining their consent, he conducted personal search of both the appellants but he did not find anything incriminating from them. Thereafter, he searched the vehicle and recovered cannabis kept in a bag and three packets. After preparing search memo of Ex.

P-6, the contraband was seized from them vide seizure memo of Ex.P-8 Contraband was also weighed by him and weighment memo of Ex.P-10 was prepared. After completing investigation, Mr. R.K. Netam (PW-4) sent both the accused persons and cannabis with the vehicle to police Station Ranker through memo of Exp.-24. Investigating Officer namely Ms. Pramila Mandawi (PW-7) after receiving the seized contraband and accused persons in the police station drawn a sample, prepared homogenous mixture of cannabis is and sample and again measured the cannabis vide Ex. P-2 On weighment, cannabis recovered from the appellants was found 25.5 kg. Two samples of 50 gm each were drawn from the seized contraband. Maruti Van used in the offence was also taken into possession on being produced by Deputy Ranger Mr. R.R. Netam. Offence was registered in the Police Station Ranker vide Ex.P-29. Accused persons were arrested vide arrest memo of Ex.P-14. Information about the arrest was forwarded to the town Inspector of City Kotwali, Rajnandgaon. Seized articles were handed over to Maalkhana Moharrir vide Ex. P-32 for safe custody. Samples were sent for chemical analysis to the Forensic Science Laboratory, Raipur vide Ex.P-33 and the report of FSL is Ex.P-35. Information about the offence was forwarded to the Superior Officer vide Ex. P-36.

3. After completing investigation, charge Sheet was filed against the appellants in the Court of Special Judge, Jagdalpur. During trial, the prosecution in order to establish the charge against the appellants examined 07 witnesses in all and thereafter the statement of appellants were recorded u/s 313 of the Cr. P.C. in which they denied the circumstances appearing against them and pleaded innocence and false implication. However, learned Special Judge, after hearing learned counsel for the respective parties, convicted and sentenced the appellants as mentioned in para-1 of this judgment.

4. Learned counsel for the appellants submits that there is absolute non-compliance of section 41 & 42 of the act as the search and seizure were effected by the deputy Ranger (pw-4) who is not empowered u/s 42 (1) of the act to effect search and seizure. Relying upon the judgment in the matter of Shailendra Kumar Jurri Vs. State of C.G., It was argued that only empowered officers or duly authorized officers, enumerated in section 41 (2) & 42 (1) of the Act, can act under the provision of the Act. If such arrest or search is made under the provision of the Act by any one other than such officers, the same would be illegal.

5. On other hand, learned counsel for the state has supported the impugned judgment.

6. It is not in dispute that deputy ranger namely Mr. R.K. Netan (pw-4) while on night patrolling duty received a communication that illegal forest produce is being transported by maruti van. He tried to stop the van, however, the vehicle did not stop and thereafter he chased it and made a chance recovery of 25.5 kg of cannabis contained in four packets from the custody of the appellants. Whole investigation under the Act was conducted on the spot by said Mr. R.K. Netam

including search and seizure of the contraband as also Maruti van. After effecting search and seizure, he sent the accused as also seized contraband to the police Station concerned where the contraband was again seized by the investigating officer from said Mr. R.K. Netam.

7. In the matter of Shalendra Kumar Jurri (Supra) also Flying Squad of the Forest Department while checking various vehicles near forest barrier Charama stopped a Tata Sumo vehicle and recovered 25 kg of cannabis kept in the vehicle and accordingly seizure was effected by the deputy Ranger. Thereafter the Station House Officer of the police Station Charama was informed and seizure of narcotic drug was effected from the Deputy Ranger by the police. This Court relying upon the judgments in the matter of State of Punjab Vs. Balbir Singh, & Beckodan Abdul Rahiman Vs. State of Kerala, has held thus:

16. In the present case, when the forest officers came to know that there was Ganja in the vehicle and they were faced with instance chance recovery, then it was incumbent upon them to inform the empowered officer who should have immediately taken in the charge of investigation and should have proceeded with further investigation in accordance with the provisions of N.D.P.S. Act. Admittedly this was not done by the forest officers and they themselves stepped into further investigation and proceeded with making seizure memo. Tol Panchnama, and affecting the arrest of the accused persons and thereafter on the next morning, when the investigation was completed by them accused persons along with vehicle and contraband were handed over by them to the police. Thereafter, the police officer made another recovery memo under Ex-p/8 and took the above articles along with 8 documents in his possession.

8. In the instant also the forest officer i.e. Deputy Ranger after detecting the cannabis, instead of handing over the appellants and contraband to the custody of police, he himself proceeded with further investigation in accordance with the provisions of the Act. He prepared consent memo of Ex.P-5, search memo of Ex.P-6, Preliminary identification memo of narcotic drug of Ex.P-9, recovery memo of Ex.P-8, weighment memo of Ex.P-10 and personal search memo of Ex.P-10 Thus, whole investigation has been done by the forest officer under the Act and the police officers have affected seizure of narcotic drug from the Deputy Ranger. Therefore, from the above it is evident that the investigation under the Act was conducted by the person who was not empowered under Sections 41 (2) & 42 (1) of the Act and thus, mandatory provisions of Section 41 (2) & 42 (1) of the Act have not been complied with and seizure of contraband has not been effected by the empowered officer from the appellants, as the same was seized from the forest officer i.e. Deputy Ranger, As such, the prosecution has not been able to prove that during investigation mandatory provisions of the Act were complied with and that cannabis was seized from the custody of the appellant and therefore, the impugned judgment convicting the appellants u/s 20(b) (ii) (C) of the Act cannot be sustained.

9. In the result, the appeal filed by the appellants succeeds and the same is

allowed. Conviction of the appellants u/s 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentence imposed under that section are hereby set aside and they are acquitted of that charge. The appellants be set at liberty forthwith, if not required in any other case.