
(1991) 09 RAJ CK 0016

In the Rajasthan High Court

Case No : Habeas Corpus Petition No's. 4303 of 1991 and 5488 of 1990

Ram Swaroop and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 37, 42, 8

Citation : (1991) 2 RLW 79 : (1991) 2 WLN 225

Hon'ble Judges : N.C. Kochhar, J;M.B. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—This order will dispose of both the above numbered Habeas Corpus petitions as they arise out of the same case.

2. One Shri D.L. Gandhi, Preventive Inspector, Central Narcotic Bureau, Gwalior on getting information that one red coloured Maruti car bearing Number PAI 5266 carrying smuggled opium weighing more than one quintal, was to pass near Nursing Temple at Nasirabad, went alongwith party and waited for it. It was seen that red Maruti car was coming, it is followed by Shri Gandhi and party and after being chased upto a distance of about 4-5 kms., it was stopped. It was noticed that the accused persons and one more and total three accused persons were inside the Car. It was being driven by Kashmirilal. On a search being taken it was found that the accused persons were in possession of the opium in different bags and the total opium which was in joint possession of the accused persons inside the Car was 79.100 kgs. Samples were taken and u/s 8/18 of the Narcotics, Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act), case was registered and investigation was set in motion. After investigation a charge-sheet was filed and the learned Magistrate convicted each of the accused persons.

3. In this Habeas Corpus Petition, detention of the two accused petitioners Amar

lal and Ram Swaroop has been challenged interalia on the grounds (1) that the Inspector (Preventive) Shri Gandhi could not have investigated the matter as he could not have been invested the powers of officer-in-charge of police station; (2) that the learned Magistrate could not have taken cognizance of the offence on a police report and at best even if Narcotic Inspector could have investigated the case, he was bound to file a complaint and if that be so, it was necessary that the evidence should have been recorded and only thereafter the case could have been committed to the court of Sessions; and (3) there has been unnecessary delay in the trial of the case.

4. We shall presently show that none of the aforesaid contentions have any force.

5. u/s 42 of the NDPS Act, only such an officer of the Central Excise, Narcotics, Customs, Revenue intelligence or any other department of the Central Government or of the Border Security Force as is authorised in this behalf by general or special Power issued by Central Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed, has the powers to enter, search and seizure. In exercise of the aforesaid powers the Central Government issued a notification No. 6/1985, vide S.O. 822(E) dated 14th November 1985 as amended by S.O. 3776 dated 1st November 1986 and empowered the officers of and above the rank of Sub-Inspector in the department, of Narcotics and of and above the rank of inspector in the departments of Central Excise, Customs, Revenue Intelligence, Central Economic Intelligence Bureau and Narcotics Central Bureau to exercise the powers and perform the duties specified in this section within the area of their respective, jurisdiction. A look at the aforesaid provision will show that powers of officer-in-charge of a police station could be conferred on the officers. Therefore, an officer of the rank of and above the rank of inspector Narcotics has been conferred the powers of officer-in-charge of a police station for investigation of the offence under the NDPS Act. Therefore, Shri Gandhi, Inspector had been invested powers of officer-in-charge of the police station for investigation of the offence. Such an offence under NDPS Act is cognizable and non-bailable as provided u/s 37 of that Act. If that base, it can be said that after investigation, he was competent to file a report u/s 173(2) to the Magistrate and the Magistrate was thereafter empowered to take cognizance of the offence u/s 190 of the Code of Criminal Procedure. Thus, as said earlier, Shri Gandhi Inspector was invested the powers of officer-in-charge of the police station, investigated the case which was cognizable and submitted his report which as said earlier as police report and according to the contention raised in the petition does not appears to be correct.

6. We have already referred to the other grounds which have been raised in the petition that the complaint could not be filed and we have taken a view that Gandhi was competent to investigate the case having been conferred powers for investigation of the officer-in-charge of the police station and the case being

cognizable, the Magistrate could take cognizance of the offence, this contention has no force.

7. Coming to the last contention raised in the petition that there is delay in the trial, we need not deal with this contention because there is no illegal detention.

8. Consequently, we find no force in any of the contentions raised in the petition. Both the Habeas Corpus petitions numbered above are dismissed. The record be sent back to the trial court immediately so that the trial of the case may continue.