

(1992) 02 RAJ CK 0050

In the Rajasthan High Court

Case No : Criminal Appeal No. 105 of 1989 and Criminal (Jail) Appeal No. 296 of 1989

Sariya

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 06-02-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (1992) 1 WLN 107

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—These two appeals arise out of the judgment dated March 28, 1988, passed by the Additional Sessions Judge, Barmer, by which the learned Additional Sessions Judge convicted the accused for the offence u/s 20(ii) of the Narcotic Drugs and Psychotropic Substances Act and sentenced him to undergo 20 years "rigorous imprisonment and a fine of Rs. 2,00,000/- and in default of payment of fine further to undergo five years" rigorous imprisonment.

2. The accused-appellant Sariya was tried by the learned Additional Sessions Judge, Barmer, for the offence u/s 20(ii) of the Narcotic Drugs and Psychotropic Substances Act. The case of the prosecution, as unfolded in the F.I.R., is that Hamir Singh, the Station House Officer, Police Station, Sheo, after receiving the information from some Motbir, left the Police Station alongwith the police party on February 27, 1987, at about 9.45 a.m. to village Dholakiya. In the way, the Station House Officer took Rewant Singh as Motbir from village Jalila Dhani and reached at the house of the accused Sariya. Accused Sariya was present in his house. On search, a gunny-bag was found, which contained 40 packets of Charas, weighing 40 kilograms packed in three different polythene packets. These packets were sealed and on examination, the contents whereof were found Charas. The prosecution, in support of its case, examined seven witnesses,

namely, PW 1 Moola Ram, PW 2 Hayat Khan, PW 3 Binjraj, PW 4 Bhabhoot Singh, PW 5 Narain Singh, PW 6 Hamir Singh and PW 7 Sohan Raj Khandelwal. The accused was examined u/s 313 Cr. P.C. and he produced three witnesses, namely DW 1 Lala, DW 2 Mehardeen and DW 3 Kayyum in support of his defence. The learned Additional Sessions Judge, after trial, convicted and sentenced the accused for the offence u/s 20[ii] of the Narcotic Drugs and Psychotropic Substances Act. It is against this judgment dated March 28, 1988, convicting and sentencing the accused-appellant that the appellant has preferred these two appeals. S.B. Criminal (Jail) Appeal No. 286 of 1989 was preferred by the accused-appellant through Jail while S.B. Criminal Appeal No. 150 of 1989 has been preferred by the accused-appellant through his counsel.

3. Heard learned Counsel for the appellant and the learned Public Prosecutor.

4. Learned Counsel for the appellant has challenged the judgment, passed by the learned lower Court, convicting and sentencing the accused, on a number of grounds, but the appeals can be disposed-of only on one point and, therefore, it is not necessary to consider the other points, as stated by the learned Counsel for the appellant.

5. The prosecution case suffers from basic infirmity that Hamir Singh, Station House Officer, who, in pursuance of the information received from some Motbir, proceeded to the scene of the occurrence, made certain recoveries and lodged the report, himself investigated the matter. The investigation made by a complainant is contrary to the criminal jurisprudence and is bad in the eye of law. Hamir Singh, Station House Officer, can be placed in the category of a complainant and, therefore, the investigation conducted by Hamir Singh-the complainant-is an infirmity, which reflects against the credibility of the prosecution case and the investigation made by him. Shri Hamir Singh, who was the complainant, was not entitled to undertake the investigation in such circumstances and the investigation should have been conducted by some other agency senior in rank to Hamir Singh, Station House Officer. Similar question came-up for consideration before this Court in a number of cases and this Court took the same view in : Ronald Mars Goonthar v. The State of Rajasthan S.B. Criminal Appeal No. 243 of 1988-decided on August 11, 1983-reported in 1988 CrLR 678 Nathiya and Anr. v. The State of Rajasthan S.B. Criminal Appeal No. 165 of 1988-decided on 30.1.1991 and Rama Ram v. The State of Rajasthan S.B. Criminal Appeal No. 380 of 1988-decided on 11. 8.1989. This infirmity goes to the root of the matter and as the investigation was conducted by the complainant himself, as such all the proceedings, based on that investigation conducted by the Station House Officer Hamir Singh, deserves to be quashed and set-aside.

6. In the result, both the appeals, filed by the appellant, are allowed. The judgment dated March 28, 1988, passed by the learned Additional Sessions Judge, Barmer, convicting and sentencing the accused appellant u/s 20(ii) of the Narcotic Drugs and Psychotropic Substance Act, in Sessions Case No. 105 of

1987, is set-aside and the appellant is acquitted of the charges levelled against him. The accused-appellant is on bail. He need not surrender if he is not required in any other case. His bail- bonds are discharged.