

(2022) 05 RAJ CK 0069
In the Rajasthan High Court
Case No : S.B. Criminal Appeal No. 456 Of 1992

State	Vs	APPELLANT
Dhokla Ram And Anr		RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 18, 50, 57

Citation : (2022) 05 RAJ CK 0069

Hon'ble Judges : Dr.Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : S.K. Bhati, Pritam Solanki

Final Decision : Dismissed

Judgement

Dr. Pushpendra Singh Bhati, J

1. This criminal appeal has been preferred by the appellant-State against the judgment dated 29.08.1991 passed by the learned Sessions Judge, Sirohi in Sessions Case No.4/88, whereby the accused-respondents were acquitted of the offence under Section 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. Learned Public Prosecutor appearing on behalf of the appellant-State, at the outset, submits that on account of demise of accused-respondent Dhoklaram s/o Sangram, the present appeal was dismissed as having abated qua him; and thus, the present appeal now survives only qua accused-respondent-Dhoklaram s/o Hema and accused-respondent-Lumbaram s/o Phoolaji. The amended cause title filed is already on record.

3. Learned Public Prosecutor appearing on behalf of the appellant-State submits that upon an information received from the informant (mukhbir) on 14.08.1987, blockade of the way of Village Ummedpura was done on 15.08.1987, at that time, Bhanaram, SHO of the concerned police station and his team were present there. Learned Public Prosecutor further submits that during such blockade, at

about 02:00 a.m., three persons (present accused-respondents) were seen coming, of the description, as given by the informant, whereupon they were stopped by the police team and their credentials were asked; upon being found suspicion, they were searched, while following the due process of law, whereupon the contraband opium was recovered from the accused-respondents and the same was seized; the said opium was kept by the accused-respondents) without any lawful license.

3.1 Learned Public Prosecutor also submits that the said opium recovered from the possession of the accused-respondents was weighing 550 grams (deceased accused-Dhoklaram s/o Sangram), 350 grams (accused-Dhoklaram s/o Hema) and 500 grams (accused-Lumbaram). As per learned Public Prosecutor, after such recovery and seizure, the contraband opium was sealed, as per the due procedure, which followed the arrest of the accused-respondents and registration of a case against them; whereafter, the samples were sent for the FSL analysis and the investigation commenced. Learned Public Prosecutor also submits that since the preparation of the site map was not required, the same was not prepared; however, the factum of search, recovery and seizure was duly brought to the knowledge of the superior officers.

3.2 Learned Public Prosecutor further submits that after investigation, a charge-sheet for the offence under Section 8/18 of the NDPS Act was filed against the accused-respondents before the learned trial court; upon such charge being denied by the accused-respondents, they were made to stand the trial, and the trial accordingly commenced.

3.3 Learned Public Prosecutor also submits that the factum of recovery of contraband from the possession of the accused-respondents and its consequential seizure was clearly proved before the learned trial court, followed by substantiation thereof by the required number of witnesses to such recovery and seizure; thus, as per learned Public Prosecutor, absence of only one mautbir cannot be said to be detrimental, in any manner whatsoever, to the case of the prosecution; this is more so when , there was no reason or ground put forth before the learned trial court on behalf of the accused-respondents, so as to persuade the learned trial court to disbelieve the testimony of the witnesses, produced before it and examined during course of the trial.

3.4 Learned Public Prosecutor further submits that during and after the search, recovery, seizure and sealing of the contraband opium in question, the process of law was duly followed, and thus, there was nothing on record before the learned trial court to show that the accused-respondents were wrongly implicated in the present case, more particularly, on count of their animosity with any of the prosecution witnesses.

3.5 Learned Public Prosecutor also submits that the learned trial court erred in disbelieving PW-1 Bhav Singh, PW-2 Bhanwarlal, PW-3 Bheru Singh, PW-5 Prem Singh and PW-6 Bhanaram, only on count of minor inconsistencies in their

statements, despite the fact that PW-1 Bhav Singh was an independent witness and he was quite consistent in rendering his testimony; furthermore, the non-consideration of the statements of PW-2, PW-3, PW-5 and PW-6 was on count of their being the employees of the police department; thus, as per learned Public Prosecutor, on that count alone, the impugned judgment deserves to be quashed and set aside.

3.6 Learned Public Prosecutor further submits that the learned trial court also erred in holding that in the present case, due compliance of the provisions of Section 50 of the NDPS Act was not disclosed, as since the accused-respondents did not seek their production before the First Class Magistrate or Gazetted Officer for the purpose of recovery, therefore, non-compliance of Section 50 of the NDPS Act cannot be made out.

3.7 Learned Public Prosecutor also submits that the learned trial court further erred in holding that the provisions of Section 57 of the NDPS Act were not complied with, despite the fact that due compliance of the said provision was made, as the information regarding registration of the case by the police against the accused-respondents was immediately sent to the Magistrate concerned.

3.8 Learned Public Prosecutor further submits that the learned trial court also failed to take into consideration the fact that the recovery in question was done by PW-6 Bhanaram, who, at the relevant time, was the SHO of the concerned police station, and not by PW-1; the said SHO was very much competent, as per law, to effect such recovery.

3.9 Learned Public Prosecutor thus submits that from the aforementioned factual and legal backdrop, it is clear that the learned trial court has passed the impugned judgment of acquittal in favour of the accused-respondents without taking into due consideration the overall facts and circumstances of the case and without duly appreciating the evidence placed on record before it; thus, the impugned judgment deserves to be quashed and set aside.

4. On the other hand, learned counsel for the accused-respondents, the recovery of the contraband in question was made by the Head Constable, who was not at all competent to do so; there are several inconsistencies in the testimonies of the prosecution witnesses; the requisite site map was not prepared; one mautbir, who was very much relevant to the present case, was not produced by the prosecution before the learned trial court. The said deficiencies and discrepancies, as per learned counsel, strikes at the very substratum of the prosecution case.

4.1 Learned counsel further submits that the clear erroneous averment has been made by the prosecution that the accused-respondents were asked whether they want effecting of the recovery in question before the competent Magistrate or any Gazetted Officer; whereas, the record of the case clearly reveals the facts to the contrary.

4.2 Learned counsel also submits that an avement is made by the prosecution that after the recovery and other proceedings, the information thereof was immediately furnished to the superior officers, whereas the record reveals that no such information was given immediately to the superior officers.

4.3 Thus, as per learned counsel, in the present case, a clear violation of the provisions of Section 50 & 57 of the NDPS is apparent on the face of the record. Learned counsel therefore, submits that such non-compliance of the statutory provisions, amongst others, are sufficiently detrimental to the case of the prosecution.

4.4 In the aforementioned backdrop, learned counsel submits that the learned trial court has not committed any error - either on facts or in law - in passing the impugned judgment of acquittal in favour of the respondents; it is amply clear from the impugned judgment that the learned trial court, before passing such judgment, has taken into due consideration the overall facts and circumstances of the case and also duly appreciated the evidence placed on record before it, more particularly, the inconsistencies in the testimonies of the prosecution witnesses and the non-compliance of the statutory provisions of law, which apparently strikes at the very root of the prosecution case.

5. After hearing learned counsel for the parties as well as perusing the record of the case, this Court finds that the learned trial court in the impugned judgment of acquittal has made due appreciation of the evidence placed on record before it; learned trial court also carefully examined the testimonies of the prosecution witnesses, so as to adjudge their reliability and non-reliability, to draw a conclusion in regard to innocence or guilt of the present accused-respondents; not only this, the learned trial court before passing the impugned judgment of acquittal, has given thoughtful consideration to each and every aspect material to the case, coupled with issue-wise finding thereon.

6. The findings recorded by the learned court below is to the effect that :

6.1 The testimony of the key prosecution witnesses, both pertaining to search, recovery of the contraband opium and sealing of the contraband, clearly reveals, beyond all doubts, that the same were not done by the concerned SHO, but by the then Head Constable, who was not at all competent, as per law, to do search and effect recovery of the contraband, since as per the law, the same can only be done by the concerned SHO; this is more so when, the factum of recovery being made by the Head Constable, instead of the concerned SHO, was clearly substantiated by Bhav Singh, who was said to be an independent witness and such independent testimony cannot be disbelieved, unless any contrary material is placed on record.

6.2 As regards the sealing of the contraband after recovery and seizure by the Head Constable, it was recorded that since the same was done by the Head Constable, the presence of the concerned SHO was very much doubtful on the spot; this is more so when, as per law, the specific seal of the SHO was required

to be put, after recovery and seizure of the contraband, whereas in the present case, an ordinary seal, which could be in possession of any police official, was put, on the contraband in question; the same is clearly discernible from the testimonies of most of the prosecution witnesses, and also from the apparent inconsistencies therein.

6.3 It has also not come on record that upon being stopped by the police team on the spot, the accused-respondents did not try to run away, which does not seem to be probable; in all probabilities, in the event of the accused, who were carrying the contraband in their possession, would not try to escape, consequent upon being stopped by the police. This aspect also casts a serious doubt upon the correctness and reliability of the prosecution case.

6.4 The absence of site map of the spot also makes the prosecution story doubtful, since as per the settled principle of law, non-preparation of such map would be highly prejudicial to and have adverse impact, so far as the rights and interests of the accused are concerned.

6.5 The absence of the testimony of one witness Sardar Singh before the learned trial court is also detrimental to the case of the prosecution, since had he been produced and examined, the same would have been able to give the case a turning point; but failure to do so, on the part of the prosecution, cannot go in its favour, rather the same tilts in favour of the accused-respondents.

6.6 Another deficiency in the present case is also writ large on the face of the record, to the effect that the prosecution has also failed to prove that before effecting the recovery in question, the accused-respondents were asked as to whether they want effecting of such recovery before the concerned Magistrate or any Gazetted Officer; this is more so when, there is no mention of such an adequate opportunity in the concerned fard, nor the factum of giving of such an opportunity was substantiated by any of the prosecution witnesses.

6.7 The prosecution has also failed to establish the factum of immediate furnishing of information of recovery and seizure in question by the police to the superior officers, which is a clear mandate of the provisions of the NDPS Act.

6.8 From the aforementioned backdrop, the violation of the statutory provisions of Sections 50, 55 and 57 of the NDPS Act is clearly discernible on the face of the record.

7. Thus, in view of the cogent findings, as recorded by the learned trial court in the impugned judgment of acquittal passed in favour of the accused-respondents, on each and every aspect relevant for the adjudication of the case before it, this Court finds that the said well reasoned speaking judgments does not warrant any interference by this Court, more particularly, when the learned Public Prosecutor could not point out any legal or factual infirmity in the said judgment.

8. Consequently, the present appeal is dismissed. All pending applications stand

disposed of. Record of the learned court below be sent back forthwith.