
(2023) 02 J&K CK 0046
In the Jammu And Kashmir High Court
Case No : Criminal Appeal No. 111 Of 2017

State Of Jammu And Kashmir

APPELLANT

Vs

Mohd Iqbal Dar And Another

RESPONDENT

Date of Decision : 16-02-2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20, 55

Citation : (2023) 02 J&K CK 0046

Hon'ble Judges : Sanjeev Kumar, J;Puneet Gupta, J

Bench : Division Bench

Advocate : Amit Gupta, S.C.Sharma

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1 This appeal is directed against the judgment of acquittal dated 19.03.2015 recorded by the learned Principal Sessions Judge, Samba (hereinafter referred to as the 'trial Court') in file No. 5/Spl Challan titled 'State vs. Mohd Iqbal and others' whereby the trial Court has acquitted the respondents of the charge.

2 Before we advert to the grounds of challenge urged by Mr. Gupta AAG appearing for the appellant to assail the impugned judgment, it is necessary to first elude to complete resume of the prosecution case.

3 On 10.03.2013, Nardev Singh Head Constable of Police Post, Mansar along with other police personnel was performing vehicle checking duties at Naka point Mansar Road. During the course of checking of vehicles at about 8 pm, they stopped a vehicle Tavera bearing Registration No. JK01Q-8070 which was coming from Srinagar. One person along with a driver was travelling in the said vehicle. The driver disclosed his name as Mohd Iqbal Dar, whereas the other passenger sitting in the vehicle disclosed his name as Ali Mohd Gaw Gujri. The vehicle was searched and on search, a polythene bag of white colour containing charas weighing 3 kg 700 gm was recovered from beneath the seat of the driver,

whereupon FIR No. 45/2013 for the commission of offences under Sections 8/20 NDPS Act was registered against the respondents and the investigation was set in motion. During the course of investigation, Bharat Bhushan, I.O of the case visited the place of occurrence, prepared the site plan and also seized the aforesaid charas which was recovered from beneath the seat of driver of the aforesaid vehicle. The total weight of the charas was found to be 3 kg 700 gm. The sample of 100 gms was taken and sent for chemical examination. Upon receipt of report of the chemical examiner that the seized item was confirmed as charas. The investigation was completed and the final report submitted in the competent Court of jurisdiction.

4 The charges for the commission of offences under Sections 8/20 NDPS Act were framed by the trial Court. Both the respondents pleaded not guilty to the charges and claimed to be tried. To sustain the charges against the respondents, the prosecution examined PWs Ram paul, Sushil Kumar, Jaswant Singh, Joginder Singh, Nardev Singh, Lekh Raj, Nazir Ahmed Lone, Ali Mohd Mir, Abdul Gani Bhat, Rajidner Kumar, Joginder Singh, Bharat Bhushan . The respondents, however, chose not to lead any evidence in defence.

5 The Trial Court, after hearing the learned counsel for the prosecution and defence and also having regard to the evidence led by the prosecution, came to the conclusion that the prosecution had failed to prove its case against the respondents beyond any reasonable doubt. Noticing several infirmities in the prosecution case, the trial Court directed the acquittal of the respondents vide judgment of acquittal dated 19.03.2015. It is this judgment of the trial Court which is assailed before us in these proceedings.

6 The impugned judgment of acquittal is challenged by the appellant, inter alia, on the grounds that the judgment impugned is against the facts and law; that the Trial Court has not appreciated the evidence adduced at the time of trial in right perspective; and that on the basis of oral and documentary evidence produced at the time of trial, the prosecution has proved the charge of the commission of offence against the respondents. On the other hand, learned counsel for the respondents has submitted that the trial Court has rightly acquitted the respondents and, therefore, the judgment of acquittal requires no interference and the appeal filed by the appellant deserves dismissal.

7 Having heard learned counsel for the parties and on perusal of the record meticulously, we are of the view that, having regard to the nature of evidence that has been brought on record by the prosecution, the Trial Court had no option, but to dismiss the challan and acquit the respondents of the charge.

8 In the present case, after sealing the sample of contraband, the seal had been kept on spurdnama of SGCT Sushil Kumar who was subordinate and working under the control of I.O. There is no evidence led by the prosecution to prove the affixation of seal and its safe custody. Thus, the possibility of tampering with the sample of the contraband cannot be ruled out. A perusal of the record clearly

shows that there is no evidence on record to prove that the in-charge of the Police Station, Samba affixed his personal seal on the seized charas and its sample. Therefore, the provisions of Section 55 of NDPS Act have not been complied with. The compliance with Section 55 of the Act may not be mandatory, but non-compliance thereof does create doubt about the prosecution case. Another flaw which weakens the persecution case is that the investigation was taken up and conducted prior to registration of the case. PW Bharat Bhsuah, I.O has deposed that he had started the investigation of the case at 10.15 pm and completed the same at 1.20 pm. A perusal of record shows that FIR was lodged at 22.00 pm, however, all the prosecution witnesses have deposed that the investigation of the case was completed prior to 9.30 pm. There is nothing on record to support the testimony of Bharat Bhushan, the IO, that investigation of the case was started at 10.15 pm. It is settled that the investigation of the case cannot be commenced prior to registration of FIR. Therefore, in our view, the commencement of the investigation prior to registration of FIR, is fatal to the prosecution case. Another aspect of the matter that needs to be noticed is that the sample of the contraband is alleged to have been taken and sealed by PW Bharat Bhushan, the I.O on spot, but he has nowhere deposed that any FSL form was filled up by him on spot. Filling of FSL form on the spot is a very valuable safeguard to ensure that the sealed sample is not tampered with till its examination by the FSL.

9 The other flaw which we have noticed in this case is that the contraband was in the maize shells, but it is not proved that the sample of the contraband was extracted from the said maize shells. To top it all, it is the specific case of the prosecution that the contraband and the sample was kept in Malkhana, but neither Malkhana register is produced, nor Malkhana In-charge has been put in question in examination in chief with regard to the day, date and timing of deposit of and taking out contraband and sample from Malkhana. We also find that the prosecution has not examined any independent witness, though some Shopkeepers nearby were available. Only shopkeeper that is examined by the prosecution is PW Jaswant Singh who was asked by the I.O to come on spot with weighing scale. He has not supported the prosecution version. He has even denied having weighed the contraband. Apart from the infirmities which we have noticed, there are several other major and minor contradictions which create sufficient doubt on the credibility of prosecution case.

10 The Trial Court has considered the case and appreciated the evidence brought on record by the prosecution in right perspective and reached a conclusion that the prosecution had failed to prove its case beyond reasonable doubt.

11. Having regard to the evidence that has come on record and reasons given by the Trial Court, we do not find it a fit case to interfere with the well- reasoned judgment of acquittal passed by the Trial Court. Otherwise also, it is well settled in law that Appellate Court, while hearing an acquittal appeal can, though re-appreciate the evidence, yet, if the view taken by the trial Court is a reasonable

view on the evidence on record and the findings recorded by the Trial Court are not manifestly erroneous, contrary to the evidence on record or perverse, the appellate Court shall not interfere with the judgment of acquittal and take a different view.

12. For the foregoing reasons and discussion made hereinabove, this appeal is found to be without any merit and substance and liable to be dismissed.

13. Appeal is, thus, dismissed. Impugned judgment is upheld. Record of the Trial Court be sent back, along with a copy of this judgment.