

(2009) 07 KAR CK 0113
In the Karnataka High Court
Case No : Criminal Appeal No. 1064 of 2002

State of Karnataka

APPELLANT

Vs

Ganapati Bhimappa Marchappanavar and Another

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20 (b) (ii),
42

Citation : (2010) 3 KCCR 1845

Hon'ble Judges : Manjula Chellur, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : A.R. Patil, app, for the Appellant; G.A. Holeyannavar, for the
Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—This appeal is directed against the judgment of acquittal in Special Case No. 10/200 1, which was registered for trying the accused-respondents for offences punishable u/s 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act of 1985, (for short "the NDPS Act").

2. According to the prosecution before the Trial Court, on 23.12.1998, the police of Badami Police Station received reliable telephone message from Kulageri police out-post that there was illegal transportation of ganja from Govanakoppa village to Ramadurga via Kulageri Village. Then, P.W.2, the Police Sub-Inspector of Badami Police Station, said to have flashed the message as required u/s 42 of the Act to his higher-ups and then made arrangements to keep a watch for the jeep in which the ganja was being transported. Accordingly, when the C.P.I, head constable and other police constables were keeping a watch near Kulageri cross in a jeep, they noticed a tempo trax jeep bearing registration No. KA-25/M-3643 coming from Govanakoppa side. When the police signaled the said vehicle to stop, it did not stop, therefore, they had to chase the said jeep. When the said jeep took a turn towards Ramadurga side, ultimately, police chased the said trax

jeep and could stop the same near Chimmanakatti bus-stand. They found two persons, who were alleged to be the accused persons before the Trial Court, present in the said jeep and on enquiry, the older man in the said vehicle showed the gunny bags in the vehicle said to contain ganja. According to the information, they were transporting the same from Konnur to Ramadurga. On enquiry, they found that these persons did not have any licence to transport the same and they disclosed their names as Mahammadsab Fakrusab Attar and the name of the driver as Ganapati Bhimappa Marachappanavar. It is further stated that the C.P.I. gave option to the accused whether they had to be personally searched in the presence of a Gazetted Officer and the accused said to have accepted the search by the CPI himself, therefore, in the presence of the panchayatdars, personal search of the accused was made and no incriminating material was found. So far as the five gunny bags in the trax jeep is concerned, when they were weighed, it was about 85.5 kgs. and the worth of ganja was valued at Rs.35,000/- as on that day. The police collected sample of the said ganja from the 5th bag. This is the gist of the complaint as well, which is marked as Ex.P.2.

3. Crime No. 165/1998 came to be registered on the suo motu complaint by P.W.2-Mr. D. Ashok, the then Police Sub-Inspector of Badami Police Station. P.W. 1 is the Panchayatdar who said to have affixed his signature on Ex.P1.-pachhanama. P.W.3 is the Head Constable who said to have assisted P.W.2 like keeping watch, chasing the trax jeep and participating in the panchanama proceedings at the time of seizure of 5 gunny bags of ganja from the trax jeep. P.W.4 is Ningappa Basappa Sakri, who was working as P.S.I. from 14.05.1999 to 23.07.2001 who took up further investigation; completed the same and filed a charge-sheet before the Court after securing chemical Expert's report, etc., P.W.5 was the Dy.S.P. at the relevant point of time, who was in charge of the police station in question as on the date of seizure of ganja from the trax jeep from accused Nos. 1 and 2.

4. After filing of the charge-sheet, the matter was tried by the Special Court. The accused pleaded not guilty to the charges framed for offence u/s 20(b)(ii) of the NDPS Act. Prosecution examined five witnesses, as stated above, marked three documents and three material objects. No defence evidence was let in after recording Section 313 statement. Therefore, arguments of the Public Prosecutor and the defence Counsel were heard. The learned Judge of the Special Court, on perusal of the entire material on record, ultimately, held that there was grave procedural lapses during the course of investigation and the very role played by each of the police officials, as stated by them before the Court on oath, seems to be doubtful. Therefore, he opined that no reliance could be placed on the evidence of the witnesses in order to convict the accused for the charges levelled against them. Ultimately, the accused were acquitted of the charges framed against them. Aggrieved by the said judgment and order of acquittal, the State has come up in this appeal.

5. According to the learned Additional State Public Prosecutor, the evidence of

P.W.2 coupled with the evidence of P.W.5 - the P.S.I and the Dy. S.P. at the relevant point of time - would establish the fact of police of Badami Police Station had to chase the vehicle in question to stop the same near Chimmanakatti bus stand. This itself would go to show that accused after noticing the police, tried to escape, therefore, the effort made by P.W.2 and P.W.5 to chase the vehicle and seize the ganja contained in five bags from the trax jeep has to be believed. According to him, evidence of P.W. 1 is nothing but a corroboration to the evidence of P.Ws.2 and 5, therefore, the oral evidence of P.Ws. 1, 2 and 5 coupled with the documentary evidence at Ex.P. 1- Mahazar and Ex.P.2, the complaint of the P.S.1-P.W.2 would prove the case of prosecution. He seeks for reversal of the judgment of acquittal into conviction contending that the quantity of ganja weighing 85.5 kgs said to be found in the trax jeep in the five bags is a grave offence, therefore, there has to be stringent punishment imposed on the accused.

6. As against this, the learned Counsel for the defence contends that the entire material placed before the Court, both oral and documentary, would give three versions as to how the jeep was chased and by whom, therefore, the very case of the prosecution brought on record is not established beyond reasonable doubt. Having regard to the stringent punishment contemplated under the Act, lapses on the procedural aspects of the matter on the part of the investigating agency cannot be ignored. With these arguments, placing reliance on the judgment of Supreme Court in the case of U.O.I. v. Bal Mukund and Ors. reported in 2009 SAR (Criminal) 385, seeks for confirmation of the judgment of acquittal.

7. We have gone through the evidence of the witnesses and also the documentary evidence at Exs.P. 1 to P.3. The C.E. report, which is marked at Ex.P.3 dated 23.03.2001, indicates that one sealed paper bag said to contain ganja was examined and it was found that the said article is ganja. According to the prosecution there were five bags in the trax jeep at the time of stopping the vehicle when inspection came to be made by the police officers near Chimmanakatti bus-stand. As stated by P.W.2, each bag was checked separately and sample of the material found in each of the bag was taken in different measurements and each sample was packed separately. However, the evidence of P.W.I and other witnesses including chemical analysis report as per Ex. P.3 do not indicate the fact of five sample of ganja were sent for chemical analysis for expert's opinion. It is also to be noticed that while sending sample packs, each sample has to be separately sent and each article has to be separately examined. Unfortunately, only one bag containing the material said to be ganja was sent for chemical analysis.

8. When we go through the evidence of P.W.I, the independent witness for the prosecution who acted as a Panchayatdar for Ex.P.1, it discloses sample ganja was collected from the 5th bag measuring 500 grams. So also, the evidence of P.W.2, the P.S.I. who investigated the crime, P.W.3-Head constable, the contents of Ex.P.1-the mahazar, the evidence of P.Ws.1 to 3 and so also the evidence of

P.W.5 is to the effect that there were totally five gunny bags containing ganja in the said vehicle and each bag was weighing separate weight. Unfortunately, except collecting the sample from one bag they have not collected the sample material from the other four bags. In the absence of prosecution establishing that the other four bags also contained ganja like the sample from the 5th bag, the very case of the prosecution that they found 85.5 kgs of ganja from all the 5 bags from the trax jeep falls to the ground. Except P.W. 1 all others are police officials. In this case, P.W. 1 is a mahazar witness and his cross-examination discloses that he acted as mahazar witness in other two similar cases for the police. This would only indicate that he is nothing but a stock witness for the police who is always ready to oblige the police.

9. Then coming to the evidence of P.W.2 and then P.W.5, according to P.W.2 they were waiting near Kulageri cross; when they saw the trax jeep speeding away inspite of signalling the driver to stop the vehicle, therefore, they had to chase the said vehicle till Chimmanakatti bus-stand. According to them, CPI and Dy.S.P were waiting near Kulageri police outpost and a message was sent to them and after securing them mahazar proceedings was conducted. Neither the contents of Ex.P.2 or the complaint lodged by P.S.I indicate the presence of CPI and Dy.S.P. nor the evidence of P.W. 1 indicates their presence. On the other hand, the evidence of Dy.S.P. is to the effect that he was all along waiting along with PSI and CPI near Kulageri cross and he also participated in the chase of the vehicle to stop the vehicle which was transporting illegal ganja.

10. The CPI, in whose presence the option of personal search of the person in the jeep was asked, is not at all examined before the Court. What was disclosed in the presence of the CPI in whose presence the jeep was inspected as well as the persons in the jeep were searched is not known. Under these circumstances, P.W.2 though says that CPI and Dy.S.P. were secured, the other evidence indicates that they were not present. It would only indicate that CPI and Dy.S.P. were not at all present when the vehicle was chased and stopped near Chimmanakatti bus-stand. The evidence of P.W. 1, the panchayatdar, nowhere indicates that he was part of the team waiting near Kulageri cross when they were waiting for the vehicle transporting illegal ganja. His evidence would go to show that only near the bus-stand he was asked to sign a paper by the police i.e., the mahazar and he put his signature to the mahazar. Whether he was present right from the time of wait and watch near Kulageri cross till the completion of the mahazar proceedings itself becomes doubtful. He being a stock-witness of the police much reliance cannot be placed on this so-called independent witness of the prosecution.

11. The learned Trial Judge, having regard to the contradictory statements with regard to the very presence of CPI and Dy.S.P. at the relevant point of drawing the mahazar and in the light of three different versions of these five witnesses of the prosecution, was justified in doubting the genuineness of the investigation, therefore, he was right in saying that reliance cannot be placed on the evidence

brought on record by the prosecution. It was just and proper on his part to acquit the accused of all the charges having regard to the laches and lapses so far as serious aspects of investigation on the part of the investigating agency is concerned. We do not find any good ground to take a different view than that of the Trial Court.

Accordingly, appeal is dismissed.