
(1975) 02 RAJ CK 0002
In the Rajasthan High Court
Case No : Criminal Appeal No. 649 of 1974

State of Rajasthan

APPELLANT

Vs

Gordhan

RESPONDENT

Date of Decision : 21-02-1975

Acts Referred:

Foreigners Act, 1946 — Section 14

Citation : (1975) RLW 127 : (1975) WLN 92

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.P. Tyagi, J.—This is a State appeal against the judgment of acquittal dated 26.2.71, whereby the learned First Class Magistrate, Barmer, acquitted the respondent Gordhan of the charges u/s 14 of the Foreigners Act, Rule 3/6 of the Pasa Port Rules and Section 13(A) of the Dangerous Drugs Act.

2. On the night intervening between 24th and 25th June, 1968, the B.S.F., party headed by Kunwar Singh Rana laid an ambush near Pillar No. 815/3 within 300 to 400 yards on the Indian side and arrested the accused, who according to the prosecution, was coming from Pakistan and bringing contra-band articles "charas" and also terylene cloth. The sample of "charges" was taken by Mr. Rana (PW. 3) and thereafter the S. H.O. of the Police Station, Girab, who investigated the matter, also took the sample of the "charas" seized by Mr. Rana, before the Third Class Magistrate, and the samples, were sealed and the seal of the Court of the Third Class Magistrate was affixed One of these samples was sent for chemical analysis to Jaipur and the report of the Chemical Examiner Ex. 4 shows that the sample was that of charas".

3. After investigation the respondent Gordhan was challaned in the Court of First Class Magistrate, Banner, u/s 14 of the Foreigner Act, under Rule 3/6 of the Pass Port Rules and u/s 13(A) of the Dangerous Drugs Act. The learned Magistrate

acquitted the accused of the charge u/s 13(A) of the Dangerous Drugs Act on the ground that the prosecution failed to prove that the same specimen which was taken from the article the alleged "charas" seized from the possession of the accused was sent for chemical analysis. The accused was also acquitted of the charge u/s 14 of the Foreigners Act on the ground that accused Gordhan was facing a trial on the day when he was caught by the B.S.F. party in the Court of Sub-Divisional Magistrate, Barmer, for a charge u/s 14 of the Foreigners Act and he was bailed out and, therefore, he had a right to stay in India under the orders of that Court. As regards charge under Rule 3/6 of the Pass Port Rules, the learned trial court held that P.W. 3 Shri Kunwar Singh Rana and P.W. 8 Ramesh Chandra, who were responsible for arresting the accused, did not state that they had seen the accused crossing the border of Pakistan and entering into India and, therefore, under those circumstances the accused was not liable for violating the provisions of Rule 8/6 of the said rules.

4. The learned trial court has held that the samples of "charas" which were taken in the presence of the "motbirs", were sealed by the S.H.O. and the seal used was that of the Third Class Magistrate, Barmer; but the sample which was sent to the Public Analyst bore the impression of the seal of the Hakumat of Barmer. Learned Public Prosecutor, appearing on behalf of the State, could not explain this difference in seals on the samples taken and the sample sent to the public analyst. In view of such a glaring discrepancy in the prosecution. I find it difficult to convert the order of acquittal into that of conviction u/s 13(A) of the Dangerous Drugs Act.

5. The statements of P.W. 3 Kunwar Singh Rana & P.W. 8 Ramesh Chandra were read over to me by the learned P.P. Both these witnesses, who were responsible for arresting accused Gordhan do not specifically say that they had seen accused Gordhan crossing the "Pak" border and entering into India. P.W. 3 Kunwar Singh Rana deposes that it was a dark night and that he had seen the accused only from a distance of 15 yards and that too on account of the fact that he was wearing white clothes. It is admitted by the prosecution witnesses that an ambush was laid about 300 to 400 yards within India border. It, therefore, became evident that the accused was seen by Mr. Rana only when he was at a distance of 15 yards, that is, he was already in the Indian border. P.W. 8 Ramesh Chandra, however, definitely says that he did not see the accused crossing Indo-Pak border and entering into India. In the absence of a definite proof that the accused entered the Indian territory from Pakistan without a Pass-port, he cannot be held liable for violating the provision of Rule 3/6 of the Pass Port Rules, His acquittal for that charge, therefore, does not suffer from any infirmity.

6. As regards charge u/s 14 of the Foreigners Act it is clear from the judgment dated 30th of May, 1969, of the Sub-Divisional Magistrate, Barmer, filed by the prosecution, that the accused facing trial in that Court for violating the provisions of the Foreigners Act and that he was in India having been released on bail by that Court. It has not been brought on the record to show that after having been

released on bail the accused crossed over to Pakistan, Therefore, in the natural course it will be taken that after he was released on bail by the Sub-Divisional Magistrate in that case he remained in India to face his trial before the Sub-Divisional Magistrate Barmer. In these circumstances it is difficult to hold that on 24th of May, 1968, when he was arrested in this case the accused came to India violating the provisions of the Foreigners Act. It may be mentioned here that the accused was found guilty by the Sub-Divisional Magistrate, Barmer, vide his judgment dated 30th of May, 1969, for an offence u/s 14 of the Foreigners Act and for that offence he was awarded a sentence of two months rigorous imprisonment and a fine of Rs. 100/-. He cannot be punished for that very offence twice over.

7. For the reasons mentioned above, I do not find any life in this appeal and it is therefore, dismissed.