
(2012) 01 CHH CK 0075
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 134 of 2008

Vishnu Achari and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(B), 50

Citation : (2012) 3 Crimes 657

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Dharendra Pandey, for the Appellant; Sunita Jain PL, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mr Justice Pritinker Diwaker

Criminal Appeal u/s 374 of The Code of criminal Procedure

1. This appeal has been preferred against the judgment and order dated 2.1.2008 passed by Special Judge, (NDPS) Bilaspur, in Special Case No. 23/2007 holding the accused/appellants guilty u/s 20(B) 2 (c) of the Narcotic Drugs and Psychotropic Substance Act (for short the "NDPS Act") and sentencing each of them to undergo rigorous imprisonment for ten years and pay fine of Rs. 1,00,000, in default of payment of fine to further undergo RI for one year. Facts of the case in brief are that on 10.8.2007 at 9.5 p.m. Assistant Sub Inspector namely R.S. Kushwaha (PW-4) received a secrete information to the effect that near the clinic of Dr. Ladikar the appellants were trying to sell Ganja in a white Ambassador Car, who in turn telephonically informed his superior officer about the same and then after calling the witness namely Abdul Nasir and Virendra Singh (PW-6), entry was made in the Rojnamcha Sanha No. 645, Mukhbir Soocha Panchnama was prepared in presence of the witnesses and information about the same was sent to C.S.P. in writing vide Ex. P-7C. Thereafter, police

party proceeded to the place of incident and found one Ambassador Car bearing registration No. MPS-9066 parked near the clinic of Dr. Ladikar in which three persons were sitting. Notices Ex. P-9 to P-10 u/s 50 of the NDPS Act were given to them and after obtaining their consent for giving search, Panchnama was prepared. On search being made, two packets of Ganja were found in the dickey of the said Ambassador Car and five packets were found inside it and then search Panchnama of the Car was prepared vide Ex. P-16 and the same was identified vide Ex. P-17. Weighment Panchnama Ex. P-19 was prepared and then the contraband was weighed vide Ex. P- 20 to P-22. By weighment Panchnama Ex. P-20 3.500 grams of ganja contained one polythene bag and 4 kg of Ganja contained in the other polythene bag was found in possession of accused/appellant Jai Jhakar, out of which a sample of 50 gram was drawn from each packet. By another weighment Panchnama Ex. P-21, three polythene bags containing 4 Kg, 8 kg and 2 + Kg of Ganja was found in possession of accused/appellant Vishnu Achari, out of which samples of 50 grams each were drawn and similarly by yet another weighment Panchnama Ex. P-22 two polythene bags containing 8 kg of Ganja each was found in possession of accused/appellant Pradeep Pillay, out of which also samples of 50 grams each were drawn. Thereafter, notice u/s 91 of the NDPS Act was given to the accused/appellants vide Ex. P-23 to P- 25. Accused/appellants have admitted the fact that they were not having the documents of the said contraband. From the possession of accused/appellant Pradeep Pillay, documents pertaining to the vehicle were seized. Vide Ex. P-26 to P-28 seizure of Ambassador Car and Ganja was made and then the contraband so seized was duly sealed. On 11.8.2007 un- numbered crime was registered and after the police party reached the police station, crime No. 263/2007 was registered. Accused/appellants were formally arrested on 11.8.2007 vide arrest memo Ex.P-29 to P-31. Samples were sent to Forensic Science Laboratory, Raipur for chemical examination vide Ex. P-40, contraband was deposited in Malkhana on 11.8.2007 vide Ex. P-3C. FSL report Ex. P-41 was received which was positive. After completing investigation, challan was filed by the police on 3.10.2007 for the offence u/s 20(B) of the NDPS Act.

2. So as to hold the accused/appellants guilty, prosecution has examined 06 witnesses. Statement of the accused/appellants were also recorded u/s 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

3. After hearing the parties, the trial Court convicted and sentenced the accused/appellants as mentioned in paragraph No.1 of this judgment. Hence, this appeal.

4. Counsel for the appellants submits that mandatory provisions of the NDPS Act have not been complied with by the prosecution. He submits that signature of witnesses was taken by the police prior to recording of Mukhbir Soochna and no notice was given to them before searching the vehicle. He submits that there is no evidence to show that the accused/appellants were sitting in the car and that in what manner the Ganja was seized from their possession. He further submits

that as per weighment Panchnama total 38 Kg. of Ganja was seized from the possession of the appellants whereas no subsequent weighment panchnama has been made after drawing the samples of 50 grams each from different polythene bags and this lacuna vitiates the entire trial. He further submits that while depositing the contraband in the Malkhana, 38 Kg. of Ganja with seven packets was deposited but it is not mentioned that these seven packets were of sample and that no detailed description has been given. He submits that at relevant page of the Malkhana register Ex. P- 3C there is an overwriting at two places which shows that the contraband was already in the Malkhana and falsely implicating the accused/appellants recovery has been shown from them. He submits that in the document of Ex. P-4 there is another overwriting and no initial was put by the concerned person. According to him, in various documents Crime No. 263/2007 has been mentioned whereas by the time those documents were prepared, FIR was not registered and therefore question of mentioning crime number in the same does not arise. He submits that FIR Ex. P-36 was already registered at 2.5 a.m. but yet in the Malkhana register crime number has not been mentioned. He submits that arrest of the accused/appellants has been shown at about 0.50 a.m. and by that time the offence was registered and therefore, question of mentioning crime number in the said document does not arise.

5. On the other hand counsel for the respondent/State supports the impugned judgment and submits that minor lacunae in the case of the prosecution will not give any benefit to the accused/appellant because all the mandatory provisions have been complied with by the prosecution. She submits that in cross examination Virendra Singh (PW-6) has categorically stated that all the documents were signed by him after 9 a.m. She submits that initially the notice u/s 50 of the NDPS Act was given to the appellants and thereafter the vehicle was searched and it is the accused/appellants who had disclosed their identity and then seizure was effected from them. She submits that investigating officer (PW-4) has categorically stated that in the car three persons were sitting, on being asked by the police people they came out of it and disclosed their identity and then other formalities were completed. She submits that a huge quantity of Ganja has been seized from the appellants and therefore quantity of 350 grams of Ganja taken out for the purposes of drawing samples, even if not shown separately, does not make any difference. She submits that deposit receipt Ex. P-4 shows as to in what manner the contraband was deposited and it separately mentions about the samples. In respect of overwriting, she submits that while mentioning section 20B of NDPS Act, there is overwriting in the word "N and D" and it does not make any difference in the case of the prosecution. In respect of mentioning of crime number in various documents, it is argued that in all these documents crime number has been shown as 0/2007 and then after registration of FIR it has been mentioned as 263/2007. In respect of time mentioned in arrest memo as 0.50 a.m. it is argued that the accused/appellants were already with the police from 9/9.30 p.m. and merely wrong mention of time in the arrest

memo does not make any difference. In respect of overwriting in Malkhana register Ex. P-3C, it is argued that in 4th entry where word "seven packets of sample" has been shown, some whitener has been shown but the same will not give any benefit to the appellant nor would it be fatal to the case of the prosecution. Regarding overwriting in the date "11.8.2007" it is argued that as the offence was registered in the intervening night of 10/11.8.2007 and initially this might have led to mentioning the incorrect entry and corrected subsequently and this would not be of any benefit to the accused/appellants.

6. Heard counsel for the parties and perused the material available on record.

7. Harvend Khunte (PW-1) is the police constable who had communicated the secrete information to the CSP. He is also the witness of Ex. P-1 and P-2 Mohanlal Dhuri (PW-2) is the witness of Ex. P-1 and P-2. Thiodor Tirki (PW-3) is the witness who made entry in the Malkhana register Ex. P-3C in respect of depositing the Ganja and the samples. He is also the witness of acknowledgement Ex. P-4. R.S. Kushwaha (PW-4) is the investigating officer who has supported the case of the prosecution categorically stating as to in what manner he proceeded to the spot after receiving the secrete information and investigated the offence. Constable - Baliram (PW-5) is the witness who took the samples to the Forensic Science Laboratory for chemical examination. Virendra Singh (PW-6) is the witness of Mukhbir Soochna panchnama Ex. P-6. He is also the witness to the consent of search vide Ex. P-12, P-13 and P-14. He has stated that samples of Ganja were prepared in his presence. Though this witness has been declared hostile, he has supported the case of the prosecution in part.

8. Minute examination of the evidence available on record makes it clear that after following the due procedure of law the investigation was done properly. There is no force in the argument of the counsel for the appellants that proper investigation has not been done in the case. Minor contradiction in the statement of the investigating officer is of no help to the accused/appellants. The submission of the counsel for the appellants that weighment of the contraband was not done before drawing the Panchnama, appears to be incorrect. Likewise, in view of the statement of the investigating officer, the contention that the signatures of the witnesses were obtained prior to recording of Mukhbir Soochna also appears to be incorrect. There appears to be no force in the argument of the counsel for the appellants that in certain documents crime number has been mentioned even before completing the legal formalities. On the contrary, the documents show that initially an un- numbered case was registered and the crime number was shown subsequently. Further, the argument regarding overwriting in the documents of Ex. P-3C and Ex. P-4 is also of no help to the appellants because the overwriting could be on account of the fact that the incident had taken place in the intervening night of 10/11.8.2007. Even assuming that there is some overwriting in the documents, as the witnesses have not been examined to this effect, it cannot be said that due to the said overwriting, any prejudice has been caused to the present appellants. In this

view of the matter and keeping in mind the fact that a huge quantity of 38 Kg of Ganja has been recovered from the possession of the appellants, judgment impugned convicting and sentencing them as mentioned above, appears to be fully justified. In the result, the appeal has no substance at all and therefore it is dismissed. The appellants are already in jail and therefore no order regarding their surrender etc. is necessary.