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Cr1.A.No. 1334 OF 2002

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1334 OF 2002

Basheer @ N.P. Basheer
...
APPELLANT (S)

VERSUS

State of Kerala
...
RESPONDENT (S)

O R D E R

The appellant has been found guilty for the offence punishable under section 21 of the NDPS Act. The Special Judge sentenced him to undergo imprisonment for a period of 10 years and to pay a fine of Rs.1 Lac with a default sentence for 6 months. The conviction and sentence was challenged by the appellant before the High Court. The High Court confirmed the conviction and sentence.

The prosecution case against the appellant was that on 23.2.2000 at about 4.15 p.m. the appellant was found in selling brown sugar. The PW-2 Sub-Inspector of Police of Nadakkavu Police Station got information that somebody was selling brown sugar and he recorded this information, copy of the same sent to immediate superior and along with the police party went to the place and he found the appellant there. On seeing PW-2 and others, the appellant tried to escape from the place and PW-2 prevented him from going and told him that it was suspected that the appellant was having brown sugar with him and his body is to be searched. PW-2 also apprised the appellant of his right under section 50 of the NDPS Act, and the appellant declined to have the privilege of his body being searched in the presence of Magistrate/Gazetted Officer and therefore a search was conducted and from the pocket of the appellant small packets were recovered wherein brown sugar was found. PW-2 prepared a Mazhar and recovered the same. On the side of the prosecution Pws. 1 to 3 were examined. The appellant alleged that he was falsely implicated in the case and in order to prove that DW-1 and DW-2 were examined. Ext. P-1 and P-2 documents were also marked. Ext. P1/Chemical Analyst shows that the article recovered from the appellant was brown sugar.

The appellant alleged that there was violation of section 50 of the NDPS Act and he also contended that he was falsely implicated. Both these pleas were rejected by the Special Judge as well as High Court.

We heard the learned counsel for the appellant. The counsel for the appellant contended that the quantity of brown sugar recovered from the appellant was only 1.2 gram and this being a small quantity and the Court shall presume that he intended it to be used for personal consumption, and therefore he should have been awarded only lesser sentence, as envisaged under section 27 of the NDPS Act, 1985. In the instant case, there is no evidence to show that the brown sugar recovered from the appellant was for personal consumption. Sub-section (2) of section 27 of the NDPS Act specifically says that the burden is on the accused to prove that it was for or personal consumption. The proviso reads to the following effect:

"Where a person is shown to have been in possession of small quantity of a narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption of such person and not for sale or distribution, shall lie on such person"

Here the brown sugar was kept in the shirt pocket of the appellant and the appellant completely denied having been in possession of the narcotic drug. When questioned under section 313 Cr.P.C. he did not have a specific case that drug was for his personal use. The counsel for the appellant drew our attention in the decision of Alpesh Kumar Vs. State of Rajasthan (JT 2

002 (10) SC 219) wherein this Court held that even in the absence of a specific plea if the circumstances show that the narcotic drug was for personal use, the Court would be at liberty to draw an inference and hold that the drug was for personal use. In that case, the narcotic drug was recovered from the accused in the form of two cigarettes and the Court drew presumption that the drug in his possession may have been for his personal consumption. The Court also relied on an earlier decision of this Court in Gaunter Edwin Kircher Vs. State of Goa, Secretariat Panaji (JT 1993 (2) SC 285). In that case the accused was having the narcotic substance in a pouch along with a chillum (smoking pipe) and smoking material and the averments extracted from the accused in the application by the Trial Court showed that it was meant for his personal consumption.

In the present case, there were no materials to show that the accused was keeping in his possession the narcotic drug for his personal consumption, whereas the evidence shows that narcotic substance was kept in six small packets and he was found in a street which obviously showed that he was waiting for his customers. In that background, we are not inclined to accept the contention that the appellant was entitled to the benefit of section 27 of the NDPS Act. The High Court has correctly held that the investigation officer strictly followed the provisions of sections 42 and 50 of the NDPS Act. We find no merit in the appeal and the appeal is accordingly dismissed.

The appellant is on bail. His bail bonds shall stand cancelled and he is directed to surrender his bail bonds within 3 weeks failing which the Special Judge will take appropriate steps to arrest him to undergo the remaining period of sentence.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
April 20, 2004.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1337 OF 2002

Sathyapalan
...
APPELLANT (S)

VERSUS

State of Kerala & Anr.
...
RESPONDENT (S)

O R D E R

This is an appeal against the conviction and sentence of the appellant under section 21 of the NDPS Act. PW-3 the Sub-Inspector of Vengara got secret information that the appellant had been doing business in brown sugar at his house. He recorded this secret information in the general diary and sent a copy to the superior officer and thereafter proceeded to the place of incident. When PW-3 and others reached near the house of the appellant, he was found at the pathway leading to his house. On seeing PW-3 and others, the appellant tried to escape but he was intercepted and told that his body is to be searched. He was told of his right under section 50 of the NDPS Act. On search one packet was recovered from his pocket and it contained 2.5 gm. of brown sugar. The Special Judge, Vadakara found the appellant guilty of the offence charged against him. The appellant preferred an appeal before the High Court. The High Court dismissed the appeal and confirmed the conviction and sentence.

We heard the learned counsel for the appellant. The counsel for the appellant contended that the information received by PW-3 was to the effect that the brown sugar was being sold in the house of the appellant and as the prosecution failed to produce any evidence to show that the information allegedly sent by PW-3 to immediate superior was received by his superior officer and therefore there was violation of section 42 of the NDPS Act. We are unable to accept the contention of the appellant's counsel. Even though the information must have been to the effect that the appellant was selling brown sugar at his house, he, in fact, was found at the pathway leading to his house and thereafter his body was searched. PW-3 had no occasion to search any building, conveyance or enclosed place so as to attract section 42 of the Act. Another contention raised by the appellant's counsel is that there was no independent witness to prove search and seizure allegedly made by PW-3. One of the mahzar witness, turned hostile and did not support the prosecution. The learned Single Judge considered the appeal, thought it fit to give an opportunity to the prosecution to adduce further evidence and the matter was sent to the Special Judge to examine two more witnesses for the prosecution. Accordingly, Pws.5 and 6 were examined and the record of evidence of these witnesses was sent back to the High Court for further decision and the evidence of this witness proved the recovery effected by PW-3.

Another contention raised by the appellant's counsel is that the appellant was found in possession of small quantity and examination of two witnesses was conducted after the commencement of the amended section 41 of the NDPS Act (Act 9/2001) and as the matter was not pending in an appeal the appellant was liable to be punished only for lesser sentence. The learned Single Judge held that the case was sent back to the Special Judge to examine two witnesses and appeal was still pending under section 391 (1) of the Cr.P.C. In that view of the matter, the learned Single Judge held that the matter was pending in appeal in view of proviso to section 41 of the NDPS (Amendment) Act 2001 (Act 9 of 2001). The appellant was not entitled to the benefit of section 21 (a) of the NDPS Act. The learned Single Judge was perfectly right in holding that amended section 21 has no application as the appeal was still pending and in view of the proviso to section 41 of Act 9/2001. No other contention has been urged before us. The appeal is without any merit and the same is accordingly dismissed. The appellant in this case was released on bail by this Court. The appellant is directed to surrender to his bail bonds within 3 weeks failing which the Special Judge will take appropriate steps to arrest him to undergo the remaining period of sentence.

.....J.
(K.G.BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)

New Delhi,
April 21,2004
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL Nos.28 and 29/2003
S.JeevananthamAppellant

Vs.

O R D E R

The appellants in these two appeals were tried by the Special Judge (NDPS Act), Madurai. Both of them were found guilty of offences under section 8(C) read with section 20(b) (2) of the NDPS Act. PW-7 the Sub- Inspector, Thirumangalam Police Station got information that narcotic drug was being sold at some places and he recorded information and sent the same to the superior officer and he along with PW-8 went to the place and found that appellant Muniyandi and one Kannan and PW-7 told them that they are to be searched. The search was conducted and each one of them was having one kg. of "Hashish". On the basis of the information furnished by them, the police party went to Muthudevanpatti and found out the appellant Jeevanantham. He was searched after complying with section 50 of the Act and found to be in possession of 2 kgs. of "Hashish". The appellants were found guilty by the Special Judge and they filed an appeal against the conviction. Appellant Muniyandi and Jeevanantham filed separate appeals before the High Court and the High Court dismissed their two appeals and hence these appeals by way of Special Leave.

We heard the learned counsel for the appellants. The counsel for the appellants contended that PW-8 the Inspector after conducting search prepared the FIR and it was on the basis of the statement of PW8 the case was registered against the appellants and it is argued that PW-8 was the complainant and he himself conducted the investigation of the case and this is illegal and the entire investigation of the case is vitiated. Reliance was placed on the decision in Megha Singh Vs. State of Haryana (1996 (11) SCC 709) wherein this Court observed that constable, who was the defacto complainant had himself investigated the case and this affects impartial investigation. This Court said that Head Constable who arrested the accused, conducted the search, recovered the pistol and on his complaint FIR was lodged and the case was initiated and later he himself recorded the statement of the witnesses under section 161, Cr.P.C. as part of the investigation and such practice may not be resorted to as it may affect the fair and impartial investigation. This decision was later referred to by this Court in State Vs. V.Jayapaul (2004 (3) SCALE 507) wherein it was observed that:

"We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias

would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done."

In the instant case, PW-8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellant was narcotic drug and the counsel for the appellant could not point out any circumstances by which the investigation caused prejudiced or was biased against the appellant. PW-8 in his official capacity gave the information, registered the case and as part of his official duty and later investigated the case and file charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation. The appellants have been rightly convicted by the Special Judge and the High Court was also justified in confirming the conviction and sentence. These appeals are without any merit and are accordingly dismissing.

.....J.
(K.G.BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
April 21, 2004

Manish Kumar

....Appellant

Vs.

State of M.P. ...Respondent

O R D E R

The appellant Manish Kumar was found guilty by the Additional Sessions Judge, Garoth, Camp Bhanpura, District Mandsaur for the offence under section 8/21 of the NDPS Act. His conviction and sentence was confirmed by the High Court. The Station Officer of P.S. Bhanpura received secret information on 8.8.1990 that one person Manish Kumar was standing at the bus stand was having "smack" with him. He reduced such information into writing and copy of the information was sent to S.D.O. and thereafter proceeded to the bus stand Bhanpura. At the bus stand he found the appellant and after compliance of the mandate under sec. 50 of the NDPS Act the appellant was searched and 750 milligrams of "smack" which was kept in a polythene bag was recovered from him. The appellant was arrested and the article was seized. During the trial the appellant alleged non-compliance of section 42 of the Act, but he was convicted by the Court.

We heard the learned counsel for the appellant. The counsel for the appellant contended that at the recovery of the article from the appellant was not satisfactorily proved as the two mahar witnesses turned hostile and did not support the prosecution. It is argued that as there was no independent witness, the recovery should be treated as not proved. We do not find any force in this argument. The Police Officer, who effected the recovery, gave evidence to the effect that he conducted the search and recovered the article. It is also important to note that the recovery witnesses admitted having signed Mazhar and there is no rational explanation as to how they signed the Mazhar. The evidence of the officer proved the recovery of the article from the appellant.

The counsel for the appellant further submitted that there was recovery of only 750 milligrams of smack and it amounts to small quantity and the appellant must have kept this drug with him for his personal consumption, and therefore the quantity of narcotic drug recovered from the appellant being small in quantity he is liable to be punished for a lesser sentence, as provided in the Act. There is no evidence to show that the narcotic drug recovered from the appellant was intended for his personal use. It was found kept in a polythene bag in a concealed manner. The appellant had also no case that he was in the habit of using the drug and he kept it in his possession for his personal consumption. When questioned under section 313, Cr.P.C. the appellant completely denied the recovery of the drug from him. There are no materials before us to show that the narcotic drug recovered from the appellant was for his personal use. That plea of the appellant has to be rejected.

No other point is raised by the appellant in this case before us. The appellant was granted bail by this Court and the appellant is directed to surrender his bail bonds within 3 weeks failing which the Special Judge will take appropriate steps to arrest him to undergo remaining period of sentence.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
April 21, 2004.