

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.915 OF 2011

Bhawar Singh

Appellant

VERSUS

Central Bureau of Narcotics

Respondent

WITH

CRIMINAL APPEAL NO.892 OF 2011

O R D E R

These appeals are directed against the judgment and order dated 05.04.2015 passed by the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal Nos.329 and 413 of 2001, whereby the said Court has dismissed the appeals, affirming the conviction and sentence recorded against the appellants Bhawar Singh and Goverdhan under Section 8/19 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and sentenced each of them to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,00,000/-, and in default of payment, each defaulter is directed to undergo further rigorous imprisonment for a period of two years.

The prosecution story, in short, is that the appellant Bhawar Singh was a licence holder for cultivation of poppy and to produce opium. It is alleged that on 09.04.1996, when an inspection was

made by Mr. Hakimuddin Mansoori (PW-4), Dy. Inspector of Central Bureau of Narcotics, it was found that the appellant Goverdhan, Lambardar, had manipulated the entries in Daily Opium Weighment Register of cultivators in respect of the entries relating to appellant Bhawar Singh. On receiving complaint from the said officer, Mr. Ashok Kumar Sharma, the District Opium Officer, directed Ramjiyavanram (PW-5), Inspector to register the crime and investigate the same. After investigation, it was found that against the production of 11.5 Kgs. of opium, the appellant, Bhawar Singh, in connivance with appellant Goverdhan, misappropriated 2.6 Kgs. of opium, and shown it in the record as 8.9 Kgs. The officer seized the relevant part of the register and prepared seizure memo (Exhibit P-1) in the presence of Panch witnesses. The investigating officer further recorded the confessional statements (Exhibits P-7 and P-8) of the appellants. After investigation, the report was submitted to the competent court. Necessary copies were given to the accused and charges were framed. Thereafter, the prosecution witnesses, Shivnarayan (PW-1), Rameshwar (PW-2), Ashok Kumar Sharma (PW-3), Hakimuddin Mansoori (PW-4), Ramjiyavanram (PW-5) and A.K. Mishra (PW-6) were examined. Statements of the witnesses and documentary evidence were put to the accused under Section 313 of the Code of Criminal procedure, in reply to which, the appellants alleged that the evidence adduced against them were false and they have not canvassed the commission of crime. In defence, the appellants got examined Radheyshyam (DW-1).

The trial court, after hearing the parties, found that the charge in respect of offence punishable under Section 8/19 of the NDPS Act is proved against both the accused, namely, Bhawar Singh and Goverdhan and convicted them accordingly. After hearing on sentence, each of the convicts was sentenced to rigorous imprisonment for a period of ten years and to pay fine of Rs.1,00,000/- each. Aggrieved by the said judgment and order dated 07.03.2001 passed by the First Additional Sessions Judge, Mandsaur, the convicts preferred Criminal Appeal Nos.329 and 413 of 2001 separately. Both the appeals were heard together by the High Court. The High Court concurred with the view taken by the trial court and dismissed the appeals.

Learned counsel for the appellants argued before us that only overwriting in the weightment register of opium cannot be said to be the embezzlement committed by the appellants in respect of opium poppy cultivated by the appellant Bhawar Singh. We have considered the argument advanced on behalf of the appellants and perused the seizure memo of the entries in the register (Exhibit P-5). We find that there are numerous 'overwritings' made in the weightment register. The confessional statements made to the Narcotics Officer which are (Exhibits P-7 and P-8) by the appellants clearly disclose that short quantity of the opium, i.e., 2.6 Kgs. was sold to one Rameshwar. This fact gets corroborated from the seizure memo prepared on 09.04.1996 by Ramjiyavanram (PW-5). Though later the panch witnesses have

turned hostile before the trial court, however, the documentary evidence on record, as mentioned above, corroborates the statements of Hakimuddin Mansoori (PW-4) and Ramjiyavanram (PW-5). Both the courts below have discussed the evidence on record at length and found that the evidence adduced against the appellants is reliable and trustworthy.

On going through the original record, which was summoned by this Court, and after considering the submissions made by learned counsel for the parties, we do not find any error committed by the courts below in appreciation of evidence.

It is also contended on behalf of the appellants that Rule 13(5) of the Narcotics Drugs and Psychotropic Substances Rules, 1985 was not complied with. The said provision of law reads as under :

"13. Procedure with regard to preliminary weighment.- (1) to (4) ...

(5) The variations between the quantity of opium produced by the cultivator indicated in the Lambardar's record and as found by the proper officer during his check, shall be inquired into by the proper officer in order to ascertain the liability of the cultivator for punishment under Section 19 of the Act."

We do not find that the rule is applicable to the facts of the present case. The only requirement under the aforesaid provision is that the variations between the quantity of opium produced by the cultivator and indicated in the Lambardar's record are

required to be verified by a proper officer. In the present case, both, the cultivator as well as the Lambardar, were in collusion and as such there was no question of variations as to quantity between the two.

In view of the principle of law laid down in Badku Joti Savant vs. State of Mysore [(1966) 3 SCR 698] read with the principle of law laid down in Raj Kumar Karwal vs. Union of India & Ors. [AIR1991 SC 45], we are of the opinion that the confessional statements made by the accused to the officers of the Narcotic Bureau are admissible in evidence on record.

In the above circumstances, we find no force in these appeals. Both the appeals are dismissed accordingly.

.....,J
(Prafulla C. Pant)

.....,J
(Amitava Roy)

New Delhi;
June 02, 2015.

ITEM NO.104

COURT NO.3

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 915/2011

BHAWAR SINGH

Appellant(s)

VERSUS

CENTRAL BUREAU OF NARCOTICS

Respondent(s)

WITH

Cr1.A. No. 892/2011

Date : 02/06/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PRAFULLA C. PANT
HON'BLE MR. JUSTICE AMITAVA ROY
(VACATION BENCH)

For Appellant(s) Ms. Poonam Raswant, Adv.
Mr. P.V. Raghunandan, Adv.
Mr. Sanjay Sharawat, Adv.

For Respondent(s) Ms. Pinky Anand, ASG
Mr. Yashank Adhyaru, Sr. Adv.
Mr. P.K. Dey, Adv.
Ms. Rashmi Malhotra, Adv.
Mr. B.K. Prasad, Adv.
Ms. Kritika Sachdeva, Adv.
Mr. Shreekant N. Terdal, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(Renu Diwan)
Court Master

(Signed order is placed on the file)