

High Court of Madhya Pradesh: Bench at Indore
Division Bench: Hon'ble Shri Justice Prakash Shrivastava
and Hon'ble Shri Justice Ved Prakash Sharma

Cr.A. No.24/2008

Badrisingh

Versus

State of M.P.

J U D G E M E N T

Ms. V. Sumanlata, learned counsel for the appellant.

Shri Mukesh Kumawat, learned Public Prosecutor for the respondent/State.

(Delivered on 23/06/2017)

Per: Justice Ved Prakash Sharma

This Criminal Appeal is directed against judgment and order dated 24.11.2007, whereby and whereunder appellant Badri singh has been found guilty under Section 8/15(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and has been sentenced to undergo RI for 15 years and to pay a fine of Rs.1,50,000/- with a further stipulation of two years RI in case of default in payment of fine.

02. Prosecution story as having emerged during trial, briefly stated, is that on 14.04.2016 Doulatram Jogawat (P.W.5), the then Assistant Sub-Inspector, Police Station –

Badod, District – Shajapur received a secret information from the informer that one Badri Singh S/o Uday Singh Rajput, r/o Village Dhodar, is having in his possession 32-40 plastic bags of poppy husk, which is likely to be delivered to some person. Doulatram Jogawat (P.W.5) entered this information at 10.40 a.m. in the daily diary at Sl. No.489. He further prepared a memorandum (Ex.P/19) and in compliance of Section 42 of ‘the Act’ forwarded a copy thereof through Constable Ramchandra (P.W.6) to S.D.O.P., Agar. Apprehending that if immediate action is not taken, the concerned person may escape with the contraband. Doulatram Jogawat (P.W.5) summoned two “**Panch**” witnesses namely, Vikram Singh (P.W.1) and Rodulal (P.W.2) and proceeded along with police force to lay a trap at village Dhodar. On reaching the spot, Doulatram Jogawat (P.W.5) found a person of given description covering some plastic bags lying in front of a house with a polythene cover. On interrogation, appellant Badri Singh disclosed his name. Thereafter, Doulatram Jogawat (P.W.5) informed the appellant that he has received secret information with regard to contraband poppy husk being kept in the plastic bags, therefore, he would like to go for a search. He further apprised appellant Badri Singh that if he wants he can get himself searched before a gazetted officer or a Magistrate. On a consent being given by the appellant, Doulatram Jogawat (P.W.5) after complying with usual

formalities searched the plastic bags. He found leaves, buds and fruit tops etc. of opium poppy lying inside the bags. On physical examination, it was revealed that the same is poppy straw. The contraband kept in 35 plastic bags was put to weighment which came to 450 kilograms. Two samples of 250 grams each were drawn from the contraband after mixing the same. The samples were marked as B/1 & B/2, while 35 bags were marked as A/1 to A/35. The contraband was seized, vide seizure memo Ex.P/11. The appellant after being apprised about the grounds of arrest, was arrested, vide arrest memo Ex.P/12. The contraband was brought to Police Station Bhador in a tractor trolley belonging to one Badri Singh (P.W.11) and was handed over to the "*Malkhana*" clerk. A First Information Report in this regard was registered against the appellant. Investigation ensued. During investigation, Devendra Singh Rathor, the then SHO, Police Station Bhador prepared spot map (Ex.P/23). One of the samples was sent, vide Ex.P/2-A to Regional Forensic Laboratory, Indore. The Assistant Chemical Examiner of the Laboratory, vide report Ex.P/26, opined that the material lying in the packet is poppy straw. The witnesses were interrogated. Necessary evidence with regard to ownership of place of recovery was collected from village Patwari Shankarlal (P.W.9) as well as Panchayat Secretary Anil Chouhan (P.W.10). Appellant Badrilal on interrogation allegedly, revealed that he had purchased the

contraband for Rs.4,000/- from one Raju Singh. On the basis of the information supplied by the appellant, vide memo Ex.P/19. A pair of bullocks and bullock cart said to have been used for transporting contraband was recovered from his possession, vide seizure memo Ex.P/14. A detailed report (Ex.P/17) with regard to arrest, search and seizure were sent to S.D.O.P., Agar. After usual investigation, the charge-sheet was laid against the appellant before the competent Court.

03. The appellant on being charged for offence under Section 8/15(C) of 'the Act' abjured the guilt and pleading innocence claimed to be tried. The prosecution in order to bring home the charge examined as many as 12 witnesses including Doulatram Jogawat (P.W.5), who, allegedly, laid the trap. Rodulal (P.W.2) and Vikram Singh (P.W.1) are said to be the "**Panch**" witnesses while Devendra Singh Rathore (P.W.8) has conducted the investigation. Apart this, documents Ex.P/1 to P/54 were also marked in evidence.

04. The incriminating circumstances appearing in the prosecution evidence were brought to the notice of the appellant during his examination under Section 313 of 'the Code'. The appellant either denied or pleaded innocence with regard of such circumstances and claimed that the place from where poppy straw was recovered is not in his exclusive

possession, rather he resides there with his father and two brothers. The learned Special Judge on appreciation of evidence on record, vide the impugned judgment, convicted and sentenced the appellant as stated herein-above.

05. In this appeal, the conviction and sentence is challenged on the ground that Sections 42, 50 & 57 of 'the Act' were not duly complied with and that the learned trial Court has committed serious error in recording a finding of guilt without properly advertng to the aspects pertaining to non-compliance of Sections 42, 50 & 57 of 'the Act. It is further submitted that the prosecution failed to establish that the place from where the contraband was allegedly, recovered was in exclusive possession of the appellant, hence, finding of conviction suffers from serious error and, therefore, the same cannot be sustained. Lastly, it is submitted that "**Panch**" witnesses Vikram Singh (P.W.1) and Rodulal (P.W.2) have not supported the prosecution case, therefore, in absence of independent evidence, the learned trial Court has committed a grave error in recording conviction against the appellant.

06. Per contra, learned Public Prosecutor supporting the impugned judgment has submitted that Sections 42 & 57 of 'the Act' have been duly complied with and that as the

contraband was recovered from a place and did not involve search of the person, therefore, Section 50 of 'the Act' was not applicable in the instant case. Lastly, it is submitted that testimony of the police officials on due appreciation has been found to be reliable by the learned trial Court, therefore, it cannot be said that the conviction suffers from any illegality. The contention is that sufficient evidence was laid before the trial Court to establish conscious possession of the contraband with the appellant, therefore, it cannot be said that the learned trial Court committed any error in recording conviction against the appellant, hence, the appeal is liable to be dismissed.

07. We have given our thoughtful consideration to the pleas raised before us and have also carefully perused the record. Considering the rival submissions made by the learned counsel for the parties, it is required to be seen whether alleged contraband was recovered from exclusive and conscious possession of the appellant and whether procedural safeguards stipulated in 'the Act in this regard were duly complied with ?

COMPLIANCE OF SECTION 42

08. Section 41, 42 & 43 of 'the Act' stipulate safeguards with regard to search of premises, conveyance or enclosed place etc. As regards applicability of Section 42 of 'the Act', the apex Court in ***Sukhdev Singh Vs. State of Haryana, (2013) 7 SCC 465***, has held as under:

“18. The provisions of Section 42 are intended to provide protection as well as lay down a procedure which is mandatory and should be followed positively by the Investigating Officer. He is obliged to furnish the information to his superior officer forthwith. That obviously means without any delay. But there could be cases where the Investigating Officer instantaneously, for special reasons to be explained in writing, is not able to reduce the information into writing and send the said information to his superior officers but could do it later and preferably prior to recovery. Compliance of Section 42 is mandatory and there cannot be an escape from its strict compliance.

19. This question is no more res integra and stands fully answered by the Constitution Bench judgment of this Court in ***Karnail Singh v. State of Haryana [(2009) 8 SCC 539]***.”

09. As per prosecution Doulatram Jogawat (P.W.5), the then A.S.I., Police Station – Badod on receipt of the secret

information recorded the same at Sl. No.489 in the Daily Diary of the Police Station, a copy of which has been placed on record as Ex.P/18. Doulatram Jogawat (P.W.5) in this regard has testified that apart this, memo Ex.P/19 was also prepared with regard to receipt of information and copy thereof was immediately forwarded to SDOP, Agar through Constable Ramchandra (P.W.6). Ramchandra (P.W.6) in this regard has supported the testimony of Doulatram Jogawat (P.W.5), which stands further corroborated by the testimony of Mohanlal (P.W.4), who at the relevant time was deputed as Reader of S.D.O.P., Agar and on 14.04.2006 had received the written information, vide acknowledgement (Ex.P/16). The testimony of these three witnesses despite grilling cross-examination has remained undented, therefore, the same deserves to be accepted. Therefore, from the evidence on record, it is well established that Section 42 of 'the Act' was complied with in letter and spirit.

10. As regards compliance of Section 50 of 'the Act' in *Megh Singh vs. State of Punjab, 2004(I) EFR 26 SC*, the apex Court has summed up the legal position as under:

“A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (*See Kalema Tumba vs. State of Maharashtra and Anr. (JT*

1999 (8) SC 293), the State of Punjab vs. Baldev Singh (JT 1999 (4) SC 595), Gurbax Singh vs. State of Haryana, 2001 (3) SCC 28.) The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh's case (supra)*. Above being the position, the contention regarding non-compliance of Section 50 of 'the Act' is also without any substance."

11. Considering that the contraband allegedly, was recovered from 35 polythene bags lying in the "**Dhalia**" (verandah) of the house of the appellant and did not involve personal search of the appellant, it can well be said that Section 50 of 'the Act' was squarely not applicable in the present case, therefore, grievance with regard to non-compliance thereof cannot be entertained.

12. With regard to compliance of Section 57 of 'the Act', we can again refer to the testimony of Doulatram Jogawat (P.W.5), which stands corroborated with the testimony of Ramchandra (P.W.6) and Mohanlal (P.W.5). Ramchandra (P.W.6) has clearly stated that on 15.04.2006 he delivered a detailed report under Section 57 of 'the Act' to Mohanlal (P.W.4), who at the relevant time was posted as

Reader of S.D.O.P., Agar. Mohanlal (P.W.4) has substantially supported Ramachandra (P.W.6) in this regard, therefore, it is well established that Section 57 of 'the Act' which provides for submission of detailed report with regard to arrest, search and seizure to the superior officer was complied with as per legal mandate.

13. Doulatram Jogawat (P.W.5) has testified that on the basis of secret information he laid a trap at the house of the appellant and found 35 plastic bags lying in the "*Dhalia*" (verandah) of the appellant's house. This witness has further testified that on physical examination he found that the substance lying inside the bags as opium poppy straw. He has further testified that the substance kept in 35 bags was seized by him on the spot and the material lying inside the bags was mixed up and two samples of 250 grams each were drawn and the remaining contraband was put in 35 bags and all the bags including the sample packets were seized after being duly sealed on the spot. Despite elaborate cross-examination no material infirmity or anomaly could be elicited in the testimony of this witness. Apart this, there is nothing to indicate that this witness has any personal ill-will or enmity against the appellant and, therefore, interested in falsely implicating him.

14. Though, it is contended by learned counsel for the appellant that Rodulal (P.W.2) and Vikram Singh (P.W.1) said to be “**Panch**” witnesses of search and seizure have not supported the same, hence, the testimony of Doulatram Jogawat (P.W.5) cannot be accepted. As regards testimony of police officer in the matter of *Anil alias Andya Sadashiv Nandoskar v. State of Maharashtra, 1996 SCC (2) 589*, the apex Court has held that “there is no rule of law that the evidence of police officials has to be discarded unless it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

15. Thus the law is well settled that the testimony of a police officer cannot be thrown overboard only on the ground that he is a police officer. If the testimony of a police officer, on due appreciation, is found to be trustworthy and free from material contradictions and anomalies, nothing prevents in law in recording conviction on the basis of such evidence. In *P.P.*

Beeran v. State of Kerala, AIR 2001 SC 2420, a case under the NDPS Act, the apex Court has held as under:

“Indeed all the 5 prosecution witnesses who have been examined in support of search and seizure were members of the raiding party. They are all police officials. There is, however, no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their credit worthiness placed reliance on the uncorroborated testimony of the Police Inspector in the case of possession of drug of small quantity. ”

16. Therefore, from the testimony of Doulatram Jogawat (P.W.5), who stands corroborated by the testimony of Ramchandra (P.W.3), a member of the trap party, it is well established that 450 kg. of opium poppy straw kept in 35 plastic bags was recovered from “*Dhalia*” (corridor) of the house where the appellant was residing.

17. As regards exclusive and conscious possession, the testimony of Shankarlal (P.W.9) and Anil Chouhan (P.W.10) is pertinent. Shankarlal (P.W.9) has clearly testified that the house of the appellant is situated in survey No.857 which is recorded in his name as per B/1 – “*Khatoni*” (Ex.P/35). Apart this, Anil Chouhan (P.W.10), who is the Secretary of Gram Panchayat, Dhodar has further stated on oath that House No.8 from where the contraband was recovered belongs to appellant and that he personally knows about the fact that the house in question including “*Dhalia*” (corridor) is in possession of the appellant. The testimony of this witness has remained intact, despite searching cross-examination, therefore, we do not have the slightest hesitation in holding that the contraband was recovered from the exclusive and conscious possession of the appellant.

18. In view of the aforesaid analysis, it cannot be said that the learned trial Court has committed any factual or legal error in recording conviction against the appellant for offence under Section 8/15(C) of ‘the Act’. As regards sentence looking to the quantity of the contraband and other attending circumstances, in our opinion the sentence of 15 years R.I. is on higher side and hence, deserves to be appropriately reduced. In the facts and circumstances of the case, in our considered view, RI for a term of 12 years instead of 15 years

will serve the ends of justice. Accordingly, we reduce the sentence from 15 years R.I. to 12 years R.I. Apart this, the appellant will also pay a fine Rs.1,50,000/- and in default of payment will further suffer one year's R.I.

19. Resultantly, the appeal is partly allowed. The conviction recorded against the appellant for offence under Section 8/15-C of 'the Act' is hereby maintained, however, the custodial sentence imposed against the appellant is reduced as stated hereinabove.

(Prakash Shrivastava)
Judge

(Ved Prakash Sharma)
Judge