Karnail Singh Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 29, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 15, 52, 55, 57

Citation: (2008) 3 RCR(Criminal) 543

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: Rahul Rathore, for the Appellant; A.K. Jindal, A.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

Sham Sunder, J.
This appeal is directed against the judgment of conviction dated 24.11.2000 and the order of sentence dated

25.11.2000, rendered by the Judge, Special Court, Karnal, vide which it convicted the accused/appellant Karnail Singh and sentenced him to

undergo rigorous imprisonment for a period of 10 years, and to pay a fine of Rs. 1,00,000/-, and in default of payment of the same, to undergo

rigorous imprisonment for another period of six months, for the offence, punishable u/s 15 of the Narcotic Drugs and Psychotropic Substances

Act, 1985 (hereinafter called as `the Act" only) for having been found in possession of 20 kilograms of poppy husk, without any permit or licence,

now falling within the ambit of non-commercial quantity.

2. The facts, in brief, are that on 17-07-1997, ASI Baljit Singh along with other police officials, was on patrolling duty, in the area of village

Khijrabad when Harpinder Singh came there and when they were talking to each other, the accused was seen coming from the side of jungle,

having a plastic bag on his head. He was apprehended on suspicion. On search of the bag, in accordance with the provisions of law, in the

presence of D.S.P. who was called to the spot by sending a wireless message, recovery of 20 kilograms of poppy husk, was effected. A sample

of 200 grams was separated. The sample and the remaining poppy husk were converted into parcels, duly sealed and taken into possession. The

accused was arrested. Ruqa was sent to the Police Station, on the basis whereof, FIR was recorded. Site plan was prepared. The statements of

the witnesses were recorded. After the completion of investigation, the accused was challaned.

3. On his appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused. Charge u/s 15 of the

Act, was framed against the accused, to which he pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Constable Ajit Singh, PW1, Head Constable Jagbir Singh, PW2, ASI Thandi Ram, PW3,

Head Constable Mahabir Singh, PW4, Sub Inspector Baljit Singh, P.T.C. Madhuban, PW5, and D.S.P. J.N. Ranga, PW6. Thereafter, the Public

Prosecutor for the State, closed the defence evidence.

5. The statement of the accused u/s 313 Cr.P.C., was recorded, and he was put all the incriminating circumstances, appearing against him, in the

prosecution evidence. He pleaded false implication. He examined Harpinder Singh, DW1 in support of his case.

6. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court,

convicted and sentenced the accused, as stated hereinbefore.

7. Feeling aggrieved, against the correctness and legality of the judgment of conviction, and the order of sentence, the instant appeal, was filed by

the accused/appellant.

8. I have heard the learned Counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. Learned Counsel for the appellant, at the very outset, submitted that though the alleged recovery was effected from the accused on 17.07.1997,

yet the sample was sent to the Office of the Forensic Science Laboratory on 21.07.1997. He further contended that the delay of 4 days, in sending

the sample to the Office of the Forensic Science Laboratory, was not explained, and, as such, the possibility of tampering with the same, could not

be ruled out. The submission of the counsel for the appellant, in this regard, appears to be correct. It is, no doubt, true that if the other evidence,

produced by the prosecution, to prove the completion of link evidence, is found to be cogent, convincing, reliable and trustworthy, then mere delay

in sending the sample to the Office of the Forensic Science Laboratory, pales into insignificance. On the other hand, if the other evidence

produced, in this regard, is found to be un-reliable, then certainly the delay assumes importance. In the instant case, the other evidence, produced

by the prosecution, to prove the completion of link evidence, besides being deficient, is neither reliable, nor creditworthy. In these circumstances,

the un-explained delay, referred to above, in sending the sample to the laboratory, certainly proved fatal to the case of the prosecution. In State of

Rajasthan v. Gurmail Singh, 2005 (2) RCR (Crl.) 58 : 2005 (1) Apex Cri 521 (SC) the contraband was kept in the Malkhana for 15 days. The

Malkhana register was not produced to prove that it was so kept, till the sample was handed over to the Constable, for deposit in the laboratory.

The other evidence, produced was also found to be un-reliable. In these circumstances, it was held that the prosecution miserably failed to prove

that the sample was not tampered with, until it reached the office of the Chemical Examiner. In State of Punjab v. Jaswant Singh, 2002 (3) RCR

(Cri) 54 (P&H)(DB), there was a delay of 21 days in sending the sample to the Chemical Examiner. It was held that it would prove fatal to the

case of the prosecution. In Gian Singh v. State of Punjab, 2006 (2) RCR(Cri) 611 (P&H), there was a delay of 14 days, in sending the sample to

the office of the Chemical Examiner. Under these circumstances, it was held that the possibility of tampering with the sample, could not be ruled

out, and the link evidence was incomplete. Ultimately, the appellant was acquitted in that case. The principle of law, laid down, in the aforesaid

authorities, is applicable to the facts of the instant case. The case of the prosecution was rendered highly doubtful, on account of the aforesaid

infirmity. The trial was completely remiss in ignoring this infirmity.

10. The next limb of the argument of the Counsel for the appellant that the link evidence was incomplete, was to the effect, that the sample

impression of the seal was not sent to the Forensic Science Laboratory. The submission of the Counsel for the appellant, in this regard, appears to

be correct. Exhibit PA is the affidavit of Ajit Singh, Constable. In this affidavit, he stated that he deposited the sample parcel in the Office of the

Forensic Science Laboratory, Madhuban on 21.07.1997 and handed over the deposit receipt to MHC. There is nothing, in his affidavit, that he

was handed over the sample impression of the seal, or he deposited the same, in the Office of Forensic Science Laboratory. In State of

Rajasthan"s case (supra), the sample impression of the seal was not sent to the Office of the Chemical Examiner. It was, thus, held that there was

no evidence to prove satisfactorily, that the seals affixed, on the sample bottles, were the same, which were immediately affixed, after seizure of the

contraband. Ultimately, the accused was acquitted by the Apex Court. In State of Rajasthan v. Daulat Ram, 1980 SCC (Crl.) 683, it was held

that the prosecution is required to prove beyond a reasonable doubt, all the links in the evidence, starting from the seizure, until the deposit of the

sample parcel, in the office of the Chemical Examiner. In that case, the parcel changed many hands, before it reached the office of the Chemical

Examiner, and the prosecution miserably failed to prove the link evidence. In these circumstances, it was held by the Apex Court, in the aforesaid

case, that the possibility of tampering with the parcel, until it reached the office of the Chemical Examiner, could not be ruled out. The principle of

law, laid down, in the aforesaid authorities, is fully applicable to the facts of this case. In the instant case also, the possibility of tampering with the

sample, could not be ruled out, the benefit of doubt whereof, must go the appellant-accused. The trial Court, however, failed to take into

consideration this aspect of the matter, as a result whereof, miscarriage of justice occasioned.

11. The Counsel for the appellant, further contended that there was a complete non-compliance of the provisions of Section 55 of the Act, as a

result whereof, prejudice was caused to the accused. No doubt, Baljit Singh, Sub Inspector, Investigating Officer, while appearing as, PW5,

stated that he produced the accused and the case property before Randhir Singh, S.H.O., who affixed his seal bearing impression `RS", on both

the parcels and, thereafter, he deposited the case property with MHC. However, Randhir Singh, S.H.O., was not examined by the prosecution as

a witness. No evidence was produced, on record, as to why, Randhir Singh. SHO was not examined. The evidence of Randhir Singh, SHO,

before whom, the case property and the accused were allegedly produced, was very significant. In the absence of examination of Randhir Singh,

SHO, the statement of Baljit Singh, Sub Inspector, that the case property and the accused were produced before him, could not be said to be

truthful. It means that the case property and the accused were not produced before SHO Randhir Singh. No doubt, the provisions of Section 55

of the Act are directory, in nature, yet that does not mean that the same should be deliberately and intentionally breached. Had any explanation

been furnished, by the prosecution, as to why, Randhir Singh, SHO was not examined, the matter would have been considered, in the light thereof,

but in the absence of any explanation, having been furnished, by the prosecution, in this regard, the Court cannot coin any of its own, to fit in with

the prosecution case. Since, there was deliberate and intentional breach of the provisions of Section 55 of the Act, by the Investigating Officer, the

same cannot be condoned. In Gurbax Singh v. State of Haryana, 2001 (1) RCR (Crl.) 702 (SC) , it was held that non-compliance of the

provisions of Sections 52, 55 and 57, which are, no doubt, directory and violation thereof, would not ipso-facto violate the trial or conviction.

However, the Investigating Officer cannot totally ignore these provisions, and, as such, failure will have bearing, on the appreciation of evidence,

regarding search and seizure of the accused. The principle of law, laid down, in the aforesaid authority, is fully applicable to the facts of the instant

case. As stated above, the Investigating Officer intentionally and deliberately breached the provisions of Section 55. He could not say that since the

provisions of Section 55 are directory, in nature, he was not bound to comply with the same. If such a stand of the Investigating Officer is taken, as

correct, then the provisions of the Act, which are directory, in nature, would be flouted with impunity, by him. Compliance of the said provisions, is

an indicator towards the reasonable, fair and just procedure, adopted by the Investigating Officer, during the course of search and seizure. Non-

compliance of such a provision, deliberately and intentionally, must be viewed with suspicion. Legitimacy of the judicial procedure, may come

under cloud, if the Court seems to condone acts of violation of statutory safeguards, committed by an authorized officer, during search and seizure

operation. Such an attitude of the investigating agency, cannot be permitted. Intentional and deliberate breach of the provisions of Section 55

certainly caused prejudice to the accused, and cast a doubt on the prosecution story. The trial Court did not take into consideration, this aspect of

the matter, as a result whereof miscarriage of justice occasioned.

12. It was next contended by the Counsel for the appellant, that the provisions of Section 57, relating to the sending of full report, with regard the

search and seizure, to the Superior Officer, immediately after the search and seizure, by the Investigating Officer, were also violated with impunity

in the instant case. No doubt, the provisions of Section 57 of the Act are directory, in nature. However, the Investigating Officer, cannot be given a

licence, to violate the same with impunity. Once, a safeguard is provided, in the Act, it is required to be adopted, at the time of search and seizure.

It is the bounden duty of the person, charged with such a responsibility, to observe the same more, in compliance, than in breach. In the instant

case, no explanation was furnished, by the Investigating Officer, as to what prevented him, from complying with the provisions of Section 57 of the

Act. Had any explanation been furnished, in this regard, the matter would have been considered, in the light thereof. The avowed object of this

provision, is that the officer Superior in rank, must come to know of the actions of his junior officials, in the matter of search and seizure, under the

Act, to find out, whether the same were genuine, and, in accordance with the provisions of law, as also to avoid any criticism, at a later stage,

against the highhandedness of the Police Officer. When the Legislature incorporates a specific provision, in the Act, with a view to safeguard the

interests of the accused, at the time of search and seizure, then those safeguards cannot be ignored, merely by saying that the same being directory,

were not required to be observed. Similar principle of law was laid down in Gurbax Singh"s case (supra). In this view of the matter, not only that

the prejudice occasioned to the accused, but a doubt was also cast, on the prosecution case.

13. It was next submitted by the Counsel for the appellant, that the contradictions and discrepancies, which occurred in the statements of the

official witnesses, remained un-explained and, as such, went to the root of the case. The submission of the Counsel for the appellant, in this regard,

appears to be correct, especially, when the recovery of poppy husk, allegedly effected from the accused, was minor, and chances of plantation of

the same, could not be ruled out. Mahabir Singh, Head Constable, PW-4, stated that the D.S.P. came to the spot on foot, whereas, the DSP, in

his statement, stated that he had gone to the spot in a jeep. Mahabir Singh, Head Constable, PW-4 stated that Vajinder Singh, Constable came to

the spot on foot, whereas, the DSP stated that Vajinder Singh, accompanied him, in a jeep. Mahabir Singh, PW-4, stated that there were two

motor cycles, but the Investigating Officer stated that there was only one motor cycle. Mahabir Singh, Head Constable, PW4, deposed that

Vajinder Singh was asked to bring some Nambardar, Sarpanch or Chowkidar from Khijrabad, whereas Baljit Singh, Sub Inspector, PW5, stated

that no person from Khijrabad was summoned. Mahabir Singh, PW4, stated that the writing work was done by sitting on the dol, whereas Baljit

Singh, Sub Inspector, PW5 stated that the writing work was done, by sitting on the ground. Baljit Singh, Sub Inspector, PW5 stated that Vajinder

Singh, Constable had brought weights and scale, who came along with the D.S.P. J.N. Ranga, D.S.P, PW6, however, stated that the weighing

material had already been arranged by the Investigating Officer. All these discrepancies, if taken individually, may not be said to be significant,

striking at the very root of the prosecution case. However, when the same are taken collectively, then it can be safely held that the same affect the

case of the prosecution. The discrepancies, which remained un-explained, when taken cumulatively, clearly go to show, that either one of the

witnesses, referred-to-above, was not present, at the time of effecting the alleged recovery, from the accused, or no recovery was effected, in the

manner, deposed to by the prosecution witnesses, especially when the alleged recovery, being minor in nature, could be easily planted against the

accused. Had an explanation been furnished, by the prosecution witnesses, as to how these discrepancies and contradictions occurred, in their

statements, the matter would have been considered, in the light of the same. In the absence of any explanation, the Court cannot coin the same of

its own to fit in with the prosecution case. These un-explained discrepancies, in the peculiar facts and circumstances of this case, cast doubt on the

prosecution case. The trial Court, failed to take into consideration this aspect of the matter, resulting into causing prejudice to the accused.

14. No other point, was urged by the Counsel for the parties.

15. In view of the above discussion, it is held that the judgment of the trial Court, is not based, on the correct appreciation of evidence, and law, on

the point. The trial Court also failed to take into consideration the aforesaid infirmities and lacunae, in the prosecution case, as a result whereof, it

fell into an error, in recording conviction and awarding sentence. The judgment of the trial Court, warrants interference, and is liable to be set aside.

16. For the reasons recorded, hereinbefore, the appeal is accepted. The judgment of conviction dated 24-11-2000 and the order of sentence

dated 25-11-2000, are set aside. The appellant shall stand acquitted of the charge, framed against him. If, he is on bail, he shall stand discharged

of the bail bonds. If he is in custody, he shall be set at liberty, at once, if not required, in any other case.