

Pramod Vs State

Court: Allahabad High Court

Date of Decision: Aug. 9, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 22, 50, 57
Penal Code, 1860 (IPC) â€” Section 328

Citation: (2007) 3 ACR 3489

Hon'ble Judges: Ajai Kumar Singh, J

Bench: Single Bench

Advocate: Abida Syed, Amicus Curiae, for the Appellant; A.G.A., for the Respondent

Judgement

Ajai Kumar Singh, J.

All these jail appeals have been preferred against the common judgment and order dated 30.3.1994 passed by Sri

K. N. Singh, the then First Addl. Sessions Judge, Saharanpur in Special Cases No. 2 of 1994, 3 of 1994 and 4 of 1994 u/s 22 of Narcotic Drugs

and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"), P. S., G. R.P., Saharanpur, convicting all the three Appellants-

accused for offence u/s 22 of N.D.P.S. Act and sentencing them each to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1 lac

and in default of payment of fine to undergo a further imprisonment for two years.

2. Briefly stated the prosecution case is that on 18.11.1993, Anil Kumar, S.O., G.R.P., Saharanpur alongwith Head Constable Shishupal Singh,

Constable Ravindra Singh and Constable Narendra Kumar had gone to platform No. 2 in connection with the investigation of case crime No. 108

of 1993, u/s 328, I.P.C. and complainant of the said case was also present with him. Complainant of the that case Sri Zaheer Ahmad pointed out

towards three persons sitting on the bench and informed the police party that those persons had intoxicating article, which they had given to him

some time back. Upon this information, the first informant with the help of the police party arrested those three persons, sitting on the bench at

about 14.10 hrs. After telling them the reasons for their arrest all the three accused were arrested. Before making enquiry about their names and

addresses, it was asked from those persons as to whether they would like to give their search before a Magistrate or Gazetted Officer, which they

denied and asked the police party itself to take their search. Then the names and addresses of those persons were asked by the police party. The

first person disclosed his name as Jasonodi. On his personal search 16 packing tablets of Serepas-30 and also the powder of these tablets kept in a

sachet of brown paper was recovered from the front pocket of the "bundi" he was wearing. On the personal search of second person, who

disclosed his name as Ram Singh, 10 tablets of Serepas-30 and 9 tablets of Nitrovet-10 and powder of serepas tablets kept in a brown paper was

recovered from the gamachha tied up with the waist of the accused. From the personal search of the third person, who disclosed his name as

Pramod, 20 tablets of Serepas-30 and one sachet of powder of these tablets kept in brown paper was recovered from the turban of the accused.

When enquired about the contraband article possessed by these accused, they could not give any satisfactory reply in this regard. Instead they

voluntarily admitted that they have been caught red handed. The accused Ram Singh disclosed the modus operandi of the accused persons.

Accused Ram Singh disclosed that at any railway station or bus stand, the accused Jasonodi after showing his palm to him used to ask questions

from him. During this time if any passenger also happen to come to Ram Singh to show his palm he was asked to wait and in the meantime,

accused Pramod used to go to bring the tea from a tea-stall and used to mix the powder of intoxicating tablet in the tea of that passenger. As soon

as the passenger became intoxicated these accused persons used to take all his belongings and run away and after selling the said articles, they

used to make merry. The contraband articles recovered from the three accused persons were kept separately in three pieces of cloths and were

sealed at the spot. Sample of the seal was also prepared. The tumbler in which tea was given to the complainant and was lying empty near that

place was also taken in police custody and was sealed at the spot and the sample of seal was prepared. Memo of recovery was prepared at the

spot and was read over to the witnesses and their signatures were obtained. Copy of the recovery memo was given to each of the accused

separately and their thumb impressions were obtained. Thereafter, accused and the recovered contraband were taken to the police station and on

the basis of the recovery memo, F.I.R. was registered at the police station.

3. Charge u/s 22 of the Act was framed against all the three accused in three separate cases, which they denied and claimed to be tried.

4. In order to prove its case, the prosecution examined Anil Kumar, S.I., P.S. G.R.P., Saharanpur P.W. 1, Constable Ravi Dutta, P.W. 2 and

S.I., Khajan Lal Gangwar, P.W. 3, P.W. 1 Anil Kumar proved the prosecution story and the manner of arrest of the accused and proved the

recovery memo Ex. Ka-1 and tablets Exts. 1-3 recovered from the possession of the accused. He also proved powder Exts. 4-6 recovered from

the possession of the accused persons. He also stated that due opportunity as required u/s 50 of the Act was given to the accused persons to get

themselves searched before a Magistrate of a Gazetted Officer to which they denied. The witness has also stated that he had informed the

Gazetted Officer, i.e., Circle Officer, about the arrest of the accused persons orally. P.W 2, Ravi Dutta, has corroborated the testimony of P.W. 1.

P.W. 3, who is Investigating Officer of the case, has proved G.D. Ext. Ka-3, site plans Exts. Ka-4 to Ka-6, report of the chemical examination

Exts. Ka-7 to Ka-9 and the charge-sheet Exts. Ka-10, Ka-12.

5. In their statements u/s 313, Cr. P.C. all the accused denied the prosecution version and have stated that they have been falsely implicated due to

enmity.

6. Since all the three cases, i.e., Special Cases No. 2/1994, 3/1994 and 4/1994 arose out of the same occurrence, they were consolidated and

Case No. 2 of 1994 was declared the leading case in which evidence was recorded and all the three cases were disposed of by the trial court by a

common judgment.

7. On the basis of oral and documentary evidences adduced before the trial court all the three accused persons were held guilty of the charge u/s

22 of the Act and were accordingly convicted and sentenced vide impugned judgment to undergo R.I. for 10 years each and a fine of Rs. 1 lac

each and in default of payment of fine each of them to undergo additional R. I. for two years.

8. Feeling aggrieved, these three jail appeals have been preferred by the accused Jasonodi, Ram Singh and Pramod respectively.

9. I have heard amicus curiae for all the three accused persons and the learned A.G.A. and have gone through the record. Since all the three

appeals arise out of the same judgment, the same have been heard together and are being decided by this common judgment.

10. The first argument put forward by amicus curiae on behalf of the Appellants is that there has been a clear cut violation of the provisions of

Section 50 of the Act. It has been submitted that no information has been recorded at the police station regarding the fact that the first informant

was proceeding from the police station in connection with the recovery of the contraband article. It is also submitted that there is no evidence to

show that information for the seizure of the contraband was given to the immediate superior officer within the time prescribed. It is also submitted

that the accused persons were not made aware of their right of personal search before a Gazetted Officer or a Magistrate. To the contrary, learned

A.G.A. argued that it is a case of sudden arrest and of chance recovery and, hence, the provisions of Section 50 of the Act are not attracted to the

present case. Learned A.G.A. in this regard placed reliance on the decision in *Azhar Hussain v. State of U.P. and Anr.* 2004 (2) JIC 410 (All):

2004 (3) ACR 2224, wherein it has been held that the provisions of Section 50 of the Act are not attracted if the recovery of the contraband

article was made from the person of the Appellant all of a sudden. From the perusal of recovery memo and oral evidence on recovery, I find that

the present case is an example of sudden arrest and the recovery is a chance recovery. Hence, in my opinion in view of the principle of law laid

down in *Azhar Hussain v. State of U.P. and Anr.* (supra), the provisions of Section 50 of the Act are not attracted.

11. The next argument advanced on behalf of the Appellants is that there is no independent witnesses of the recovery and that the complainant of

the case crime No. 108 of 1993 namely Zaheer Ahmad has also not been examined, who was also a witness of recovery, hence, adverse

inference will be taken against the prosecution. To the contrary, it has been submitted by learned A.G.A. that one public witness of recovery,

namely, Zaheer Ahmad was already with the police party, hence, there was no need for the police party to have collected any other public witness.

It has also been submitted that this witness has already been examined in the case in which the accused persons were being tried for the offence u/s

328, I.P.C. and in that case also accused persons have been convicted and it does not matter that the said witness could not be examined in this

case. In my opinion, the testimony of the police witnesses cannot be doubted only on the ground that the witnesses are police officers/officials. In

absence of any evidence regarding bias, the testimony of a police witness is as good as that of a public witness. I find that in the present case, there

is no effect of non-examination of the public witness of recovery because no bias has been alleged on behalf of the Appellants-accused with the

police officers/officials nor any suggestion to this effect has been given from the side of the defence to the prosecution witnesses.

12. It has been next argued that no information of the seizure was given by the arresting officer to his immediate superior officer within 48 hours of

the seizure, hence, there is violation of the provisions of Section 57 of the Act, which vitiates the entire recovery proceedings. To the contrary,

learned A. G. A. contended that the provision of Section 57 of the Act are only directory and only on this ground the recovery proceedings cannot

be held to be vitiated. Moreover, there has been compliance of the provisions of Section 57 of the Act as the arresting officer, P.W. 1 has clearly

stated that the information of the seizure was given to the Circle Officer orally after the occurrence. In my opinion, since there is nothing on record

to show that the seizure proceedings are not genuine, hence. The violation of provisions of Section 57 being directory in nature, has no effect on

the genuineness of the recovery proceeding.

13. No other point has been raised during the course of argument on behalf of the Appellants.

14. From the above, I find that the prosecution case is fully established by the documentary as well as oral evidences adduced during the trial and

no material contradictions have been pointed out in the statements of the prosecution witnesses. The provisions of Section 50 of the Act are not

attracted. There is no material on record to show that the Appellant/ accused has been falsely implicated. Thus, I am of the opinion that the

prosecution has successfully proved its case beyond reasonable doubt and the judgment and order of the lower court does not suffer from any

infirmity. The conviction and sentence awarded to the Appellants are liable to be upheld.

15. In the result, the appeals fail and are dismissed.

16. Copy of this judgment be placed on records of connected Jail Appeal Nos. 1015 of 1994 and 1016 of 1994.

17. Dr. Abida Syed appointed as amicus curiae on behalf of the Appellants in all the three appeals shall get Rs. 5,000 as her fees.

18. Let the lower court record be sent back to District Judge, Siddharth Nagar without delay alongwith a copy of this judgment for compliance

and for making entry in the relevant record. Compliance report be submitted within two months.