
(2007) 08 AHC CK 0240

Allahabad High Court

Case No: Criminal A. No. 2291 of 1997

Smt. Piyari Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 9, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, 23, 50

Citation: (2007) 3 ACR 3395

Hon'ble Judges: Ajai Kumar Singh, J

Bench: Single Bench

Advocate: Akhilesh Chandra Srivastava and I.M. Khan, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

Ajai Kumar Singh, J.

This appeal has been preferred against the judgment and order dated 6.11.1997, passed by Sri S.K. Ratoodi, Ist Additional District and Sessions Judge, Siddharth Nagar in S. T. No. 21 of 1997, State of U.P. v. Piyari Devi, under Sections 20(b)(ii) and 23 of Narcotic Drugs and Psychotropic Substance Act (hereinafter referred to as "Act") Police Station Dhebaruwa district Siddharth Nagar convicting the Appellant u/s 20(b)(ii) of the Act and sentencing her to undergo rigorous imprisonment for 10 years and a fine of Rs. one lac and in default of payment of fine to undergo additional imprisonment for a period of three years.

2. Briefly stated the prosecution case is that on 3.2.1997 at 20.40 hours when S.I. Subhash Singh was on patrol duty and reached near Malgahiya barrier he saw that a woman having a bag in her hand was coming from the side of Madani. At the barrier Head Constable Gorakhnath Yadav, Constable Rajendra Prasad and Constable Adalat Yadav were present. On suspicion when a check was conducted some objectionable

article was found in the plastic bag being carried by the said woman. On interrogation the woman told her name as Piyari, wife of late Lakhan Pasi. S.I. Subhash Singh inquired from her about the contraband article and gave an opportunity to her for search before a Gazetted Officer but the accused Piyari Devi denied the same and voluntarily submitted herself for her search by the police party. Thereafter S.I. Subhash Singh took search of the bag of the accused and found one and half kilogram charas kept in it wrapped in a gamchha. The seized contraband was taken in police custody. Investigating Officer inspected the spot and prepared a site plan Ex. Ka-4. Out of the seized Article 50 grams of charas was taken out by the Investigating Officer as sample. This sample of contraband and the remaining contraband were separately sealed and recovery memo Ex. Ka-1 was prepared at the spot in the light of a lantern. The recovery memo was read over to the witnesses and their signatures were obtained on it. The signature of the accused was also obtained on the recovery memo. Thereafter the seized article and the accused were taken to police station and on the basis of the recovery memo chick F.I.R. Ex. Ka-2 was prepared and the entry was made in the G. D. The sample was sent to the Scientific Laboratory for chemical examination. On chemical analysis the seized contraband was found to be charas. After close of the investigation the Investigating Officer submitted a charge-sheet Ex. Ka-6.

3. Charge under Sections 20(b)(ii) and 23 of the Act was framed against the accused which she denied.

4. To prove its case the prosecution examined S.I. Subhash Singh P.W. 1, Gorakh Nath Yadav P.W. 2 and S.I., D. N. Rai, P.W. 3. Witnesses P.W. 1 and P.W. 2 are the witnesses of fact of recovery and witness P.W. 3 is the Investigating Officer.

5. In her statement u/s 313, Cr. P.C. the accused-Appellant has denied the entire prosecution story and has stated that she has been implicated in a false case on the basis of false documents prepared.

6. After considering the oral and documentary evidence on record the learned Sessions Judge held the accused-Appellant guilty of the charge u/s 20(b)(ii) of the Act and convicted and sentenced her as mentioned above. Feeling aggrieved the present appeal has been filed.

7. I have heard the learned Counsel for the Appellant, learned A.G.A. and have gone through the record.

8. The main contention put forward on behalf of the Appellants-accused is that there has been no compliance of the provisions of Section 50 of the Act and hence the recovery proceedings are vitiated. To the contrary learned A.G.A. argued that it is a case of sudden arrest and a chance recovery and hence the provisions of Section 50 of the Act are not applicable to the present case. He also submitted that in the present case the contraband article has been recovered from a bag which the accused-Appellant was

carrying at the time of seizure and hence it is not a case of personal search and the provisions of Section 50 of the Act are not attracted. Learned A.G.A. in this regard has placed reliance upon the decisions (1) State of Haryana v. Ranbir alias Rana, (LV) 2006 ACC 522: 2006 (2) ACR 1983 (SC); (2) State of Punjab v. Baldev Singh, (IXL) 1999ACC 349: 1999 (2) ACR 1694 (SC) and (3) [Shri Satyawani Pagi and Another Vs. Union of India \(UOI\) and Another,](#)

9. In State of Haryana v. Ranbir alias Rana (supra), the Hon"ble Supreme Court has held as under:

7. The question as regards applicability of Section 50 of the Act need not detain us for long. We may notice that in view of conflict in the opinions of different Benches as also difference of opinion between two Judges of this Court. In State of Himanchal Pradesh v. Pawan Kumar,(L) 2004 ACC 900: 2004 (3) ACR 2779 (SC), the question was referred to a large Bench. A three Judge Bench of this Court in State of Himanchal Pradesh etc. v. Pawan Kumar, (LII) 2005 ACC 710: 2005 (2) ACR 1291 (SC), relying on or on the basis of a large number of decisions and in particular the decisions of the Constitution Bench of this Court in State of Punjab v. Baldev Singh, (IXL) 1999 ACC 349 (SC), clearly held that Section 50 of the Act would be applicable only in a case of personal search of the accused and not when it is made in respect of some baggage like a bag, article or container etc. which the accused at the relevant time was carrying.

10. In Azadar Hussain v. State of U.P. and Anr. 2004 (2) JIC 410 (All): 2004 (3) ACR 2224, it has been held that the provisions of Section 50 of the Act are not attracted as recovery of contraband article was made from the person of the Appellant all of a sudden.

11. The present case is an example of sudden arrest and also in the present case the contraband article has been recovered from the bag which the accused-Appellant was carrying at the time of her arrest, hence in view of the principles of law laid down in State of Haryana v. Ranbir alias Rana (supra) and Azadar Hussain (supra) I am of the opinion that the provisions of Section 50 of the Act are not attracted.

12. The next argument advanced on behalf of the accused-Appellant is that there are no public witnesses of recovery and hence the genuineness of the recovery becomes doubtful. To the contrary it has been submitted by the learned A.G.A. that the recovery is of 20.40 hours in the night of winter season and there is likelihood that no public witness be found present at that time. Perusal of the lower court record also shows that no cross-examination has been done from the side of the accused with the prosecution witnesses P.W. 1 and P.W. 2 in this regard. Thus, under these circumstances I find that only police witnesses (members of the police party) could be available as witnesses of recovery. There is nothing on record to show that the police witnesses were biased with the Appellant in any way. In my opinion, the testimony of the police witnesses cannot be doubted only on the ground that the witnesses are police officers or officials. I find that merely on the ground that there is no public witness of the occurrence genuineness of the

recovery proceedings cannot be doubted.

13. No other point was argued before me on behalf of the accused-Appellant.

14. From the above I find that the prosecution case is fully established by documentary as well as oral evidence 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, as has been stated in the statement u/s 313, Cr. P.C. Thus, I am of the opinion that the prosecution has successfully proved its case beyond reasonable doubt and the judgment and order of the court below does not suffer with any infirmity. The conviction of the Appellant is upheld.

15. As regards the question of sentence, since the Appellant has already been awarded a minimum sentence, i.e., rigorous imprisonment for 10 years and a fine of rupees one lac for the offence, as provided u/s 20(b)(ii) of the original N.D.P.S. Act (i.e., prior to its amendment in the year 2001), hence it does not require any change. But as regards the additional sentence of 3 years rigorous imprisonment in default of payment of fine of Rs. one lac, in my opinion, it is disproportionate and ends of justice would meet if the same is reduced to one year only.

16. In the result, the appeal is partly allowed. While upholding the conviction of the Appellant u/s 20(b)(ii) of the Act and upholding the sentence of rigorous imprisonment of 10 years and a fine of Rs. one lac, the sentence awarded by the trial court in default of payment of fine is modified to the extent that additional sentence of 3 years R.I. in default of payment of fine of Rs. one lac is reduced from three years to one year only.

17. Sri I. M. Khan, appointed as amicus curiae in this case will get Rs. 3,000 as his fees.

18. Let the lower court record be sent back to District Judge, Siddharth Nagar, without delay with a copy of this judgment for necessary compliance and entry in the relevant record. Compliance report to be submitted within two months.