

(2011) 05 GAU CK 0023

Gauhati High Court

Case No: Criminal Appeal No. 95 of 2007

Chandra Kumar Singh

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: May 26, 2011

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 42(2)
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 42(2)

Citation: (2012) 1 GLT 49

Hon'ble Judges: A.K.Goswami, J

Bench: Single Bench

Advocate: Mr. Z. Alam, Advocate appeared for the Respondent: Mr. B.S. Sinha, Addl. P.P.,
Advocates appearing for Parties

Judgement

A.K. Goswami, J.

This criminal appeal is directed against the Judgment and order dated 29.03.2007 passed by the learned Special Judge, Cachar, Silchar in Special Case No. 28/2004 convicting the accused appellant under Section 20(b)(ii) (C) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, NDPS Act.) and sentencing him to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 1.00 lac, in default, further rigorous imprisonment of one year.

2. Heard Mr. Z. Alam, learned counsel appearing for the appellant and Mr. B.S. Sinha, learned Addl. Public Prosecutor, Assam.

3. The prosecution case, in brief, is that on 10.11.2004, one Shri V.K. Singh of 151 Battalion, CRPF lodged an FIR before the "Special House Officer", Police Station (S), Silchar that on a specific information from the Regional Cell of the Unit, raids/search operation was conducted at village Rangpur under Silchar Police Station, Silchar town in the intervening nights of 10.11.2004 and 11.11.2004 by the troops of 151 Btn. of CRPF along with the senior Officers of the Unit and that during the search

operation, the suspected person, namely, the appellant, was apprehended and 11 packets of Ganja weighing about 300 kgs, which was kept inside a Maruti Van bearing Registration No. MN1A6170 was seized from the vehicle possessed by the appellant and that the said vehicle was found in the compound of the appellant. The FIR also indicates that the apprehended persons with the seized items were handed over to the Police Station for consequential steps to be taken by them. Accordingly, Silchar Police Station case No. 1624/2004 under Section 20(C) of the NDPS Act was registered.

4. The police started investigation and on completion thereof, submitted charge sheet against the appellant. Accordingly, Sessions (Special) case No. 28/2004 was registered. The learned trial Judge framed charges under Section 20(b)(ii)(C) of NDPS Act and the same having been read over to the appellant, he pleaded not guilty and claimed to be tried. During the trial, the prosecution examined 5 witnesses. The defence adduced no evidence.

5. PW 1 is one Surjeet Singh, who deposed that on receipt of the secret information that some arms and weapons were to be transported from Jiribum to Silchar on 10.11.2004, they started checking of vehicles. In the meantime, there was another secret information that at Central Water Commission area at Rongpur, some ganja was kept by some Manipuri persons in their house and accordingly, they went to the house of the particular person, opened the gate and knocked at the door and found the accused person there. Hence, the house and premises were searched but there was no ganja to be found. However, one Maruti Van bearing Registration No. MN1A6170 was found in the shed. On being asked about the owner of the vehicle, according to him, the appellant informed him that some one had kept it there and had left. It is also recorded in Ms evidence that the accused brought out the key and thereafter, on being opened, 11 packets of Ganja packed in Polythene bags were found in the dickey of the vehicle. He had deposed that he had looked for independent witnesses but as it was night, they could not find any body. The seizure list was produced and the same was exhibited as Exhibit I. through which the vehicle and packets of ganja were seized from the possession of the accused. It further came out from his evidence that the accused, the vehicle and ganja were taken to Dayapur camp. Subsequently, the FIR lodged by Shri V. K. Singh on 11.11.2004. In the cross examination, it has come out that Exhibit 1, seizure list was written in the house of the accused and the articles were seized at night at about 8:30 P.M of 10.11.2004. He did not remember as to who wrote the Exhibit 1. He further stated that Dayapur camp is about 17 KM from the place of occurrence. He had clearly stated in his cross examination that no search warrant from the Magistrate was obtained before searching the house of the accused. He has also indicated that the house belonged to the accused, as stated by him.

6. PW 2 Jiten Kalita was also a member of the party that carried out the search and seizure operation on the night of 10.11.2004 and 11.11.2004. He stated that the

accused and his wife were found in the house and nothing incriminating was found inside the house. However, when the Maruti Van kept in the campus was opened with the keys provided by the appellant, it was found that there were 11 packets of Ganja weighing 3 quintals. In the cross examination, this witness had stated that Ranjit Chakraborty and M. Gandhi put their signatures in the Dayapur Camp. It is also borne out in his cross examination that there were three families residing near the house of the accused.

7. PW 3, Jasimuddin and PW 4, Monoranjan Das were posted at the Silchar PS and they deposed that on 11.11.2004, CRPF personnel had produced the Maruti Van at about 8:30 A.M. where there were packets of Ganja and the same were seized by the SubInspector, Mr. B.U. Laskar, vide Exhibit3. In crossexamination, they stated that they were not aware from where the ganja was seized.

8. PW 5 is the Investigating Officer and he also deposed the Maruti Van along with ganja being produced in the Police Station on 11.11.2004, which were seized as per seziurc list Exhibit3. He had produced Forensic Science Laboratory Report, Exhibit4, which disclosed that sample gave positive test for cannabis (ganja). He was not the Officer who submitted the chargesheet, as he was transferred in the meantime. However, he deposed that one Mr. F. A, Laskar had submitted the charge sheet in the case, which was exhibited by him as Exhibit5. He had also adduced in his evidence a Sketch Map and proved the same as Exhibit6. In the crossexamination, he indicated in the Sketch Map the house in question as that of one Kulamani Singh. It has also come in his examination that he did not examine any neighbouring witnesses. He also deposed that he was not aware as to whether CRPF personnel had any power to seize ganja under the NDPS Act.

9. The accused appellant was examined under Section 313 CrPC by the learned Trial Court. It came out in such statement that he had been falsely implicated in the case by taking him from the road.

10. mr. Alam, learned counsel for the appellant has submitted that there were gross irregularities in the procedure adopted by the raiding party while conducting search and seizure. He submits that the intelligence input received by the CRPF was not taken down in writing. There is also no evidence on record suggesting that the authority which had made the seizure has been empowered on that behalf by the Central Government. There is also no manner of doubt that the seizure was made around 8:30 P.M. If the evidence of PW 1 is to be believed, it is after the sun rise and before sun set the period during which, under normal circumstances, entry for search and seizure can be made. Placing reliance on the provision of the subsection 2 of Section 42, he urges that no justification and/or explanation has been provided for as to why entry and search had to be conducted around 8:30 PM. No explanation had also been forthcoming as to why the search warrant from the authority could not be obtained. It is also his contention that the prosecution case has miserably failed to prove that the house belonged to the accused appellant. On the contrary,

from the materials on record, Exhibit 6, it is also crystal clear that the premises in which the search was conducted belonged to one Kulomani Singh and not the appellant. No explanation had been forthcoming as to why the witnesses of the neighborhood were not examined during the course of investigation. There is no evidence on record that there was any nexus of the appellant with the Maruti Van seized, which purportedly contained the seized articles. Accordingly, the learned counsel for the appellant urges that in view of the flagrant violation of the provisions of the NDPS Act, which are to be meticulously followed during the entry and search, having been breached with impunity, the impugned judgment of the learned trial Court is vitiated and the same is liable to be set aside and quashed. For the forgoing reasons, it is submitted that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and as such, he is entitled to acquittal. The learned counsel of the petitioner has placed reliance on Judgment rendered in the case of Manik Debnath & Am. Vs. State of Assam, reported in 2008 (1) GIT 2005.

11. Mr. B. S. Sinha, learned Addl. PP, Assam, on the contrary, submits that there is no manner of doubt that the ganja in question has been seized from the possession of the appellant. It is also his contention that there is no requirement in law mandatorily requiring the raid party to put in writing the secret information received from its source. He has also submitted that according to the evidence of PW 1, it is crystal clear that the accused appellant had made available the key of the Maruli Van in question and it was he who said that the said premises belonged to him. He also tried to justify the delay in producing the accused appellant before the Police Station by submitting that the circumstances may not have warranted production of the accused appellant at the late hour. The report of the FSL having established that the seized articles are narcotic substances, the infraction, as claimed by the learned counsel for the appellant, would not vitiate the conviction of the accused appellant. He says that the materials on record would amply demonstrate that the accused appellant was in possession of 300 kgs of ganja and, therefore, his conviction is liable to be sustained.

12. In Manik Debnath (supra), this Court has held that when the prosecution failed to prove that the search, seizure and arrest was made by an authorized Officer, the search, seizure and arrest conducted are illegal abinitio. This Court also held that it is incumbent on the Officer concerned to state the grounds of belief and also send a copy of the grounds of belief to his immediate official superior within 72 hours.

13. I have considered the rival submissions of the parties and perused the materials on record. One of the striking features of the case is that entry and seizure was made at around 8:30 P.M., according to PW 1 and PW 2. The FIR lodged on 11.11.2004, however, indicates that the search and seizure was made in the intervening night of 10.11.2004 and 11.11.2004. The reference to the intervening night on 10.11.2004 is significant in view of the fact that unless the seizure had

taken place around mid night, the question of mentioning that it was done in the intervening nights of 10.11.2004 and 11.11.2004 may not have arisen. Be that as it may, the fact of the matter remains that it was done beyond sun set. By now it is quite established by the various pronouncements of the Apex Court that having regard to the severity of punishment, the provisions of NDPS Act has to be scrupulously observed. A duty is cast on the prosecution to establish with some degree of certainty that the provisions have been complied with as is required under the law. There is nothing on record to suggest that members of the CRPF party who had conducted the raid was in anyway empowered to do so. Least the prosecution could have done was to adduce evidence suggesting that the raid party was authorized under the law to take action under the provisions of NDPS Act. Sadly, that has not been done. If that be so, the very foundation of the prosecution case is severely compromised. Unless there is empowerment authorizing the persons to conduct such raid, search and seizure carried out has to be construed as wholly unauthorized. The fact that there was no disclosure of grounds of belief by the Officer that there was compelling circumstances to conduct the raid at night hence, entry after sun set would also have its own implication. In my opinion, the ratio of Manik Debanth (supra) is squarely applicable.

14. The matter does not rest there. The prefatory nature of investigation carried out by the authorities is amply borne out by the fact that in the description of the seized articles, the signature of Ranjit Chakraborty at SI. 1. has been left vacant. The signatures appearing in the seizure list, Exhibit 1 are that of Ranjit Chakraborty and M. Gandhi, According to PW 2, the signatures were taken in the Dayapur Army Camp. There is no evidence on record to indicate that the aforesaid Ranjit Chakraborty and Mr. M. Gandhi were party to the raid. If we are to believe the prosecution case, seizure had been taken place in the house and, therefore, two witnesses putting their signature at Dayapur Army camp could not have arisen. The evidence of PW1 is also somewhat ambiguous in as much as while in his examination in chief, he had indicated that because it was night they could not find any independent witness, he denied a suggestion in the cross examination that he had not called any neighbouring people to the place of occurrence. Both these versions cannot go together. Either there was no person in the vicinity or there were persons but they had declined to give witness of the seizure.

15. The prosecution case has not come out with any explanation whatsoever, as to why people of the neighbouring houses could not be examined during the course of investigation. Non examination of Kulomani Singh, who is the owner of the house, as revealed from Exhibit 6, Sketch Map also raises doubt in the prosecution case. With respect to the vehicle that was found in the premises, no effort was made to find out to whom it belongs. The prosecution led no evidence to establish who the owner of the vehicle was or how the appellant was connected with such vehicle. There is no evidence to suggest that the appellant is the owner of the house in question where he was allegedly found at the time when search was conducted.

These infirmities cannot be brushed aside.

16. Having regard to the materials on record, I am of the opinion that the entry, search, seizure and arrest had been done in a manner which is not authorized by law. The alleged recovery of ganja, which the appellant disputed to be in his possession in his 313 CrPC statement, can not also be ignored altogether. In his 313 CrPC statement the appellant had submitted that he had been falsely implicated and that he had been taken from the street and thereafter arrested.

17. In view of the above, the conviction and sentence awarded by learned trial Court by the impugned judgment and order is not sustainable in law and the same, is accordingly, set aside and quashed. The appellant is acquitted and set at liberty.

18. In the result, the appeal is allowed. No costs.

19. Send down the lower Court records.