Beikhokim @ Veikhokim @ Mayami Kukini Vs State of Manipur

Court: Gauhati High Court

Date of Decision: May 16, 1994

Acts Referred: Narcotic Drugs and Psychotropic Substances Act, 1985 â€" Section 42(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 42(1)

Citation: (1994) 2 GLJ 457

Hon'ble Judges: H.K.Sema, J and N.G.Das, J

Bench: Division Bench

Advocate: R.K.Sanajaoba Singh , Jagat Chandra Singh, Advocates appearing for Parties

Judgement

NG Das, J.
Smti Beikhokim alias Veikhokim Kukini alias Mayama Kukini, a lady is the sole appellant herein. She was found guilty under

section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act) by Mr. HJ Singh, Sessions Judge,

Manipur East for possessing certain quantity of heroin which is said to have been seized from her bed room at Zomi Villa, North AOC, Imphal on

3.3 87around 3 PM.

2. The story of the prosecution case is as follows : On 3.3.87 around 2.50 PM when Heikrujam Ibomcha Meitei (PW 2), Reader SI to SP/BA

Manipur, Imphal along with some women police constables was performing some specific task at North AOC, he got an information from some

reliable source that one Smti Beikhokim alias Veikhokim Kukini alias Mayami Kukini of Zomi Villa, North AOC Imphal, who is the appellant

before us, stored No.4 heroin powder in huge quantity for selling the same either to mobile agents or consumers.

3. On receipt of this information Heikrujam Ibomcha Meitei along with some women constables rushed to the house of the aforesaid woman and

during search he recovered, (i) one plastic packet containing about 1 gram of No.4 heroin powder, (ii) one big paper packet containing about 1

gram of No.4 heroin powder, (iii) one small packet containing about 20 grams of No. 4 heroin powder, (iv) currency notes of Rs. 695, and (v)

one empty packet for using as container from the beneath the mattress of the bed of the appellant in the southern room of the first floor of her

house. After recovery of the aforesaid heroin and articles, SI Heikrujam Ibomcha Meitei (PW 2) seized the aforesaid heroin drugs and articles

from the possession of the appellant in presence of witnesses, namely, Chongtham Ingo Singh (PW 7), Chabungbam Joykumar Singh (PW 4),

Anang Kukini and Suwanpao Kuki on that very date at 2.50 PM and after seizure he also arrested the appellant.

4. After the aforesaid seizure and arrest, Heikrujam Ibomcha Meitei took the accused and the seized articles to their office of the Border Affairs

inside the complex of CID Office at Imphal where he drew up an ejahar narrating the above facts and addressed it to OC, Imphal Police Station

for taking necessary action. He also handed over the accused to OC, Imphal PS and handed over the seized articles to SI Meibam Rameswar

Singh (PW 8) to whom the case was endorsed by OC for investigation.

5. On receipt of the aforesaid written complaint (Ext.P3), OC Imphal Police Station treated it as FIR and registered Imphal PS Case No. 159

(3)/87 under section 22 of Act the and endorsed it to SI Meibam Rameswar Singh (PW 8) for investigation. Accordingly SI Meibam Rameswar

Singh took up investigation of the case and in course of his investigation he forwarded the appellant to the Court of learned Chief Judicial

Magistrate, Imphal along with a forwarding report dated 4.3.87 wherein it was stated that during investigation he recorded the statements of a

number of witnesses, seized the heroin and materials in question and it was also stated in the forwarding report that the evidence so collected

during investigation established a prima facie caie under section 22 of the Act against the appellant. He, therefore, made a prayer for remanding the

accused to judicial custody but the learned Chief Judicial Magistrate granted bail to the accused for a sum of Rs.3,000/ only. However, after

completing investigation SI Rameswar Singh submitted charge sheet for prosecution of the appellant under section 22 of the Act through Additional

Superintendent of Police.

6. The case being exclusively friable by the Court of Sessions, learned Chief Judicial Magistrate by his order dated 22.12.88 committed the case

to the Court of Sessions after furnishing copies of the prosecution documents to the learned counsel of the appellant. Learned Chief Judicial

Magistrate also directed the appellant to appear before the Court of learned Sessions Judge, Manipur.

7. Accordingly the appellant appeared before the learned Sessions Judge who after perusal of the materials produced before him framed a charge

under section 22 of the Act. The charge was read over and explained to the appellant In the language she understands. The appellant, however,

pleaded not guilty and claimed to be tried.

8. In order to bring home the charge the prosecution examined 9 witnesses in all and also exhibited the documents marked as Ext. Pl to Ext. P8

including the report (Ext. P4) of Assistant Director of the Forensic Science Laboratory, Assam. The sample parcels were sent to the Forensic

Laboratory, Assam whereupon PW 6 Mr. SK Dutta after examination and analysis reported that the samples gave positive test for heroin. The

accused led no evidence in support of her defence. However, her evidence as would appear from the trend of crossexamination as well as the

statement she gave at the time of examination under section 313 of CrPC is that she has been falsely implicated in this case. She straightway denied

having any knowledge about the seized heroin.

9. We have heard arguments advanced by learned counsel of the parties and have given our careful consideration to the evidence of the PWs

examined in the case and we have also quite carefully perused the judgment recorded by the learned Sessions Judge. Mr. RK Sanajaoba Singh,

the learned counsel for the appellant has, at the very outset, contended that the police failed to comply with the certain mandatory provisions of the

Act and on this ground the appellant is entitled to be acquitted. Mr. Sanajaoba Singh has, at first, drawn our attention to section 42(1) of the Act

which provides that when any officer being superior in rank to a peon, sepoy or constables of the departments of central excise, narcotics,

customs, revenue intelligence or any other department of the Central Government or of the Border Security Force is empowered in this behalf by

general or special order by the Central Government or any such officer of the revenue, drugs control, excise, police or any other department of a

State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal

knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance in respect of which an

offence punishable under Chapter IV has been committed then only he has the power to enter into and search any such building, conveyance or

place. Laying emphasis on the words ""and taken down in writing"" Mr. Sanajaoba Singh has argued that the Legislature has made it incumbent upon

a police officer to record in writing the reasons of his belief that an offence punishable under Chapter IV has been committed. In the instant case it

is an admitted fact that the police officer (PW 2) who searched the house of the appellant did not record the information which he received through

secret source and that he went to search the house of the appellant without obtaining any search warrant.

10. Therefore, the question which posses for consideration is whether the requirements under section 42 of the Act for reducing the information in

writing can be said to be mandatory or only directory. To put it differently it is upon the Court to examine the question whether the reasons for the

belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of

subsection. But the learned counsel for the appellant has quite vehemently contended that since police did not record the information as required

under section 42 (1) of the Act it must be held that the police received no information and as such this mandatory requirement of law was not

complied with. In support of his contention Mr. Sanajaoba Singh has referred to the decision in the case of Md. Jainul Abdin alias Nabamacha vs.

State of Manipur, 1990 (2) GLJ 309 wherein it has been observed by a Division Bench of this Court that recording of the grounds of his belief

under the above proviso to section 42 (1) and sending of the report are also mandatory for the reasons that if the information is not reduced into

writing result may be (i) the prosecution may subsequently improve the story, and (ii) officer may be exposed to vexatious prosecution under

section 58 of the Act.

11. But Mr. Jagat Chandra Singh, the learned Public Prosecutor has submitted in his reply that although it is correct that when a police officer or

any of the officers mentioned in section 41 (2) or section 42 (1) of the Act gets information on the basis of which he acts and conducts a search, he

is bound to record in writing that information and to report it his superiors, the fact remains that it is not necessary at all for the prosecution to

prove that theseprovisions of law had been complied with. It is argued by Mr. Jagat Chandra Singh that it is incumbent upon the accused to show

that for non compliance of the said provisions, she was prejudiced. That apart, according to learned Public Prosecutor Mr. Jagat Chandra Singh

these provisions are mainly to the benefit of the officers concerned and to provide a safeguard to them. His submission is that in case such a search

is conducted and nothing is recovered then a complaint may be filed under section 58 of the Act against the concerned officers. According to him

sections 41 (2) and 42 (1) merely provide for a safeguard to such officers. So, according to him if there is any procedural omission, such omission

does not vitiate the proceedings. In support of his contention learned Public Prosecutor has placed reliance on a decision in the case of Santokh

Singh vs. State, 1991 Crl LJ 147 where the learned Judge of Delhi High Court held that non compliance of section 42 of the Act does not vitiate

the investigation. Similar view has also been taken in the case of Nathu Ram vs. State, 1990 Crl LJ 806.

12. In the case of Ismail and etc. vs. State of Kerala, 1991 Crl LJ 2945 it has been held under para 7 of the judgment that the provisions of

section 42, 50 (1), 52 (1) and 57 of the Act are not intended as technical defence on which the prosecution must fail for that reason alone. It is

stated that in view of the stringency of the punishments, the provisions are intended only as safeguards to protect the interest of the accused from

unmerited prosecution and the question to be considered in only prejudice or failure of justice. It has been observed that an irregularity or illegality

in the collection of materials cannot affect the trial and conviction unless prejudice or failure of justice is the result.

13. In the case of RS Seth Gopikisan AgarwaJ vs. SR Sen, Assistant Collector of Customs and Central Excise, Raipur & others reported in AIR

1967 SC 1298 an information was received to the effect that the appellant was in possession of a large quantity of undeclared gold. Pursuant to

that information Assistant Collector of Customs and Central Excise made an authorisation for searching the premises of the appellant. The

appellant''s premises were searched and as a result of the search gold and other articles, foreign currency and other documents were seized. The

appellant filed a writ petition challenging the validity of the said search and seizure. The contention was that the Assistant Collector and the officer

authorised by him to make the search acted with malafide. The High Court rejected that. It was contended therein that the Assistant Collector of

Customs should not only give reasons for his belief but also the particulars of the nature of the goods and of the documents but the Supreme Court

after examination of the scope of section 105 (2) of the Customs Act and section 165 (1) of the Code of Criminal Procedure held that recording of

reasons by the Assistant Collector in writing is not necessary. In this context it may be stated that section 125 of the Evidence Act envisages that

no Magistrate or Police Officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue

Officer shall be compelled to say whenee he got any information as to the commission of any offence against the public revenue.

14. So, in view of the decisions, particularly the decision of the Supreme Court we are of the opinion that once prosecution succeeds in proving

beyond reasonable doubt that the seizure of the articles was made from the possession of the accused and once such burden is discharged, even if

there is any procedural omission such omission docs not vitiate the proceedings. Accordingly we are of the opinion that reducing of the information

in writing as required under section 42(1) and sending of report thereof are not mandatory. This view of ours is, however, confined only to the

question whether reducing of the information in writing as required under section 42 (1) of the Act and lending report thereof are mandatory or not.

We are also of the view that the requirements of section 42 of the Act under the expression ""taken down in writing"" are intended to safeguard the

interest of the officer and not the accused because under subsection 1 of section 58 of the Act any person empowered under section 42, 43 and

44 of the Act are liable to be prosecuted if the entry, search, seizure or are vexatious.

15. We accordingly formulate the following question and refer it for decision by a larger Bench. The question is :

Whether recording of the information as required under section 42(1) of the Act is mandatory in a case where no prejudice was caused to the

accused at the time of search and seizure of the contravened goods ?