(2000) 03 AP CK 0016

Andhra Pradesh High Court

Case No: Criminal Appeal No. 618 of 1997

Shaik Bande Ali		APPELLANT
	Vs	
State of A.P.		RESPONDENT

Date of Decision: March 1, 2000

Acts Referred:

- Constitution of India, 1950 - Article 215
- Criminal Procedure Code, 1973 (CrPC) - Section 362, 369
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, 20(1), 42, 42(1), 42(2)

Citation: (2000) 1 ALD(Cri) 512 : (2000) 3 ALT 381 : (2000) 1 ALT(Cri) 412 : (2000) CriLJ 2033 : (2000) 70 ECC 715

Hon'ble Judges: B. Sudershan Reddy, J

Bench: Single Bench

Advocate: A. Prabhakar Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

B. Sudershan, J.

The learned First Additional Sessions Judge, Warangal, convicted the appellant herein for the offence punishable u/s 8(b) read with Section 20(i)(b) of the Narcotic Drugs and Psychotropic Substances Act (for short ''the Act'') and sentenced to him to under go rigorous imprisonment for one year and to pay a fine of Rs. 3,000 (Rs. Three thousand only) in default to suffer rigorous imprisonment for a period of six months. The appellant challenges the conviction, as well as the sentence imposed on him by the learned Sessions Judge. The Judgment dated: 02-07-1997 in Calendar Case No. 90 of 1995 on the file of the learned First Additional Sessions Judge, Warangal, is impugned in this criminal appeal.

2. It may be necessary to briefly notice the case of the prosecution before adverting to the questions that may arise for consideration in this case. The Station House

Officer, Khanapur P.S., in pursuance of the information about the cultivation of raided the land in the possession of the appellant herein on 05-10-1994. The land is locate house at Biudharaopet village. The inspection is alleged to have been taken place in the presence of two mediators, who are examined as P.Ws. 1 and 2. The Village Administrative Officer, examined as P.W. 3, is also stated to have been present at the time of raid. It was found that the appellant herein was illegally cultivating and raised sixty-two ganja plants in the land. The plants were got plucked. They were sent under a Panchanama for chemical analysis. On analysis the samples were found to be ganja plants.

3. The prosecution examined P.Ws. 1 to 5 and got marked Exs. P-1 to P-6. The learned Additional Sessions Judge, upon appreciation of the evidence, as well as the material available on record, found the appellant herein guilty of the charge framed u/s 8(b) read with Section 20 of the Act and accordingly he was convicted and sentenced as noticed supra.

4. In this appeal, Sri P. Prabhakar Rao, learned Counsel for the appellant submits that the whole prosecution is vitiated for the reason of non-compliance with the procedure prescribed u/s 42 of the Act and for that reason alone the prosecution has to be quashed. It is also urged by the learned Counsel for the appellant that the prosecution failed to establish the ownership of the land, where ganja cultivation was found. According to the learned Counsel for the appellant, there is no evidence on record to show that the appellant herein is the owner of the land where ganja plants were raised.

5. This Court having heard the learned Counsel for the appellant and the learned Public Prosecutor allowed the appeal by Judgment dated: 22-01-2000 pronounced in the open Court. The appeal was allowed on the siple ground that prosecution failed to comply with the mandatory requirement u/s 42 of the Act. This Court came to the conclusion that P.W. 3, the Station House Officer, Khanapur P.S., having received the information about the cultivation of ganja failed to take down the said information in writing and further failed to send a copy thereof to his immediate official superior. Immediately after pronouncing the Judgment in the open Court, this Court entertained a doubt as to the correctness of the judgment pronounced in the open Court. The doubt entertained by the Court relates to the interpretation of Section 42(1)(2) of the Act. No doubt, the Apex Court in an authoritative pronouncement in State of Punjab Vs. Balbir Singh, held the provision to be mandatory in its nature. The said principle is reiterated by a subsequent Constitutional Bench of the Apex Court in State of Punjab Vs. Baldev Singh, etc. etc., . But this Court entertained a doubt as to whether any and every information received is required to be reduced into writing and recorded by the empowered officer. Whether vague and indefinite information received from sources have to be recorded in writing by the empowered officer?

6. Therefore, this Court thought it fit to rehear the whole matter and accordingly directed the Registry to list the matter on 24-01-2000 "for being mentioned".

7. The learned Counsel for the appellant raised serious objection for further hearing of the case. Learned Counsel for the appellant contended that the Court cannot review its own judgment after pronouncing the same in the open Court. Learned Counsel submits that such a course is not permissible in law. This Court cannot review its own judgment in a criminal case, once pronounced, for whatever reason. Learned Counsel made an extreme submission.

8. Having regard to the importance of the question that arose for consideration, this Court requested Sri C. Padmanabha Reddy, learned senior Counsel to assist the Court as amicus curiae. The learned Senior Counsel readily agreed to assist the Court and accordingly rendered in valuable assistance. This Court acknowledges the assistance rendered by the learned senior Counsel.

9. In the circumstances, the first question that arises for consideration is as to whether this Court can reopen and rehear the matter after pronouncing the judgment in the open Court.

10. It may be necessary to notice that this Court merely pronounced the judgment. The judgment was dictated in the open Court to the Court Master. The judgment was not transcribed. I have not signed the script of the judgment.

11. Section 362 of the Code of Criminal Procedure, 1973, provides that no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. A plain reading of the provision, itself is enough to reject the extreme submission made by the learned Counsel for the appellant. Since the whole submission centers round the interpretation to be placed upon Section 362 of the Code, it may be necessary to have a look at the same.

362. Court not to alter Judgment:

"Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

12. Evidently, Section 362 prohibits the Court to alter or review the signed judgment or final order disposing of a case, except to correct a clerical or arithmetical error. It specifically speaks that signed judgment or final order disposing of a case cannot be altered or reviewed by the Court. The question is as to whether the expression "no Court" used in Section 362 would include the High Court also. I shall advert to the question at a later stage.

What is a Judgment:

13. In Surendra Singh and Others Vs. The State of Uttar Pradesh, , the Supreme Court while interpreting Section 369 of the Code of Criminal Procedure, 1898 (Act V of 1898), which is analogous to Section 362 of the present Code, observed that a judgment within the meaning of this section is a final decision of the Court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court. It is a judicial act, which must be performed in a judicial way. Small irregularities in the manner of pronouncement or mode of delivery do not matter, but the substance of the opinion must be there. It is observed:

"An important point therefore arises. It is evident that the decision, which is so pronounced or intimated, must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But however it is done it must be an expression of the mind of the Court at the time of delivery. We say this because that is the first judicial act touching the judgment, which the Court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however, heavily and often they may have been signed. The final operative act is that which is formally declared "in open Court with the intention of making it the operative decision of the Court. This what constitutes the "judgment".

Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of ''locus paenitentiae'' and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed before hand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallize into a full fledged judgment and becomes operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in Court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery. But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge''s responsibility is heavy and when a man''s life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or

for consideration and criticism. The mere signing of the draft does not necessarily indicates a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft . sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment.

14. In Sangam Lal Vs. Rent Control and Eviction Officer and Others, , the following question arose for consideration by a Full Bench of Allahabad High Court.

"Whether, after a judgment has been orally dictated in open Court but before it is signed and sealed, it can be completely changed?"

15. A Division Bench of Allahabad High Court in Faulad v. State AIR 1961 All. 224, took the view that until the judgment is signed and sealed after delivery in Court, it is not a judgment and it can be changed or altered at any time before it is signed and sealed.

16. Another Division Bench of the same High Court in Faulad and Another Vs. State, , doubted the correctness of the proposition and for that reason the matter came up for consideration before a Full Bench of that Court. The Full Bench after making analysis of the judgment in Surendra Singh case (3 supra) held:

"There is a power of review both in case where judgment has been delivered but not signed and in cases in which judgment has been delivered, signed and sealed. In the former case, the power to alter or amend or even to change completely is unlimited provided notice is given to the parties and they are heard before the proposed change is made, while in the latter case the power is limited and review is permitted only on very narrow grounds. Hence a judgment which has been orally dictated in open Court can be completely changed before it is signed and sealed provided 4. Sangam Lal Vs. Rent Control and Eviction Officer and Others, . notice is given to all parties concerned and they are heard before the change is made."

17. However, a learned single Judge of Rajasthan High Court in Dhanna and Others Vs. State of Rajasthan, came to a different conclusion and held that there is no provision in the Code of Criminal Procedure requiring that the judgment of the High Court in its criminal appellate jurisdiction should be dated and signed in the manner provided in Section 367. The learned Judge accordingly held that the order of rejection of appeal passed by the High Court is formal declaration in a judicial way in open Court and goes on the record of the case; as such it cannot be altered or reviewed. The learned Judge referred to the Rules framed by the Rajasthan High Court, which provides that the Judgment may be delivered orally in open Court and* a transcript can be initialled or signed when prepared by the judgment-writer later on, in arriving at the said conclusion. With great respect, express my inability to subscribe to the view expressed by the learned single Judge of the Rajasthan High Court. It does not lay down the correct law. The Full Bench of the Allahabad High

Court in Surendra Singh case (3 supra), interpreted the Judgment of the Supreme Court in the correct manner.

18. In my considered opinion, the High Court can alter, review or modify its judgment before the Judgment is transcribed and actually signed by the Judge, after its pronouncement in the open Court. The High Court can recall its Judgment and rehear the matter even after pronouncing the same in the open Court. The High Court''s power to annual, modify, review or correct the judgment after pronouncing the same in the Court, before the transcript is signed by the Judge, is in no way limited or effected by Section 362 of the Code of Criminal Procedure, 1973.

19. There is yet another way to look at this issue. Article 215 of the Constitution of India declares that every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. It is well settled that the High Courts in India are superior Courts of record. They have inherent and plenary powers. They have unlimited jurisdiction, including the jurisdiction to determine their own powers. The High Court has inherent power to correct the records. A Court of record envelopes all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A Court of record is undoubtedly a superior Court, which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of record, has a duty to itself to keep all its records correctly and in accordance with law. (See: M.M. Thomas Vs. State of Kerala and Another, .

20. It is thus clear that if any apparent error is noticed by this Court in respect of any of its orders, it has not only power, but also a duty to correct it. The High Court is duty bound to keep its records correctly and for that purpose can always correct its record. The High Court cannot be denied the power of correcting its own record, when it notices the apparent errors. Such denial may dwindle down the superior status of the High Court.

21. For all the aforesaid reasons, I hold that this Court is not precluded from rehearing the criminal cases after its disposal by way of pronouncing the judgment in the open Court. Of course, it goes without saying that the Court can do so and change the judgment and its view, but only after rehearing the same by giving notice to the parties. Mere pronouncement of judgment in a criminal case, in the open Court without signing the script, would not operate as a bar and put any fetters upon the jurisdiction of the High Court to rehear the matter. This, in my considered opinion, is the true interpretation of Section 362 of the Code of Criminal Procedure, 1973.

22. The objection raised in this regard by the learned Connsel for the appellant is accordingly rejected.

Merits of the Case:

23. This Court once again heard the matter afresh after directing it to be listed "for being mentioned". The learned Counsel for the appellant and the learned Public Prosecutor advanced their arguments on the merits of the case. Sri C. Padmanabha Reddy, learned senior Counsel also assisted the Court as amicus curiae. In my considered opinion, it may not be necessary in this case to consider the question as to whether any and every information received by the empowered officer is to be recorded in writing and send the information to the superior officer. This appeal can be disposed of on merits without going into that question.

24. P.W. 5 is the Station House Officer, P.S., Khanapur, who received the information about the cultivation of Ganja. It is in his evidence that he has secured two panchas at Budharaopet village. He noticed cultivation of sixty ganja plants in the backyard of the appellant''s house. Scene of offence panchanama was prepared under Ex. P-1 dated 05-10-1994 and in the said Panchanama, it is mentioned that survey number of the land where ganja cultivation was found as ''31/1''. It may be required to notice that in the rough sketch of the scene of offence only backyard of the house of the appellant was shown, but the house was not shown.

25. The Village Administrative Officer, Khanapur village is examined as P.W. 3. It is in his evidence that he acted as a panch for seizure of ganja plants. At the time of panchanama, he was in-charge Village Administrative Officer of Budharaopet village. Ex. P-2 is the certificate issued by him to the effect that the house of the appellant herein is located in Survey No. 31/1. According to him, he issued such a certificate as per the records. The Superintendent in the office of the Revenue Divisional Officer, Warangal is examined as P.W. 4. It is in his evidence that the concerned Village Administrative Officer was under suspension. The in-charge Village Administrative Officer (P.W. 3) was not familiar with the area and issued an incorrect certificate under Ex. P-2. It is in his evidence that he identified the land and issued the correct certificate with correct survey number. He issued Pahani Ex. P-3 and the revised certificate under Ex.P-4. According to him, the survey number of the field pertaining to the appellant is "2/3'', but not ''31/1'', as certified by P.W. 3. The Mandal Revenue Officer is the custodian of the records. But he was not examined. The Superintendent working in the Office of the Revenue Divisional Officer is examined as P.W. 4 and we have already noticed his evidence. In the cross-examination, P.W. 4 categorically admitted that he did not go to the spot, where ganja cultivation was found. He states in his evidence that he revised the certificate Ex. P-2 issued by the Village Administrative Officer certifying that the field in which ganja plants are raised is in Survey number ''31/1'' by issuing another certificate, Ex. P-3 certifying that the land in which ganja cultivation was found is in Survey number Admittedly, Survey number 31/1 is not owned by the appellant. It is further admitted by P.W. 4 that he has not visited the spot to verify as to in which part of the survey number the field where ganja plants were raised would fall. Nothing is stated in the evidence as to on what basis and material, he corrected Ex. P-2 issued by the Village Administrative Officer and issued another Certificate, Ex.

P-3. It would have been a different matter altogether, had P.W. 4 visited the spot and fixed the location of the land with reference to the available records. Thus, there is any amount of ambiguity with regard to the land in which the ganja cultivation was found by P.W. 5. Even if it was found in survey number "31/1", no case is made out against the appellant herein as he is not the owner of the land. In fact, this is the earliest version given by the Village Administrative Officer certifying that ganja plants were found in survey number "31/1" of the village. The revised certificate issued under Ex. P-3, by the P.W. 4 certifying that the survey number of the field in which ganja plants were found as "2/3" cannot be relied upon for convicting the appellant for the offence punishable u/s 8(b) read with 20(i)(b) of the Act. The appellant, undoubtedly, is entitled for the benefit of doubt. It is not possible to convict the appellant herein on the basis of mere suspicion. The prosecution failed to establish the charge against the petitioner beyond reasonable doubt.

26. For all the aforesaid reasons, I hold that the appellant herein is found not guilty of the charge u/s 8(b) read with Section 20 of the Narcotic Drugs and Psychotropic Substances Act. He is accordingly acquitted of the said charge. The conviction as well as the sentence imposed against him are set aside. His bail bonds shall stand cancelled.

27. The appeal is accordingly allowed.