

(2014) 09 CAL CK 0068

Calcutta High Court

Case No: CRA 734 of 2006 and CRA 354 of 2010

Rahul Chakraborty

APPELLANT

Vs

Union of India
 Swapan
Mishra Vs The State of West
BengalRESPONDENT

Date of Decision: Sept. 25, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20(b)(ii)(C), 42, 43, 67

Citation: (2014) 4 CALLT 463 : (2015) 1 CCR 256 : (2015) 2 CHN 129 : (2016) 1 Crimes 105**Hon'ble Judges:** S. Chatterjee, J; Nishita Mhatre, J**Bench:** Division Bench**Advocate:** Partha Sarathi Bhattacharya, Sukla Das Chandra and R.K. Sanyal, Advocate for the Appellant; D.N. Chatterjee, Advocate for the Respondent

Judgement

Nishita Mhatre, J.

Appeal No. 734 of 2006 has been filed by Rahul Chakraborty and Swapan Mishra against the judgment and order of the Special Court under the NDPS Act, Barasat. Swapan Mishra has filed another appeal against the same judgment and order being CRA 354 of 2010. Both the appeals have been heard together.

2. The case of the prosecution is that the Intelligence Officers of the Narcotics Control Bureau (hereinafter referred to as "NCB") acted on specific information received and proceeded to Burdwan Bypass More to conduct a raid. A group of NCB Officers reached there by 12.30 a.m. on 2nd July, 2003. They tried to intercept a Mahindra Marshal jeep bearing No. WB-02B-7864, which was seen approaching from the Panagarh side at about 1 a.m. The vehicle did not stop though the officers tried to stop it. The officers then chased the vehicle for a long distance and were

finally able to intercept it at Dunlop More at 4 a.m. on 2nd July, 2003. The driver of the vehicle managed to escape. The other persons who were sitting in the car disclosed their names as Rahul Chakraborty and Swapan Mishra. The officers then informed the two persons that they intended to search the vehicle as they had specific information that a huge quantity of ganja was kept concealed in cavities in the vehicle. The officers had no equipment to open the concealed cavities. Therefore, they decided to take the vehicle to the NCB Office at Karaya Road, Kolkata. They took two independent witnesses from the onlookers who had gathered when they had intercepted the car at Dunlop More. The appellants were issued notices u/s 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") to appear before the NCB Officer on 2nd July, 2003 at 7 a.m. The prosecution claims that two independent witnesses and the appellants voluntarily accompanied the officers to the NCB office. On searching through the car at the NCB, Eastern Zonal Unit, Kolkata (hereinafter referred to as "NCB, EZU"), it was found that 55 packets of different sizes containing flowering tops of cannabis plant were concealed in cavities on the roof, the seat and floor of the vehicle. The packets were wrapped in a newspaper and with a polythene cover on the outside. According to the prosecution a small quantity of the contents, taken randomly, tested positive for ganja/cannabis. All the packets were seized u/s 43 of the NDPS Act. Each of the packets was weighed and an inventory was made. The total weight of the packets was 363.1 Kgs. It has been stated by the prosecution that six samples of 25 gms. each in duplicate were drawn from six packets which were numbered. These samples were labelled and packed in envelopes which were sealed. The seizing officer, the owner of the goods, independent witnesses and a Gazetted Officer signed the labels. The rest of the ganja which was seized in the 55 packets was also labelled and sealed in the presence of the independent witnesses and others. All of them signed the labels. The vehicle was also seized u/s 43 of the NDPS Act. The prosecution claims that the appellants submitted voluntary statements which implicate themselves. The appellants were then arrested on 2nd July, 2003 at 10.30 p.m.

3. As a follow-up action, the officers and staff of the NCB, EZU, claimed that they seized ganja from some other persons who were co-accused in this case, namely, Kusum Debnath and Dilip Dutta. Those persons have been acquitted by the Special Court.

4. Nine witnesses were examined before the Special Court to prove the case against the appellants. These witnesses were personnel from the NCB.

5. The Special Court, while acquitting Kusum Debnath and Dilip Dutta, has convicted the appellants who have both been found guilty of the offence u/s 20(b)(ii)(C) of the NDPS Act. Both the appellants have been sentenced to suffer rigorous imprisonment for 12 years and to pay a fine of Rs. 1,50,000/- (Rupees one lac and fifty thousand only) each, in default of payment of such fine both of them have been

directed to suffer rigorous imprisonment for a further period of 1 year each.

6. The first witness examined by the prosecution was an Intelligence Officer, Sadhananda Mondal, who has narrated the incident. He claims that he could identify Rahul Chakraborty in Court. The officer has also stated that he was not aware about the owner of the vehicle and that he had not bothered to enquire about its ownership. He was not able to recollect whether the vehicle seized was photographed. The witness has stated that he recorded the statement of Swapan Mishra consisting of five pages. According to the witness it was a completely voluntary statement made by the appellant. The witness has further stated that when the vehicle was intercepted, 50 or 60 persons had assembled there.

7. PW 2 is the complainant. He has admitted that though he obtained permission from his superior officer to file the complaint, that fact has not been mentioned in the complaint.

8. PW 3 is the Assistant Chemical Examiner. He examined the samples sent for analysis and found that they tested positive for ganja. According to him when he received the articles, the seals were intact. The articles were received on 10th July, 2003 and were in his custody till August 29, 2003.

9. PW 4 is the witness who has been examined in respect of the seizure made from one of the other accused persons who has been acquitted and therefore his evidence is not relevant for deciding the appeal.

10. PW 5 is the Intelligence Officer, who arrested the appellants on 2nd July, 2003. He has reiterated the contents of the complaint and thus corroborated the testimony of PW 1. This witness has conceded that there was no independent witness to the arrest memo. He has also stated that he did not photograph the seized vehicle or the seized articles before they were packed, sealed and labelled. According to him, although the inventory was made, the signature of the concerned Magistrate had not been obtained on the inventory list which was prepared in the NCB office. He has further conceded that the time at which the allegedly voluntarily statements were made by the appellants has not been mentioned in the statements nor were the appellants cautioned before they made the statements that they could be used against them. No independent witness was present when the statements were recorded.

11. PW 6 was the Assistant Director-in-charge and posted at the NCB EZU, Kolkata. He has narrated the incident as mentioned by the other witnesses. He has also spoken about two independent witnesses being taken from the point at which the vehicle was intercepted in Dunlop till the NCB office in Kolkata. According to this witness, Rahul Chakraborty was arrested at 10.30 p.m. while Swapan Mishra was arrested at 10.40 p.m. on 2nd July, 2003. The witness has admitted that no photographs were taken of the vehicle in question or of the articles seized. He has claimed that he was not a party to the raid between 1st July, 2003 and 3rd July, 2003

and that he had acquired knowledge about it from his officers. Thus, this witness had no personal knowledge about the raid conducted pursuant to which the appellants were apprehended.

12. PW 7 was another Intelligence Officer of the NCB who was a part of the raiding team. He has reiterated the version of the earlier witnesses regarding the interception of the car and the seizure. However, this witness has stated that the search resulted in 55 different "slabs" and not "packets" of flowering tops of cannabis being recovered from the vehicle. He has admitted that there are several police stations between Burdwan and Calcutta, and that they had not informed any of the police stations before carrying out the raid.

13. PW 8 was in charge of the godown at the NCB office on the relevant date. He has stated that the Investigating Officer S.K. Biswas who has been examined as PW 5 had deposited 55 packets of ganja and 12 samples packets with him and also the Mahindra Marshal jeep in the godown. He claims to have made the relevant entries in the godown register. He then prepared the test memos in respect of the seized articles. He has also admitted that the godown register does not indicate the place from where the goods were seized and the description of the vehicle is also not mentioned.

14. PW 9 prepared the notices u/s 67 of the NDPS Act which were issued to the appellants. The witness claims that after the car was intercepted and he had served the aforesaid notices to the appellants he left the spot for his residence.

15. In the examination of the appellants u/s 313 of the Cr.P.C. Rahul Chakraborty has stated that the entire story of the prosecution is fabricated. In answer to the question as to whether he had signed the seizure list as mentioned by PW 5, he has stated that he was supposed to sign the same. In respect of the so-called voluntary statement made by him as mentioned by PW 5 he has stated that he was compelled to issue the statement. After being mentally tortured and pressurised he has categorically denied the incident.

16. The first submission of Mr. Partha Sarathi Bhattacharya, learned Counsel appearing for the appellants, is that the source of the information received by the Intelligence Officers has not been disclosed. He further submitted that it was incumbent on the officer who had received the source information to first inform his superior officer before the raiding party set off to conduct the raid. He submitted that all the provisions of the NDPS Act have been flouted in this case. According to the learned Counsel if there is a breach in this procedure prescribed u/s 42 of the NDPS Act the appellants are entitled to be acquitted. We have given our anxious consideration to this submission of the learned Counsel. Section 42 of NDPS Act makes it incumbent on the officer who receives information from a source to inform his superior officer before conducting a raid. PW 5 has deposed that before he left the office along with PWs 1, 7, 9, Ardhendhu Sekhar Ghosh and the driver of their

vehicle they all signed the movement register. PW 6 the Assistant Director in-charge, being the superior officer of the officers who conducted the raid was informed about the specific information received after which the raiding party left for working on the information received. Therefore there has been compliance of this provision of law.

17. The next submission of the learned Counsel was that the entire incident was unbelievable because no independent witnesses have been examined by the prosecution. He drew our attention to the fact that two seizure witnesses had been taken all the way to the NCB office in Calcutta despite which they were not examined in Court.

18. From the evidence on record it is apparent that 50 or 60 persons had gathered when the car was intercepted at 4 a.m. at Dunlop. It is unbelievable that there would be so many people on the road at 4 a.m. If indeed there were so many people who had gathered once the car was intercepted, there is no explanation as to why only two persons were chosen to be independent witnesses. These witnesses have not been examined before the Special Court and there is no justification for their absence. If the vehicle was seized at Dunlop after it was intercepted the seizure memo in respect of the jeep could have been drawn up at the place it was intercepted. The evidence on record does not offer any clarification as to why this was not possible. There is no explanation for driving these independent witnesses all the way to Kolkata to witness the seizure of the contraband. The Special Court has accepted the statement made in the complaint that the vehicle had a fake number plate although none of the witnesses examined before the court have deposed to this fact. Thus the seizure itself appears to be suspicious.

19. The learned Counsel then criticised the manner in which the so-called voluntary statements have been extricated from the appellants. He submitted that the statements could never have been voluntary as expected u/s 67 of the NDPS Act as these statements were made while the appellants were detained and in control of the NCB Officers. We have perused the statements which have been translated into English from Bengali. Swapan has tried to suggest that he was wrongly involved in this incident because he accepted Rahul's offer that they should go for a drive in the car. Rahul Chakraborty has spoken about being instructed by Dilip Dutta to ferry the ganja. Dilip Dutta has been acquitted. After scanning these two statements, it is evident that the statements are the handiwork of the Intelligence Officers and not statements made by the appellants. PW 1 has stated that he has recorded the statements of the appellants as dictated by them. PW 6 was present while the statements were being recorded. It is unnatural and unbelievable that a person who is expected to submit his voluntary statement regarding a raid conducted and the seizures made from him of any contraband would mention in detail in the statements, the manner in which the seizures were made, the procedure adopted for drawing the samples, labelling the packets, signing them and sending them for

analysis to the Forensic Science Laboratory. These details which are contained in the statements which allegedly have been made voluntarily are therefore not believable. The statement made by Swapan has a footnote indicating that 5 pages had been recorded in Bengali which was the language understood by the appellants. There is no such noting in the statement allegedly submitted by Rahul Chakraborty. Significantly the time of recording the statements has not been mentioned. Therefore, it is not possible to accept with certainty that the statement was recorded before the appellants were arrested on 2nd July, 2003 between 10.30 p.m. and 10.40 p.m.

20. Section 42 of the NDPS Act requires the local police station to be informed of any impending raid which may be conducted. The evidence on record indicates that there were several police stations between Burdwan Bypass More and Dunlop where the car was finally intercepted. However, the NCB did not inform the local police about the raid. Furthermore, the NCB Officers have all stated that they received information that ganja would be concealed in secret cavities of the car which was used to transport it. It is surprising that the raiding party consisting of Intelligence Officers of the NCB did not bother to intercept the vehicle armed with requisite instruments to open the secret cavities of the car where the contraband was allegedly hidden. If indeed the officers knew that there were secret cavities in the car and the contraband was being concealed in them, there is no material on record to indicate what prevented these officers from being prepared for the recovery of these contraband articles at the spot of interception of the car. Significantly, the prosecution has made no attempt to ascertain the ownership of the car which was seized.

21. After considering all the evidence on record we find that the seizure of the contraband has been made in suspicious circumstances. The local Police Station was not informed of the raid which was to be conducted. The purported confessional statements do not appear to be natural and seem to be doubtful for the reasons mentioned earlier. There appear to be serious lacunae in the prosecution case. The appellants therefore are entitled to the benefit of doubt. The appellants have been incarcerated for 11 years and 2 months. The appellants are therefore acquitted. The judgment and order of the Special Court is set aside.

22. The appellants shall be set at liberty forthwith if not required to be detained in any other case.

23. The seized alamsats to be destroyed in accordance with law.

24. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.