

(1979) 01 BOM CK 0057

Bombay High Court

Case No: Criminal Revision Application No. 457 of 1978

Rohidas Harbakas
Dhakali

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Jan. 17, 1979

Acts Referred:

- Bombay Prohibition Act, 1949 - Section 66(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 360

Hon'ble Judges: S.C. Pratap, J

Bench: Single Bench

Advocate: Navin Parekh, for the Appellant; M.D. Gangakhedkar, Public Prosecutor, for the Respondent

Judgement

S.C. Pratap, J.

This revision application has been filed by the original accused, challenging the order of conviction and sentence passed by the learned trial Magistrate for an offence punishable u/s 66(1)(b) of the Bombay Prohibition Act and confirmed in appeal by the learned Additional Sessions Judge, Jalgaon.

2. Prosecution case, in brief, has been that on 8th October, 1977, the accused was travelling by the 58-Up to Pathankot Express, from Delhi to Bombay. He was a passenger from Delhi to Nasik. At about 10 p.m. on the same day, when the said train stopped at the Chalisgaon Railway Station, Head Constable Abhimanyu Patil and Constable Pralhad, got into the compartment in which the accused was travelling. The accused was seated on a bench and there was a trunk below his seat. Head Constable, Abhimanyu, smelt Ganja and made inquiries with the accused about the trunk near his feet. The accused was frightened when asked to open the trunk. The accused, however, did open the trunk taking out its key. On opening, the trunk was found to contain 3 packages of Ganja in cloth bags. The accused was detained and the party got down at the next stop i.e. Manmad Railway Station and

by the train in the opposite direction, the party returned to Chalisgaon and went to the Railway Station. The accused was arrested. After completion of investigation and receipt of report from the Chemical Analyser, the accused came to be charge-sheeted. The defence of the accused was one of denial. The trunk was disowned by the accused and the same was alleged to have been foisted upon the accused. The learned trial Magistrate by his order dated 3rd July, 1978, convicted the accused and sentenced him to suffer R.I. for a period of 3 months and also to pay a fine of Rs. 200/- in default whereof, he was sentence to suffer further R.I. for a period 2 months. Appeal preferred therefrom by the accused was dismissed by the learned Additional Sessions Judge by his judgment dated 13th October, 1978.

3. In this revision application filed by the accused Mr. Navin Parekh, the learned Advocate, appearing on his behalf, strenuously contended before me that the reasoning and the conclusion of both the courts below were illegal and unsustainable on the evidence on record and the accused was consequently entitled to an acquittal. I am afraid it is not possible to accept this contention. In my view, there is sample evidence on record to sustain the conviction of the accused. Even if I were to re-appreciate the evidence, it would not have been possible for me to take any different view than the one taken by the two courts below. I do not find any illegality or impropriety in the judgments of the courts below so as to warrant interference therewith in the present revision application.

4. We have, in support of the prosecution case, the evidence of Prosecution Witness No. 1, the complaint Head Constable, Abhimanyu. His evidence has been corroborated by the evidence of the accompanying Constable Prosecution Witness No. 2, Pralhad, as also the evidence of one Subhash Malhotra, Prosecution Witness No. 3, an Import-export trader from Bombay, who was one of the travellers travelling in the same compartment of the same mail in which the accused was travelling. The panchanama at Exhibit No. 7 and the evidence of the panch witness, Shivaji as also the report of the Chemical Analyser, Exhibit No. 10, also corroborate the case of the prosecution against the accused. Considering the evidence of the aforesaid prosecution witness, the conviction of the accused by the learned trial Magistrate and its confirmation by the learned Additional Sessions Judge is, in my opinion, amply justified. It would in the circumstances not be possible for this Court to interfere with the order of conviction.

5. There is, however, considerable substance in the next contention of Mr. Parekh, the learned Advocate for the accused viz. that this was a case where the courts below should have exercised their powers u/s 360 of the Code of Criminal Procedure. Though the accused was under 21 years of age both at the time of the offence as also at the time of his conviction by the learned trial Magistrate the provisions of the Probation of Offenders Act do not apply to him because of his conviction under the provisions of the Bombay Prohibition Act. This, however is, in my opinion, a fit case for recourse to powers u/s 360 of the Code of Criminal

Procedure. Nothing has been brought against the accused, so far as his antecedents and/or character is concerned. His age, as already mentioned hereinabove, was under 21 years. There is nothing on record to indicate any previous conviction. Taking all the factors into consideration as also bearing in mind all the circumstances of the case relating to the evidence I am of the view that it would be expedient in this case that the accused should be released on probation of good conduct instead of sentencing him at once to any punishment. The learned Public Prosecutor, Mr. M.D. Gangakhedkar, was also not in a position to seriously contest the aforesaid recourse to section 360 of the Code of Criminal Procedure.

6. In these circumstances, I partly allow this revision application. It confirm the conviction of the accused. Instead, however, of sentencing him at once to any punishment. I direct that the accused be released on his entering into a bond in the sum of Rs. 500/- with one surety in the like amount, to appear and receive sentence when called upon during a period of one year and in the meantime to keep the peace and be of good behaviour.

7. Fine, if any, paid to be refunded.

8. Bail bond of the accused shall stand cancelled.

9. Rule is made partly absolute.