SUPREME COURT OF INDIA

Ashiq Miyan

Vs.

State of M.P.

Crl.A.No.128 of 1966

(V. Ramaswami and C. A. Vaidialingam, JJ.)

01.05.1968

JUDGEMENT

VAIDIALINGAM, J.

1. This is an appeal, by special leave in which the appellants challenge the propriety and correctness, of the order of the Madhya Pradesh High Court confirming their conviction, under Section 120B, I. P. C., 1878 (Act 1 of 1878), (hereinafter called the Act). Appellants 2 and 3 are the sons of the first appellant, and the 4th appellant since deceased, was his nephew.

2. On receiving information, that opium was being smuggled and secretly kept, in the house of the appellants the Sub- Inspector of Police Station Malharganj, Indore with a police party, raided their house, on September 19, 1960, and recovered a fairly large quantity of opium of about 2 maunds, 14 seers and 14 chhatacks. The appellants were arrested and charge-sheeted, for having committed offences, under Section 120B, I. P. C. and Section 9 (a) of the Act. They pleaded not guilty. Their defence was that each of them was living separately, and they were not also in the house,

when the opium was stated to have been recovered. The deceased, 4th appellant, raised a plea that one Altaf had come, in the morning of September 19, 1960, at about 9 A. M., and told him that the police were after him, and that he wanted to throw a bundle, which was, in his possession, in the house of the appellants. Accordingly, Altaf threw a bundle, in the court-yard of the house of the appellants.

3. The Additional City Magistrate, Indore, accepted the case of the prosecution and rejected the plea of the appellants. The trial Magistrate found that the opium was recovered from the possession of the appellants, who had no permit or licence, for its possession or transportation, and he also found that the appellants, along with others had conspired to possess the said opium. On these findings, each of the appellants, was convicted, under Section 120B, I. P. C., and Section 9 (a) of the Act and sentenced to undergo two years' rigorous imprisonment in respect of each of the offences, the sentences to run concurrently.

4. The appellants challenged their conviction and sentence, before the First Additional Sessions Judge, Indore, in Criminal Appeal No. 118 of 1968. The learned Sessions Judge, agreeing with the conclusions, arrived at by the trial Court, dismissed the appeal.

5. The appellants, again, moved the High Court of Madhya Pradesh, Criminal Revision No. 181 of 1964, to set aside their conviction; but the High Court also, by its order, dated December 28, 1965, which is under attack, dismissed the revision.

6. On behalf of the appellants, Mr. C. L. Sarin, learned counsel raised three contentions: (1) that there is no evidence of any conspiracy, to attract S. 120B, I. P. C.; (2) neither the High Court, nor the two Subordinate Courts, have considered the vital question, viz., whether the evidence establishes that the four appellants were in conscious possession of the opium, recovered from the house; and (3) the trial which was held, under Section 251A, of the Code of Criminal Procedure, was vitiated, as it should have been properly held, only under S. 252, Cr. P. C.

7. So far as the first two contentions are concerned, in our opinion, it is really an attack, on the concurrent findings, recorded by the Magistrate and, on appeal, by the Sessions Judge, and which have been accepted by the High Court in revision. The Magistrate, as well as the learned Sessions Judge, have posed, one of the questions for consideration, as to whether the appellants can be considered to have been in conscious possession of the opium, recovered from the home. It is, in considering this question, that the plea of the appellants, at each of them was living separately in the house and that they were not present, at the time of the recovery, and that it was possible, for some outsider, to have thrown the opium recovered, into the court-yard of the home, have all been considered, in detail, and findings, recorded, against the appellants. The chance of any outsider, having thrown this article in the court-yard of the appellants' home, has been eliminated. The court-yard has been found to be a place where various domestic Articles were kept, and has also been

found to be a place in frequent use, by the appellants. Their presence, at the time of the recovery, has also been held to be established. In view of all these, and other circumstances, to which it is unnecessary for us to refer, the finding has been recorded that the opium, found in the court-yard of the house of the appellants was in their conscious possession and that the appellants, along with others had also conspired together, to obtain deal in, and possess opium. The further, finding is that the presence of such a large quantity of opium could not have been possible, without each of them, taking the other, into confidence. These findings have been accepted, by the High Court, and we are satisfied that there is no legal error, or infirmity, committed by any of the Courts, in arriving at that conclusion. Therefore, the two contentions, noted above, will have to be rejected.

8. That leaves us, for consideration, the third contention, noted above, that the trial in this case, ought to have been held, under Section 252, Cr. P. C., and it is vitiated as it has been held, under Section 251A. Mr. Sarin, learned counsel for the appellants, urged that the officers who are to investigate offences and grant bail, to persons arrested under the Opium Act, as well as the procedure, for trial, in respect of offences, under is the Act, and other incidental matters, connected therewith, have been laid down in Sections 20 to 20-I, introduced in the Act, by the Opium (Madhya Pradesh) Amendment Act, 1955 (M. P. Act XV of 1955). Counsel urged that the Officer empowered to investigate offences, under Section 20, be he an officer of the Department of Excise or a police officer, must be considered to be an excise officer and though the report, made by such an officer, is treated under Section 20G, of the Act, as applied to Madhya Pradesh, as a report made by a police officer, under Section 190(1) (b), Cr. P. C., it cannot be held to be a police report within the meaning of Section 251A, and hence, the trial should have been held, in this case, not under Section 251-A, but under Section 252 Cr. P. C. Counsel referred us to the decision, of the Madhya Pradesh High Court in Sardar Khan Multan Khan v. State, AIR 1963 Madh Pra 337, in this connection. Counsel further stated that this question, regarding illegality, of the trial held under Section 251A, was raised, in the present proceedings, when the appellants had filed in the High Court, a criminal revision, challenging their conviction, by the two Subordinate Courts. This question was referred, by a learned Single Judge, by his order dated August 3, 1965, to a Full Bench, for consideration. The Full Bench, in its decision, reported as Ashiq Miyan v. State of M. P., AIR 1966 Madh Pra 1 (FB), has overruled the earlier decision in Sardar Khan's case, AIR 1963 Madh Pra 337. The learned Judges, of the Full Bench, have rejected the contention of the appellants, that their trial was vitiated by the fact that the procedure prescribed by Section 251A, Cr. P. C., has been adopted. The Full Bench has further held that Section 251A, Cr. P. C., is attracted to a case, instituted under the Opium Act, on a report made by a police Officer, and that it logically follows that the trial, of an accused, under the Opium Act, instituted on a report, made by an excise officer, would also be governed, by Section 251A- According to the appellants, this decision of the Full Bench, is erroneous, and counsel wants the earlier decision of the Madhya Pradesh High Court, in Sardar Khan's case, AIR 1963 Madh Pra 337 to be restored.

9. Mr. I. N. Shroff, learned counsel for the state, pointed out that the case against the appellants was investigated in accordance with the provisions, contained in the Opium Act and was initiated, on a report, made by a police officer. These facts have been noted by the learned Judges of the Full Bench, and it is on that basis, that ultimately after a reference to the decision of this Court, in Amalshah v. State of Madhya Pradesh, Cri. Appeal No. 201 of 1963, D/- 1-12-11964 (unrep.) that the Full Bench has held that the trial is not vitiated.

10. It is not really necessary for us, to consider the larger question, as to whether, when an excise officer makes a report, under Section 20-G of the Act, whether the trial, following it, in such a case, would be governed by Sec. 251A. In fact the Full Bench has gone further and expressed an opinion, on this point also, that even in such a case, the trial would be governed, by Section 251A, Cr. P. C. We express no opinion, on that aspect of the matter. We will confine our decision, to the present case, on the basis that the crime was investigated, in accordance with the provisions, contained in the Opium Act, and the case was initiated against the appellants, on a report made by a police officer.

11. The first information report, Exhibit P-20, shows that the search of the appellants house was conducted, by the Sub-Inspector of Police, Malharganj Police Station, and the recovery of opium as well as the arrest of the appellants were made by the said officer. Investigation was also done, by him. Ultimately the report which is styled as a 'complaint' and dated October 23, 1960, was made and signed by Tehsildar Singh, Sub-Inspector of Police, Malharganj Police Station, as the Investigating Officer. It is on the basis of that report that the Magistrate, in this case, conducted the trial of the appellants.

12. We have already referred to the Full Bench decision of the Madhya Pradesh High Court, wherein these facts have been stated. No doubt, counsel for the appellants has urged that, even under those circumstances, a trial for an offence under the Opium Act cannot be held under Section 251-A. We are not inclined to accept the contention of the learned counsel. More or less, a similar question arose before the Constitution Bench of this Court in Amalshah's case, Cri. Appeal No. 201, of 1963, D/- 11-12-1964 (unrep.) Similar contentions were also urged and reliance was placed on Section 20-G of the Act, as applied to Madhya Pradesh. This Court after referring to the material provisions of Section 20-G by its judgment, dated December 11, 1964 declined to express an opinion on the larger question, that the report, made by an excise officer, cannot be held to be a police report, so as to attract Sec. 251-A, of the Code of Criminal Procedure. In that decision, this Court actually found that the proceedings, against the appellant before them, commenced on the report, of a police officer, and not on the report, of an excise officer, and that the complaint, lodged before the Magistrate, had been signed by the police officer, who investigated the offence. On these findings, this Court held that inasmuch as the proceedings commenced, on a report made by a police officer, S. 251-A Cr. P. C. in terms would apply and hence the trial held under that section in that case, was perfectly legal. Therefore, it will be seen that in respect of a trial conducted by a Magistrate on a report made by a police officer, under the Opium Act, as applicable to the state of Madhya Pradesh, for an offence under that Act, this Court held that S. 251-A, Cr. P. C. applied.

13. In the case before us, in the facts it is clear that the investigation was done by a police officer, the seizure of the articles and the arrest, of the accused, were effected by a police officer and the complaint or report dated October 23, 1960, to the Magistrate was made by the Police Officer. It is on this report of the police officer the trial also followed. Under these circumstances it is clear that Sec. 251-A Cr. P. C. directly applies and it was, in accordance with the procedure indicated in that

section that the trial was held. It follows that there is no illegality, in the trial.

14. The result is that this appeal fails, and is dismissed.

Appeal dismissed.