

Krishan Mohar Singh Dugal

Vs

State of Goa

Criminal Appeals No. 1652-53 of 1996

(G. T. Nanavati, R. P. Sethi JJ)

07.10.1999

JUDGMENT

NANAVATI, J.:-

1. The appellants in these two appeals were tried before the NDPS Court, Mapusa in special Crime Case No. 42 of 1992 for committing the offence punishable under Section 20(b)(ii) of the NDPS Act. The trial court convicted both the accused and imposed a sentence of 15 years and ordered them to pay a fine of Rs 2 lakhs each. The appellants then filed two separate appeals before the High Court. Their conviction was confirmed but the sentence was reduced to 10 years and the fine was reduced from Rs2 lakhs to Rs 1 lakhs each. They have filed separate appeals but as they arise out of the common judgment they were heard together and are disposed of by this common judgment.

2. Mr. Anil Shrivastava, Learned counsel appearing for appellant Krishan Mohar Singh Dugal submitted that the only evidence against the appellant is the discovery stated to have been made by him of 7 gm of charas. He submitted that the evidence clearly discloses that the police was already informed about the place where charas was concealed before the appellant had taken the police to that place and therefore no reliance could have been placed upon the recovery of charas. Having scrutinised the evidence of the witnesses and the panchnama, we find that the police was already informed about the place where the charas was kept. Thus this is not a case where the offending article was taken out by the accused from the place of concealment after leading the police to that place and that the police did not know about it earlier. The coconut tree from whose stem charas was found was admittedly standing on an open space accessible to all. It is, therefore, difficult to uphold the finding of the courts below that it was the appellant who had concealed the charas there and that it was found out only on the basis of the disclosure statement made by the appellant. The conviction of the appellant Krishan Mohar Singh Dugal, therefore will have to be set aside.

3. As regards appellant Revatram R. Thakur, what has been held proved is that charas weighing 10 gm was found from his person. The trial court has recorded that finding on the basis of the evidence of PWs 2 and 6. The High Court has also after reappreciating the evidence confirmed that finding. What was contended on his behalf was that while his person was searched the appellant was not properly informed about his right under section 50 of the NDPS Act. We do not find any substance in this contention because the PI who had searched the person of the appellant has stated in his evidence that he had asked the appellant whether he would like to be searched before a Magistrate or a gazetted officer. He has also stated that the appellant had declined to be searched in the presence of a Magistrate or a gazetted officer and, therefore, he had searched the appellant in the presence of two panch witnesses. The appellant was thus informed about his right. If the evidence of PI Allen

D'Sa is read carefully it becomes apparent that he first explained to the appellant the purpose of his visit to that place. He then told the appellant that he wanted to carry out a search of the person of the appellant and also the premises. Thereafter he had told the appellant that if he so desired he could be searched in the presence of a Magistrate or a gazetted officer. The appellant understood very well what he was told. He declined to be searched either in the presence of a Magistrate or a gazetted officer. It is therefore not possible to agree with the contention of the learned counsel that the mandatory requirement of section 50 was not complied with in this case.

4. Learned counsel also wanted to draw our attention to some irregularities committed in following the procedure with respect to safe custody of the charas seized from the appellant and in other respects. The said irregularities are not of such nature as would vitiate the trial or the conviction of the appellant. His conviction, therefore, will have to be confirmed.

5. Accordingly, Criminal appeal No. 1652 of 1996 is allowed. The conviction of appellant Krishan Mohar sing Dugal and the sentence imposed upon him are set aside and he is acquitted of the charge levelled against him. Criminal Appeal No 1653 of 1996 is dismissed with the result that his conviction and sentence are confirmed.