SUPREME COURT OF INDIA

Ashok Kumar

Versus

State of Haryana

(G.T. Nanavati and S.N. Phukan, JJ.)

Crl. Appeal No. 1338 of 1998.

2.12.1999

JUDGMENT

G.T. Nanavati, J. - The appellant has been convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 as, on 24.9.1995, he was found in possession of charas weighing 5 kgs. and 500 grams.

2. In order to establish its case the prosecution had examined PW-1, Shri Dharam Pal Pannu, Tehsildar-cum-Executive Magistrate in whose presence the appellant was searched, PW-2, Daya Nand, the Chowkidar who was present at the time of the search, PW-3 ASI Raj Kumar who had received the Ruqa at 3.35 p.m. and registered an offence against the appellant, PW-4 ASI Maha Singh the Investigating Officer and PW-5. S.I. Satbir Singh, who had received the sealed parcels of seized materials over which he had put his own seal and then returned them for safe custody. The prosecution also filed affidavits and documents to prove identity of the articles seized and sent for chemical analysis and nature of the substances seized.

3. The Trial Court believed the prosecution witnesses and also the documentary evidence and held that the appellant did possess charas as alleged by the prosecution. The High Court agreed with the findings of the trial Court and confirmed the conviction.

4. What is contended by the learned counsel for the appellant is that no independent witness was kept present while the appellant was searched. But that circumstance cannot create any doubt as the appellant was searched in presence of a Magistrate. The Magistrate was examined as a witness and in this cross-examination nothing was brought out on the basis of which it can be said that what he had deposed was not correct. Only submission by the learned counsel with respect to his evidence was that he had not identified the appellant in the Court. He was not able to state that the person present in the dock was the same Ashok Kumar but ASI Maha Singh had identified the appellant. His evidence has been found to be reliable and we find no good reason to differ from that finding.

5. It was also submitted that when PW-1 had left the place at about 3.30 p.m. the work

of preparing the samples was not over and yet in the FIR the time of registration mentioned is 3.35 p.m. and that would mean that really the search and seizure had not taken place at the time and in the manner stated by the witnesses and everything was done at the Police Station. We find no substance in this submission. Though the Investigating Officer has stated that he had sent constable Raj Kumar with Ruqqa to the Police Station for registration of the offence after the search and seizure was over, it appears that Raj Kumar was sent earlier as the other evidence on record discloses that the appellant and the seized articles were sent to the Police Station a little later.

6. It was next contended that identity of the cloth bag stated to have been recovered from the appellant, was not established as PW-1 had not identified it in the Court. PW-4, the Investigating Officer had identified it and no good reason has been given to doubt the evidence of this witness on that point.

7. It was also contended that nothing happened at the place where the search and seizure are stated to have taken place and that everything was done at the Police Station. In his statement under Section 313 Cr.P.C. the appellant had not stated so. The appellant was the resident of Badia, a place in the State of Bihar. According to the evidence of PW-4 while the appellant was alighting from the Bus he was found carrying a bag and on suspicion he has searched. There was no reason for PW-4 to falsely involve the appellant.

8. It was also submitted that there was non-compliance with the requirement of Section 55 of the NDPS Act, but the learned counsel was not able to point out which part of Section 55 was not complied with. The prosecution evidence clearly discloses that the seized articles were produced before the Officer incharge of the Police Station, that he had put his seal over those articles and thereafter they were sent for safe custody. The evidence also discloses that the seized articles were kept in Malkhana and even while they were taken to the Chemical analysis they were properly sealed.

9. It was strongly submitted that, as admitted by PW-1, the seals on the packets produced before the Court were very faint and could not be read properly. Thus there was no reliable evidence to prove that the samples seized from the appellant were the same as were examined by the chemical analyser. There is no substance in this contention. The report of the chemical analyser clearly establishes that the articles examined by him were the articles connected with this case. Neither the report of the chemical analyser was challenged nor any application was given for examining him as witness to establish that the seals on the samples were faint when received by him and it was not possible to say whose seals they were.

10. Leaned counsel lastly submitted that in any case the sentence in default of payment of fine should be reduced. That is not permissible and hence that request has to be rejected.

11. As we find no substance in this appeal, it is dismissed.

Appeal dismissed.