

SUPREME COURT OF INDIA

Karnail Singh

Versus

State of Rajasthan

(K.T. Thomas and R.P. Sethi, JJ.)

Criminal Appeal No. 781 of 2000 (Arising out of S.L.P. (Criminal) No. 982 of 1999).

13.09.2000

JUDGMENT

R.P. Sethi, J. - Leave granted.

2. The appellant, a truck driver was apprehended and arrested on 21st August, 1992 by a Preventive Party, on the Kota-Bundi Road in Rajasthan as he was shown to be carrying 96.600 kgs. of opium in his truck No. PCT 9997. The opium was found concealed in three gunny bags containing 21 raxine bags. After compliance of the requisite legal formalities, a case under Sections 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called "the Act") was registered. The seized goods and samples were kept in double lock malkhana. On conducting tests, the articles seized were found to be opium. On trial, the appellant was found guilty of the offences with which he was charged under the Act. He was convicted and sentenced to rigorous imprisonment for 15 years and to pay a fine of Rs. 1.5 lakhs or in default of the fine to undergo rigorous imprisonment for one year. In appeal, the High Court upheld the conviction but reduced the sentence of imprisonment to 10 years and fine to Rs. 1 lakh, vide the order impugned in this appeal.

3. Mr. Jayant Bhushan, Advocate who appeared as *amicus curiae* has raised some legal questions which, according to him, had not been taken note of either by the trial Court or by the High Court. He contended that as the procedure prescribed under the Act was not followed, the appellant was entitled to acquittal. It was further submitted that no presumption under Section 35 of the Act could be drawn against the appellant. Relying upon the judgment of this Court in *Abdul Rashid Ibrahim Mansuri v. State of Gujarat, 2000(1) RCR (Crl.) 611 : 2000(2) SCC 513* he contended that the appellant had discharged the onus of proof regarding his plea of absence of culpable mental state which should have been accepted and the appellant acquitted.

4. Regarding violation of the procedural safeguard under the Act, it has been contended on behalf of the appellant that the mandate of section 55 of the Act has not been followed and as the trial Court as well as the appellate Court arrived at the guilt of the appellant on wrong assumptions, the appeal be accepted by setting aside the impugned judgment.

5. In order to appreciate this submission some facts of the case are required to be noticed. There is no dispute that the truck, when intercepted, was not stationary but was in transit being driven by the appellant. The raiding party comprised of Nand Lal Rai, Inspector (PW8), Mohan Lal (PW1), Bajrang Lal (PW2) and Zaheen Ahmad (PW7). Suspecting that in the truck some narcotic drugs might be transported, Inspector Nand Lal Rai (PW8) called independent witnesses Onkar and Ram Lal and in their presence told the appellant that he had a suspicion of opium being transported in the truck. As he wanted to take search of the truck, he inquired from the appellant whether he would get the truck searched in the presence of a Gazetted Officer or a Magistrate. He was told by the accused that the truck may be searched by any officer or employee. As by that time rain had started and there was no arrangement of light at the place of checking, the preventive party took the truck along with its driver to the Control Room of Central Narcotics Bureau, Kota. PW8, Nand Lal Rai along with other employees searched the truck in the presence of Anand Singh Negi and other witnesses and found three gunny bags containing opium, as noticed earlier. From each of the gunny bags 2-2 samples of 24-24 grams opium were taken for chemical examination and the samples seized in the presence of the witnesses. The raxine bags containing opium were placed in the gunny bags in the condition as it were and each of the gunny bags was wrapped in white cloth and sealed. Nand Lal Rai, Inspector (PW8), Anand Singh Negi (PW4) and other employee-witnesses of the Department put their signatures on the samples and the three bundles. They also signed Panchanama. The appellant was arrested under the Act. Inspector Nand Lal Rai then went to the office of the Superintendent, Central Narcotic Bureau, Kota and lodged the First Information Report. The Superintendent, Central Narcotic Bureau, Kota handed over the investigation to Inspector Shiv Narain. The information of the incident was sent to the higher authorities on 23rd August, 1992. Samples taken from the seized opium were sent to the General Manager, Government Opium and Alkaloid Works, Neemach. On examination, the samples were found to be of opium.

6. In the trial Court, the defence counsel argued that the provisions of Sections 42, 50, 52A, 52(1) and (2), 55 and 57 had not been complied with. The court, however, held that the provisions of Section 42 of the Act were not applicable and under Section 49, which was the relevant section for the case, it was not necessary for Inspector Nand Lal Rai (PW8) to reduce in writing, the reasons for suspicion before taking the actual search. The alleged violation of section 52A of the Act did not affect the merits of the case. No prejudice was held to have been caused on account of alleged non-compliance of the provisions of Section 52(1) and (2) of the Act. Section 52(3) of the Act was held to have been complied with. So far as compliance of Section 55 of the Act was concerned, the trial Court held :

"On the basis of above discussion of evidence, I am of the view that mandatory provisions of Section 55 of the Act have been duly complied with. Bundles containing remaining opium and samples were sealed at the site by Officer Incharge of the police station i.e. Nand Lal Rai Inspector under his own seal. And it is proved beyond reasonable doubt that these bundles of Opium were produced in the court in the same sealed condition and that samples were sent to laboratory for examination in the same sealed condition. Not only this that after examination samples were produced in the court in open condition and bundles of Opium were also produced in the court in sealed condition, but also PW4 Anand Singh Negi and PW5 Rama

Shanker Prasad have deposed, while giving statement and after seeing above samples and packets, that these packets and samples bear the same wax seal of Nand Lal Rai which was affixed by him at the time of sealing these packets and samples at the site. The chits affixed on above packets and samples bear today also the same signatures of Anand Singh which were put by him at the time of sealing these packets and samples. Therefore, in my opinion mandatory provisions section 55 of the Act have been fully complied with."

7. The High Court also found that the provisions of section 42 of the Act were not applicable in the case and as resort was not had to the procedure prescribed under Clause (a) of sub-section (3) of Section 52, the compliance of Section 55 was not necessitated.

8. The Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for the matters connected therewith. Chapter V comprising of Sections 41 to 68 deals with the procedure relating to issuance of warrants and authorisation, power of entry, search, seizure and arrest without warrant or authorisation, procedure where seizure of goods liable to confiscation not practicable, conditions under which searches shall be conducted, disposal of persons arrested and articles seized, presumptions regarding possession of illicit articles, punishment for vexatious entry, search, seizure and arrest, confiscation of goods used for concealing illicit drugs and substances, procedure for making confiscation and power to tender immunity from prosecution, etc. Section 42 provides that any Authorised Officer of the Departments of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government or the Border Security Force, specially empowered by general or special order by the Central Government, or any such officer of the Revenue, Drugs Control, Excise, Police or any other Department of a State Government empowered in that behalf by general or special order, if he has reason to believe from personal knowledge or information given by any person that any narcotic drug or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset, enter into any such building, conveyance or place and in case of resistance, break open any door and remove any obstacle to such entry. Such officer has the power to seize the drug or substance and all material used in manufacture thereof and any other article or conveyance which he has reason to believe to be liable to confiscation under the Act and detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV. If such officer has reason to believe that such warrant and authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for escape of an offender, he has the authority to enter such building, conveyance or enclosed place any time between sunset and sunrise but after recording the grounds of his belief. For attracting the applicability of Section 42, it is necessary that the officer empowered thereunder, before exercise of

his right, has reason to believe from personal knowledge or information regarding the movement of narcotic drug or psychotropic substance. However, if the action is taken not upon his personal knowledge or information, the requirements of Section 42 would not be applicable.

Section 43 of the Act provides :

"Power of Seizure and arrest in public places. - Any officer of any of the departments mentioned in section 42 may - " cer authorised under Section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance, in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and -

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon."

9. Section 53 of the Act empowers the Central Government, after consultation with the State Government to invest any officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence or Border Security Force or any other class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offence under the Act. The provisions of the Code of Criminal Procedure, 1973 have been made applicable in so far as they are not inconsistent with the provisions of the Act to all warrants issued and arrests, searches and seizure under the Act. Section 52 of the Act requires an officer arresting a person under Sections 41, 42, 43 or 44, as soon as may be, to inform him of the grounds for such arrest. Every person arrested and articles seized under warrant issued under sub-section (1) of Section 41 is required to be forwarded without necessary (unnecessary ?) delay to Magistrate by whom the warrant was issued. Sub-section (3) of Section 52 provides :

"(3) Every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to

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(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under Section 53."

10. Section 55 mandates an officer-in-charge of a Police Station to take charge and keep in safe custody of articles seized under the Act within the local area of that Police Station *which may be delivered to him* (emphasis supplied) and shall allow any officer who may accompany such article to the Police Station or who may be deputed for the purpose to affix his seal to such articles or to take samples of and from them

and all samples so taken shall also be sealed with a seal of the officer-incharge of the Police Station. Relying upon this section Mr. Jayant Bhushan, learned *amicus curiae*, submitted that as after the seizure the goods were sent to the Superintendent, Central Narcotic Bureau, Kota, who, as per law, being incharge of a Police Station, had not affixed his seal on the articles and the samples, the whole of the procedure followed being illegal, entitled the appellant to be acquitted. The argument, though attractive on the face of it, when analysed in depth, is found to be without any substance. With the application of Section 51 read with Sections 52 and 53 of the Act, the officer required to affix the seal etc., under Section 55 of the Act, would be "the officer-incharge of the nearest Police Station" as distinguishable from an officer-incharge of a Police Station empowered under Section 53 of the Act. If resort is had to the procedure prescribed under sub-section (3)(a) of Section 52, the applicability of Section 55 of the Act would be attracted but if the arrested person and the seized articles are forwarded under clause (b) of sub-section (3) of Section 53 of the Act, the compliance of Section 55 cannot be insisted upon. The distinction between the officer-incharge of the nearest Police Station and the officer empowered under Section 53 of the Act is distinct and clear. The distinction is apparently based upon a reasonable object, because as in case the person and the seized articles are referred to the 'officer-incharge of the nearest Police Station', a distinct agency, than the 'officers contemplated under Section 53' of the Act, comes into the picture which requires the taking of sufficient safeguards to protect the seized property in the interests of the arrested persons. The distinction is also evident from Section 52-A(2) of the Act. Keeping in view the multifarious activities and the duties cast upon the officer incharge of the Police Station under the Code of Criminal Procedure and he being apparently busy with the duties under the Code, the officers mentioned in Section 53 of the Act have been mandated to take action for disposal of seized narcotic drugs and psychotropic substances by filing application which, when filed, has to be allowed by the Magistrate as soon as may be. We are of the opinion that in the present case the procedure prescribed under Section 49 read with Section 43 was attracted, which, on facts, has been found to be followed.

11. Keeping in mind the facts and circumstances of the case and the mandate of law, as explained by this Court in Abdul Rashid Ibrahim Mansuri's case (*supra*), we are of the opinion that the appellant had not discharged the burden of proof in any manner to rebut the presumption envisaged under Section 35 of the Act. He has been proved to be transporting the opium with a conscious mind and full knowledge. All ingredients of the offences with which he has been convicted and sentenced had been proved by the prosecution.

We find no merit in this appeal which is accordingly dismissed.

Appeal dismissed.