

SUPREME COURT OF INDIA

A.K. Mehaboob And P.K. Naushad

Vs.

Intelligence Officer, Narcotics Control Bureau

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

10.10.2000

ORDER

K.T. Thomas, J.

1. These two appeals are by second accused (P.K. Naushad) and third accused (A.K. Mehaboob) in a case wherein three persons were arraigned before the trial court to face a charge for the offence under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). The trial court acquitted these appellants of the offences, but convicted only 1st accused (N.P. Divakaran) for the afore-said offences and sentenced him to rigorous imprisonment and fine in accordance with law. The aforesaid convicted person preferred an appeal before the High Court in challenge of the conviction and sentence. In the meanwhile, respondent also filed an appeal in challenge of the order of acquittal passed in favour of the present appellants. Both appeals were heard together by a learned Single Judge of the High Court. While dismissing the appeal preferred by 1st accused, learned Single Judge reversed the order of acquittal passed on the appellants and convicted them also under Sections 21 and 29 of the Act and sentenced each of them to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/-.

2. The substance of the case against the three accused was this:

On the strength of sleuth information the Intelligence Officers of Narcotics Control Bureau lead by Superintendent of Narcotics Control Bureau, Cochin (PW-1 and PW-2) raided the house of the appellant Naushad on 6.3.1994 at about 10.00 a.m. They found Divakaran (A1) and appellant Mehaboob (A3) sitting in one room. On search, 251 grams of brown sugar and had been recovered from Divakaran A1. It was followed by another search made in the house of said Divakaran at about 7.00 p.m. and then also a quantity of 251 grams of brown sugar had been recovered from a suit case kept in that house. All the three accused were arrested. Their statements were recorded under Section 67 of the Act.

3. The case against appellant - Naushad depends entirely on Exhibit P-8 statement made to the officer under Section 67. There is no dispute that if the said statement is found to be genuine and reliable - Naushad has no escape from conviction, for, it contained vivid description of the transaction he entered into with Divakaran in the trafficking of narcotics drug "heroin" and "brown sugar".

4. Smt. Malini Poduval, learned Counsel for the appellants contended that Exhibit P-8 cannot be

relied on for more than one reason. One is that the said statement had been retracted by the accused him-self. Second is that on 11.8.1994 appellant - Naushad informed the Magistrate in writing that the said statement had been coaxed out from him. The third is that the said retracted confession had no corroboration, and therefore, cannot be made the basis for conviction.

5. There is nothing to indicate that Exhibit P-8 had been elicited from A2 by any coercion, threat or force, and therefore, the learned Single Judge of the High Court had spurned down that contention. Regarding the complaint alleged to have been made by appellant - Naushad on 11.3.1994 we have perused it. His case therein was that he offered himself to be a witness in the case and some reward was offered for it. It was on the said offers that he agreed to sign the said statement. It must be remembered that appellant - Naushad has no case that when he was produced before the Magistrate, immediately after his arrest, he made any grievance of any maltreatment administered to him by the members of the Narcotics Control Bureau. Wisdom downed on him (when the complaint dated 11.3.1994 was filed) to put up an advance defence against the statement given by him under his own signature. Even then he did not think it necessary to make any allegation that any intimidatory tactic, much less any third degree method had been applied on him. His case in the said complaint that a reward was offered to him and hence he agreed to sign the statement is contrary to the present stand adopted by him that he was coerced and threatened to make such a statement. The learned Single Judge had rightly repelled the contentions made on behalf of appellant - Naushad relating to Exhibit P-8.

6. Smt. Malini Poduval, learned Counsel for the appellants then contended that there was violation of Sections 42 and 57 of the Act. Both contentions cannot be countenanced by us for two reasons. One is that they were not seriously pressed into service before the High Court. Second is that there is no factual basis for such contentions. On the other hand, PW-2 has said in so many words that he has recorded the information in his personal diary as well as in the official diary as soon as he got the information that narcotic drugs were being transacted in the house of appellant - Naushad PW-2 had admitted during cross-examination that he had submitted a report to his superior officers. That statement shows that he had acted in conformity with Section 57 of the Act.

7. As the appellant - Naushad failed to succeed on any of the points raised by him, we do not find any reason to interfere with the conviction and sentence passed on him by the High Court.

8. Dealing with the case of appellant - Mehaboob we notice that Exhibit P-9 statement attributed to him does not contain any inculpatory statement which would involve him either in a conspiracy or in an abetment for the offences committed by other accused. The worst part in the statement - Exhibit P-9 is that he was informed that brown sugar could be supplied to him and he went to the house of A-2 in response to that. It is admitted by the prosecution that no brown sugar had been given to him pursuant to the said offer nor did appellant - Mehaboob part with any money as consideration thereof. It is pertinent to notice that the members of the Bureau did not recover any money from the appellant - Mehaboob. In this context, it is to be pointed out that price of 1 kg of brown sugar ranges from Rs. 75,000/- to Rs. 95,000/-. So, if appellant - Mehaboob had gone to purchase, it cannot be expected that he would have gone without any cash with him.

9. For the aforesaid reasons, it is very difficult to convict appellant - A.K. Mehaboob (A3) on the strength of the statement contained in Exhibit P-9.

10. Mr. Ashok Bhan, learned Counsel for the Narcotics Control - Bureau made a last bid to sustain

the conviction of appellant - A.K. Mehaboob by resorting to Section 30 of the Act. We are not inclined to go into that Section since the same was not included in the charge nor in the discussion made by the trial court or the High Court as against that appellant. It will not be fair for us to ferret out a new provision from the Act to fasten the appellant with a, penal liability which may visit him with very serious consequences.

11. In the result, we allow Criminal Appeal No. 980 of 1999 filed by A.K. Mehaboob (A3) and set aside the conviction and sentence passed on him by the High Court. We, therefore, order that he be set at liberty forthwith unless he is required in any other case. We dismiss Criminal Appeal No. 981 of 1999 filed by P.K. Naushad.

12. These appeals are disposed of accordingly.