

SUPREME COURT OF INDIA

State by Inspector of Police, NIB, Madurai, Tamil Nadu

Vs.

Rajangam

Crl.A.No.886 of 2002

(Dalveer Bhandari and Dr. Mukundakam Sharma JJ.)

30.04.2009

ORDER

1. This appeal is directed against the judgment of the High Court of Madras dated 15th June, 2001 delivered in Criminal Appeal No. 523 of 1997. Brief facts of the case in nutshell are as follows: Kalidasan, Sub Inspector of Police, P.W.4 received an information that the respondent (hereinafter referred to as the accused) was transporting contraband articles and that the accused could be caught with the contraband if he goes to the Nandhi Departmental Stores. This information received by P.W.4 was conveyed to his superior P.W.5, who was the Inspector of Police, Narcotic Intelligence Bureau during the relevant period. The said information given in writing is Ex.P.6. On the basis of the said information, P.W.5 met P.W.6 and appraised him of the said fact. Thereafter, PWs 4, 5 and 6 went to the said departmental store and arrested the accused. The accused was found in possession of a bag which contained the narcotic substance. The accused was informed of his right under section 50 of the Act. Thereafter, the bag was searched and the officers found 5 Kgs. of opium in the said bag. After taking 10 grams of opium for sample, the remaining opium was also taken in a packet. The sample packet as well as the other packet was sealed in the presence of the witnesses. The accused was brought to the police station. P.W.6 registered a case in Crime No. 64 of 1994 and took up investigation. Ex.P.7 is the copy of the printed first information report. He questioned the witnesses and recorded their statements. He sent Ex.P.8 (his report) to the superior officer under section 57 of the Act. The same was sent to the court with a requisition to forward them for analysis. On receipt of the report from the chemical analyst, the final report was filed against the accused. The accused was convicted by the Special District and Sessions Judge, Madurai and was directed to undergo 10 years rigorous imprisonment with a fine of Rs.1,00,000/- and, in default, to further undergo 3 years simple imprisonment. The accused preferred an appeal before the High Court. It was submitted on behalf of the accused before the High Court that the officer who had registered the crime in the case, also investigated the said crime. It was also submitted that the crime was registered by P.W.6 and that the case was also investigated by him. According to the submission advanced on behalf of the accused, the crime ought to have been investigated by another independent officer and not by P.W.6. The High Court found substance in this submission made on behalf of the accused and acquitted the accused. Aggrieved by the said judgment of

the High Court, the State, through Inspector of Police, NIB, Madurai, Tamil Nadu, preferred a special leave petition under Article 136 of the Constitution before this Court. This Court granted leave on 29.8.2002. The short question which falls for consideration of this Court is whether P.W.6 who registered the crime could have investigated the case or an independent officer ought to have investigated the case. The learned counsel appearing for the accused submitted that the controversy involved in this case is no longer *res integra*. In *Megna Singh v. State of Haryana*¹, this Court has taken a categorical view that the officer who arrested the accused should not have proceeded with the investigation of the case. The relevant paragraph reads as under:

“4. We have also noted another disturbing feature in this case. P.W.3, Sri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.”

2. The ratio of Megna's case has been followed by other cases. In another case in *Balasundaran v. State*², in para 16, the Madras High Court took the same view. The relevant portion reads as under:

“16. Learned Counsel for the appellants also stated that P.W. 5 being the Inspector of Police who was present at the time of search and he was the investigating officer and as such it is fatal to the case of the prosecution. P.W. 5, according to the prosecution, was present with PWs 3 and 4 at the time of search. In fact, P.W. 5 alone took up investigation in the case and he had examined the witnesses. No doubt the successor to P.W. 5 alone had filed the charge sheet. But there is no material to show that he had examined any other witness. It therefore follows that P.W. 5 was the person who really investigated the case. P.W. 5 was the person who had searched the appellants in question and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating agency. On this score also, the investigation is bound to suffer and as such the entire proceedings will be vitiated.”

3. In this view of the legal position, as crystallized in Megna Singh's case (*supra*), the High Court was justified in acquitting the accused. We see no infirmity in the view which has been taken by the High Court in the impugned judgment. In our considered view, no interference is called for. The appeal, being devoid of any merit, is accordingly dismissed.

¹(1996) 11 SCC 709

²1999 (113) ELT 785 (Mad)