

SUPREME COURT OF INDIA

State through Narcotics Control Bureau

Vs.

Yusuf @ Asif & Ors.

Crl.A.No.1219 of 2009

(M.Y.Eqbal and Arun Mishra,JJ.)

18.01.2016

JUDGMENT

Arun Mishra, J.

1. The appeal is directed against the judgment and order passed by the High Court of Judicature at Madras recording acquittal of respondents thereby setting aside the judgment and order of conviction for commission of offence under section 8(c) read with sections 21, 25 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and the sentence of 10 years' rigorous imprisonment and fine of Rs.1 lakh imposed by the Special Judge for NDPS Act cases, Chennai.

2. According to the prosecution, in a stationed lorry, the appellants were sitting inside on 28.3.2000 at 2 a.m. Lorry was parked in front of Puzhal Jail, it was intercepted by Rajasekhar PW-1, Jaberia Nazir PW- 2, P.Saran PW-6, all Intelligence Officers of NCB headed by Mr. K. Raghavan PW-8, an officer of the Gazetted rank, in the presence of the witnesses - Naveenraj, PW-5 and Vinobaraj. Two jute hand-bags containing 26 packets were seized. They were marked as S1 and S2 and seal No.12 was affixed thereon. Statements under section 67 were recorded. The accused were arrested and seized property was produced before the Magistrate. P.Saran, PW-6 deposited the property at the NCB. Godown at about 9.30 p.m. on 29.3.2000 as per receipt Ex. P-1. Property was produced before the NDPS Court by PW-6 on 3.4.2000. As per orders of the court, it was deposited in the godown for safe custody. Analyst's report Ex. P-22 was submitted.

3. Prosecution examined Srinivasan PW-9, who prepared the godown receipt on 29.3.2000 regarding the contraband though the forwarding memo sent along with it mentioned that seal No.12 was affixed. However, it was mentioned due to inadvertence in the godown receipt that it contained seal No.11. The trial court convicted the respondents. On appeal, the High Court has acquitted them on the ground that the prosecution has not proved that the seized articles were in fact sent for chemical analysis due to the discrepancy in Seal number as on receipt of godown seal number 11 was mentioned.

4. We have heard learned counsel appearing for the appellant and perused the record. In our considered opinion, the High Court has not considered various reasonings given by the trial court in its judgment. The trial court has given the following reasons with respect to the aforesaid discrepancy in the seal number:

“10. As per directions of the Court, for receiving articles in godown, P.W.9 gave Ex.D-1. But P.W.9 Srinivasa wrongly wrote 11 instead of 1. On 31.3.2000 regarding Mohammed Safi accused of the separated case and his family Ex.P.41 was obtained from the Superintendent Mansore Police. On that basis, he ordered P.W.6 Saran to enquire into it. Then P.W.6 on that basis, he ordered P.W.6 Saran to enquire into it. Then P.W.6 gave complaint in the court for taking action against accused 1 to 4 and two accused of the separated case under section 89(c) r/w 21, 25, 28 and 29 of the NDPS Act. Ex. D-1 is the receipt given at the godown on 29.3.2000. Ex.D-2 is the letter written from the court to the Chemical Laboratory. Ex.D- 3 is the letter written by Gopal Intelligent officer to South Zone Narcotic Control Bureau. Ex.P.4 is the letter sent by a Chennai Officer to Chandigarh officer on 1.4.2000. Ex.D-5 is the Fax message sent from N.C.P. Zonal to Director General, N.C.B. New Delhi E.D.-6 is the letter sent by from NCD New Delhi to D.B.G.(I).

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14. Regarding this, 1999 Supreme Court Cases Criminal Page 95, 2002 (1) S.B.R. 615 (Supreme Court of India), 2001 (2) C.T.C. Page 764, 2002 Criminal Law Journal 749 were pointed to by the defence side. During Prosecution argument, prosecution reply that P.Ws.1, 2, 6 and 8 were authorized officers and that on the basis of written document Ex.1, after giving information to the superior officer they went to the scene of occurrence and that when P.W.1 questioned accused 1 he produced M.O.30 Heroin voluntarily from the lorry cabin and that P.W.1 being intelligent officer, though he need not leak out information he made endorsement on Ex.P.1 and giving information to Superintendent and got orders from him and therefore their contention is not acceptable and further they went to the scene of the information and in the presence of P.W.1, 2, 6 and 8 and independent witness P.W.5 and witness Vinoba Raj they gave information to the accused that they were going to inspect the lorry and that they informed the accused that they were entitled to be inspected either in the presence of a gazette officer or in the presence of Judicial Magistrate as per section 50 of the above Act and they obtained Ex.P.2 to 5 wherein accused stated that they need not do so and that further, articles were recovered from cabin of the lorry section 50 need not be enforced and the prosecution witnesses did not transgress provisions of 41(1) and 4a (2) of the Act or section 50 of the above Act and therefore the contention that the case is vitiated is not acceptable and that seized articles were marked as NCB 12 and were handed over as Ex.P.29. Therefore it was subjected to chemical analysis as per court order and that on the contrary in Ex.D.1, the mark was wrongly marked as NCB 11, as deposed by P.W.9 and therefore the articles were sent to chemical laboratory through NCB mark 12 and Ex.P.22 was obtained stating the articles analyzed was Heroin and that therefore the contention that wrong materials were sent for chemical

analysis was not acceptable and therefore the citations given by the defence side are not relevant to fact and in support of their argument, they pointed out citations (2001) Supreme Page 363, (2001) (3) Crimes page 377, J.T. 2001 S.T.330 and 2000 Supreme Court Cases Criminal Page 506 and Chennai High Court Criminal Appeal N.898/98 order dated 12.6.2001 and Notification dated 6/86 F.No.664/75/ Opium- 1.11.86 and Notification No.8/86 dated 1.11.86.

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23. Next though the witnesses deposed that they put NCB seal 12 on the seized articles but as per Ex.P.1 NCB seal 11 was affixed and the before benefit of doubt be given to the accused and in support of their contention, they produced the citation 2001 (1) (2) C.P.C. 764 para - 4. Further 2002 (1) S.B.R. 615 Supreme Court of India Judgment was pointed out. Arguing on behalf of prosecution, it is pointed out that in the preparation of Ex.P.6 Mahazar for seizure of articles from the accused, the NCB seal 12 was affixed and as per Ex.P-19, when P.W.3 obtained statement he mentioned NCB seal 12 and further when Ex.P-28 was handed over in the court, NCB seal 12 was affixed. In the annexure attached to it and further in the Ex.P-30 document requesting to send articles for chemical analysis it was mentioned and Ex.P-20 in copy of letter to chemical laboratory and in Ex.P-21 Test Memo, it was mentioned and that in Ex.P-1 it was wrongly mentioned as NCR seal 11 instead of 12 and that articles sent for chemical analyzing are not concerned in this case it not acceptable and that further regarding that D.Ws.8 and 9 gave evidences and therefore the contention that the seized articles of this case were not sent for chemical analysis and that Ex.P.22 is not chemical analysis report of the case is not acceptable the the citation 2001 (2) C.P.C. page 764 and 2002 (1) S.B.R. 615 put forwarded by the defence side is not relevant to this case. Regarding that perusing Ex.P.6 Mahazar, page 5 it is stated in the Ex.P.6 that NCB seal 12 was affixed and that NCB seal 12 was affixed on Ex.M.O. 1 to 26, 27 and 28.

24. Further, it is said that in Ex.P.28 Annexure, sample NCB was affixed in it, special court judge ordered to handover Ex.P.1 to 3 and 5 to intelligent officer and he received the same. Before that as per Ex.P.29. On 203.2000 night at 21.30 on the basis of forwarding memo No.8/2000 he handed over in the NCB godown incharge, Southern Zone. As per Ex.P.30 he requested to send the articles for chemical analysis as per Ex.P-29 for entrusting the articles, he received receipt Ex.P1 in it on 29.3.2001 receipt No.8/2000 was received as per Ex.P.29 and seal No.12 was mentioned. But Ex.P- 1 it must have been marked as seal No.11 instead of 12. For that purpose P.W.9 was examined and explanation was obtained. Regarding the P.W.8 mentioned in his deposition. On the basis of Ex. P-30 requisition as per Ex.P-20 for analysis, court sent articles as per Ex.P-21 test memo, Ex.P-20 and Ex.P-2 are one and the same. It is very clear that the seal 12 is only for the seized articles of the case. On the contrary, the court considers that the mark mentioned in Ex.P-1 was wrong. P.W.4 examined the above said articles and gave Ex.P-22 report stating that the above articles were Heroin

regarding the mark 12 in the articles produced by the accused 1, P.Ws. 1, 2 and independent witnesses 5 and P.W.8 gave evidence.

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27. He sent Ex.P-35 summons to manager of the Hotel where the accused 1 and 2 stayed and obtained Ex.P-36 statement from him. Further he examined accused - 1 and obtained Ex.P-37 from the accused 1. Further P.W.8 obtained reports from P.W.1, 2 and 6 and as per Ex.P-40 he sent report to superior officer. As per Ex.P-41 to 43 he obtained report for accused 5 and 6 (separate accused). Receiving the above said reports, P.W.6 Saran under Section 8(c) r/w 21, 25, 28 and 29 of Narcotic Drugs and Psychotropic Substances Act 1985. It is decided that from the examination of the above said prosecution witnesses and on the basis of documents it is established beyond all reasonable doubts that the accused transported Heroin, narcotic substance without Government's permission and possessed the same for the purpose of selling."

5. The trial court has given various reasons, considered statement of witnesses, effect of various documents including of sending them to the chemical analyst and trial Judge also compared the seals and came to the conclusion that the same articles which were seized were sent for chemical examination. The High Court has not considered the other material on record which according to trial court established identity of sample sent for chemical examination with the contraband which was seized, and has also overlooked the effect of forwarding memo to godown which contained seal No.12, and effect of remanding Magistrate endorsement. Merely because no departmental action had been taken against PW-9 for mentioning seal No.11 instead of seal No.12 the prosecution case could not have been disbelieved. The effect of document Ex. D-2 which indicated that samples "are duly checked and sealed with my office Seal and sent through Shri B.Sharan (PW-6). ... Ex. D-2 contains the facsimile of both seal No.12 affixed by NCB on the samples at the time of seizure and the facsimile of the Special Judge's seal", has not been considered. The effect of the fact that the trial Judge saw and compared seals on the samples and contraband at the time of marking them as MOs. 1 to 29, has not been adverted to by the High Court. The High Court has also not compared the seals. It was also submitted that the High Court has not considered that the chemical examiner has stated that the sample covers contained NCB seal and court seal on contraband and samples sent for analysis. In the report Ex. P-22 it was mentioned that the seals in each packet were compared with the respective facsimile given on the above-referred letter and found to tally. Reasons given in para 25 of the judgment of trial court have not been taken into consideration by the High Court.

6. It is trite law that while reversing the Judgment the reasons given by the trial court ought to have been taken into consideration along with the entire evidence in that regard. Same has not been done by the High Court. As such without commenting on the merits of the case we find the judgment and order of the High Court to be unsustainable. Same is hereby quashed and we remit the case to the High Court to decide the appeal afresh in accordance with law duly considering the reasoning employed by the trial court and the entire evidence.

7. Appeal is accordingly disposed of.