Supreme Court of India
Mahiman Singh vs State Of Uttrakhand on 29 June, 2016
Author: A M Sapre
Bench: Abhay Manohar Sapre, Ashok Bhushan

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 957 OF 2015

Mahiman Singh Appellant(s)

VERSUS

State of Uttrakhand Respondent(s)

J U D G M E N T

Abhay Manohar Sapre,J.

1) This appeal is filed against the final judgment and order dated 22.07.2013 passed by the High Court of Uttrakhand at Nainital in Criminal Appeal No. 311 of 2002 whereby the High Court dismissed the appeal filed by the appellant herein and affirmed the judgment and order dated 27.11.2002 passed by the Special Judge, Pithoragarh in Sessions Trial No. 17 of 1996 convicting the appellant herein under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act) and sentenced him to undergo rigorous imprisonment for ten years with a fine of Rs. One lakh, in default, to undergo further simple imprisonment for three years.

2) Brief facts:

On an information received on 09.07.1996 at about 10.00 a.m. in the morning that in Jeep No. UP 03-1113 going from Dharchula to Pithoragarh, a boy is carrying Charas in a bag, the police team went at the Gauripul check post and at about 11.00 a.m. the said Jeep arrived at the check post Gauripul, it was stopped. When the jeep was checked, it was found that one boy was sitting in its middle seat with a bag on his lap. On being asked as to what was in his bag, he became nervous. On suspicion, the bag was lifted and the same felt to contain heavy materials and on smelling gave foul smell of Charas. When it became certain that this was certainly contraband, the name and address of

the boy was asked and he told that his name was Mahiman Singh, resident of Garbyal Khera, P.S. Dharchula, Dist. Pithoragarh. Thereafter he was asked as to which gazetted officer or of which magistrate presence, he wanted search of his bag. On being asked, he apologized. Immediately, he was taken to the office of S.D.M. Dharchula along with companion police staff in official jeep where it was found that the S.D.M. and Tehsildar were not present there. Thereafter he was taken to Nayab Tehsildar and in the presence of Shri Bansi Lal Rana, Magistrate, the search was made and inside the said bag charas of 2 kg. and 100 gm. was found. The authorities then took 100 gm. Charas for its examination in the Laboratory and after taking the sample, it was sealed and the remaining Charas was kept in light green colour polythene bag. The bag was then sealed. Informing the accused of the offence which he has committed, he was then taken into custody.

3) On the basis of the recovery, at 4.00 p.m. a FIR was registered against the appellant-accused at the P.S. Jauljibi under Section 20 of the NDPS Act. The case was committed to the Court of Special Judge, Pithoragarh under Sessions Trial No. 17 of 1996.

4) After examination of witnesses and recording of the statements, the Special Judge, by order dated 27.11.2002, found the appellant-accused guilty of the offence punishable under Section 20 of the NDPS Act and sentenced him to undergo imprisonment for ten years with labour and fine of Rs. One lakh, in default to pay fine, to undergo further simple imprisonment for three years.

5) Aggrieved by the order of the conviction and sentence passed by the Trial Court, the appellant filed an appeal being Criminal Appeal No. 311 of 2002 before the High Court.

6) The High Court, by impugned judgment/order dated 22.07.2013 dismissed the appeal and affirmed the order of conviction and sentence passed by the Trial Court.

7) Aggrieved by the said judgment/order, the appellant has filed this appeal by way of special before this Court.

8) Heard Mr. Mahabir Singh, learned senior counsel for the appellant and Mr. Rahul Kaushik, learned counsel for the respondent-State.

9) Mr. Mahabir Singh, learned Senior counsel for the appellant(accused) while assailing the legality and correctness of the impugned order contended that both the Courts below erred in convicting the appellant for the offence punishable under Section 20 of the NDPS Act. It was his submission that Firstly, there was no evidence to sustain the conviction; Secondly, the evidence adduced by the prosecution was also not sufficient to warrant the appellant's conviction; Thirdly, compliance of requirements of Sections 42, 43 read with Section 50 of the NDPS Act was also not done as explained by this Court in several decided cases and, therefore, the appellant's conviction is rendered bad in law. It was also urged that since the statement of accused recorded in Section 313 proceedings coupled with the affidavit of one Maan Singh (at page 30 of Vol. II of appeal paper book marked as Annexure-A/3) was neither taken into consideration and much less appreciated and, therefore, the appellant's conviction is rendered bad in law.

10) Learned counsel elaborated his submissions by referring to the evidence and contended that if the issues urged by him are examined in its proper perspective keeping in view the evidence then the appellant's conviction becomes unsustainable and deserves to be set aside.

11) In reply, learned counsel for the respondent supported the impugned judgment and contended that no case is made out to interfere in the impugned judgment. It was his submission that Firstly, the evidence adduced by the prosecution is sufficient to warrant the appellant's conviction and secondly, the requirements of Sections 42, 43 read with 50 of the NDPS Act have been complied with in letter and spirit and lastly, since the deponent of an affidavit was not examined as witness, no reliance can be placed on such self-speaking affidavit.

12) Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.

13) In our considered opinion, two Courts below rightly held that the prosecution was able to prove their case against the appellant beyond reasonable doubt and that the evidence adduced by the prosecution was sufficient to warrant the appellant's conviction. It was also held that all the requirements of relevant Sections, which had application to the case, were complied with at the time of search made from the appellant thereby leaving no infirmity of any nature in their compliance including the procedure prescribed therein for making searches etc.

14) We find from the record of the case that the prosecution proved with the aid of evidence that the search was made in public place. It has also come in evidence that it was carried out in the presence of gazetted officer and was done after giving an offer to the appellant as required under the NDPS Act. It has also come in evidence that quantity of the contraband recovered from the appellant was commercial in nature as prescribed in the Schedule to the NDPS Act.

15) It is also not in dispute that the appellant failed to adduce any evidence in defence except to record his statement in Section 313 proceedings taking therein a plea of denial. It is also not in dispute that the affidavit relied upon by the appellant of one Maan Singh (Annexure-A/3) was not proved in evidence in as much as Maan Singh was neither examined nor cross-examined.

16) In these circumstances, in our view, the two Courts below rightly did not consider such affidavit as evidence, which was of no use and could not be construed as piece of evidence for deciding the rights of the parties.

17) One of the submissions of the learned counsel for the appellant was that one witness by name - Pradhan though named in the record was not examined by the prosecution and, therefore, his non-examination is fatal to the prosecution case and has rendered the appellant's conviction bad in law. The submission has no merit.

18) In our opinion, if the evidence adduced by the prosecution was found sufficient to warrant the conviction then it was not necessary for the prosecution to examine all the witness cited by them. It is for the prosecution to decide as to how many witnesses they consider it proper to examine to

prove their case against the accused and whether their evidence would be sufficient to warrant the conviction of the accused. Thereafter it is for the Court to assess and appreciate the evidence adduced to see as to whether it is sufficient to sustain conviction with the aid of such evidence or not.

19) In this case, we find that the witnesses examined by the prosecution were able to prove the prosecution case beyond reasonable doubt and hence even if one or two witnesses though cited initially were later given up by the prosecution, the same did not adversely affect the prosecution case in any manner. In other words, the conviction could be sustained on the evidence adduced and was rightly held to sustain in this case.

20) Learned counsel for the appellant then read out almost entire oral evidence of all the witnesses examined by the prosecution and contended by making sincere attempt that this Court should appreciate the evidence and then record a finding of acquittal by drawing inferences suggested by him.

21) We do not think that we can do this exercise again in this appeal. It could be done in the Trial Court and then in appeal before the High Court and was in fact done by two Courts but not in this appeal. It is more so when both the Courts have concurrently recorded a finding against the appellant after appreciating the evidence. In the absence of any kind of extreme perversity and arbitrariness noticed by this Court in the findings of the High Court, we are afraid we can undertake such exercise at this stage.

22) Learned counsel for the appellant, however, placed reliance on the decisions of this Court in State of Punjab vs. Baldev Singh, (1999) 6 SCC 172 and Sukhdev Singh vs. State of Haryana, (2013) 2 SCC 212. We have perused these decisions. In our opinion, there can be no quarrel with the proposition of law laid down in these decisions. However, we are of the view that these decisions are distinguishable on facts and hence are of no help to the appellant.

23) We are, therefore, unable to appreciate any of the submissions of the learned counsel for the appellant though urged with ability. Indeed, in the light of evidence adduced by the prosecution, which indisputably remained un-rebutted, the two Courts below were justified in placing reliance on such evidence for recording the finding of conviction against the appellant. We concur with these findings and uphold the conviction.

24) In view of foregoing discussion, we find no merit in this appeal, which fails and is accordingly dismissed.

.....J.

[ABHAY MANOHAR SAPRE] .....J.

[ASHOK BHUSHAN] New Delhi, June 29, 2016
