

Mohinder Kumar vs The State, Panaji, Goa on 20 January, 1995

Equivalent citations: AIR1995SC1157, 1995CRILJ2074, (1998)8SCC655, AIR 1995 SUPREME COURT 1157, 1998 (8) SCC 655, 1995 AIR SCW 1208, (1995) 2 EASTCRIC 395, (1995) 2 EFR 342, (1995) 2 RECCRIR 599, (1995) 2 CRICJ 69, 1995 APLJ(CRI) 17(3), (1995) 1 APLJ 69(1), (1995) 22 CRILT 539, 1995 APLJ(CRI) 240, 1999 SCC (CRI) 79

Bench: A.M. Ahmadi, N.P. Singh, Sujata V. Manohar

JUDGMENT

1. The basic facts which require to be stated for the disposal of this appeal are that on the evening of January 20, 1990 P.W. -4 ASI Umesh Gaokar, while on patrolling duty in a jeep reached Anjuna Out-post at Village Vagator. After parking his jeep, he and the police party accompanying him except one Head-Constable alighted from the vehicle and reached the house bearing No. 591 at Small Vagalar. He noticed two persons sitting in the verandah of that house and as soon as they saw him and the police party, they hurriedly entered the house. This aroused the suspicion of the Sub-Inspector whereupon he and the police party went to the house and directed the two accused persons to stay where they were and asked the Head Constable to alert the others and to arrange for panchas. On the arrival of the panchas he and his companions entered the house and questioned the accused persons. He saw a white plastic bag lying by the side of the accused Mohinder Kumar. On search, he found that the bag contained two polythene packets of charas like substance. Both the packets were attached, weighted and samples weighing about 50 gms. were taken therefrom and sealed. The person of the accused was searched and two pieces of charas from the right pocket of his pant were recovered weighing about 10 gms. and samples therefrom were also taken. At the instance of the said accused - Marc, an Italian National, further recovery was effected from the adjoining room where a shoulder bag was found containing charas weighing about 1.65 kg. From the said find also samples were taken and were later sent to the Public Analyst for examination. The rest of the charas was separately packed and sealed. The report of the Public Analyst was received in due course. We need not notice any further facts.

2. From the above basic facts it would appear that this search and seizure took place in the evening between 7.45 PM and 8 PM i.e. after sunset. Counsel for the appellant contends that the entire search and seizure had been effected in total violation of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter called "the Act"). She points out that there has been a violation of Sections 41(2), 42(1) and Section 50 in particular. In support, she referred to the decision of this Court in *State of Punjab v. Balbir Singh*, . The relevant part with which we are concerned is to be found in the paragraph where the conclusions have been summed up. After analysing the provisions of the Act, this Court has stated that if a police officer, without prior information, makes a search and effect arrest of persons and if during such search he stumbles on a chance recovery of any narcotic drugs or psycho-tropic substance and if he happens to be a police officer who is not empowered under the Act to effect search and seizure, he should inform the

empowered officer as required by the Act. If he himself happens to be the empowered officer, then from that stage onwards the investigation must be carried out in accordance with the provisions of the Act.

3. In the instant case, the facts show that he accidentally reached the house while on patrolling duty and had it not been for the conduct of the accused persons in trying to run into the house on seeing the police party he would perhaps not have had occasion to enter the house and effect search. But when the conduct of the accused persons raised a suspicion he went there and effected the search, seizure and arrest. It was, therefore, not on any prior information but he purely accidentally stumbled upon the offending articles and not being the empowered person, on coming to know about the accused persons being in custody of the offending articles, he sent for the panchas and on their arrival drew up the panchnama. In the circumstances, from the stage he had reason to believe that the accused persons were in custody of narcotic drugs and sent for panchas, he was under an obligation to proceed further in the matter in accordance with the provisions of the Act. Under Section 42(1) proviso, if the search is carried out between sun set and sun rise, he must record the grounds of his belief. Admittedly, he did not record the grounds of his belief at any stage of the investigation subsequent to his realising that the accused persons were in possession of charas. He also did not forward a copy of the ground to his superior officer, as required by Section 42(2) of the Act because he had not made any record under the proviso to Section 42(1). He also did not adhere to the provisions of Section 50 of the Act in that he did not inform the person to be searched that if he would like to be taken to a Gazetted Officer or a Magistrate, a requirement which has been held to be mandatory. In Balbir Singh's case, it has been further stated that the provisions of Sections 52 and 57 of the Act, which deal with the steps to be taken by the officer after making arrest or seizure are mandatory in character. In that view of the matter, the learned Counsel for the State was not able to show for want of material on record, that the mandatory requirements pointed out above had been adhered to. The accused is, therefore, entitled to be acquitted.

4. In the result, we allow this appeal, set aside the order of conviction and sentence and acquit the appellant-accused of the charges leveled against him. He will be set at liberty at once unless required in any other matter. .