

S. Jeevanantham vs State Through Inspector Of Police, Tn on 21 April, 2004

Bench: K. G. Balakrishnan, B.N. Srikrishna

CASE NO. :

Appeal (crl.) 28-29 of 2002

PETITIONER:

S. JEEVANANTHAM

RESPONDENT:

STATE THROUGH INSPECTOR OF POLICE, TN

DATE OF JUDGMENT: 21/04/2004

BENCH:

K. G. BALAKRISHNAN & B.N. SRIKRISHNA

JUDGMENT:

JUDGMENT 2004 Supp(1) SCR 607 The following Order of the Court was delivered :

The appellants in these two appeals were tried by the Special Judge (NDPS Act), Madurai. Both of them were found guilty of offences under section 8(C) read with section 20(b)(2) of the NDPS Act. PW-7 the Sub-Inspector, Thirumangalam Police Station, got information that narcotic drug was being sold at some places and he recorded information and sent the same to the superior officer and he along with PW-8 went to the place and found that appellant Muniyandi and one Kannan and PW-7 told them that they are to be searched. The search was conducted and each one of them was having one kg.

of "Hashish". On the basis of the information furnished by them, the police party went to Muthudevanpatti and found out the appellant Jeevanantham. He was searched after complying with section 50 of the Act and found to be in possession of 2 kgs. of "Hashish". The appellants were found guilty by the Special Judge and they filed an appeal against the conviction. Appellant Muniyandi and Jeevanantham filed separate appeals before the High Court and the High Court dismissed their two appeals and hence these appeals by way of Special Leave.

We heard the learned counsel for the appellants. The counsel for the appellants contended that PW-8 the Inspector after conducting search prepared the FIR and it was on the basis of the statement of PW8 the case was registered against the appellants and it is argued that PW-8 was the complainant and he himself conducted the investigation of the case and this is illegal and the entire investigation of the case is vitiated. Reliance was placed on the decision in Megha Singh v. State of Haryana, [1996] 11 SCC 709 wherein this Court observed that constable, who was the defacto complainant, had himself investigated the case and this affects impartial investigation. This Court

said that Head Constable who arrested the accused, conducted the search, recovered the pistol and on his complaint FIR was lodged and the case was initiated and later he himself recorded the statement of the witnesses under section 161, Cr.P.C. as part of the investigation and such practice may not be resorted to as it may affect the fair and impartial investigation. This decision was later referred to by this Court in State v. V. Javapaul, [2004] 3 SCALE 507 wherein it was observed that :

"We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done."

In the instant case, PW-8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellant was narcotic drug and the counsel for the appellant could not point out any circumstances by which the investigation caused prejudice or was biased against the appellant. PW-8 in his official capacity gave the information, registered the case as part of his official duty and later investigated the case and filed charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation.

The appellants have been rightly convicted by the Special Judge and the High Court was also justified in confirming the conviction and sentence. These appeals are without any merit and are accordingly dismissing.