Ashiq Miyan And Ors vs State Of Madhya Pradesh on 1 May, 1968

Equivalent citations: 1969 AIR, 4 1969 SCR (1) 188, AIR 1969 SUPREME COURT 4

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, V. Ramaswami

PETITIONER:
ASHIQ MIYAN AND ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT:
01/05/1968

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAMASWAMI, V.

CITATION:
1969 AIR 4 1969 SCR (1) 188

ACT:
Opium Act (1 of 1878), as applicable to Madhya Pradesh-Seizure and Report by Police Officer-Trial under Cr. P. C. whether s. 251A or s. 252 Cr. P.C . applicable.

HEADNOTE:
On receiving information, that opium was being smuggled and secretly kept in the house of the appellants, the Sub-Inspector of Police with a police party raided their house, and recovered large quantity of opium from the courtyard of the house. The Sub-Inspector of Police made the report and the trial followed. The appellants' plea that they were living separately and that one A had thrown the bundle, was rejected by the courts below, and they were convicted under s. 120B I.P.C. and s. 9(a) of the Opium Act. In the appeal to this Court, the appellants contended that the trial,

which was held, under s. 251A of the Code of Criminal Procedure, was vitiated, as it should have been properly held only under s. 252 Cr. P.C.
HELD : There was no illegality in the trial.
In this case the investigation was done by a police officer. the seizure ,of the articles and the report to the Magistrate was made by the Police Officer. It was on this report of the police officer that the Magistrate acted further, and the trial also followed. In respect of a trial conducted by a Magistrate on a report made by a police officer, under the Opium Act,as applicable to the State of Madhya Pradesh, for an offence under that Act, s. 251A Cr. P.C. is applicable. [192 F-H]
Amalshah v. State of Madhya Pradesh, unreported decision, in Cr. A. No. 201/63, dt. 11-12-64, followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 128 of 1966.

Appeal by special leave from the judgment and order dated December 23, 1965 of the Madhya Pradesh High Court (Indore Bench) in Criminal Revision No. 131 of 1964. C. L. Sareen and R. L. Kohli, for the appellants. I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by Vaidialingam, J. This is an appeal, by special leave, in which the appellants challenge the propriety and correctness, of the order of the Madhya Pradesh High Court confirming their conviction, under s. 120B, IPC, and S. 9(a), of the Opium Act, 1878 (Act I of 1878) (hereinafter called the Act). Appellants 2 and 3 are the sons of the first appellant, and the 4th appellant, since deceased, was his nephew.

On receiving information, that opium was being smuggled and secretly kept, in the house of the appellants, the Sub Inspector of Police, Station Malharganj, Indore, with a police party, raided their house, on September 19, 1960, and recovered a fairly large quantity of opium, of about 2 maunds, 14 seers and 14 chhatacks. The appellants were arrested, and charge-sheeted, for having committed offences, under s. 120B, IPC., and S. 9(a), of the Act. They pleaded not guilty. Their defence was that each of them was living separately, and they were not also in the house, when the opium was stated to have been recovered. The deceased. 4th appellant, raised a plea that one Altaf had come, in the morning of September 19, 1960, at about 9 a.m., and told him that the police were after him, and that he wanted to throw a bundle. which was, in his possession, in the house of the appellants. Accordingly, Altaf threw a bundle, in the court-yard of the house of the appellants.

The Additional City Magistrate, Indore, accepted the case of the prosecution, and rejected the plea of the appellants. The trial Magistrate found that the opium was recovered, from the possession of the appellants, who had no permit or licence, for its possession or transportation, and he also found that the appellants, along with others, had conspired to possess the said opium. On these findings, each

of the appellants, was convicted, under ss. 120B, IPC., and S. 9(a), of the Act, and sentenced to undergo two years' rigorous imprisonment, in respect of each of the offences, the sentences, to run concurrently.

The appellants challenged their conviction and sentence, before the First Additional Sessions Judge, Indore, in Criminal Appeal No. 118 of 1963. The learned Sessions Judge, agreeing with the conclusions, arrived at by the trial Court, dismissed the appeal.

The appellants, again, moved the High Court of Madhya Pradesh, in Criminal Revision No. 131 of 1964, to set aside their conviction; but the High Court also, by its order, dated December 23, 1965, which is under attack, dismissed the revision.

On behalf of the appellants, Mr. C. L. Sarin, learned counsel raised three contentions : (1) that there is no evidence of any conspiracy, to attract S. 120B, IPC; (2) neither the High Court, nor the two Subordinate Courts, have considered the vital question, viz., whether the evidence establishes that the four appellants were in conscious possession of the opium, recovered from the house; and (3) the trial, which was held, under S. 251A, of the Code of Criminal Procedure, was vitiated, as it should have been properly held, only under s. 252, Cr.P.C.

So far as the first two contentions are concerned, in our opinion, it is really an attack, on the concurrent findings, recorded by the Magistrate, and, on appeal, by the Sessions Judge, and which have been accepted, 'by the High Court, in revision. The Magistrate, as well as the learned Sessions Judge, have posed, one of the questions for consideration, as to whether the appellants can be considered to have been in conscious possession of the, opium, recovered from the house. It is, in considering this question, that the plea of the appellants, that each of them was living -separately in the house and that they were not present, at the time -of tile recovery, and that it was. possible, for some outsider, to have thrown the opium recovered, into the court-yard of the house, have all been considered, in detail, and findings recorded. against the appellants. The chance of any outsider, having thrown this article in the court-yard of the appellants' house, has been eliminated. The courtyard has been found to be a place where various domestic articles were kept, and has also been found to be a place, in frequent use, by the appellants. Their presence, at the time of the recovery, has also been held to be ,established. In view of all these, and other circumstances, to which it is unnecessary for us to refer, the finding has been recorded that the opium, found in the court-yard of the house of the appellants, was in their conscious possession and that the appellants, along with others, had also conspired together, to obtain, deal in, and possession . The further finding is that the presence of such a large quantity of opium could not -,have been possible, without each of them, taking the other, into confidence. 'These findings have been accepted, by the High Court, and we :are satisfied that there is no legal error, or infirmity, committed by any of the Courts, in arriving at that conclusion. Therefore. the two contentions, noted above, will have to be rejected.

That leaves us, for consideration, the third contention, noted above, that the trial, in this case ought to have been held, under, s.252, Cr.P.C., and it is vitiated, as it has been held, under s. 251A. Mr. Sarin, learned counsel for the appellants, urged that the officers, who are to investigate offences, and grant bail. to persons arrested under the Opium Act, as well as the procedure, for trial, in respect of

offences, under the Act, and other incidental matters, connected therewith, have been laid down in sections 20 to 20-1, introduced in the Act, by the Opium (Madhya Pradesh) Amendment Act, 1955 (M.P. Act XV of 1955). Counsel urged that the officer, empowered to investigate ,offences, under s. 20, be he an officer of the Department of Excise. or a police officer, must be considered to be an excise officer; and though the report, made by such an officer, is treated, under s. 20G, of the Act, as applied to Madhya Pradesh, as a report. made by a police officer, under s.190 (1) (b), Cr.P.C., it cannot be held to be a police report, within the meaning of s. 251A, and hence, the trial should have been held, in this case, not under s.251-A, but under s. 252, Cr.P.C. Counsel referred us to the decision, of the Madhya Pradesh High Court in Sardar Khan Multan Khan v. State(1), in this connection. Counsel further stated that this question, regarding the illegality, of the trial held under s. 251A, was raised, in the present proceedings, when the appellants had filed in the High Court, a criminal revision, challenging their conviction, by the two Subordinate Courts. This question, was referred, by a learned Single Judge by his order dated August 3, 1965, to a Full Bench, for consideration. The Full Bench, in its decision, reported as Ashiq Miyan v. State(2) has overruled the earlier decision, in Sardar Khan's case(1). The learned Judges, of the Full Bench, have rejected the contention of the appellants, that their trial was vitiated, by the fact that the procedure, prescribed by s. 251A, Cr.P.C., has been adopted. The Full Bench has further held that s. 251A, Cr.P.C., is attracted to a case, instituted under the Opium Act, on a report made by a police officer, and that it logically follows that the trial, of an accused, under the Opium Act, instituted on a report, made by an excise officer, would also be governed, by s. 251A. According to the appellants, this decision of the Full Bench, is erroneous. and counsel wants the earlier decision of the Madhya Pradesh High Court, in Sardar Khan's case(1), to be restored.

Mr. 1. N. Shroff, learned counsel for the State_ pointed out ,that the case against the appellants was investigated, in accordance, with the provisions, contained in the Opium Act and was initiated, on a report, made by a police officer. These facts have been noted, by the learned Judges of the Full Bench, and it is, on that basis, that ultimately, after a reference to the decision of this Court, in Amalshah v. The State of Madhya Pradesh(3), that the Full Bench has held that the trial is not vitiated.

It is not really necessary, for us, to consider the larger question, as to whether, when an excise officer makes a report, under S. 20-G, of the Act, whether the trial, following it, in such a case, would be governed by s. 251A. In fact, the Full Bench has gone further, and expressed an opinion, on this point also, that even in such a case, the trial would be governed, by s. 251A,Cr.P.C. We express no opinion, on that aspect of the matter. We will confine our decision, to the -present case, on the basis that the crime was investigated, in accordance with the provisions, con- tained in the Opium Act and the case was initiated against the appellants, on a report, made by a police officer. The, first information report, Exhibit P-20, shows that the search of the appellants' house was conducted, by the Sub- Inspector of Police, Malharganj Police Station, and the recovery of opium, as well as the arrest of the appellants, were made, by the (1) A.I.R. 1963 M.P. 337. (2) A.I.R. 1966 M.P. 1 (F.B.). (3) Unreported decision, in Crl. A. 201 of 1963, decided on II -1 2-1964.

said officer. Investigation was also done, by him. Ultimately, the report, which is styled as a 'complaint', and dated October 23, 1960, was made and signed by Tehsildar Singh, Sub-Inspector of

Police, Malharganj Police Station, as the Investigating Officer. It is on the basis of that report, that the Magistrate, in this case, conducted the trial of the appellants.

We have already referred to the Full Bench decision, of the Madhya Pradesh High Court, wherein these facts have been stated. No doubt, counsel for the appellants has urged that, even under those circumstances, a trial, for an offence under the Opium Act, cannot 'be held, under s. 251- A. We are not inclined to accept, this contention of the, learned counsel. More or less, a similar question arose, before the Constitution Bench of this Court, in Amalsh's Case(1). Similar contentions were also urged, and reliance was placed, on s. 20-G, of the Act, as applied to Madhya Pradesh. This Court, after referring to the material provisions of s. 20-G, by its judgment, dated December 11, 1964, declined to express an opinion on the larger question, that the report, made by an excise officer, cannot be held to be a police report, so as to attract s. 251-A, of the Code of Criminal Procedure. In that decision, this Court actually found that the proceedings, against the appellant before them, commenced on the report, of a police officer, and not on the report, of an excise officer, and that the complaint, lodged before the Magistrate, had been signed by the police officer, who investigated the offence. On these findings, this Court held that, inasmuch as the proceedings commenced, on a report made by a police officer, s. 251-A, Cr.P.C., in terms, would apply, and hence the trial held, under that section, in that case, was perfectly legal. Therefore, it will be seen, that in respect of a trial, conducted by a Magistrate, on a report made by a police officer, under the Opium Act, as applicable to the State of Madhya Pradesh, for an offence under that Act, this Court held that s. 251-A, Cr.P.C., applied.

In the case before us, on the facts, it is clear that the investigation was done by a police officer, the seizure of the articles and the arrest, of the accused, were effected, by a police officer, and the complaint or report, dated October 23, 1960, to the Magistrate, was made, by the Police Officer. It is, on this report of the police officer, that the Magistrate acted further, and the trial also followed. Under those circumstances, it is clear that s. 251-A. Cr.P.C., directly applies, and it was, in accordance with the procedure, indicated in that section, that the trial was held. It follows, that there is no illegality, in the trial.

The result is that this appeal fails, and is dismissed.

Y.P. Appeal dismissed.

(1) Unreported decision in Crl. A. 201 of 1963 decided on 11-12-1964.