

PETITIONER:
MOHD. ALAM KHAN

Vs.

RESPONDENT:
NARCOTICS CONTROL BUREAU & ANOTHER

DATE OF JUDGMENT: 20/02/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
AHMADI A.M. (CJ)
SINGH N.P. (J)

CITATION:
JT 1996 (2) 636 1996 SCALE (2) 276

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. VENKATASWAMI, J.

Leave granted.

This appeal is preferred against the judgment of the Bombay High Court in Criminal Appeal No. 378/93 dated 18.10.94. The judgment under appeal has confirmed the conviction and sentence passed against the appellant under Section 22 read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') by the learned Special Judge, Greater Bombay by his judgment and order dated 25/28th June, 1993 in Special Case No. 255/89. Brief facts are the following.

At the outset, it may be pointed out that the appellant was tried by the Special Judge along with other accused and also along with a connected case. On 5.3.89 officials of Narcotic Control Bureau, Bombay (NCB for short) raided the houses of the co-accused. One of the co-accused by name, Raj Babu Pardan, pointed out the residence of the appellant situated at second floor, S.M. Mansion, 299 Bellasis Road, Bombay, thereby suggesting to conduct a raid in that premises as well. Accordingly that house of the appellant was searched on 6.3.89 and some incriminating documents along with cash amount of Rs. 45,000/- came to be seized. In connection with that seizure, the appellant was brought to the office of the Narcotic Control Bureau, Bombay for interrogation. While the appellant was in the office of the Narcotic Control Bureau, Bombay for the purpose of interrogations the Intelligence officer of the said Bureau received information to the effect. the appellant was having another flat now 102, in building no. 8A1 Quba Co-operative Housing Society, Millat Nagar, Andheri, Bombay-58. The further information received was to the effect that the appellant was trafficking in Narcotic and psychotropic drugs in a big way and that he had stored Mandrex tablets numbering 50,000 to 60,000 in that house. On

receipt of this information on the evening of 7th March 1989, the said premises came to be searched in the presence of Panchas. In the search, the officials seized 50,000 Mandrex tablets contained in a maroon colored bag along with certain documents. The samples of the said Mandrex tablets were drawn under a panchnama. The Deputy Director of NCB was informed about the result of the search. It may be noted that the said search was conducted when the appellant was being interrogated by the NCB officials. It is also common ground that the said premises was under lock and key and the search party broke upon the lock for conducting the search in the course of the interrogation, the appellant was asked about the seizure of those 50,000 Mandrex tablets and he was said to have given statements under Section 108 of the Customs Act, 1962 and also under Section 67 of the NDPS Act, 1985. In the course of the search and seizure of the said premises along with the contraband tablets, an agreement dated 8.3.1989 supposed to have been signed by the appellant in favour of the promotor/builder was also seized by the officials.

On the basis of the abovesaid materials, the prosecution presented the case before the Special Judge Greater Bombay. As noticed earlier, the case against the appellant was heard and tried along with another connected case and also along with some other co-accused. The learned Special Judge, Greater Bombay while acquitting the co-accused and also the appellant, in the connected case which related to the raid of the premisses situated at second floor S.M. Mansion, 299 Bellasis Road Bombay, convicted the appellant in respect of the seizure of 50,000 Mandrex tablets from flat No 102 in building no. 8A1 Quba Co-operative Housing Society, Millat Nagar, Bombay and sentenced him to undergo rigorous imprisonment for 10 years and pay a fine of Rs.one lac in default to undergo one year additional rigorous imprisonment. In fact, the learned Special Judge in paragraph 53 concluded as follows:-

In view of my aforesaid discussion, I hold that the accused No. 3 Mohammad Aslam Khan was Possession of such Mandrex tablets is prohibited under Section 8 (c) of the NDPS Act and hence, he has committed an offence punishable under Section 22. read with 8(c) of the NDPS Act, 1985." (Emphasis supplied)

The above conviction and sentence was challenged by the appellant before the Bombay High Court in Criminal Appeal No. 379/93. As noticed above, the learned Judges for the reasons stated in the judgment declined to interfere with the judgment of the learned Special Judge, Greater Bombay. Hence the present appeal.

The learned counsel appearing for the appellant raised several contentions in assailing the judgment under appeal. However, we do not propose to deal with all the contentions raised before us as it may not be necessary in view of the fact that one of the contentions finds acceptance at our ends. That contention is that the prosecution has miserably failed to establish the ownership and possession of the premises namely, flat now 102 in building no.8A1, Quba Co-operative Housing Societies Millat Nagar, Andheri, Bombay from which the contraband tablets were seized as belonging to the appellant.

According to the learned counsel for the appellant, except the information received by the officials (Exhbt.

No.34) panchnama (Exhbt, No. 33) report and the alleged agreement containing the alleged signature of the appellants no other acceptable evidence was let in by the prosecution to prove that the appellant was the owner and in actual possession of the said building, He also submitted that the reliance placed by the prosecution on the statements of the appellant obtained under Section 108 of the Customs Act and 67 of the NDPS Act will be of no avail as the appellant has retracted the same without loss of time. He further submitted that a careful perusal of the statements of the appellants viz., Exhbt, 83 and 84 will clearly show that such statements would not have been given voluntarily by the appellant.

The learned Additional Solicitor General submitted that the agreement executed by the appellant found in the Premises in question and recovered by the officials containing the signature of the appellant is sufficient to establish that the appellant was the owner and in possession of the premises. In this connection, he invited our attention to Section 66 of the NDPS Act and submitted that the prosecution has established the case beyond doubt. He also submitted That the admission of the appellant during the course of interrogation under Section 67 of the NDPS Act is admissible in evidence and coupled with the fact of seizure of agreement containing the signature of the appellant, it is not open to the learned counsel for the appellant to contend that the prosecution has failed to establish the ownership of the appellant regarding the premises in question.

We have considered the rival submissions. We do not think that the learned Additional Solicitor General is right in invoking the aid of Section 66 of NDPS Act for Section 66(i) visualizes the production of a document which has been seized from the custody or control of any person or furnished by any person. In this case, the document namely the agreement has not been seized from the custody of the appellant or it has been furnished by him. In order to invoke the aid of Section 66, the prosecution should have established that the appellant is the owner and was in actual possession of the flat in question. Therefore, we are not able to accept the argument of the learned Additional Solicitor General. It is not in dispute that the appellant did not admit his signature in the agreement in question. The prosecution did not bother to produce any independent evidence to establish that the appellant was the owner of the flat in question by producing documents from concerned Registrar's office or by examining the neighbors. No statement has been made by the prosecution that inspite of the efforts taken by them, they could not produce the document or examine the neighbors to prove the ownership of the appellant relating to the flat in question. It is relevant to note here that two independent witnesses attested the panchnama. Only one of them was examined as PW 5 who did not support the prosecution version and therefore was treated as hostile. In this case except the retracted statements of the appellant to connect the appellant with the house in question, no other independent evidence is available to sustain the finding of the learned Special Judge extracted in the beginning and confirmed by the High Court.

The High Court was not right in holding that 'the learned Trial Judge was therefore right in holding that in view of Section 66 of the NDPS Act, the said document can be admitted in evidence and it goes to show that the said flat was owned by the appellant'. Again the High Court observed

that 'even assuming' that the said agreement is excluded from consideration, there remains the specific information received, Exhbt. 33 and his own statement recorded by the Authority under Section 313, Exhbt. 83 and 84 and all of them go to show that the appellant was the owner of the said flat. Ns pointed out earlier that nobody has identified the flat in question as belonging to the appellant and in the absence of corroborating evidence, one cannot come to a confirmed conclusion regarding ownership and possession on the basis of the retracted statements of the appellant alone.

For all these reasons, we hold that the persecution failed to establish the ownership of the flat in question as belonging to the appellant and consequently the conviction and sentence challenged in this Appeal cannot be sustained. Accordingly, the appeal is allowed and the conviction and sentence passed against the appellant are set aside. The appellant will be set at liberty at once unless required in any other case. Fine, if paid will be refunded.