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“Dharma is to protect the Needy”

Case Comment on
Apprehension of Biasness or A Blanket Rule?
A close Analysis of Mukesh Singh V. State (Narcotics Branch of Delhi)

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Abstract

The Narcotics Drugs and Psychotropic Substances Act since its enactment in the year 1985, has always been a subject to varying interpretations, it can be said that the Act in itself works as a complete code. The present case comment revolves around the most debated judgement of “Mukesh Singh v. State (Narcotics Branch of Delhi)” which was decided by the five-judge’s constitutional bench, in which the question pertaining to a crucial issue of the investigating officer and the informant being the same person which could potentially create some kind of bias in the investigation process was resolved. The judgement of this case then aided in solving many other pending cases with similar issues in which the same question was acting as an obstruction between the ways of justice. The author in this case comment pointed out at the ratio provided in this case, and prominently analysed the central idea behind why this judgment is celebrated, the author has also elaborated upon the pertinent sections which were in question in the present case.

Key words: - Informant, Investigation, Officer, Ratio, Judgement

Background

The constitutional bench of the Supreme Court of India, finally settled out the long coming dispute on the interpretation of the statute of the NDPS ACT, 1985. The question which was brought before the court in the present case was similar to that of the provision of CrPc, where a police officer being an informant in a cognizable offence cannot be the investigating officer of the same offence. The exact issue of interpretation was there in the NDPS Act, 1985. However, this issue was raised before the Bombay High Court and before the three-judge bench of the Supreme Court. The Supreme Court in the present case overruled the decision of the *Mohan Lal*¹ case, where the blanket rule was applied, which states that in cases where the informant and the investigating officers are same while an investigation is being carried out under the statute of the NDPS Act, the trial was vitiated and the benefit of this was rendered to the accused in the form of acquittal even if the procedure prescribed in the act have been followed, the reason behind it is that the element of the apprehension of unfair investigation exists in such cases.

Ratio

¹ Mohan Lal V. State of Punjab, 2018 17 SCC 627.

The Court while unanimously deciding the issue explained the backdrops of the NDPS Act and the issue in question, that the police officer being the informant and the investigating officer in a same case was clearly countered out by the court saying that there can be chances where the essence of biases can be seen, but that cannot be deemed as the general rule and needs to be decided solely depending upon the factual circumstances and the nature of the case, the Court held that,

“... merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that the informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis.”

The Supreme Court while laying down the ratio in the present case took a view of the following sections i.e., 41, 42, 43 and 44 of the NDPS Act, 1985², where the Central Government or the State Government authorized persons who can be the investigating officer and the officer-in-charge of the police station. The say of section 53 of the NDPS Act, was explained by the court in a better way and said that the officers under the Narcotics Bureau of India are authorized with the power of an “officer-in-charge of a designated police station”. For the purpose of the Investigation under the act there shall be other officers authorized under Sections 41, 42, 43, and 44 of the NDPS Act. The same was highlighted from the wordings of the court, where the court took into consideration the act of the legislature and highlighted that,

“It appears that the legislature in its wisdom has never thought that the officers authorized to exercise the powers under Sections 41, 42, 43 and 44 cannot be the officer in charge of a police station for the investigation of the offences under the NDPS Act.”

Moving on to the search and seizure aspects of the NDPS Act, the court opined that even search and seizure are considered as an important part of the investigation and the case investigation must be conducted by the person in charge of a police station only. Section 53, authorizes the Central Government or the State Government to appoint any officer of the revenue or excise, or any other department, department of drugs control, or any class of such officers, with the

² Section 41, 42, 43 and 44 of the NDPS Act.

powers of an officer-in-charge of police station, or of the same rank for the purpose of investigating violations under the NDPS Act.

Further, when we look into the provisions of the NDPS Act about the power of search, entry, arrest, and seizure of a person without any authorization or warrant, Section 42 of the code entails all such provisions and this provision includes the officers of the same rank of the police officers by the Central or the State government.

The only contrast that was brought into light by the court while looking at Section 42 and 53 of the Act was that under the provision of section 42 word “police” is specifically mentioned but when we move on to section 53 of the same act, it is absent there and this was the point of dichotomy in the act which gave a view that the same officer who is informant cannot be the investigating officer for the same case.

The Court while looking into the technicalities of the NDPS Act clearly sets out that there are no such provisions in the code which bar a police officer to be an informant/complainant and the investigating officer of the same case. The court also mentioned that when there is no such bar then it is implied that the same is allowed in the eyes of law. The same was highlighted in the below mentioned paragraph by the court.

“There is an obvious reason as for police such a requirement is not warranted as he can always be the officer in charge of a police station as per the definition of an “officer in charge of a police station as defined under the Cr. P.C.”

“To take a contrary view would be amending Section 53 and the relevant provisions of the NDPS Act and/or adding something which is not there, which is not permissible.”

The Court in the abovementioned paragraph also highlighted that whenever, there is a cognizable offence brought into the eyes of the authority, according to section 58 of the code the statute itself has provided the punishment as per section 58, such an offence is required to be investigated by the “officer in charge of a police station”. The word “officer” under the code is the referred as the one who exercises the power of search, entry, arrest, and arrest prescribed

under section 42, 43, or 44 as without any exception in such a case he would be the accused and hence he cannot be permitted to investigate and to be a judge in his own case.

However, the notable thing mentioned by the court is that as far as the investigation against the accused is concerned for the offences mentioned under the NDPS Act, the same analogy may not apply for the reasons stated by the court.

As a result, the Court determined that there is no reason to suspect the informant's reliability or the Prosecution's whole case just because the informant investigated the matter. The entire Prosecution version cannot be thrown out solely on the basis of any apprehensions or doubts, and the accused cannot be acquitted on the spot unless and until the accused can establish and prove the prejudice and bias.

As the NDPS Act is a special act with the special procedure that needs to be followed in the light of the Act's safeguards, there is no express prohibition on the informant conducting the inquiry himself under Chapter V, itself, namely, according to Section 58, the Court believes that no general concept of law can be established that the trial is tainted and the Accused is entitled to acquittal in every case where the informant is the investigator.

Similarly, as previously stated, there is no particular prohibition on the informant/complainant who is investigating the case under the IPC. The same line was drawn by the court in the below mentioned paragraph by the court.

“Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record.”

Analysis

This judgement gave a breakthrough to a number of pending NDPS cases where the accused was just escaping the liability of the crime stating the fact that the investigating officer and the informant are the same. The concept was being used as a blanket rule but the decision of the constitutional bench made it very clear that this should not be used as a general rule and the decision should be taken depending upon the factual circumstances of the case. The rule

followed prior to this decision was a judgement given by a three-judge bench by the supreme court in the case of Mohan Lal where the decision specifically barred the informant of a case to be the investigating officer and this was being followed as a blanket rule in the cases where the informant and the investigating officer are same person.

When we look into the case of “*Maneka Gandhi v. Union of India*”³ the due procedure prescribed must be reasonable and in the NDPS case where the act has prescribed the complete procedure for the search, seizure, investigation, and arrest and in that case if all the due process of law has been followed there occurs no point on which the trial should be vitiated and this is the general rule that needs to be followed until and unless a contrary view appears before the court where the court can see that there is some sort of biasness on the part of the investigating officer and this biasness will bring prejudice to the case in hand.

The court at several places highlighted that the abuse of the power conferred upon the officer under the NDPS Act cannot be presumed and it must be proved with the help of the facts of the case and the instances of the investigation. If the court at the 1st instance believes that the action of the officer is unreasonable and arbitrary in nature then in such a case the trial can be vitiated and a fresh trial can be ordered. The sole purpose of the investigation and the trial is to bring justice to the accused person and the aggrieved party but in a situation when one of the procedure not properly followed will create a hindrance in the justice delivery system and there can be a chance that justice delivered is not fair then in such circumstance it is better to vitiate the trial.

The Court also referred to illustration (e) of Section 114 of the IEA, 1882. According to the aforementioned rule, if an official act is proven to have been done, it is believed to have been done properly. The mere presumption that the complainant and the investigating officer where the same person is not sufficient to cast doubt on the Prosecution's story to declare that the Prosecution's case is vulnerable. The case must be decided on the facts and a generalized way should not be adopted.

The Court also emphasized that, under Sections 35 and 54 of the NDPS Act, the presumption is against the accused. As a result, in circumstances where the Prosecution bears the initial burden of proof, the presumption can only be applied after the Prosecution has met its initial

³ Maneka Gandhi v. Union of India, 1978 AIR 597

burden. It is important to highlight at this point that the reverse burden is not limited to special statutes such as the Prevention of Corruption Act and the NDPS Act, but the same is part of IPC - Section 304 B and the offences of same kind under the Indian Penal Code needs to be investigated under the procedure prescribed under Code of Criminal Procedure and for the same the informant can himself be an investigating officer for the offences prescribed under section 157 Cr.P.C.

Ruling

The court while giving the final decision marked that according to NDPS Act, the investigating officer and the informant can be the same person and marked the following words,

“The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that the informant is the investigator, the accused is not entitled to acquittal.”

