

CASE NO.:
Appeal (crl.) 1240 of 1999

PETITIONER:
STATE OF PUNJAB

RESPONDENT:
BALWANT RAI

DATE OF JUDGMENT: 24/02/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P. SINGH, J.

The respondent herein was put up for trial before the Additional Sessions Judge, Sangrur who by judgment and order dated August 8, 1997 found the respondent guilty of the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short N.D.P.S. Act) and sentenced him to undergo rigorous imprisonment for ten years and a fine of Rs. one lakh, in default of payment of fine to undergo rigorous imprisonment for 2-1/2 (two and a half) years. The respondent preferred an appeal before the High Court of Punjab & Haryana at Chandigarh being Criminal Appeal No. 655-SB/1997. The High Court by its impugned judgment and order of 19th February, 1999 allowed the appeal and set aside the order of conviction and sentence passed against the respondent. The State of Punjab has come up in appeal before this Court by special leave.

The facts of the case are that ASI Sampuran Singh (PW3) along with ASI Surinder Paul Singh (PW1) and Head Constable Satnam Singh, Constable Harinder Singh and other police officials was on patrol duty. While they were at village Ahankheri, Sampuran Singh PW3 received a secret information that the respondent was selling poppyhusk in wholesale and that on the preceding night in village Farid Pur Kalan several bags of poppyhusk had been unloaded and the accused was waiting for customers. On receipt of such information, a wireless message was sent to Pritpal Singh, Superintendent of Police, Malerkotla (PW2) who was requested to reach the spot. Chowkidar of village Ahankheri joined the police party and the police party reached the place indicated in the secret information. The respondent was found sitting on bags numbering 15. In the meantime, the Superintendent of police also reached there. In his presence PW3 opened the bags and found the bag to contain poppyhusk. There were 15 such bags. The contents of the bags were mixed up and two samples each weighing 500 gms. were taken. The remaining poppyhusk was packed in the same bags each containing 37 kgs. of poppyhusk. The samples were duly sealed and after necessary formalities and requirements of law were complied with a personal search of the respondent was conducted and from the person of the respondent a sum of Rs. 200/- was recovered, which was taken into possession under recovery memo Ex. PB. The sample was sent to the chemical examiner, Chandigarh and on receipt of his report Exh. PH, the respondent was put up for trial. The prosecution sought to prove its case by adducing oral as well as documentary evidence. ASI Surinder Pal Singh member of the raiding party was examined as PW1 while Shri Pritpal Singh, Superintendent of Police was examined as PW2. The investigating officer ASI Sampuran Singh was examined as

PW3. The report of the chemical examiner was produced before the court marked Exh.PH.

The incriminating circumstances were put to the accused in his examination under Section 313 of the Code of Criminal Procedure. There was a general denial by the respondent of

all the incriminating circumstances put to him but in answer to the last question, the respondent

stated that the police party was inimical towards him and he had, therefore, been falsely implicated. According to him in the year 1987 he had advanced a sum of Rs.18,000/- to Dhan Singh and Hakam Singh. The said Dhan Singh and Hakam Singh refused to repay the amount on demand. In the year 1990 ASI Amar Singh, ASI Sampuran Singh, PW3 and sub-inspector Shamsher Singh brought him (the respondent) to the police station Dhuri and falsely implicated

him in a case. A relative of the respondent filed a writ petition in the High Court and a Warrant

Officer was appointed by the High Court. His report disclosed that the respondent along with

Roop Singh and Sajjan Singh had been illegally detained in the police station Dhuri. Ultimately,

the High Court imposed a fine of Rs.5000/- upon sub-inspector Shamsher Singh for the illegal

detention of the respondent and others. On account of this police officials were inimical towards

him and, therefore, sub-inspector Shamsher Singh got him falsely implicated in this case.

The trial court accepting the evidence of the prosecution witnesses, and rejecting the

defence pleaded by the respondent, found the respondent guilty and sentenced him as earlier noticed.

In appeal before the High Court, it was argued that the conviction of the respondent was bad in law for non-compliance with the provisions of Section 50 of the N.D.P.S Act. The

High Court upheld this contention. The reasoning of the High Court in this regard is that since

the police had specific information that the respondent was indulging in the trade of poppyh usk,

Section 50 stood attracted. Even though the Superintendent of police was associated with the

search, neither he nor the investigating officer gave the option to the respondent to be searched

in the presence of a gazetted officer or magistrate. Referring to several judgments of the

High Court, the learned judge came to the conclusion that in view of the fact that the search was

made pursuant to secret information received by the investigating officer, Section 42 read with Section

50 obliged the prosecution to give an option to the respondent to be searched before a magistrate

or a gazetted officer. Since that was not done, the mandatory provisions of Section 50 of the

N.D.P.S Act were breached and the respondent was entitled to an acquittal. The High Court held that the use of the word "person" in Section 50 has to be given its widest import otherwise

the provision will be rendered nugatory. As an illustration the High Court observed that if a

person was found carrying a bag in his hand containing narcotic substance, before the bag is

searched, the requirements of Section 50 had to be fulfilled. It went to the extent of holding that

Section 50 would apply even in a case where a search is conducted in the house of the accused.

In this view of the matter, the High Court allowed the appeal and set aside the order of conviction and sentence against the respondent.

Even before us it was argued on behalf of the respondent that the search conducted by the raiding party in the instant case was a personal search of the respondent and, therefore,

the provisions of Section 50 of the Act are attracted. We are not persuaded to accept the submission. It has been brought to our notice that recently this Court on a difference of opinion has referred to a larger Bench the question as to whether search of the bag carried by the accused on his shoulder attracts Section 50 of the Act, and whether failure to give to the accused the necessary option contemplated by Section 50 before searching his bag would be in violation of the provisions of Section 50. [2004] 7 SCC 735] Some earlier judgments of this Court do take the view that search of a person does not extend to search of a vehicle, container, bag or premises. Since the matter has been referred to a larger Bench, we need not express any opinion on that question. The facts of this case are entirely different. We are not concerned with a case of the nature referred to a larger Bench of this Court. In the instant case 15 bags of poppyhusk were found by the side of the road, and the petitioner was found sitting on them. On search of the respondent, nothing incriminating was found and only a sum of Rs.200/- was recovered, but on search of the bags it was found to contain poppyhusk. The question is whether in the facts and circumstance of this case, search of the bags would amount to search of the person of the respondent. In our view this is clearly not a case of personal search and, therefore, requirements of Section 50 will not be attracted. The High Court was clearly in error in holding that the provisions of Section 50 of the N.D.P.S Act apply to a case with such facts.

Learned amicus curiae appearing on behalf of the respondent sought to sustain the order of acquittal by reference to other evidence on record. He submitted that the police was inimical towards the respondent and, therefore, the respondent was involved in this case at the instance of sub-inspector Shamsher Singh. We have earlier noticed the defence of the respondent. The earlier incident took place some time in the year 1990, whereas the incident giving rise to the instant case took place on 24th September, 1994 i.e. about four years later. Moreover, so far ASI Sampuran Singh (PW3) is concerned, we find that in the earlier episode he was not the officer against whom the High Court had passed an order imposing fine. It was sub-inspector Shamsher Singh against whom a fine was imposed by the High Court for illegal detention of the respondent and some others. It was submitted that since sub-inspector Shamsher Singh is on friendly terms with ASI Sampuran Singh, PW3, therefore, he colluded with Shamsher Singh and falsely implicated the respondent. We are not impressed by the argument. The fact is that apart from these officers, the Superintendent of Police was also associated with the search, though the respondent has gone to the extent of denying his presence. It would be too much to suspect merely on the basis of such allegations that the respondent was falsely implicated. Moreover, if such a plea of the respondent were to be accepted, in no case can the respondent be prosecuted because if prosecuted, his plea would be that the police was inimically disposed towards him, and therefore, falsely implicated him.

We have examined the evidence on record and from the facts of this case, it does not appear to be a case of implanted evidence. The police had prior information of the fact that poppyhusk contained in several bags had been unloaded at the point where they were ultimately found. Intimation of this fact had been given to the Superintendent of Police who reached

the place where the bags were unloaded. The respondent was found present there. The quantity is so large that the question of implanting does not arise. No other explanation has been offered by the respondent.

Given these facts and circumstance, we are of the view that the defence of the respondent, that he was falsely implicated, cannot be accepted.

In view of these findings, we allow this appeal, set aside the impugned judgment and order of the High Court acquitting the respondent and find him guilty of the offence punishable under Section 15 of the N.D.P.S. Act. We affirm the order of conviction and sentence passed by the trial court on 8.8.97 in Sessions Case No.7 of 20.1.1995 arising out of FIR No.102 dated 24.9.1994.

This Court by its order dated 14th July, 1999 had issued bailable warrants. In case the respondent has been released on his furnishing bail bonds, the same are cancelled and the State is directed to apprehend the respondent forthwith. The respondent shall undergo the remainder of the sentence.

We place on record our appreciation of the assistance rendered by Mr.Rana Ranjit Singh, amicus curiae.