

BAHADUR SINGH
v.
STATE OF HARYANA
(Special Leave Petition (Crl.) No. 5523 of 2009)

APRIL 6, 2010

[Altamas Kabir and Cyriac Joseph, JJ.]
2010 (4) SCR 402

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The petitioner was convicted for an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs. One lakh and in default of payment of the same to undergo further rigorous imprisonment for a period of three years. The allegation against the petitioner that he had been found in possession of six bags each containing 32 kilograms of Poppy Husk without any permit or licence, was found to have been proved by the Trial Court as well as the High Court. In order to appreciate the submissions made by Mr. R.K. Talwar, learned counsel appearing for the petitioner, it is necessary to set out the facts of the case in brief.

2. On 2nd December, 1995, Gian Singh, Inspector, along with other Police officers, was on patrol duty at the turning of Bhawani Khera on the Thanesar-Jhansa Road. He received a secret information that the petitioner herein, a resident of Singpura, was selling Poppy Husk in his house and the same could be recovered in case a raid was conducted. In the meantime, one Sukhdev Singh son of Sampuran Singh, reached the spot and he was also joined with the Police party as an independent witness. The police party thereafter raided the house of the petitioner, who was present, and on being interrogated he disclosed that he had concealed six bags in a locked room under the wheat chaff and that the key was with him. The disclosure

statement made by the petitioner was reduced into writing and the thumb impression of the petitioner was affixed thereupon and attested by witnesses. Thereafter, Gian Singh sent a wireless message to the Deputy Superintendent of Police, Kurukshetra, who rushed to the spot and in his presence the petitioner led the police party to the room in question and opened the lock with a key which was in his possession and from the said room six bags, each containing 32 kilograms of Poppy Husk, were recovered from underneath the wheat chaff kept in the room. Thereafter, as required, samples were taken out from the seized contraband and the remaining Poppy Husk was sealed and taken into possession vide a separate recovery memo and attested by the witnesses and the same was sent to the Police Station along with the Ruqa on the basis whereof the First Information Report (Exh.PB/1) was registered. A site plan was also prepared and statements were duly recorded. After completion of investigation challan was duly filed before the Special Court, Kurukshetra. Charge was framed against the petitioner under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed to be tried. On the evidence adduced by the prosecution, the petitioner was found guilty of the charged offence and was convicted and sentenced in the manner indicated hereinbefore.

3. Aggrieved by the judgment of conviction and sentence, the petitioner preferred the appeal before the High Court, being Criminal Appeal No.107-DB of 2000, which was partly allowed to the extent that the sentence of imprisonment was reduced from 12 years to 10 years. The rest of the judgment of the Trial Court was not disturbed.

4. Mr. R.K. Talwar, learned Advocate, appearing for the petitioner, assailed the judgments both of the Trial Court as well as the High Court, mainly on two grounds. He urged that the prosecution case stood vitiated on account of non-compliance of the provisions of Sections 42 and 57 of the NDPS Act. He submitted that, as has been held in various decisions, the provisions of Section 42 of the NDPS Act are mandatory and any failure by

the investigating agency to comply with the same would vitiate the investigation and also the trial on the basis of such investigation. In that regard Mr. Talwar referred to the decision of this Court in *Directorate of Revenue and another vs. Mohammed Nisar Holia* [(2008) 2 SCC 370] in which it was, inter alia, held that since the information as to the offence had not been reduced into writing by the officer who received the same, but by someone later on, the High Court had rightly set aside the conviction of the accused on the basis that the statutory requirement of Section 42 had not been complied with. Mr. Talwar pointed out that in the said case this Court maintained the judgment of the High Court on the same grounds relating to non-compliance of the provisions of Section 42 of the NDPS Act.

5. Mr. Talwar also referred to the Constitution Bench decision of this Court in *Karnail Singh vs. State of Haryana* [(2009) 8 SCC 539] wherein the effect of the amendment of Section 42 with effect from 2.10.2001, relaxing the time for sending the information from “forthwith” “within 72 hours” was considered along with the effect of the decisions rendered by this Court in the case of *Abdul Rashid Ibrahim Mansuri vs. State of Gujarat* [(2000) SCC (Cri) 496] and *Sajan Abraham vs. State of Kerala* [(2001) 6 SCC 692] in the context of the advent of cellular phones and wireless phones in dealing with emergent situations. The Constitution Bench held that whether there was adequate or substantial compliance with Section 42 or not would have to be decided on the facts of each case and non-compliance with Section 42 may not otherwise vitiate the trial if it did not prejudice the accused.

6. Mr. Talwar next submitted that even the provisions of Section 57 of the NDPS Act had not been complied with, inasmuch as, after the petitioner’s arrest the police authorities did not, within the time prescribed, make a full report of all the particulars of such arrest and seizure to his immediate superior. Mr. Talwar submitted that the prosecution also stood vitiated by the aforesaid lapse.

7. Apart from the two aforesaid points, Mr. Talwar also urged that the petitioner had not been found to be in conscious possession of the seized Poppy Husk and the mere fact that the bags containing the Poppy Husk were recovered from his premises did not automatically establish “conscious possession”. Mr. Talwar submitted that, in any event, having regard to the failure of the investigating agency in complying with the mandatory provisions of Sections 42 and 57, the trial of the petitioner and his conviction and sentence therein stood vitiated and the High Court erred in upholding the same.

8. Appearing for the State of Haryana, Mr. Rao Ranjeet, learned Advocate, while refuting the submissions of Mr. Talwar, submitted that the view of this Court with regard to the mandatory requirement of Section 42 had to a great extent been watered down with the advent of electronic equipment such as wireless as also cell phones. Mr. Ranjeet submitted that even prior to such consideration, this Court in *Sajan Abraham’s* case (supra) had taken the view that in an emergent situation it may not always be possible to strictly comply with the provisions of Section 42 since the delay involved in effecting such strict compliance could help the offender to remove the contraband or to flee the place so as to make any raid for recovery of such contraband meaningless. He pointed out that in *Sajan Abraham’s* case (supra) this Court had held that it was not possible for the officer concerned, who was on patrol duty, to comply with the requirements of sub-sections (1) and (2) of Section 42 as the same would have delayed the trapping of the accused which might have led to his escape.

9. With regard to non-compliance of Section 57 of the above Act it was held that the same was not mandatory and that substantial compliance would not vitiate the prosecution case, since the copies of the FIR along with other remarks regarding the arrest of the accused and seizure of the contraband articles had been sent by the concerned officer to his superior officer immediately after registering the case. It was held that this amounted to

substantial compliance and mere absence of such report could not be said to have prejudiced the accused. It was further held that since the Section was not mandatory in nature, when there were substantial compliance, it would not vitiate the prosecution case.

10. Mr. Ranjeet also referred to the decision of this Court in *State of Punjab vs. Balbir Singh* [(1994) 3 SCC 299] where also similar views were expressed and such views had been relied upon by this Court in deciding *Sajan Abraham's* case (supra). Mr. Ranjeet submitted that no grounds have been made out on behalf of the petitioner warranting interference with the judgment impugned in the Special Leave Petition.

11. We have carefully considered the submissions made on behalf of the respective parties and we are inclined to agree with the submissions advanced by Mr. Rao Ranjeet appearing on behalf of the State of Haryana.

12. It cannot but be noticed that with the advancement of technology and the availability of high speed exchange of information, some of the provisions of the NDPS Act, including Section 42, have to be read in the changed context. Apart from the views expressed in *Sajan Abraham's* case (supra) that the delay caused in complying with the provisions of Section 42 could result in the escape of the offender or even removal of the contraband, there would be substantial compliance, if the information received were subsequently sent to the superior officer. In the instant case, as soon as the investigating officer reached the spot, he sent a wireless message to the Deputy Superintendent of Police, Kurukshetra, who was his immediate higher officer and subsequent to recovery of the contraband, a Ruqa containing all the facts and circumstances of the case was also sent to the Police Station from the spot from where the recovery was made on the basis whereof the First Information Report was registered and copies thereof were sent to the Ilaka Magistrate and also to the higher police officers. As was held by the High Court, there was, therefore, substantial compliance with the provisions

of Section 42 of the NDPS Act and no prejudice was shown to have been caused to the accused on account of non-reduction of secret information into writing and non-sending of the same to the higher officer immediately thereafter.

13. Apart from the decision in *Sajan Abraham's* case (supra), the decision of the Constitution Bench in *Karnail Singh's* case (supra), has also made it clear that non-compliance with the provisions of Section 42 may not vitiate the trial if it did not cause any prejudice to the accused. Furthermore, whether there is adequate compliance of Section 42 or not is a question of fact to be decided in each case.

14. As far as compliance with the provisions of Section 57 of NDPS Act is concerned, as has been indicated earlier, it has been held by this Court that the same was not mandatory, and, in any event, information of the arrest of the petitioner and seizure of the contraband had been duly reported to the local police station on the basis of which the First Information Report had been drawn up.

15. As to the submissions advanced with regard to conscious possession of the seized Poppy Husk, we are of the view that the same cannot be accepted having particular regard to the fact that the six bags containing 32 kilograms of Poppy Husk in each of the bags were not only recovered from the premises of the petitioner but from a room which was opened by him with a key in his possession.

16. We, accordingly, find no merit in the Special Leave Petition, and the same is dismissed.