

REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO(s). 2106 OF 2008****BAHADUR SINGH****.. Appellant (s)****VERSUS****STATE OF PUNJAB****.. Respondent(s)****O R D E R**

This appeal is directed against the judgment and order dated 29th May, 2008 of the High Court of Punjab & Haryana, whereby the acquittal of the appellant-Bahadur Singh for an offence punishable under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985, (hereinafter referred to as 'the Act') has been set aside and he has been convicted under that provision and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. one lakh and in default in payment of fine, to undergo further rigorous imprisonment for one year.

2. The facts are as under:-

3. At about 6.30 p.m. on the 5th December, 1995, a police party headed by SHO Rajbir Singh held a special nakabandi under the supervision of PW-3 Gurmeet Singh, Superintendent of Police (Headquarters). At about 6.45 p.m. two persons were spotted

coming towards them. On seeing the police party, one of the persons ran towards the taxi stand, whereas the other attempted to turn towards Amloh Chowk. A party led by inspector Rajbir Singh followed the person proceeding towards Amloh Chowk and apprehended him. He turned out to be Bahadur Singh, the appellant. He was also found to be carrying a bag in his right hand which was suspected to contain contraband. An offer under Section 50 of the Act was made to him by inspector Rajbir Singh. The appellant stated that he would like to be searched in the presence of a Gazetted Officer. PW-3 Gurmeet Singh was accordingly requested to be present. The bag was searched and 10 Kgs. of opium was found therein. A sample of 20 grams was separated and the balance of the opium was sealed and was entrusted to PW Mohinder Singh. It appears that the person who had run towards the taxi stand was also apprehended by another police party and 10 kg. of opium was also recovered from him. That man was Darshan Khan. Two trials were held thereafter, one with respect to the appellant, Bahadur Singh and the other with respect to Darshan Khan. It is the admitted position that Darshan Khan's conviction has attained finality. Bahadur Singh was, however, tried by the Additional Sessions Judge, Ludhiana, who held that the Prosecution story was doubtful and accordingly acquitted him. In arriving at this conclusion, the trial court observed that the provisions of Sections 50, 55 and 57 of the Act had been violated. It was further found that as per the press note

published in the Daily "Jagbani", Jalandhar (Ex.DD) dated 8th December, 1995, it had been brought out that 20 kgs. of opium had been recovered from Darshan Khan by SI Bhupinder Singh and there was no reference to the appellant. The trial court's judgment has been reversed in appeal by the High Court by observing that the provisions of Section 50 of the Act were not applicable in the facts of the present case and that in any event, the press note, Exhibit DD could not be taken in evidence and no reliance could thus be placed thereon, with regard to its contents.

4. Having heard learned counsel for the parties and having gone through the records and materials placed before us, we find that provisions of Section 50 of the Act would not be applicable in the present case. The opium had allegedly been recovered, from a bag, which the appellant was carrying, as per the prosecution story. We, however, find that the observations of the High Court that the press note, Exhibit DD, could not be relied upon appears to be unacceptable. We must note that the High Court had proceeded on the basis that Exhibit DD was a news item, whereas it is clear from Exhibit DD, that it was a press note issued by the SSP Khanna, Shri Arun Kumar Mittal. We have gone through this document and find that it clearly states that as per prior information that opium smugglers from Madhya Pradesh would be selling opium, a police naka had been organised and two persons had alighted from a bus and on seeing the police had run in the different

directions and of them, one person was the appellant and the other was Darshan Khan and that 20 kilograms of opium had been recovered from the bag carried by Darshan Khan. PW3 SP Gurmeet Singh, in his cross-examination admitted that the press note had indeed been issued and published in the daily "Jagbani" dated 8th December, 1995. On reading the press note, he stated that it referred to the naka in which the alleged opium had been recovered. In our view, the High Court's observation that Exhibit DD being a news item could not be taken into evidence, is not correct, as the veracity of the contents of the document, had been accepted by PW-3. We accordingly find that the recovery of 10 Kgs. of opium from the appellant becomes suspect.

5. We may also highlight that the trial court had taken a view in favour of the accused on a consideration of the evidence, and as that view was clearly possible, the High Court should not have interfered in the matter in an appeal against acquittal.

6. We, accordingly, allow this appeal, set aside the order of the High Court and order the acquittal of the appellant.

7. We also direct that the appellant, who is in custody, shall be released forthwith if not wanted/required in connection with any other case.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;
April 26, 2011.

