

CASE NO.:
Appeal (crl.) 1893 of 1996

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
VIDHYA DHAR

DATE OF JUDGMENT: 01/03/2002

BENCH:
R.P. Sethi & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

This appeal is preferred by the State of Haryana challenging the judgment and order passed by the learned Single Judge of the High Court of Punjab and Haryana reversing conviction of the respondent, Vidhya Dhar, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The respondent was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs,1,00,000/- and in default thereof to undergo rigorous imprisonment for a period of one year. The facts of the case, in brief, are thus.

On 4.12.1992, Sub Inspector Ram Chander, along with some police personnel was proceeding in a vehicle towards village Sangwan. When they reached the bus stand, they saw the respondent coming from the village side to the bus station. On seeing the police party, the respondent tried to escape. This aroused suspicion in the mind of Sub Inspector Ram Chander. The police party intercepted the respondent and tried to conduct a search on his person. The respondent was told that if he desired, the search could be effected in the presence of a Gazetted Officer or a Magistrate. The respondent, however, declined to have the search conducted either in the presence of a Gazettted Officer or Magistrate. This was recorded in the form of a statement, which was marked in the proceedings as Ex. PG. On conducting search of the respondent, a tin was recovered from the bag belonging to the respondent. It was found to contain about 2 kilogram and 250 grams opium. A sample was taken from the opium and sealed. Both the packets containing opium and its sample were taken into possession after preparing a recovery note. The respondent along with these two packets was produced before the Officer Incharge of Police Station, Tosham. The Officer Incharge verified the facts and affixed his own seal 'RKB' on both the packets containing sample and the rest of opium. The articles were deposited in the 'Malkhana'. Thereafter, the sample of the opium was sent for chemical analysis and on receipt of the report, the charge sheet was filed against the respondent.

The respondent pleaded not guilty. In support of prosecution case, five witnesses were examined. The respondent pleaded that he was falsely implicated. The Addl. Sessions Judge, after consideration of the evidence, found the respondent guilty of the offence charged against him. The Sessions Court found that there was no violation of the provisions contained in Section 50 of the Narcotic Drugs & Psychotropic Substances Act and that the prosecution had proved recovery of 2 kilograms and 250 grams of opium from the possession of the respondent. The respondent had contended before

the learned Sessions Judge that there was tampering with the seal affixed on the packet containing the sample. But that plea was rejected.

Aggrieved by the findings of the Sessions Judge, the respondent filed an appeal and the learned Single Judge acquitted the respondent on the sole ground that there appeared to be some tampering with the seals affixed on the packet containing the sample. The learned Single Judge stated in the impugned judgment that PW-5, Inspector Amar Singh took sample and he put his seal 'AS' and entrusted the same to the Station House Officer and the Station House Officer put his seal 'RKB'. The learned Single Judge observed that Sub Inspector Ram Chander had deposed that he had verified and affixed his seal. The learned Single Judge was, therefore, of the opinion that if verification was done, PW-1 must have opened the packet and thereafter he must have put his seal 'RKB' and in that case the original seal 'AS' should not have been there on the packet. On this premise it was held that the chances of tampering could not be ruled out and the respondent accused was entitled to the benefit of doubt. This finding of the learned Single Judge is challenged before us.

We have heard Shri J.P. Dhanda, learned counsel for the appellant-State and Shri Vishal Malik, learned counsel for the respondent. It was submitted by learned counsel for the State of Haryana that there was no tampering with the seal placed on the packet of opium sample collected and the evidence of the prosecution is very clear on this aspect. We have perused the evidence adduced in this case. PW-4 Sub Inspector, Ram Chander, had collected the sample of the opium recovered from the respondent. PW-4 deposed: "The sample and the residue were sealed with the seal of AS. The seal after use was handed over to Badan Singh and the sample and the case property were taken into possession vide memo Ex. PH attested by me and PW Badan Singh. Case property is Ex.P1 and the sample is Ex. P2 and the 'thelais' Ex.P3. After that, the police party along with the accused and the case property went to the SHO, PS Tosham, who had verified the facts from the accused as well as from the witnesses and checked the case property and the sample. He affixed his own seal of "RKB" on the sample and the residue." PW-4 did not say that the packet of the sample was opened and fresh 'AS' seal put thereon.

Sub Inspector Rameshwar Kumar, who was also the Station House Officer, was examined as PW-1. He deposed: "I had verified the facts from SI Amar Singh, witnesses and the accused. Case property was found sealed with the seal of AS and the same seal was found on the sample. After verification of the case property and sample I also affixed my seal of "RKB" on the residue as well as the sample." PW-1 was cross-examined by the counsel for the respondent. It was not suggested to him whether the seal put by the Sub Inspector Ram Chander, was found tampered or not. In fact, there was no cross examination regarding the tampering of the seal. All that he deposed was that he checked and verified the facts and then affixed his seal on the sample as well as on the rest of the opium recovered from the respondent.

On a perusal of the evidence of PW-1 and PW-4, we are unable to perceive any defect therein and it clearly shows that the seal put on the sample packet was found intact. The learned Single Judge did not appreciate the evidence adduced by the prosecution in the correct perspective.

The prosecution, in our opinion, successfully proved that 2 kilograms and 250 grams opium was recovered from the respondent and there was no procedural illegality in the investigation. The finding of the learned Single Judge that there was tampering with the seal put by the Investigating Officer was without any basis and the respondent was not entitled to get benefit thereof. As there was clear misreading of evidence, we are constrained to reverse the finding of acquittal. We, therefore, set aside the impugned judgment of the learned Single Judge, allow this appeal and affirm the conviction and sentence of the respondent as recorded by the Addl. Sessions Judge, Bhiwani.

J
[R.P. Sethi]

.J
[K.G. Balakrishnan]

March 1, 2002

JUDIS