

2009(9) SCR 621
STATE OF RAJASTHAN
v.
BHIYA RAM
(Criminal Appeal No. 1325 of 2004)

MAY 5, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. In this appeal challenge is to the order of the learned single Judge of the Rajasthan High Court at Jodhpur directing acquittal of the respondent who was tried for allegedly committing offence punishable under Sections 8/18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short the N.D.P.S. Act) The learned Special Judge, NDPS found him guilty and sentenced him to undergo imprisonment for 10 years and to pay a fine of Rs.1 lac and on account of non payment of fine, additional rigorous imprisonment for one year was awarded.

2. The prosecution version as unfolded during the trial was that the SHO, P.S. Modara, District Jalore, Gopal Ramawat (PW-5) on 22.4.2001 was conducting routine checking of the vehicles on the road near village Ramseen. In the evening, allegedly, Bhiya Ram and Prahlad Ram came riding on a motor-cycle, which had no number plate and when the same was signaled to stop, they did not stop. They were chased by the police jeep and ultimately the motor cycle was stopped. According to the prosecution, the motor cycle was searched and large quantity of opium was seized. Both were arrested. A case under Section 8/18 of the NDPS Act was registered. The samples which were taken on the spot were sent for chemical examination. As per the chemical examination report

(Exh.P/27) the material sent for examination was found to be opium containing Morphine. Hence, both were challaned before the said court. Both pleaded not guilty. The prosecution examined 12 witnesses. DW-1 Jagdish was examined in defence. He stated that during the relevant time both the accused persons were at his house attending the betrothal ceremony of his daughter, Rekha, and the motor cycle belonging to Bhiya Ram was stolen by somebody and on the next day during the search, they found that the motor cycle was lying in the police out-post at Ramseen. In this way according to the defence version both were implicated falsely.

3.The Trial Court acquitted accused Prahlad Ram while finding the present respondent guilty. He filed in appeal before the High Court. The stand taken by the accused before the Trial Court and the High Court was that the samples which were allegedly collected at the time of recovery on 22.4.2001 did not reach the FSL Jaipur intact and on that score alone the accused was entitled to acquittal. The Trial Court held that accusations were established. The prosecution version clearly shows that the seals were intact when the articles for examination were received by the FSL in the manner in which the articles were first put in polythene bags and then put in plastic bags. The Trial Court did not find any substance that the samples collected did not reach the FSL, Jaipur in the same form as were collected. The High Court, however, held that there was non compliance with the requirement of Sections 55 of the Act and the evidence of PW-1 and PW-11 clearly show that the requisite procedures were not followed. Accordingly, acquittal was directed.

4. In support of the appeal, learned counsel for the appellant submitted that the High Court should not have picked up stray sentences from the evidence to hold accused not guilty. The effect of the fact that the seals were intact when received by the FSL, Jaipur has not been considered. The judgment of the High Court is very cryptic. The well reasoned order of the Trial Court should not have been subsided by the High Court. Learned counsel for the appellant stated that the judgment of the High Court is cryptic and there is hardly any analysis of the evidence.

5. Learned counsel for the respondent supported the judgment of the High Court.

6. The effect of the samples reaching with the seals intact has been considered by this Court in a large number of cases, e.g. in *Hardip Singh versus State of Punjab* reported in 2008 (8) SCC 557 and Criminal Appeal No.18 of 2003 decided on 28th April, 2009.

7. We set aside the impugned judgment and remit the matter to the High Court to reconsider the matter in accordance with law. This course is being adopted as the impugned order is bereft of discussion and reasoning.

8. The appeal is allowed to the aforesaid extent.