

2009(9) SCR 917
STATE OF PUNJAB
v.
NIRMAL SINGH
(Criminal Appeal No. 1390 of 2004)
APRIL 23, 2009

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

The Judgment/Order of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is the judgment of a learned Single Judge of the Punjab and Haryana High Court directing acquittal of the respondent who faced trial for alleged commission of offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "Act"). It was alleged that the accused had kept 10 bags of poppy husk under the sugar cane straw. Learned Additional Sessions Judge, Sangrur found the accused guilty and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,00,000/- with default stipulation.

2. The prosecution version in a nutshell is as follows:

3. On February 25, 1988, ASI Darshant Singh PW2 was present alongwith Constable Baldev Singh, Avtar and Gurjant Singh, on Malerkotla bye-pass, Dhuri. He received a secret information that the present appellant was selling poppy husk in his house and if raided, the same could be recovered. Head Constable Darshan Singh PW1 also arrived there and he too, was joined in the police party. After receipt of the secret information, ruqa Ex.PC was sent to the concerned police station for the

registration of the case, on the basis of which, formal F.I.R. Ex.PC/1 was recorded by ASI Amarjit Singh. ASI Darshan Singh reached Village Bhanbauri, where Sant Ram Chowkidar of the same village was also joined on the outskirts of the village. The police party, thereafter, raided the house of the appellant, where he was found present. He was consequently apprehended and interrogated by ASI Darshan Singh PW2 in the presence of witnesses, whereupon the appellant allegedly made a disclosure statement Ex.PA to the effect that he had kept concealed 10 bags of poppy husk under the sugar cane straw lying in his house, which he could get recovered. After reducing Ex.PA the statement into writing, which was thumb marked by the appellant and attested by the witnesses, the police party led to the place of concealment and from there, the appellant got recovered the contraband. Each bag contained 40 kg. of poppy husk. Out of each bag 250 grams was taken out as a sample, put in a separate container and the same as also the remaining poppy husk were sealed with the seal bearing inscription "DS" and was taken into possession vide memo Ex.PB, duly attested by the witnesses. The seal after use was handed over to Head Constable Darshan Singh PW1. Rough site plan of the place of recovery Ex.PD was also prepared by ASI Darshan Singh. On return to the police station, the case property was deposited with seal intact with the MHC as no senior official was present in the police station. On receipt of the report of the public analyst Ex.PE, who opined the substance as poppy heads, the appellant was challaned. A charge under Section 15 of the Act was framed against the appellant.

4. In order to substantiate the accusations, prosecution examined several witnesses like the Head Constable, ASI, who

was the Investigating Officer, one Sant Ram, Chowkidar who was joined before raid for the purpose of being a witness was given up by the prosecution as being won over. However, he was produced as the defence witness (DW1) by the accused. One Sukhminder Singh was also examined as DW2. The accused took the stand that he been falsely implicated because of dispute with certain politicians. The trial court found the accused guilty.

5. Before the High Court the stand of the accused was that he never made a disclosure for recovery of the articles purported to have been done on the basis of disclosure made under Section 27 of the Indian Evidence Act, 1872 (in short the 'Act'). It was also submitted that the requisite parameters of Section 50 of the Act were not kept in view. Finally, it was submitted that only on the basis of the evidence of the official witness conviction should not have recorded.

6. The High Court accepted the stand and directed acquittal. In support of the appeal, learned counsel for the appellant submitted that the High Court was erroneous.

7. There is no legal bar on recording the conviction on the basis of evidence of official witness and Section 50 of the Act has no application as there was no personal search.

8. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. See *Kalema Tumba v. State of Maharashtra and Anr.* (JT 1999 (8) SC 293), *The State of Punjab v. Baldev Singh* (JT 1999 (4) SC 595), *Gurbax Singh v. State of Haryana* (2001 (3) SCC 28). The language of Section 50 is implicitly clear that the search has to be

in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh's* case (supra). Above being the position, the conclusion regarding non-compliance of Section 50 of the Act is unsustainable.

9. Therefore, the conviction of the High Court which alleged contravention Section 58 of the Act is clearly unsustainable. Coming to the conclusion of the High Court their conviction cannot be recorded only on the basis of official witness also is indefensible.

11. This position was stated in *State of Haryana vs. Mai Ram, Son of Man Chand* (2008 (8) SCC 292) as follows:

XXXXXXXXXXXX

“So far as the examination of only official witness is concerned, it is to be noted that the only independent witness who was examined to speak about the seizure did not support the prosecution version. No material was brought on record by the defence to discredit the evidence of the official witnesses. The ultimate question is whether the evidence of the official witness suffers from any infirmity in the instant case nothing of the nature could be pointed out. Further PWs 1 and 2 categorically stated that no other person was willing to depose as witness. Therefore, the High Court was clearly in error in holding that the prosecution version became vulnerable for non-examination of persons who were not official witnesses.”

12. The judgment of the High Court is set aside. The appeal is allowed. The respondent shall surrender to custody forthwith to serve the remainder of sentence.

SUPREME COURT OF INDIA



JUDGMENT