

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 82 OF 2006

GURDEV KAUR

Appellant (s)

VERSUS

STATE OF PUNJAB

Respondent(s)

O R D E R

As per the case of the prosecution, on 24.7.1997, Inspector Ram Prakash(PW-1) along with ASI Ram Nath (PW-5), Constable Jaspal Singh and some other police officials were going in a Government vehicle in connection with the patrol duty. When the police party reached near the turning point of village Kahri Sarhri, a secret information was received that the appellant herein had procured large quantity of poppy husk and the same could be recovered, if the raid was conducted. On receiving this information, the police party reached the house of the appellant. The appellant disclosed that she had kept concealed 5 bags of poppy husk towards the Eastern side of the village. The appellant even led the police party to that place and the police got recovered 5 bags of poppy husk, which were found to be 35 kgs each. In this way, total of 175 kgs were recovered. Immediately, wireless message was sent to DSP Sushil Kumar who reached the spot and the recovery was produced before the said DSP along with the accused/appellant. The appellant was thereafter charged under Section 15 of the NDPS Act.

The Special Judge, Hoshiarpur, vide its judgment dated 17.8.1999 was pleased to convict the appellant under the aforesaid provision. A sentence of 10 years rigorous imprisonment along with fine of Rs. 1 lakh was imposed thereon.

The appellant filed appeal against the conviction and sentence before the High Court. Apart from taking some trivial arguments, the main submission of the appellant was non-compliance of the provisions of Section 42 of the NDPS Act as well as Section 50 of the said Act. It was, inter alia, argued that while carrying out the search, senior officer was not associated. The High Court went into this particular aspect and rejected the contention of the appellant in the following manner:-

"I have considered the rival submissions and perused the record of the case. Recovery was effected at the instance of the appellant. In the presence of PW-1 Ram Parkash and PW-2 DSP Sushil Kumar, who reached the spot immediately and therefore, it cannot be said that the contraband was to in possession of the appellant and Section 42 of the Act did not apply as the recovery was from open space and in any case, the

information was immediately sent in the form of rukka and the DSP Sushil Kumar had come to the spot before whom the recovery and the accused were produced and therefore, the case of the prosecution could not be said to have been vitiated by non compliance of Section 42 of the Act. Reference is made to the decision of the Supreme Court in Sajjan Ibrahim Versus State of Kerala, 2001(6) SCC 692, wherein, it has been held that the Court has to adopt pragmatic approach in interpreting Section 42 of the Act."

It is clear from the above, which could not be disputed as well, that the recovery was made from an open space. However, in any case, the information was immediately sent to DSP Sushil Kumar who had come to the spot before whom the recovery as well as the

appellant were produced. On this basis, the High Court, after relying upon the judgment of this Court in Sajjan Abraham Versus State of Kerala 2001(6) SCC 692 held that the provisions of Section 42 of the Act were complied with.

We may point out, at this stage, that the matter was referred to the larger Bench. That was the sole reason that in the special leave petition filed by the appellant leave was granted, i.e. in view of the fact that the compliance of Section 42 of the NDPS Act is mandatory or not had been referred to by larger Bench. The Constitution Bench has since decided the issue in Karnail Singh Vs. State of Haryana 2009(8) SCC 539. Not only the judgment in Sajjan Abraham case(supra) is explained, it is specifically held by the Constitution Bench that in special circumstances involving emergent situations(when the officer is on the move) and recording of information is not practical prior to search and seizure and would be detrimental to effectiveness of the search and seizure concerned, the requirement of writing down and conveying information to superior officer may be postponed by a reasonable period which may even be after the search, entry and seizure. It is further held that whether there is adequate or substantial compliance of the provisions of Section 42 of the Act or not is a question of fact to be decided in each case. It was further held that non-compliance of Section 42 may not vitiate the trial if it does not cause any prejudice to the accused.

In the present case as mentioned above, the seizure was from the open area when the officers concerned were on the move and not in their office when they received information and immediately the information was given to DSP Sushil Kumar who immediately had come to the spot. Therefore, it is clear that there was a substantial compliance of provisions of Section 42 of the Act.

Ms. Sweta Rani, learned counsel appearing for the appellant made further submission to the effect that there was independent witness Mota Singh who was not examined. We are of the opinion that merely because of non-examination of independent witness,

balance would not tilt in favour of the appellant as on the one hand, cogent reasons for non-examination are furnished and on the other hand, testimony of other witnesses, may be police officials, coupled with the recovery of the contraband is adequately established on the basis of evidence on record. In so far as the requirement of Section 50 of the Act is concerned, that provision is rightly held to be not attracted simply because of the reason that the person of the appellant was not searched and in fact recovery was made from open space.

The appeal is dismissed accordingly.

During the pendency of this appeal vide orders dated 13.5.2005, the appellant was released on bail. The appellant shall surrender to serve the remaining sentence failing which the trial Court would take steps to arrest the appellant. A copy of the order be sent to the learned court concerned.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(A.K. SIKRI)

NEW DELHI
MAY 21, 2014

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ITEM NO.111

Court No.2

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 82 OF 2006

GURDEV KAUR

Appellant (s)

VERSUS

STATE OF PUNJAB

Respondent(s)

Date: 21/05/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE A.K. SIKRI
(VACATION BENCH)

For Appellant(s)

Ms. Sweta Rani, Adv.
Mr. Prem Malhotra, Adv.

For Respondent(s)

Mr. Jayant K. Sud, AAG
Ms. Bonita Singh, Adv.
Mr. Vishal Dabar, Adv.
Mr. Kuldip Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(DEEPAK MANSUKHANI)

Court Master

(Signed order is placed on the file)

(M.S. NEGI)

Assistant Registrar