

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). 803 OF 2006

STATE OF PUNJAB

Appellant (s)

VERSUS

BABU LAL

Respondent(s)

(With office report)

Date: 04/05/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE C.K. PRASAD

For Appellant(s) Mr. Jayant K.Sud,Adv.
Mr. Atul Sahi,Adv.for
Mr. Kuldip Singh,Adv.

For Respondent(s) Mr. Rajesh Kumar,Adv.
Dr. Kailash Chand,Adv.

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

The Appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 803 OF 2006

STATE OF PUNJAB

.. APPELLANT(S)

vs.

BABU LAL

.. RESPONDENT(S)

O R D E R

We have heard the learned counsel for the appellant
very carefully.

The respondent Babu Lal, was brought to trial for an
offence punishable under Section 18 of the Narcotic Drugs &

Psychotropic Substances Act, 1985, (hereinafter referred to as 'the Act') for having been found in possession of 4.3 kg. of opium on 16th August 1998. He was arrested on that date by PW.2 Inspector Joginder Singh. S.H.O., Police Station, Division No.5, Ludhiana, who was on patrol duty along with PW.3 S.I. Balwant Singh and another police officer near the police Naka at the Dharamkanda of Sham Nagar, Ludhiana. PW.2 Inspector Joginder Singh then apprised Babu Lal of his rights under Section 50 of the Act on which D.S.P. H.P. Singh PW.5 was summoned to the place. The Investigating Officer also prepared several memos at the place of incident including a Rugqa to the police station on which the FIR was registered, and the recovery memo Ext. PD and the seizure memo Ext. PL. and deported the opium in the Malkhana.

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The Trial Court on an examination of the prosecution evidence convicted and sentenced Babu Lal. An appeal was thereafter brought to the High Court which set aside his conviction and ordered his acquittal. The High Court observed as under:

"In the present case, the conviction of the appellant is sought to be justified on the ground that appellant has not been able to bring on record any material, which would support his plea of innocence. the stage for shifting of onus would come if the prosecution has been able to bring on record material which leaves no loopholes in the version sought to be projected by it. One of the way in which the Courts of law try to determine the truth is whether the assertions made by the witnesses can be accepted on its face value. The case against the appellant rests on the oral averments of PW.2 Inspector Joginder Singh, PW3 SI Balwant Singh and PW.5 H.P.Singh, Dy. S.P. According to them on the fateful day, they were holding a naka near the Dharmkanda of Sham Nagar, Ludhiana when they had seen the appellant approaching the naka on foot with a tin on his head. When he tried to turn back, he was apprehended and the recovery was effected. The investigation was completed before 4.30 p.m. by which time what all happened had already been incorporated in the rugqa Ex.PD. After all the investigations have been completed. There was no possibility of number of FIR at which the case was registered being made available to the investigating Officer and other officials for being

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incorporated in the memorandums which had been prepared by them at the spot before the registration of the FIR. This circumstance shatters the credibility of the version sought to be projected and renders more probable the suggestions, which were made to the witnesses in cross examination that all the written work was completed by the police after the arrest of the appellant when it had return to the police station."

The Court also observed that as the mandatory provision of Section 50 of the Act had been ignored, the accused was entitled to acquittal on this aspect also.

A bare perusal of the above quoted portion from the High Court judgment clearly reveals that the High Court on an appreciation of the evidence on record found that the search, seizure and investigation were tainted and that the various memos had been prepared in the police station and the prosecution story that they had been prepared at the spot where the seizure had been made, was incorrect.

Mr. Sud, the learned counsel for the appellant has, however, pointed out that the High Court was wrong in holding that the provision of Section 50 of the Act had been ignored as the opium was not being carried on the person of the accused but in a tin which he was carrying in his hand. That may be so, but in the light of the above

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findings of the High Court on facts we are not called upon to render our opinion on this aspect of the matter, in an acquittal appeal.

We accordingly dismiss the appeal.

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

.....J.
(K.S. RADHAKRISHNAN)

New Delhi,
May 4, 2010.