

ITEM NO.101

COURT NO.3

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO(s). 649 OF 1999

STATE OF HARYANA

Appellant (s)

VERSUS

HUKAM SINGH

Respondent(s)

(With office report)

Date: 19/01/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. Manjeet Singh, Adv.
Mr. Harikesh Singh, Adv.
For Mr.T.V.George,Adv.

For Respondent(s)

Mr. R.C. Gubrele,Adv.

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

Heard learned counsel for the parties.

The appeal is disposed of in terms of the signed

order.

(R.K. DHAWAN)
COURT MASTER

(VEERA VERMA)
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.649 OF 1999

STATE OF HARYANA

.... APPELLANT.

VERSUS

HUKAM SINGH

.... RESPONDENT.

O R D E R

This appeal is preferred by the State against the judgment of

the High Court of Punjab and Haryana at Chandigarh. The respondent

herein was found guilty for the offence punishable under Section 15 of

3

Narcotic, Drugs and Psychotropic Substances Act, 1985, by the

Additional Sessions Judge, Bhiwani, and he was sentenced to undergo

rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- in

default of payment of fine further rigorous imprisonment for six months.

Respondent filed an appeal before the High Court and it is alleged that

there was violation of the procedure prescribed under Section 50 of

N.D.P.S. Act, therefore the conviction and sentence was not sustainable.

The learned Single Judge accepted this plea and acquitted the appellant

of all charges filed against him. This finding is challenged before us.

We heard learned counsel for the parties.

The facts in short are as follows:

Under the leadership of one ASI Maya Ram the police party

was having patrol duty near the Railway crossing at Pilani road in

Rajasthan. The respondent was seen passing through the road with a

bag on his head. On seeing the police party he suddenly turned and

moved away, this aroused some suspicion and he was apprehended by

the police. On examination of the bag carried by the respondent, it was

found that it contained 20 kgs. Of "Chura"(poppy straw). After the

investigation, the case was tried by the Sessions Court and he was found

guilty and sentenced.

The counsel for the respondent, in his appeal preferred before the High Court, contended that while conducting the search the police party did not comply with the provisions of Section 50 of NDPS

4

Act, therefore the whole search was illegal. This plea was accepted by the

learned Single Judge and the accused was acquitted. The counsel

appearing for the State submits that the view taken by the learned Single

Judge is incorrect in view of the decision of a three-Judge Bench of this

Court, in State of H.P. vs. Pawan Kumar reported in 2005(4) SCC 350,

wherein it was held that when a search of a bag, briefcase or any such

article or container, etc. which is being carried by the accused, for such

search, Section 50 of NDPS Act has no application. This Court held

therein as follows:

"11. A bag, briefcase or any such article or container, etc.

can, under no circumstances, be treated as body of a human

being. They are given a separate name and are identifiable

as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was

5

carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

In the present case, the finding of the learned Single Judge that provisions of Section 50 of NDPS Act should have been complied with is

incorrect, therefore, the impugned judgment is liable to be set aside.

The appeal preferred by the respondent was allowed on this sole ground and certainly respondent must have other contentions against his conviction and sentence. The article seized from the appellant was "Chura" (poppy straw) and its weight was 20 kgs. but it was less than the commercial quantity.

In the result, we set aside the judgment of the learned Single Judge and the matter is remanded to the High Court for fresh consideration in accordance with law. The respondent is on bail. He is directed to surrender before the High Court for further action within a period of four weeks. The respondent accused would be at liberty to raise all the contentions before the learned Single Judge.

The appeal is disposed of accordingly.

Original record be sent back to the High Court.

.....J

(K.G.

BALAKRISHNAN)

.....J

(S.B. SINHA)

.....J

(P.P. NAOLEKAR)

NEW DELHI ;

JANUARY 19, 2006.