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Cr1.A.No. 685 OF 1997
ITEM NO. 101(P.H.)COURT NO.9 SECTION IIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No. 685/1997

State of Haryana
...
APPELLANT(S)

VERSUS

Dhanna Ram
...
RESPONDENT (S)

(With Office Report)

Date :25
02/2004
This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s)Mr. Vinay Kumar Garg,Adv.

For Respondent (s)Ms. Promila,Adv.(A.C.)

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

Heard Ms. Promila, the learned counsel for the
respondent from 10.35 a.m. to 11.45 a.m.

The appeal is allowed in terms of order.

(Y.P.Dhamija)
AR-cum-PS

(Veera Verma)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 685 OF 1997

State of Haryana

...

APPELLANT (S)

VERSUS

Dhanna Ram

...

RESPONDENT (S)

O R D E R

This is an appeal preferred by the State against the acquittal passed by the High Court of Punjab and Haryana in Criminal Appeal No. 708/1995. The respondent Dhanna Ram was found guilty of the offence punishable under section 18 of the NDPS Act, 1985 by the Addl. Sessions Judge, Ambala for being in possession of one Kg. of opium. Aggrieved by the same, respondent Dhanna Ram preferred the appeal and the High Court acquitted him of the charge.

The prosecution case is that on 11.9.1990 PW-5 ASI Suraj Pal along with other officers was on patrol duty and while they were in Village Ghel he got information that a person coming from the side of Ambala City is likely to be in possession of some narcotic drugs. PW-5 saw the respondent Dhanna Ram coming from the side of Ambala City and he was carrying a cloth bag. PW-5 intercepted him and told him that he was suspected to be in possession of opium and apprised him that if he so desires he would be taken to a Gazetted Officer or a Magistrate for his body being searched. PW-5 recorded this fact in Ext.PD. The respondent Dhanna Ram gave a statement that he did not desire the search being done in the presence of a Gazetted Officer or a Magistrate and this was recorded as Ext.PD-1 and the signature of the respondent was taken in that Ext.PD-1. The cloth bag, which was in possession of the respondent, was searched and it contained substance suspected to be opium. PW-5 prepared two samples of 100 grams each and he sealed the two packets and the remaining substance also was packed in separate seal cover. Later, this sample and the other substance were entrusted to the Station House Officer. The sample was sent to the Public Analyst and the FSL report indicated sample was of opium. Thereafter, the prosecution case was laid against the respondent.

On the side of the prosecution Pws. 1 to 5 were examined and the learned Sessions Judge relied on the evidence adduced and found the accused guilty.

The High Court in the impugned judgment reversed the conviction and sentence of the respondent on two grounds. It was held by the High Court that there was no compliance of section 50 of the NDPS Act. It was also held by the High Court that there was delay in sending the sample to the Forensic Science Laboratory and the inordinate delay was not satisfactorily explained by the prosecution and hence the respondent was entitled to the benefit of that fact and on that ground also the conviction of the respondent was held to be unsustainable. Aggrieved by the same, the present appeal has been filed.

We heard the counsel for the State and also the counsel for the respondent. We considered the evidence adduced by the prosecution in detail and verified whether there was any violation of the provision of Section 50 of the NDPS Act. In the facts and circumstances of the case, section 50 of the NDPS Act has no application. The contraband article, namely, opium was found in a bag, which was in possession of the respondent. Nothing was recovered from the body of the respondent. The bag itself was not kept concealed by the respondent and the respondent was simply carrying it and PW-5 and other witness PW-4 saw the accused and suspected that the bag contained the contraband article. As the body of the accused was not to be searched, section 50 of the NDPS Act had no application. This is made clear by the decision of the Constitution Bench of this Court in State of Punjab Vs. Baldev Singh (1999) 6 SCC 172 and the following conclusion was made:

"That search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a Gazetted Officer or a Magistra

te for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of section 50 of the Act."

(emphasis supplied)

Moreover, in this case PW-4 deposed that he prepared Ext.PD and apprised the respondent if he would desire he could be searched in the presence of a Gazetted Officer or a Magistrate. We have perused Ext.PD and it clearly shows that the respondent was told of this fact. However, it is surprising that the learned Single Judge in the impugned judgment stated that the word "Magistrate" does not find place in Ext.PD. This statement is not correct as Ext.PD clearly states a "Gazetted Officer" or a "Magistrate". It is also pertinent to note that in Ext.PD-1, which is recorded at the lower portion of Ext.PD sheet, the signature of the respondent Dhanu Ram is obtained.

The learned Single Judge was clearly in error in stating that the signature of the respondent was not obtained. We are of the view that there was no violation of provision of section 50 of the Act and the reasons given by the learned Single Judge is without any foundation and is against the evidence adduced by the prosecution.

Another reason given by the learned Single Judge for acquitting the accused is that there was delay in sending the sample from the Malkhana to the Forensic Science Laboratory. The opium was seized from the respondent on 11.9.1990. It was produced before the SHO and on 15.10.1990 the same was sent to the FSL. The report of the FSL shows that the seal of the sample was intact and the same tallied with the specimen sealed sent from the SHO. PW-5 gave evidence in detail as to how the sample was sent to the FSL. There was no cross-examination by the respondent-accused about the delay if any caused in sending the sample to the Laboratory. The respondent had also no case that any prejudice was caused to him. The delay in this case is also not so much as to arouse a suspicion regarding the prosecution case. The finding of the learned Single Judge from this count is erroneous and unsustainable.

The acquittal of the respondent is illegal as it was against the evidence adduced by the prosecution. Therefore, we set aside the judgment of the learned Single Judge and affirm the judgment passed by the learned Sessions Judge.

The learned Sessions Judge is directed to take further steps to apprehend the accused to serve out the sentence.

The appeal is allowed.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
February 25, 2004.