

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.592 OF 2005

State of Rajasthan

... Appellant

Versus

Chhagan Lal

... Respondent

O R D E R

1. The State of Rajasthan is aggrieved by the judgment and order dated 12.05.2003 whereby the High Court acquitted the respondent of the offence under Section 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act').

2. The prosecution case was that on 13.4.1997, Deputy Superintendent of Police, Mahinder Pal Singh Punia recorded information received by him through an informer that one Chhagan Lal Jat, i.e., the respondent herein has concealed some opium in his well which he was to sell in the night. On receipt of the information, he noted it down and forwarded it to the Superintendent of Police, Chittorgarh. Thereafter, independent panchas were called and the concerned area was cordoned off. It is further the case of the prosecution that at about 5.00 O'clock in the morning, one person was spotted. He was chased and while running the said person threw one bag in the well. On interrogation, the said person is stated to have told the police

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that he was Chhagan Lal, i.e., the respondent herein. The respondent was directed to bring out the bag which was thrown inside the well. He took out the said bag with the help of one

Pappu, an independent witness. The search of the bag was conducted. Some brown material was found inside the bag. When tested, it was found to be opium. Thereafter, the necessary procedure was followed and on completion of the investigation, the respondent came to be charged as aforesaid.

3. We have heard learned counsel for the parties.

4. One of the reasons why the High Court has upset the order of conviction and acquitted the respondent is non-compliance of Section 42(1) of the NDPS Act. Section 42 reads as under :

"42. Power of entry, search, seizure and arrest without warrant or authorisation--.(1) Any such officer (being an officer superior in rank to a person, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing

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or forfeiture under Chapter VA of this Act is kept or concealed in any building conveyance or enclosed place, may between sunrise and sunset,--

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe may furnish evidence of the commission of confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under

Chapter VA of this Act; and
(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

5. In view of conflicting opinions regarding scope and applicability of Section 42 of the NDPS Act in the matter of conducting search, seizure and arrest without warrant or authorisation, certain appeals were placed before the Constitution

Bench to resolve the issue. In *Karnail Singh vs. State of Haryana*

[(2009) 8 SCC 539], after considering the relevant judgments on the

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point, the Constitution Bench resolved the said issue and recorded

its conclusions which read as under :

"35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official

superior.

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be

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acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

6. In this case, the bag was recovered from the well which the respondent claimed belonged to him by the respondent and the independent witness Pappu by entering in the well at 5.00 O'clock in the morning. The High Court has clearly recorded a finding of fact that the bag was taken out from the well after sunset and prior to sunrise. We have no reason to disbelieve this finding.

7. According to the prosecution, the respondent threw the bag in the well. The suspected contraband was, therefore, tried to be concealed in a well. The possibility of its destruction was imminent. In fact, the evidence on record indicates that water entered in the bag and got mixed up with the opium. The opium was

liquefied. This was indeed, an emergent situation. The well had to be searched with the help of an independent witness, which was done.

In such an emergent situation, if the officer had reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence (which, in this case, would have resulted in destruction of evidence), as per proviso to Section 42(1) of the NDPS Act, he could have conducted the search of the well after recording grounds of his belief. Section 42(2) requires that grounds of belief so recorded have to be communicated to the immediate superior official within seventy-two hours. In this case, there is nothing to establish that the officer had followed this procedure. There is nothing to establish that he recorded grounds of his belief and communicated them to his immediate superior. As observed by the Constitution Bench in Karnail Singh (supra), total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible. However, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. Since in this case, there is total non-compliance of Section 42 of the NDPS Act, the High Court has rightly set aside the conviction of the respondent. The impugned order calls for no interference from this end.

8. The appeal is, thus, dismissed.

.....
(Ranjana Prakash Desai)

.....
(Madan B. Lokur)

New Delhi;
February 04, 2014.

VERSUS

CHHAGAN LAL

Respondent(s)

(With office report)

Date: 04/03/2014 This Appeal was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. S.S. Shamsbery, AAG
Mr. Bharat Sood, Adv.
Mr. Sandeep Singh, Adv.
Mr. Harshwardhan Singh Rathore, Adv.
Ms. Ruchi Kohli, Adv.

For Respondent(s) Mr. D.K. Thakur, Adv.
Mr. Devendra Jha, Adv.
Mr. Debasis Misra, Adv.

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

The appeal is dismissed in terms of the signed order.

[Gulshan Kumar Arora]
Court Master

[Indu Pokhriyal]
Court Master

(Signed order is placed on the file)