

,>ITEM NO.103

COURT NO.9

SECTION IIA

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). 701 OF 2009

HARJINDER SINGH @ KAKA

Appellant (s)

VERSUS

STATE OF PUNJAB

Respondent(s)

(With office report )

Date: 07/12/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. Ajay Majithia, adv.  
Mr. Rajesh Kumar, Adv.  
Dr. Kailash Chand,Adv.

For Respondent(s)

Mr. Kuldip Singh,Adv.

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

This appeal is dismissed in terms of the signed  
order.

(Sukhbir Paul Kaur)  
Court Master

(Renuka Sadana)  
Court Master

(Signed Order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.701 OF 2009

HARJINDER SINGH @ KAKA

Appellant(s)

Versus

STATE OF PUNJAB

Respondent(s)

O R D E R

This appeal by special leave is directed against  
the final order dated 17.7.2008 passed by the High Court of  
Punjab and Haryana at Chandigarh in Criminal Appeal No.

2075-SB of 2003 whereby the High Court dismissed the appeal filed by the appellant.

The Trial Court convicted the appellant herein for the offence punishable under Section 15-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 ( in short, 'the NDPS Act') and accordingly, sentenced him to undergo rigorous imprisonment for a period of 10 years and a fine of Rs. one lac. On appeal the High Court confirmed the conviction and sentence awarded by the trial court.

One Mukhtiar Kaur (A-1) was the owner of Maruti Van which was intercepted on 9.9.2000 by the police. The vehicle was being driven by the appellant herein. On search, two bags each weighing 40 kgs. of poppy straw were found. The bags were seized and taken into possession by the police. Thereafter the prescribed procedure was

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followed ultimately culminating in filing of the charge sheet against the appellant and the Mukhtiar Kaur.

The trial court upon appreciation of the evidence available on record found the appellant and the said Mukhtiar Kaur guilty for the offence punishable under Section 15 of the NDPS Act. On appeal the High Court confirmed the conviction and sentence awarded by the trial court. In this appeal before us the learned counsel for the appellant mainly contended that the appellant's services to drive the vehicle owned by Mukhtiar Kaur were hired for that day and the appellant was not aware that any contraband was being transported in the vehicle and therefore, he cannot be held guilty of any offence punishable under Section 15 of the NDPS Act. The submission was that the appellant had no culpable mental state with respect to the act charged as an offence. It was urged that the prosecution miserably failed to

establish that the appellant herein was in conscious possession of the seized contraband. This contention was

neither urged before the courts below nor there is any such ground raised in this appeal, yet we propose to deal with it.

In order to consider this submission it is necessary to note that the trial court in clear and

categorical terms found that Mukhtiar Kaur(A-1) was herself

traveling in the said Maruti Van owned by her and the

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contraband was found beneath her feet in the said vehicle.

It is not a goods vehicle.

The appellant who in his 313

Cr.P.C. statement admitted that he happens to be the driver

of the Maruti Van owned by A-1, therefore, the contention

that the appellant's services were hired by A-1 only for

that day is totally unacceptable.

There is no whisper

about the hiring of the services for that day anywhere in

the trial court and the witnesses examined on his behalf

did not utter a word about the same. In the circumstances,

it becomes difficult to accept the submission that the

appellant herein was not aware that he was driving a

vehicle in which contraband was being transported. The

evidence available on record suggests that he was in

conscious possession of the seized contraband and found

transporting the same to its destination.

The learned counsel for the appellant relying on

the judgment of this Court in Noor Aga Vs. state of Punjab

& Anr. [(2008) 16 SCC 417]

contended that it is for the

prosecution to establish beyond reasonable doubt

that the

appellant herein was in conscious possession of the

contraband and in the absence of such proof according to

the learned counsel the appellant is entitled for

acquittal. We find no substance in this submission as the

same is misconceived. The judgment in no manner supports

the proposition advanced by the learned counsel for the appellant. This Court analyzing Section 35 of the NDPS Act

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stated that the said provision provides for presumption of culpable mental state. "It also provides that an accused may prove that had no such mental state with respect to the act charged as an offence under the prosecution." It is thus clear that the presumption of culpable mental state is against the accused but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in the prosecution. "Culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. On the facts of the case the appellant being the driver of the vehicle owned by A-1 in which the contraband was seized while in transition it cannot be said that the appellant was not aware of the fact that the contraband was being transported in the vehicle.

No other point is urged before us.

For the aforesaid reasons, we find no merit in this appeal and the same shall accordingly stand dismissed.

.....J.  
(B.SUDERSHAN REDDY)

.....J.  
(SURINDER SINGH NIJJAR)

New Delhi,  
December 07, 2010