
(1998) CriLJ 199 : (1997) 4 RCR(Criminal) 644

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 233-DB of 1997 and Murder Reference No. 1 of 1997

Neki Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 22, 1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 313, 366#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 17, 18, 31(A), 41(2), 42

Citation: (1998) CriLJ 199 : (1997) 4 RCR(Criminal) 644

Hon'ble Judges: K.S. Kumaran, J; H.S. Bedi, J

Bench: Division Bench

Advocate: D.N. Ganeriwala, for the Appellant; N.K. Sanghi, DAG, for the Respondent

Judgement

H.S. Bedi, J.

The brief facts giving rise to these appeals and to the murder reference are as under:-

2. On 20-1-1992, Inspector/SHO Shadi Lal (PW-2) of Police Station Sirsa, received secret information that the accused - Neki Ram, who was

selling opium, could be caught if an immediate " raid was conducted on him. This information was conveyed by Inspector Shadi Lal (PW 2) to

Inder Dutt (PW 3) DSP Headquarters by a telephonic message and two police vehicles were called to the Police Station for the use of the raiding

party. A raiding party consisting of PW-2 Inspector Shadi Lal along with ASIs Jai Singh, Birsal Singh, Ram Phal, Jagdish Lal and Lajpat Rai along

with some police constables was organised and after boarding the aforesaid vehicles, proceeded for the raid to be conducted at the house of the

accused. Before proceeding from the Police Station, the police party also associated one Rameshwar Dass, as an independent member of the

raiding party. In the meanwhile PW-3 DSP - Inder Dutt along with his staff in another Government vehicle also joined the other officials and he too

proceeded towards the house of the accused. When they reached near the house of the accused, two groups of police officers were formed, to

keep vigil on the house. After 10/15 minutes the accused Neki Ram emerged from his house closely wrapped in a khes. He was duly intercepted

and apprehended by the police party. A notice Ex. PB u/s 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter called the

Act) was also served on him by DSP Inder Dutt, a Gazetted Officer and the accused gave in writing that he had full faith in him and volunteered his

search by him, and in token of his acceptance put his signatures on Ex. P. B. The accused was then searched by Inder Dutt, DSP and a bag was

recovered from his left arm-pit and on opening it two wax papers were found, one containing opium and the other containing charas. A sample of

300 grams of opium was separated and the residue on weighing was found to be 15 Kgs (sic) of opium whereas the charas weighed 180 gms in

all. Two cases were thereafter registered, one for the recovery of charas and the other for opium. The case property was thereafter deposited in

the Treasury at Sirsa and the samples were sent to the Forensic Science Laboratory, Haryana, Madhuban, for analysis. On receipt of the report

and after completion of the necessary investigation, the accused was charged for offences punishable under Sections 17/18 of the Act and on

pleading not guilty he was brought to trial.

3. The prosecution in support of its case examined PW-1 Chattar Singh, PW-2 Shadi Lal Inspector and DSP Inder Dutt PW-3, who had issued

the notice u/s 50 of the Act and tendered into evidence various documents relevant to the prosecution's case.

4. The accused when examined u/s 313, Cr.P.C. denied the allegations levelled against him and pleaded false implication due to the enmity with the

police. He denied that anything had been recovered from him.

5. The trial Court on an appreciation of the evidence held that the evidence of Inspector Shadi Lal (PW-2) and DSP Inder Dutt, proved the

recovery of the incriminatory articles and the evidence of Chattar Singh (PW-1) indicated that the seized articles had been kept under proper

custody after their seizure. The trial Court also relied on the report of the Forensic Science Laboratory, Haryana, Madhuban, which had reported

that the samples tested were of Opium and of Charas. The Court also did not accept the argument of the counsel for the accused with respect to

the non-compliance with the provisions of Section 50 of the Act at the time of the search and seizure by holding that the said provisions had been

fully complied with and in any case in view of the authority reported as Raghbir Singh v. State of Haryana 1996 SCC 266 : 1996 Cri LJ 1694, all

that was required was that the accused had to be searched in the presence of a senior officer, and as DSP Inder Dutt was such an officer, no

prejudice had been caused to the accused. The trial Court also repelled the argument raised by the learned defence counsel with regard to the non-

compliance with the provisions of Sections 52 and 57 of the Act by holding that the compliance with these provisions was not mandatory and not

fatal to the prosecution unless it would further be shown that prejudice had been caused to the accused, and as no evidence showing prejudice had

come on record, this omission too was not of any significance. The Court then found that as the accused was a previous convict dealing with the

Narcotics it was required that a deterrent sentence should be imposed on him and that, he was covered by the provisions of Section 31(A) of the

Act and liable to suffer a death sentence for the recovery of opium and also to undergo 30(3) years" rigorous imprisonment and to the payment of

fine for the recovery of the charas. The accused-appellant has accordingly filed two appeals before this Court i.e. Cr. A. No. 233-DB of 1997

and Cr. A. No. 234-DB of 1997 pertaining to the opium and charas cases respectively, whereas a reference u/s 366 of the Code of Criminal

Procedure for confirmation of the death sentence has been made by the trial Court. All these, matters are being disposed of by this judgment. 6.

Mr. Ganeri wala, the learned counsel for the accused has first and foremost urged that the trial Court itself had observed that the provisions of

Section 50 of the Act were mandatory but had given a finding that the provisions had been complied with in this case. He has pointed out that a

look at Ex. PB the notice served on the accused by DSP Inder Dutt did not conform to the requirements of Section 50 of the Act and this fact

itself was fatal to the prosecution. We reproduce here the translation of the notice Ex.PB:-

NOTICE OF SEARCH

In the presence of the following witnesses, accused Neki Ram aforesaid was apprehended on suspicion and a notice for search is being given to

him directing, "We suspect opium in possession for which his search is to be conducted and DSP Head Quarter, Sirsa is present with us." In case

you want your search to be conducted by DSP, the search can be as per your own will. Thereupon the accused desired to be searched by the

DSP and signed on the notice for search and witness also signed the same. Notice of search has been reduced into writing.

Sd/- (In Hindi) Sd/- (In Hindi)

Accused Neki Ram Shadi Lal SHO

PS. City, Sirsa

Dated 20-1-1992.

Witnesses :

1. Rameshwar Dass s/o Ganga Ram caste Brahman r/o Sanjay Colony, Sirsa Sd/- (In Hindi)

2. Jagdish Lal ASI. P.S. City. Sirsa

Sd/- (In Hindi)

3. Sh. Inder Dutt Bakshi DSP Ex. PB

Head Quarter Sirsa Sd/-

Sd/- (In English) ASJ

2-5-1996

Certified that the above document has been translated by me correctly.

Sd/-

(Som Nath)

Translator

7. He has then relied on the judgment of Hon"ble Supreme Court in case State of Punjab v. Balbir Singh (1994) 2 JT (SC) 108 : 1994 Cri LJ

3702 the relevant para reads as under (at p. 3719 of Cri LJ).-

On prior information, the empowered officer or authorised officer while acting u/s 41(2) or 42 should comply with the provisions of Section 50

before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer

or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person

to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate would amount to non-compliance of

Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person

opted for such a course or not would be a question of fact.

Mr. N.K. Sanghi, the learned Dy. Advocate General appearing for the State has, however, relied on Raghbir Singh Vs. State of Haryana, .

8. A reading of the paragraph quoted above in the context of Ex.PB clearly indicates that no offer was made by the DSP-Inder Dutt giving an

option to the accused to be searched before a Gazetted Officer or a Magistrate and the offer was only a partial one, seeking his consent as to

whether he would be satisfied if he was subjected to a search by the DSP in question. The Judgment in Raghbir Singh"s case does not support the

argument advanced by Mr. Sanghi. In this case it was held that once a full offer u/s 50 of the Act had been made to an accused, the further option

with regard to selecting either one of the two officers was left to the Police Officer, conducting the search. The words "Senior Officer" relied upon

by the trial Court, to hold that the Act envisaged a search by the DSP himself, have to our mind been read out of context. The observations in para

eleven of the report clearly visualise a search before such Senior Officer that is envisaged in Section 50 of the Act - that is a Gazetted Officer or a

Magistrate and not just any Senior Officer, and that too after an officer under this section has been made.

9. In view of what has been observed above, the other points urged need not be gone into. Consequently, Cr. Appeals No. 233-DB/1997 and

234-DB/1997 are allowed and the appellant is acquitted of the charges levelled. Ipso facto reference is declined.