
Dharambir Singh Vs State of Haryana

Criminal Appeal No. 311-SB of 1993

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 6, 2006

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 20(b)

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: Simranjit Chahal, for the Appellant; Manmohan Sikka, AAG, Haryana, for the Respondent

Final Decision: Allowed

Judgement

Virender Singh, J.

Appellant Dharambir stands convicted vide impugned judgment of learned Additional Sessions Judge, Sonapat dated

6/7.8.1993 u/s 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act"). He has been sentenced to undergo RI

for ten years and to pay a fine of Rs. one lakh, in default of payment of fine, to further undergo RI for two years. Aggrieved by the said judgment

of conviction and sentence, he has preferred the instant appeal.

2. The alleged recovery from the appellant is of 250 grams of charas when he was apprehended on 19.7.1992 by ASI Om Parkash PW-4, who

along with other police officials was present near the bridge of Kami Road Ganda Naala, Sonipat. Raghbir Singh one independent person from

public was also joined in the police party. As per the prosecution case after the appellant was apprehended, he was given a written notice Ex. PC

for seeking his option with regard to compliance of Section 50 of the Act. The appellant opted to be searched in the presence of a Gazetted

Officer and consequently he was taken to the residence of DSP Rattan Singh. In his presence his personal search was conducted in which 250

grams of Charas was recovered. 10 grams of Charas was extracted as sample. The sample and the remainder were then sealed with the seal

impression of DSP Rattan Singh (RS). Seal after use was handed over to Raghubir Singh PW. All the other formalities were also done there with

regard to taking into possession the contraband. On the basis of the ruqa, formal Ex. PA/1 was recorded. Thereafter the Investigating Officer

reached the spot, prepared the rough site plan Ex. PE. The appellant was produced along with case property before SHO Rohtas Singh who

verified the entire investigation, checked the case property, resealed the same and then handed over to ASI Om Parkash. Sample was sent to the

Chemical Examiner on 29.7.1992 and on the receipt of the report, Ex. P-3, the appellant was challaned. He was consequently charged u/s 20(b)

of the Act. During the trial the appellant has pleaded his innocence as is clear from the statement recorded u/s 313 of Cr. P.C. However, he did

not produce any evidence in his defence. After recording the entire evidence, he now stands convicted and sentenced as indicated above. Hence,

this appeal.

3. I have heard Ms. Simranjit Chahal, learned counsel for the appellant and Mr. M.M. Sikka, AAG Haryana. With their assistance, I have gone

through the records of the present case very minutely.

4. Besides pointing out infirmities in the case of the prosecution with regard to delay in sending the sample to the Chemical Examiner and certain

other flaws in link evidence, the learned counsel for the appellant has attacked the prosecution case mainly on the ground that the offer allegedly

made to the appellant in compliance to Section 50 of the Act, is not a complete offer and therefore, the case of the prosecution falls on this score

alone. Dwelling upon her arguments, the learned counsel submits that the notice given to the appellant shows that he was asked by the Investigating

Officer Om Parkash PW-4 as to whether he wanted to get himself searched by him (Investigating Officer) or before some gazetted officer,

whereas the requirement of Section 50 of the Act is that the accused is to be informed in so many terms that it is his right to be searched in the

presence of a gazetted officer or a Magistrate. According to the learned counsel, this is mandatory in nature. Since notice allegedly given to the

appellant is not complete in the aforesaid terms, whole of the trial vitiates and the appellant is entitled to acquittal.

5. In support of her submissions, the learned counsel for the appellant relies upon a judgment of this Court rendered in Ram Prasad v. State of

Haryana, 2005 (2) RCR (Crl.) 288, where the offer was also of the similar nature and the same was considered to be a partial one, resultantly the

accused-appellant was acquitted.

6. The argument advanced by the learned counsel for the appellant are controverted by the learned State counsel. He submits that even if the

notice given to the appellant is not complete as per the provisions of Section 50 of the Act, still the fact remains that the appellant was taken to the

residence of DSP Rattan Singh and in his presence search was conducted. There is no reason to doubt the police officials as they had no animosity

against the appellant. The conviction, as already recorded, therefore, deserves to be upheld.

7. I need not discuss the other infirmities in the prosecution case as highlighted by the learned counsel for the appellant for the reason that the

appellant deserves acquittal on account of non-compliance of mandatory provisions of Section 50 of the Act alone. I have gone through the notice

Ex. PC. The relevant portion of the same when translated into English reads as under :-

x x x x

I have suspicion that you are in possession of some narcotic item. You should give in writing as to whether you want to be searched by me here at

the spot or would get yourself searched before some gazetted officer.

x x x x

8. This offer cannot be said to be a complete compliance of Section 50 of the Act. In other terms it can be said to be a partial offer of search. The

Investigating Officer was bound to make a complete offer to the appellant apprising him of his statutory right of being searched by a gazetted

officer or a Magistrate. The settled position of law is that the person to be searched under the Act is required to be informed of his statutory right in

clear terms. No presumption to that effect can be raised. This basic lacuna touches the core of the case and is enough to discard the case of the

prosecution in its entirety. The judgment relied upon by the learned counsel for the appellant in Ram Prasad's case (supra) comes at the rescue of

the appellant. Another judgment of this Court rendered in Dalbir Singh v. State of Punjab, 1998 (1) RCR (Crl.) 79, on the same proposition can

also be read in advantage.

9. As a sequel to the aforesaid discussion, the instant appeal is hereby allowed. The appellant stands acquitted of the charge. He is discharged of

his bail bonds submitted by him during the pendency of the instant appeal.

Appeal allowed.