

(2003) 09 P&amp;H CK 0155

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Appeal No. 9-SB of 1997

Darshan Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision:** Sept. 10, 2003**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 50

**Citation:** (2003) 8 CriminalCC 100 : (2004) 1 RCR(Criminal) 16**Hon'ble Judges:** Mehtab S. Gill, J**Bench:** Single Bench**Advocate:** Vinod Ghai, for the Appellant; N.S. Bhinder, D.A., Haryana, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Mehtab S. Gill, J.

The prosecution story is that on 22.3.1995 at 2 p.m., the appellant was stopped in the area of Village Dariyapur by Inspector Murari Lal. Inspector Murari Lal was accompanied by H.C. Dharam Pal and other police officials. Notice Ex.PD was served on the accused-appellant as to whether he wanted to be searched by a Gazetted Officer or a Magistrate. The accused vide his reply Ex.PD/1, declined the offer and stated that he had faith in the Inspector. The accused was searched and 800 grams of opium was recovered from him. The opium was taken into custody vide recovery memo Ex.PC. The ruqa Ex.PF was sent to the police station and formal F.I.R. Ex.PF/1 was recorded at Fatehabad.

2. The prosecution in order to prove its case, brought into witness-box PW-1 D.S.P. Mange Ram, PW-2 Constable Naib Singh, PW-3 H.C. Dharam Pal, PW-4 Inspector Murari Lal and PW-5 H.C. Mukesh Chand.

3. I have heard learned counsel for the appellant and the learned counsel for the State and perused the record with their assistance.

4. Learned counsel for the appellant has stated that no independent witness was joined. The accused was arrested at "T" Point where a lot of people must have passed, during the search of the accused.
5. Learned counsel for the appellant has stated that the mandatory provisions of Section 50 of the Narcotic Drugs and Psychotropic Substance Act (hereinafter referred to as the Act) have not been complied with and the offer of search was only a formality. No accused would ever like to be searched by the very police official who has apprehended him. The accused would have liked to be searched by a senior Gazetted Officer.
6. Learned counsel for the appellant has further stated that notice Ex.PD and reply Ex.PD/1 is a sham document. The accused never affixed thumb impression on these documents. He was asked to put his thumb impression on blank papers in the police station.
7. Learned counsel for the State has stated that provisions of Section 50 of the Act were complied with. The statements on oath given before the learned trial Court are corroborating each other. The witnesses have been put to a lengthy cross-examination, but nothing substantial came out, against the version put forward by the prosecution. He has further stated the accused was not apprehended near the village, where an independent witness could be joined in the search; but it was a "T" Point, which was leading to the village, where accused-appellant was apprehended. Notice as per document Ex.PD was served on the accused. The accused stated in his reply Ex.PD/1 that he need not be searched by a Gazetted Officer or a Magistrate. PW-4 Inspector Murari Lal who was the S.H.O. of Police Station, Fatehabad, then conducted the search on the person of the accused. Sample packets and the statements of the witnesses were handed over to D.S.P. Mange Ram (PW-1) who verified the investigation conducted by Inspector Murari Lal (PW-4). Provisions of Sections 55 and 57 of the Act were complied with. PW-1 D.S.P.. Mange Ram made his endorsements Exhibits"PA/1, PB/1 respectively on the report submitted to him.
8. In his statement u/s 313 Cr.P.C. the accused-appellant stated that he had an altercation with the Conductor at Bus Stand, Fatehabad, and thus, he was falsely implicated in this case. No witness has come into the witness-box to substantiate as to with which Conductor and when this altercation had taken place.
9. I do not find any infirmity in the judgment of the learned trial court.
10. The appellant was sentenced on 21.11.1996 to undergo R. I. for 10 years and to pay a fine of Rs.1 lac. Learned counsel for the appellant has stated that the accused has already undergone R.1. for more than 4-1/2 years. The sentence seems to be on the higher side. It is reduced to the period already undergone by the accused-appellant. The fine is also on the higher side. The fine is reduced from Rs. 1 lac to Rs.5,000/-.

11. With the above modification of sentence, the appeal is dismissed.