
Tahir Ahmed Vs State of Punjab

CRA No. 1609-SB of 2003

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 17, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 15, 35, 42, 50

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: Namit Sharma, Amicus Curiae, for the Appellant; K.S. Aulakh, AAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Paramjeet Singh, J.

This appeal is directed against the judgment of conviction and order of sentence dated 12.07.2003 passed by the

learned Judge, Special Court, Patiala, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for ten years

and to pay a fine of Rs. One lac for the offence punishable u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter

referred to as the "NDPS Act"). In default, to further undergo RI for six months. Brief facts of the case are that on 21.05.2002 SI Barinder Singh

along with HC Mewa Singh and some other police officials were present on the turning of Waraichan Patti, Samana. He received secret

information that Angrej Singh and his relative Suba, Chhinda and Melo are in the habit of selling poppy husk in the area of Punjab by bringing it

from Uttar Pradesh and they used to bring poppy husk in Truck No. HR-58-7860 driven and owned by Tahir Ahmed and Harish Kumar. On that

day, accused Angrej Singh, Suba, Chhindi, Channi and Melo would be unloading the aforesaid truck at T-Point of Village Muradpur and if a naka

is put at T-Point of Village Muradpur, the accused could be apprehended red handed. Believing the said information reliable, SI Balwinder Singh

sent ruqa to the police station for the registration of the case, on the basis of which formal FIR was recorded. Thereafter, the police party

proceeded towards T-Point of Village Muradpur to hold naka and PW Ajay Kumar @ Bhindi met them on the way and he was joined in the

police party. At about 6.30 a.m. one truck was seen coming from the side of Village Muradpur and on signal to stop the truck, the driver stopped

the truck at some distance from the naka and four persons and one lady, which were in the truck, succeeded to run away from the spot, whereas

Tahir Ahmed and Harish Kumar were apprehended at the spot. On the consent of the accused for search before a gazetted Officer, DSP Jaspreet

Singh Sidhu was called, who reached at the spot. Thereafter, on the direction of the DSP, SI Barinder Singh searched the truck No. HR-58-7860,

which led to the recovery of 40 bags of poppy husk, containing 35 kg. Poppy husk each bag. Two samples of 250 grms each were separated

from each bag and made into parcel. Samples and remaining poppy husk were sealed separately and taken into possession. Seal after use was

handed over to PW Ajay Kumar alias Bhindi. From the personal search of accused Tahir Ahmed Rs. 600/- were recovered and that of accused

Harish Kumar, Rs. 200/- were recovered along with one Titan watch. Thereafter, statements of the witnesses were recorded and the accused

were arrested. On return to the police station, SI Barinder Singh produced the accused along with case property before SHO Virsa Singh. On the

next day, the case property was produced before the Illaqa Magistrate. After completion of formal investigation, the accused Tahir Ahmed and

Harish Kumar were challaned. Finding a prima facie case against the accused, they were charge-sheeted to which they pleaded not guilty and

claimed trial.

2. The prosecution, in order to prove its case, examined PW1 DSP Jaspreet Singh, PW2 HC Udham Singh, PW3 Daljit Singh, PW4 SI Barinder

Singh, PW5 SI Virsa Singh, PW6 ASI Gurbax Singh and closed its evidence.

3. Thereafter, statements of the accused were recorded u/s 313 Cr.P.C. All incriminating circumstances were put to them. They denied the same

and pleaded innocence. However, in their defence, they have examined DW1 Ravinder Kumar, DW2 Kewal Krishan and DW3 Rajesh Monga.

4. The learned Trial Court, after trial, convicted and sentenced the accused-appellant as mentioned above. Hence, this appeal.

5. I have heard learned counsel for the appellant, as well as, the learned State counsel.

6. Learned counsel for the appellant vehemently contended that there is no compliance of the provisions of Section 50 of the NDPS Act. The

appellant was not taken to the Magistrate, rather, he was searched by the DSP who was called at the spot, prior to that recovery has already been

effected from a truck bearing No. HR-58-7860. The compliance of Section 50 of the NDPS Act is mandatory before effecting recovery. Learned

counsel for the appellant further contended that the seal was handed over to an independent witness Ajay Kumar who has not been examined as a

witness. Failure to examine an independent witness clearly indicates that no independent witness was present at the spot as he has not been

subjected to cross-examination to elicit truth from him. Learned counsel for the appellant further submitted that the prosecution has failed to prove

the conscious possession of the appellant and submitted that the link evidence is missing. The case property has not been produced in the Court

and affidavit of HC Daljit Singh is defective.

7. Learned State counsel has opposed the contentions raised by the learned counsel for the appellant and submitted that recovery has been

effected from a truck and not from the person. Huge quantity has been recovered from the truck which has turned out to be a poppy husk

weighing about 1400 kgs. which was contained in 40 bags of 35 kg. each. Such a huge quantity cannot be planted on the accused. The appellant

was apprehended at the spot. As such, the possession of the appellant is conscious and he was fully aware of this fact. Learned State counsel

further contended that non-examination of independent witness cannot be a ground for acquittal. The evidence of the police officials specifically

when the recovery is so heavy can not be discarded merely on the ground that they are police officials. The prosecution has categorically proved

the case by leading a cogent evidence, the recovery of articles of the contraband has been effected from the truck which was in conscious

possession of the appellant and the other accused.

8. I have considered the rival contention of the learned counsel for the parties and perused the evidence on record.

9. Perusal of the record shows that when the appellant was apprehended then an option was given to him whether he wanted to be searched by a

Gazetted Officer or by a Magistrate and the consent memo was prepared and the appellant had opted that he wanted to be searched by a

Gazetted Officer. As such, at the spot, DSP, a Gazetted Officer was called and the search was carried out. Recovery of contraband is from truck.

So, provisions of Section 50 of the NDPS Act are not applicable.

10. The Apex Court in the judgment of State of Punjab Vs. Baldev Singh, etc. etc., has clearly held as under:-

12. On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc.

However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of

person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the

NDPS Act is also recovered, the requirement of Section 50 of the Act are not attracted.

11. When the recovery is effected from the person only then Section 50 of the NDPS Act is mandatory. If the recovery is effected from the

premises, automobile, etc. then there is no requirement of complying with the provisions of Section 50 of the NDPS Act. The said view has been

further affirmed by the Apex Court in the case of Ajmer Singh versus State of Haryana, 2010 (2) RCR (Criminal) 132 wherein it has been held

that Section 50 of the NDPS Act applies only in case the personal search of the person is carried out and not otherwise. Articles like bag, brief

case, container, etc. cannot even remotely be treated as part of the body of a human being. The same view has been affirmed in a recent

Constitutional Bench judgment of the Hon"ble Apex Court in the case of Vijaysinh Chandubha Jadeja versus State of Gujarat, 2010 (4) RCR

(Criminal) 911.

12. In view of the above, the contention of the learned counsel for the appellant in regard to non-compliance of Section 50 of the NDPS Act fails.

13. Further, the non-examination of the independent witness does not affect the merit of the case. Police Officials are responsible persons and their

evidence cannot be discarded merely on the ground that the same is not corroborated by the independent witness. If the appellant wanted to

derive any benefit for non-examination of Ajay Kumar the alleged independent witness, the same could have been taken by calling the said witness

by the appellant in his defence. As such, the said contention of the learned counsel for the appellant that the evidence of the official witnesses has

not been corroborated by independent witness becomes insignificant specially when the recovery is huge. The question of implanting such a heavy

quantity does not arise. Hence, this contention is also rejected.

14. The next contention is of the conscious possession. The recovery of the huge quantity of gunny bags from a truck at the spot is indicative of the

conscious possession of the appellant. The appellant was driving the truck and was in control of it. The presumption of existence of such mental

state will be presumed against the appellant especially in view of Section 35 of the N.D.P.S. Act read with the explanation of Section 35 of the

NDPS Act. A person in possession of huge quantity of contrabands must be deemed to be in the knowledge of the fact of such articles, unless it is

rebutted by cogent evidence. Recovery itself indicates the motive and intention of retaining such contraband and is indicative of the fact of

conscious possession. The learned counsel for the appellant has failed to show, it stands rebutted, specifically when the appellant has been

apprehended at the spot.

15. Learned counsel for the appellant failed to point out any other material discrepancies which may go to the root of the case. In view of this, the

present appeal fails and is dismissed. The appellant is already absconding and has not been arrested. The authorities may take appropriate

measures for arrest of the appellant to serve the remaining part of the sentence.