
Parkash Kaur Vs State of Punjab

Criminal Appeal No.262-SB of 2000

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 3, 2006

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) "Section 18

Citation: (2006) 18 CriminalCC 812

Hon'ble Judges: Mehtab S.Gill, J; Baldev Singh, J

Bench: Division Bench

Advocate: K.S.Dhaliwal, for the Appellant; S.S. Randhawa, D.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

Mehtab S.Gill, J.

This is an appeal against the judgment dated 8.2.2000 of the Special Judge, Patiala whereby he convicted Parkash Kaur

wife of Chanan Singh u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") and

sentenced her to undergo 10 years RI and to pay a fine of Rs.1 lac, in default to undergo RI for two years.

2. The case of the prosecution is unfolded by rukka Ex.PG being sent to Police Station Sadar Nabha for registration of case through C.Karamjit

Singh, on the basis of which, FIR Ex.PG1 was recorded by Rajwinder Singh SI/SHO Police Station Sadar, Nabha. Rajwinder Singh stated that

he along with ASI Sucha Singh, ASI Karamsher Singh, HC Baldev Singh, Constables Karamjit Singh and Puran Singh were present on the T

point towards village Kameli and were checking regarding as to whether any bad elements were present in that area or not. Jagdev Singh alias

Jagga son of Bir Singh Saini was talking to him. In the meantime, a motor cycle came from the side of village Udha, which was driven by an aged

man and a lady was sitting behind him. The motor cycle was stopped. The woman sitting in the pillion of the motor cycle got down and tried to turn

towards village Udha. On suspicion, she was stopped. The man told his name as Chanan Singh son of Teja Singh and the woman Parkash Kaur

was his wife. Rajwinder Singh SI told them that he wanted to get them searched and in case they wanted to get them searched in the presence of

Gazetted Officer Police Officer or a Magistrate, he could call any of them at the spot. They stated that they had faith in him and they do not want

to get themselves searched from any officer. Separate consent statements were prepared. They put their signatures/thumb impressions on them.

The witnesses signed the statement. SI Rajwinder Singh made the personal search of Parkash Kaur as per the rules. A bag, which was being

carried in the right hand of Parkash Kaur, was also searched. Opium wrapped in a glazed paper was recovered from the bag. 10 grams was

separated as sample. The sample was wrapped in a glazed paper and put in a tin dabbi. The remaining opium was weighed and it was found to be

1 kg. The opium and the sample were put in the same glazed paper and thereafter sealed with the seal of ""RS"". A separate sample seal was

prepared. Seal after its use was handed over to Jagdev Singh. The sample parcel, remaining opium and the motor cycle bearing No.PUV-6543

were then taken into possession by separate memos, which was attested by the witnesses. Grounds of arrest were supplied to both Chanan Singh

and Parkash Kaur.

3. The prosecution to prove its case brought into the witness box Constable Dilbag Singh as PW1, ASI Sucha Singh as PW2, HC Mahabir Singh

as PW4, SI Rajwinder Singh as PW5 and Karansher Singh as PW6.

4. Learned counsel for the appellant has argued that as per the consent memo Ex.PC of Parkash Kaur regarding the offer of search being made to

her and Parkash Kaur stating that she had full faith in Rajwinder Singh SI PW5 and he could search her is a faulty document. The consent memo

Ex.PC bears the signatures of Chanan Singh and right thumb impressions of Parkash Kaur. Thus it is clear that a joint consent memo was

prepared. No separate consent of Chanan Singh was taken. If it had been taken, there was no need for Chanan Singh to have signed consent

memo Ex.PC. In fact document Ex.PD, the consent memo of Chanan Singh has been prepared at a later stage. On document Ex.PD only Chanan

Singh has signed. There was no need for the Investigating Officer Rajwinder Singh PW5 to make two consent memos i.e. Ex.PC and Ex.PD for

Chanan Singh. In document Ex.PE, the memo prepared by Rajwinder Singh PW5, it has been stated that in the presence of the witnesses, SI

made the search of Parkash Kaur. This is a clear violation Of Section 50 sub-section (4) of the NDPS Act. Appellant Parkash Kaur could not

have been searched by a male police officer. It was incumbent upon Rajwinder Singh PW5 to summon a lady police official to search appellant

Parkash Kaur. Search as per Ex.PE and in the statements of the official witnesses was the personal search of Parkash Kaur and also of the bag

which she was carrying. The consent memos Ex.PC and Ex.PD are in different hand-writings. The writing is not of the same person. This showed

that these were prepared in the police station and not at the place of alleged recovery. Investigating Officer, Rajwinder Singh SI PW5 has admitted

in his statement before the Court that no special report was sent to the senior officer from the spot. Independent witness Jagdev Singh is a stamp

witness. In his cross-examination, he has admitted that he was appearing in a number of cases for the police. No effort was made by the

Investigating Officer to join some other independent witness apart from Jagdev Singh. No reason has been given as to the sending of the sample to

the Forensic Science Laboratory on 17.4.1995 after a gap of 10 days, as the alleged recovery was made on 7.4.1995.

5. Learned counsel for the State has argued, that the search was done as envisaged in the NDPS Act. Offer of search was made. Appellant

reposed confidence in the Investigating Officer SI Rajwinder Singh PW5, that she may be searched by him. She further stated that she had

confidence in him and he need not summon a Gazetted Officer or Magistrate to search her. The offer was made not for her personal search but to

search the bag she was carrying. The official witnesses have corroborated each other and also have corroborated the FIR Ex.PG1. The samples

were kept in the malkhana. No tampering had been done. The independent witness, Jagdev Singh could not be brought into the witness box as he

had been won over by the accused. Documents Ex.PC and Ex.PD even if conceded that these were written in different hands would not make any

difference as they were written on the direction and dictation of SI Rajwinder Singh PW5.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. In Ex.PG1 the FIR and memo Ex.PE, it has been categorically stated that ""SI made the personal search of appellant Parkash Kaur under rule"".

SI Rajwinder Singh PW5 in his statement before the court, realizing his mistake, then stated that he asked the accused, that he wanted to search

the motor cycle and in case they wanted the search to be conducted in the presence of a Gazetted Officer or a Magistrate, he could call them. It is

clear from both Ex.PG1 and Ex.PE, the Investigating Officer wanted to search the bag and also wanted to conduct the personal search of the

appellant. As per Section 50 sub Section 4 of the NDPS Act, the personal search of appellant Parkash Kaur could not have been done by SI

Rajwinder Singh PW5. It was incumbent upon him to summon a lady police official to search the person of appellant Parkash Kaur. The

Investigating Officer could have only searched the bag though as stated by him, he did so and allegedly recovered 1 kg. of opium.

8. Consent memo Ex.PC regarding the offer of search whether a Gazetted Officer or a Magistrate has been jointly signed by both Chanan Singh

the acquitted accused and thumb marked by the appellant Parkash Kaur. Realizing his mistake, the Investigating Officer then prepared another

consent memo Ex.PD at a later stage and then got the signatures of Chanan Singh. If Chanan Singh had signed at the spot on document Ex.PD,

there was no need for him to sign document Ex.PC. The independent witness Jagdev Singh, who has been given up by the prosecution, is a stock

witness as admitted by the prosecution witnesses. SI Rajwinder Singh PW5 in his testimony has stated that Jagdev Singh might be a witness in FIR

No.73 dated 28.3.1995 of Police Station Sadar Nabha and FIR No.91 dated 1.12.1995 of Police Station Sadar Nabha and in some other cases.

Similarly PW2 ASI Sucha Singh has also stated the same. Karansher Singh PW6 in his testimony has admitted that no separate special report was

sent from the place of recovery to the senior officer. He has further admitted that no lady constable was called to the place of recovery.

9. We are of the considered opinion that the prosecution has failed to prove its case. There are glaring infirmities, which cannot be overlooked and

a doubt is created in our mind, the benefit of which is given to appellant Parkash Kaur. Appeal is allowed. Judgment of conviction and sentence is

set aside and she is acquitted of the charge.