

(2003) 02 AHC CK 0160

Allahabad High Court

Case No: Criminal Appeal No. 693 of 1994

Manjoor alias Pawwa

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 13, 2003**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 42

Citation: (2003) CriLJ 4644 : (2004) 1 RCR(Criminal) 55**Hon'ble Judges:** Onkareshwar Bhatt, J**Bench:** Single Bench**Advocate:** R.K. Khanna, for the Appellant; R.S. Sengar, A.G.A., for the Respondent**Final Decision:** Dismissed

Judgement

Onkareshwar Bhatt, J.

This appeal has been preferred against judgment and order dated 23-2-1994 passed by the then Addl. Sessions Judge, Saharanpur in Special Case No. 30 of 1993. The appellant has been convicted u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as the Act, and sentenced to undergo ten years rigorous imprisonment and a fine of rupees one lack and in default of the payment of fine three months further rigorous imprisonment has been awarded.

2. Sri R.K. Khanna, learned counsel for the appellant and Sri R.S. Sengar, learned A.G.A. appearing for the State have been heard.

3. According to the prosecution case P.W. 1 Khanjan Lal Gangwar, Sub-Inspector, was posted at police station G.R.P. Saharanpur. He was on checking duty of the platform. While on checking he picked up Constables Kanhaiya Lal P.W. 2 and Naresh Kumar P.W. 3. The Sub-Inspector reached near tea stall of platform No. 5/6. At the tea stall the Sub Inspector received information that the appellant who is wearing black clothes is carrying a bag with him having stripe of red, yellow, white and black colour, which contains Doda Post and who is sitting near southern wall of

western bridge. The Sub-Inspector along with the police party proceeded towards the bridge on platform No. 6 and about ten paces towards west of it the appellant was apprehended at 2.50 a.m. On his search 4 1/4 kilograms of Doda Post powder was found in the bag which he was carrying. The appellant could not show any licence for possession of the same. The Sub-Inspector took out some powder as sample. The sample and seized Doda Post were separately sealed. The appellant was informed of the grounds and was arrested. The Sub-Inspector thereafter brought the seized contraband along with the sample and the appellant and deposited the same at the police station G.R.P. The fact that the Sub-Inspector received information at the tea stall of platform No. 6 is stated by the Sub-Inspector Khanjan Lal Gangwar P.W. 1 himself and by the two constables, P.W. 2 Kanhaiya Lal and Naresh Kumar P.W. 3. They have also stated above apprehension, search and seizure of the contraband from possession of the appellant and also the fact that from the seized contraband sample was taken and both the sample and the contraband were separately sealed on the spot and a recovery memo in that regard was prepared. The statements of all the three witnesses are consistent and there is no discrepancy in the same.

4. It has been contended that the provisions of Section 42 of the Act have not been complied with in the present case inasmuch as Sub Inspector Khanjan Lal Gangwar, P.W. 1 had prior information that the appellant had in his possession Doda Post and thus an offence punishable under Chapter IV of the Act has been committed, did not take down in writing the information. It has come in evidence that Sub-Inspector was on checking duty at the platform. He has stated that after receiving information he did not have sufficient time to collect witnesses from public though he asked two or four persons. He has further stated that he could not ask other persons also because the appellant might have run away in the meantime. The facts of the case show that the information was received by the Sub-Inspector at 2.40 a.m. and the appellant was apprehended at 2.50 a.m. i.e. after the receipt of the information apprehension of the appellant was made in ten minutes. Had the Sub-Inspector devoted some time in taking the information in writing there were chances that the appellant might have run away. Since the period of receiving the information and apprehension of the appellant is too short, he did not think it proper to take down the information in writing. In Similar situation this Court as well as the Hon"ble Supreme Court has held in the case of Suresh alias Daharey v. State of U.P., reported in 2001 (2) JIC 729 and [Sajan Abraham Vs. State of Kerala](#), Supreme Court that taking down in writing the information is not essential.

5. It has been contended that Section 50 of the Act has not been complied with. The facts of the case show that the contraband was recovered not from personal search of the appellant but from the bag which he was carrying. Section 50 of the Act is attracted when personal search is to be made. It has been so held in the case of "[State of Punjab Vs. Balbir Singh](#),

6. It has come in evidence that sample and the seized contraband were separately sealed on the spot and in that very condition they had been deposited in the Malkhana of the police station. Constable Clerk, Satya Prakash P.W. 4 has stated that he prepared chick FIR and registered the case in the general diary and that sample and the seized contraband were deposited in the Malkhana of the police station. Sub-Inspector Khanjan Lal Gangwar P.W. 1 has stated that he had put the seal of "RLY UPP" on the bag which contained contraband and on the sample which was taken. He has further stated that R.L. Yadav was Head Moharrir at the said police station in those days. He has further stated that at the time of search and seizure he was having the seal of "RLY UPP", in his possession. The sample which Constable Vinod Kumar P.W. 6 carried to the Chemical Analyst at Agra bore the seal "RLY UPP." Vinod Kumar has stated that by order of the officer-in-charge of the police station he had carried the sample of the contraband to the Sessions Court. His signature was verified by the Sessions Judge on 23-9-1992 and on 24-9-1992 he proceeded with the sample and delivered it to the Public Analyst on 26-2-1992 at Agra. He has stated that so long the sample of the contraband remained in his possession its seal was intact. The statement of Vinod Kumar P.W. 6 that the Sessions Judge broke the seal and applied another seal appears to have been made in some confusion because he has stated that when the sample was being filled he remained seated outside. He cannot say what action the Sessions Judge took. The statement of this witness that the Sessions Judge broke the seal and saw the sample appears wholly incorrect because he himself was not present before the Sessions Judge and remained outside. It is also not correct because according to Sub-Inspector Khanjan Lal Gangwar P.W. 1 he had put the seal of "RLY UPP", on the sample seal and it was this very seal which the Chemical Analyst found on the sample which he received on 26-2-1992. The Chemical Analyst has reported that the powder of sample was *Papaver Somniferum* Linn.

7. P.W. 5 Virendra Pratap Singh was the officer-in-charge of police station G.R.P. and is the Investigating Officer of the case also. He has stated that he was present at the police station when the case was registered. On the strength of the statement of P.W. 1 Khanjan Lal Gangwar and two other constables it is contended that the officer-in-charge was not present at the police station when the case was registered. The statements of the above witnesses are not very clear but they have not stated definitely that the officer-in-charge was not present at the police station. They have only stated that they cannot say whether the officer-in-charge was present or not. It has come in evidence that on that date the officer-in-charge was not on leave. The Station Officer Virendra Pratap Singh himself says that he was present at the police station when the case was registered and he took the seized article in his custody as is required u/s 55 of the Act. He has also stated that he had sent the sample of the seized contraband to the Chemical Examiner. He has stated that on the seized contraband he had put his seal also. He has further stated that on the sample of the contraband he had not put his seal. It has come in the statement of P.W. 1 Khanjan

Lal Gangwar. Sub-Inspector, that the bag does not contain any seal except that of "RLY UPP". He has stated that due to opening of the bag other seals had broken.

8. The evidence of arrest of the appellant, search and seizure of the contraband is consistent and convincing. The evidence is also trustworthy that the sample of the said article which was seized from possession of the appellant was sent to the Chemical Examiner who found it to be Opium Poppy. No case for interference with the findings of the trial Court is made out. The appeal has, therefore, no force and is liable to be dismissed.

9. The appeal is dismissed. The appellant is on bail. His bail bonds are cancelled. He shall surrender before the Chief Judicial Magistrate. Saharanpur forthwith to serve out the sentences awarded to him. After his surrender, his sureties shall stand discharged.