

(2016) 11 SC CK 0102

SUPREME COURT OF INDIA

Case No: Criminal Appeal No. 1096 of 2016 (Arising Out of S.L.P (Criminal) No. 6093 of 2015).

Dilbagh Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Nov. 28, 2016

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 50, 57, 25, 41, 42
- Code Of Criminal Procedure, 1973 - Section 313, 100

Citation: (2017) 98 ACrC 686 : (2017) 170 AIC 189 : (2017) 170 AIC 212 : (2017) 1 AICLR 657 : (2017) ALLSCRCrI 113 : (2017) 2 ALTCrI 6 : (2017) 1 BLJud 91 : (2017) 1 BomCR(Cri) 25 : (2017) 1 CriCC 85 : (2016) CriLR 1213 : (2016) 4 Crimes 328 : (2017) sup1 CutLTCrim

Hon'ble Judges: Dipak Misra and Amitava Roy, JJ.

Bench: Division Bench

Advocate: Ms. Aparna Jha, Advocate, for the Appellant; V. Madhukar, AAG, Ms. Anvita Cowshish, Ms. Sunita Sharma, Advocates, for the Respondents

Final Decision: Dismissed

Judgement

Amitava Roy, J. - Heard Ms. Aparna Jha, learned counsel for the appellant and Mr. V. Madhukar, learned counsel for the respondent.

2. The appellant, faced with concurrent determinations culminating in his conviction along with another, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") is before this Court seeking redress. Whereas the Trial Court, upon the entering finding of guilt had sentenced the accused persons with rigorous imprisonment for 10 years and six months each and fine of Rs. 1 lac each with default sentence of rigorous imprisonment for one year, the High Court in appeal has confirmed the verdict in to by the decision impugned herein.

3. The prosecution case unfolds with the interception of the appellant and the co-accused Ranjit Singh by the patrol party on 28.08.2007 while they were travelling in a car bearing registration No.MH-04BS-1651 at the check point at Khanauri Patran. One Baaj Singh, apart from the police party was then present. The appellant and his companion, on being interrogated, disclosed their names. Their car on search revealed six bags stuffed with Poppy Husk.

4. The Investigation Officer, A.S.I. Satnam Singh introduced himself and apprised the appellant and the co-accused of their right to be searched in the presence of a Gazetted Officer or a Magistrate if they so desired but they declined and instead reposed confidence in him. After recording their consent in writing the car was searched in presence of the other members of the patrol party as well as Baaj Singh and in course thereof three bags each from the rear seat and the dicky, containing Poppy Husk were recovered. Samples were taken and sealed with specimen impression of the Investigating Officer. On weighment of the remaining Poppy Husk, the contraband weighed 34 kg. 800 gms in each bag minus the samples taken. Personal search of the appellant and the co-accused yielded currency of Rs. 225/- and Rs. 150/- respectively which were also seized. The information of the exercise was forwarded to the police station on which a formal FIR was lodged.

5. The sealed samples as well as the contraband as a whole were deposited in the malkhana and were also produced before the concerned Magistrate on the next date along with the accused persons. The sample on chemical examination by the Forensic Science Laboratory disclosed the same to be of Poppy Husk. Eventually, on completion of the investigation challan was submitted and the appellant and the co-accused were made to face trial under Sections 15 and 25 of the Act, as they pleaded "not guilty".

6. In support of the charge, the prosecution examined PW-1/Constable Ravinder Singh, PW-2/S.I. Jaswinder Singh, PW-3/M.H.C. Shamsheer Singh, PW- 4/A.S.I. Satnam Singh, PW-5/H.C. Darbara Singh and PW-6 Parminderpal Singh, who had participated in the entire drill.

7. All the incriminating circumstances were laid before the accused persons in course of their examination under Section 313 Cr.P.C. and they denied the correctness thereof and complained of false implication.

8. The Trial Court on a consideration of the evidence on record and after analysing the rival contentions held the charge to be proved and convicted and sentenced both the accused persons as above. The appellant unsuccessfully challenged the conviction and sentence before the High Court.

9. The learned counsel for the appellant has asserted that as the Investigating Agency had contravened the mandatory prescriptions of Sections 50 and 57 of the Act, the conviction recorded by the Courts below is patently illegal and non est in law. According to her, though allegedly Poppy Husk was recovered from the car in

which the appellant and the co-accused were travelling at the relevant point of time, adherence to the mandate of Section 50 of the Act was indispensable. Similarly, as no report of the operation undertaken by the Investigating Agency involving the alleged seizure of the contraband had been reported to the superior officer concerned, the exercise was in gross defiance of the edict of Section 57 of the Act rendering the same null and void. The learned counsel for the appellant, to reinforce the above pleas has pressed into service the decision of this Court in **Mohinder Kumar v. State, Panaji, Goa, (1998) 8 SCC 655**. No other argument has been advanced.

10. As against this, the learned counsel for the respondent has insisted that the investigation had been conducted in meticulous compliance of the dicta of the law qua Sections 50 and 57 of the Act in particular. Not only the accused persons were duly apprised of their right of search in presence of a Gazetted Officer or a Magistrate before the search of their car, they were afforded all opportunities to offer their defence in the process undertaken. According to the learned counsel, the fact of the interception of the accused persons and the recovery of the contraband had been communicated to the concerned police station and to the Ilaka Magistrate through the higher officer i.e., Deputy Superintendent of Police without any delay whatsoever. The sample with the stock of Poppy Husk was properly sealed and deposited with the malkhana immediately as per the procedure prescribed as well, he urged. The learned counsel further submitted that though in a way, compliance of Section 50 of the Act was inessential in the facts of the case, as the vehicle was searched which yielded the contraband, the Investigating Officer by way of abundant caution did adhere thereto as well. As the information with regard to the entire gamut of the investigation had been forwarded to the higher officer i.e. Deputy Superintendent of Police and to the concerned Magistrate without any delay, the demur based on Sections 50 and 57 of the Act is wholly misplaced, he urged.

11. The evidence on record as well as the rival assertions have been duly evaluated.

12. As the essence of the impeachment is the non-compliance of the enjoinder of Sections 50 and 57 of the Act, for ready reference, these provisions are extracted herein below:

"50. Conditions under which search of persons shall be conducted - (1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

57. Report of arrest and seizure - Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

13. Whereas the conditions under which, the search as contemplated in Section 50 are limited only to the contingency of search of any person, Section 57 prescribes that whenever any person makes any arrest or seizure under the Act, he would within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. As it is no longer *res integra* that the application of Section 50 of the Act is comprehended and called for only in the case of search of a person as distinguished from search of any premises etc. having been authoritatively propounded by the two Constitution Bench rulings of this Court in **State of Punjab v. Baldev Singh, (1999) 6 SCC 172** and **Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609**, further dilation in this regard, in the attendant facts and circumstances of the case, is considered inessential. This is more so as the contraband in the case in hand had been recovered from inside the car in which the petitioner and the co-accused were travelling at the relevant point of time and not in course of the search of their person. Noticeably, it had also not been the plea of the defence ever that the alleged seizure according to the accused persons had been from their person. In the contextual facts therefore, Section 50 has no application to espouse the cause of the defence.

14. Qua the imputation of non-adherence of the requisites of Section 57 of the Act, suffice it to note that both the Courts below, on an analytical appreciation of the evidence on record have concurrently concluded that the Investigating Officer at the site, had after the arrest of the accused persons and or seizure of the contraband

forwarded the information with regard thereto to his higher officer, namely, Deputy Superintendent of Police without any delay and that the related FIR with the necessary endorsements therein had reached the Ilaka Magistrate on the same date i.e. 28.08.2007 at 9 p.m. There is no evidence forthcoming or referred to by the learned counsel for the petitioner to either contradict or decimate this finding based on records. In this view of the matter as well, the assertion of non-compliance of Section 57 of the Act does not commend for acceptance. In our view, having regard to the facts available, the requirements of Section 57 of the Act had been duly complied with as well.

15. The decision in Mohinder Kumar (supra) not only is distinguishable on facts, as the search therein was of the petitioner's premises, the investigation was afflicted as well by several other omissions on the part of the authority conducting the same. Though in this rendering, it was observed that in **State of Punjab v. Balbir Singh, (1994) 3 SCC 299** the provisions of Sections 52 and 57 of the Act had been held to be mandatory in character, it is pertinent to note that this Court in **Sajan Abraham v. State of Kerala, (2001) 6 SCC 692** had expounded that Section 57 was not mandatory in nature so much so that if a substantial compliance thereof is made, it would not vitiate the case of the prosecution. Incidentally the decision rendered in Balbir Singh (supra) was rendered by a Coram of two Hon'ble Judges whereas the one in Sajan Abraham (supra) was by a three Judge Bench.

16. In Balbir Singh (supra), a Bench of two Hon'ble Judges of this Court had enunciated, advertent to Sections 52 and 57 of the Act that these provisions contain certain procedural instructions for strict compliance by the officers, but clarified that if there was none, such omission by itself would not render the acts done by them null and void and at the most, it may affect the probative value of the evidence regarding arrest or search and in some cases, it may invalidate such arrest or search. That the non-compliance had caused prejudice to the accused persons and had resulted in failure of justice was necessary to be demonstrated, was emphasised. It was ruled that these provisions, which deal with the steps to be taken by the officers after making arrest or seizure under Section 41 and 44 are by themselves not mandatory and if there was non-compliance or any delay was involved with regard thereto, then it has to be examined, to ascertain as to whether any prejudice had been caused to the accused and further whether, such failure would have a bearing on the appreciation of evidence regarding arrest or seizure as well as on the merits of the case.

17. Be that as it may, having regard to the evidence available attesting the compliance of the requisites of Section 57 of the Act in the instant case, we need not be detained by this issue in praesenti.

18. Aside the above, an appraisal of the testimony of the prosecution witnesses and in particular of PW-4 ASI/Satnam Singh and PW-5 HC/Darbara Singh, the seizure witnesses, fully substantiate the recovery of the contraband i.e. Poppy Husk from

the conscious possession of the accused persons. That the samples were properly sampled, sealed and forwarded to the Forensic Science Laboratory through Malkhana also stands established. The certificate of the Chemical Examiner, FSL to the effect that the seal of the samples was found intact and that the same tallied with the specimen seals also rules out the possibility of any tampering therewith. The fact that the contraband was recovered from the car while the same was being driven by one of the accused persons in the company of the other also authenticate the charge of their conscious possession thereof. The haul of six bags of Poppy Husk is substantial so much so that it negates even the remote possibility of the same being planted by the police. Furthermore no evidence with regard to bias or malice against the Investigating Agency has been adduced.

19. In the wake of the above, we are of the unhesitant opinion in the face of the evidence on record, that the prosecution has been able to prove the charge against the accused persons beyond all reasonable doubt. The Courts below have appreciated the materials on record in the correct legal and factual perspectives and the findings recorded do not merit any interference. The appeal is thus dismissed. The Trial Court is hereby directed to take immediate follow up the steps so as to ensure that the sentence awarded is served out by the accused persons.