

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S 1200 SB of 2003 (O&M)
Date of decision : January 14, 2015

Baj Singh,

..... Appellant

v.

State of Punjab,

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. K.L Chaudhary, Sr. Advocate with
Mr. Harshit Sethi, Advocate
for the appellant.

Mr. APS Gill, AAG Punjab

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This appeal has been filed against the judgment and order dated 5.6.2003, vide which the trial Court convicted the appellant under Section 18 of the NDPS Act and sentenced him to undergo RI for 10 years and to pay a fine of ₹ 1,00,000/-, in default of payment of fine to undergo further RI for 2 years.

As per allegations, on 11.6.1998, when the police party headed by Inspector Major Singh, was present near canal bridge in the area of village Khabe Rajputan at about 3 pm, a truck bearing No.KA-01-8386 being driven by the appellant was seen approaching. The truck was stopped

and since the police had suspicion that the appellant might be carrying some narcotic contraband either on his person or on his truck, he was asked whether he wanted to be searched by a police Gazetted Officer or by a Magistrate or by the Inspector himself. On his expressing confidence on the Inspector, search was carried out but nothing was found from his person. However, 4 kgs of opium was found from the truck. Having charged and convicted and sentenced, the appellant is before this Court.

Counsel for the appellant has argued that the search is illegal because it violated the provisions of Section 50 of the NDPS Act (for short “the Act”). As per him, there is no provision under the Act for search specifically by a police Gazetted Officer and under the Act an offer has to be made for search by a Gazetted Officer or a Magistrate. On this score alone, the conviction of the appellant is liable to be set aside.

Counsel for the respondent has argued, in my opinion rightly so, that had it been a case where contraband was recovered from the person, the argument in respect of violation of Section 50 of the Act could have been pressed into service but once nothing was yielded in the personal search, the infraction of Section 50 of the Act was neither here nor there.

Counsel for the appellant has further argued that neither in the charge nor in the statement under Section 313 of the Cr.P.C was it put to the appellant that he was in conscious possession of the opium. This, coupled with the statement of the truck owner that he had never appointed the appellant as a driver, casts a doubt on the entire recovery. It has been further argued that as per the alleged disclosure statement, the appellant had informed the police that in addition to 4 kgs of opium lying in the truck, he

had also hidden 6 kgs more opium at some place in Ambala but no raid was conducted to confiscate the same. As per him, this also renders the alleged recovery improbable.

Counsel for the appellant has further argued that there is delay of 12 days in sending the samples to the Chemical Examiner and this also vitiates the entire prosecution story.

A perusal of the charge and the statement made by the appellant under Section 313 of the Cr.P.C reveals that the arguments (except the first argument) raised by counsel for the appellant are correct and, therefore, the prejudice caused to the appellant is palpable. Of-course, these factors individually may not have amounted to much but cumulatively they do show that the prosecution has not been able to bring home guilt of the appellant beyond reasonable doubt. That being so, benefit has to be granted to the appellant. Consequently, this appeal is allowed and the judgment and order of conviction and sentence, passed by the trial Court, is set aside.

(AJAY TEWARI)
JUDGE

January 14, 2015
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