

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

Crl. Appeal No. 406-SB of 2004

Date of decision : January 12, 2015

* * * * *

Kesar Singh

.....Appellant

Versus

State of Haryana

.....Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. J.S Virk, Advocate for the appellant.

Mr. C.S Bakshi, Addl.A.G., Haryana.

* * * * *

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?*

RITU BAHRI, J

Present appeal has been filed against the judgment of conviction and order of sentence dated 21.11.2003, whereby the appellant was convicted under Section 15 of the NDPS Act.

Prosecution story, in brief, is that on 29.12.1999, Hari Ram Inspector, CIA, Ambala along with other police officials in government vehicle No. HR-01/4464 raided New Neelkhant Dhaba at Village Teora, G.T. Road in view of the order of I.G police and apprehended the owner of the said dhaba who disclosed his name as Kesar Singh. The police party suspected him of having opium with him and poppy husk in an envelope lying on the counter and

thus on the basis of said suspicion notice under Section 50 of the Act was given to the effect that his search was to be conducted and he was asked to give his option as to whether he wanted the search on his person conducted before Gazetted Officer or Magistrate and the suspect gave reply that he was willing to get the search conducted on his person as well as of the said envelope in the presence of Gazetted Officer or nearest Magistrate. Thereafter, Hari Ram Inspector reached police station Shahabad along with suspect Kesar Singh an poly envelope and requested the SHO to call for Tehsildar and thereafter, Satish Bhardwaj Tehsildar was requested to reach in police station Shahabdad, who after receipt of information reached the police Station and the Hari Ram Inspector apprised the SHO Sher Singh, SI Puran Chand and Satish Kumar Bhardwaj about the facts of the case and on the direction of the said Satish Kumar Tehsildar when search on the person of Kesar Singh was conducted as per law then opium wrapped in polythene paper was recovered from the right side pocket of the pant of the accused and smack wrapped in paper was also recovered from the left side pocket of the pant and from the plastic bag crushed poppy husk was recovered. When the opium was weighted then it was found to be 17 grams out of which 5 grams was separated as sample. Sample and the remaining opium were converted into separate parcels and were sealed separately. When the smack was weighed the same was found to be 3.5 grams, out of which 1 grams was separated as sample and the sample as well as remaining smack were converted

into separate parcels and were sealed separately. When the polythene bag containing chura post was weighed then it was found 2.800 Kgs. Out of which 100 grams was separated as sample and the sample as well as remaining chura post were converted into separate parcels and thereafter, all the parcels were sealed with seal bearing impression HR of Hari Ram Inspector and SS of SHO Sher Singh and seal impression were also taken and all the parcels were taken into possession and recovery memo was prepared which was signed by the witnesses and attested by Satish Bhardwaj Tehsildar and on the basis of the said recovery, case under Sections 15 and 18 NDPS Act was got registered.

After completion of investigation, copies of challan and other documents were supplied. Accused was charge sheeted under Sections 15, 18 and 21 of the Act on 6.4.2000 by the then Presiding Officer, Special Court, Kurukshetra, to which the accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined seven witnesses. Thereafter prosecution evidence was closed. In his statement recorded under Sections 313 Cr.P.C the accused denied all the allegations of the prosecution levelled against him and pleaded false implication.

The trial Court after going through the facts of the case came to the conclusion that the necessary provisions as contemplated under Section 50 of the NDPS Act were not complied with by the prosecution in carrying out the personal search of the

appellant with regard to 17 grams of opium and smack weighing 3.5 grams which were recovered from the person of the accused as per Section 50 of the NDPS Act. As per the judgment of the Hon'ble Apex Court in ***State of Punjab vs. Baldev Singh, 1999 (3) RCR (Criminal) 533***, it is the duty of the empowering officer to convey the information to the concerned suspect of his right of being searched in the presence of a Magistrate or a Gazetted Officer. In the present case, at the time of the conducting search of the appellant, the prosecution had served a notice Ex.PE. But, there was no evidence that the Investigating Officer or any other prosecution witness had made the accused aware of his right to be searched in the presence of a Gazetted Officer or a Magistrate orally. On account of this lacuna, the recovery of 17 grams of opium and smack weighing 3.5 grams cannot be held to be legal. The case of the petitioner has now to be considered whether the recovery of 2.800 Kgs. of chura post in the police station was in accordance with the law.

The prosecution version is that on 29.12.1999, a team of police officers, on receiving secret information by the IGP Ambala, conducted raid at New Neelkhant Dhaba at Village Teora, G.T. Road. At the time of the raid, the appellant-accused was carrying a poly envelope on the counter. For conducting search of this envelope, Section 50 of the NDPS Act was not applicable. But search of this bag was not carried out at the Dhaba. The appellant was taken to the police station where the personal search was not carried out in accordance with Section 50 of the NDPS Act and recovery of 17

grams of opium and 3.5 grams of smack was not in accordance with the law and was not found to be legal. However, recovery of 2.800 Kgs. of chura post from the polythene envelope has been effected in the police station. The chura post was in a polythene bag and at the time of raid, recovery memo could be prepared there and then. This recovery at the police station becomes doubtful as the presence of Gazetted Officer was not required. This casts a doubt in the case of the prosecution. Hence extending the benefit of doubt to the appellant, is acquitted of the charged framed against him.

Appeal is allowed.

January 12, 2015
ritu

(**RITU BAHRI**)
JUDGE