

STATE OF PUNJAB  
v.  
BALBIR SINGH AND ORS.

OCTOBER 26, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

*Narcotic Drugs and Psychotropic Substances Act, 1985: s.50—Compliance with requirements of—Accused found carrying gunny bags containing poppy husk on a bullock-cart—Plea of non-compliance with provisions of s.50—Held, s.50 applies in case of personal search of a person—On facts, s.50 not attracted.*

Respondents were prosecuted under s.15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The prosecution case was that a police party found the accused carrying 18 gunny bags containing poppy husk on a bullock cart. The trial court convicted the accused of the offence charged. But, the High Court accepted the plea of the accused that mandatory requirements of s.50 of the Act were not complied with and, therefore, the conviction and sentence could not be sustained.

In the appeal filed by the State, it was contended that, in the facts and circumstances of the case, no personal search was involved and the High Court erred in holding that s.50 of the Act was attracted.

Allowing the appeal, the Court

**HELD:** 1. The High Court was not justified in directing acquittal of the accused persons for the purported non-compliance with the requirements of s.50 of the Narcotic and Psychotropic Substances Act, 1985. A bare reading of s.50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises.

[647-B 646-G]

*State of Punjab v. Baldev Singh*, [1999] 6 SCC 172; *Kalema Tumba v. State of Maharashtra and Anr.*, JT (1999) 8 SC 293; *Gurbax Singh v. State of Haryana*, [2001] 3 SCC 28 and *Madan Lal and Anr. v. State of Himachal Pradesh*, (2003) 6 Supreme 382, relied on.

**A** CRIMINAL APPELLATE JURISDICTION : Criminal Appel Nos. 1218-1219 of 2004.

From the Judgment and Order dated 17.9.2003 of the Punjab and Haryana High Court in Cri A. Nos. 331-SB and 426-SB of 1989.

**B** Bimay Roy Jad and Arun K. Sinha for the Appellant.

Dinesh Verma, Ms. Suresh Kumari and A.P. Mohanty for the Respondent.

The Judgment of the Court was delivered by

**C** **ARIJIT PASAYAT, J.** Leave granted.

Respondents faced trial for alleged commission of offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'Act'). Sans unnecessary details the prosecution version is as follows:

**D** On 28.6.1987, Inspector Karnail Singh along with Head Constable Shamsheer Singh, Head Constable Surjit Singh and other Police officials, were going from Moga to Talwandi Dosanjh in Govt. jeep for the search of suspects. When they reached on the crossing of Talwandi Bhangarian. Dosanjh, a bullock cart was seen coming from opposite side. Accused Sukhwinder Singh was driving that cart whereas his co-accused Kuldip Singh and Balbir Singh were sitting on bags carried on that cart on bags. The police party asked accused Sukhwinder Singh to stop the cart. Accused Kuldip Singh and Balbir Singh ran away whereas accused Sukhwinder Singh was apprehended at the spot. On search of the cart, 18 bags containing poppy husk were recovered from it. The weight of each of those bags was told to be 45 kg. by accused

**E** Sukhwinder Singh. 250 grams poppy husk was taken out as sample from each of the bags. The sample and the bags containing the remaining poppy husk were separately sealed with the seal and taken into possession vide recovery memo Ex.PA attested by HC Surjit Singh. The seal after use, was given to HC Surjit Singh. Specimen impression of the seal, Ex P.19 was prepared. The cart was also taken into possession through the same memo Ex.PA. The Inspector sent ruqa Ex.P8 to the Police Station on the basis of which FIR.PB/1 was recorded. Site plan (Ex.PC) was prepared. Statements of PWs were recorded. The bags were weighed on way back on the Saw Mill at Village Duneke. On return to the Police Station, the Inspector deposited the case property with seals with MHC Sukhdev Singh. The copies of the FIR and the Wireless message were sent to the higher authorities. Accused Kuldip Singh and Balbir

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Singh who escaped from the spot on the day of recovery were subsequently arrested by the Police on 23.7.1989 and 24.7.1989 respectively.

After completion of investigation charge sheet was placed. The Illaqua Magistrate, Moga committed the case to the Court of Sessions for trial under Section 15 of the Act. Charges were framed. As the accused persons pleaded innocence they claimed to be tried. In order to prove its accusations, two witnesses were examined and certain documents were exhibited. The accused Sukhwinder Singh took the plea that Inspector Karnail Singh (PW-2) was having enmity with him as he had a dispute of land with his relatives. Accused Balbir Singh took a similar plea. Three witnesses were examined to further the plea of innocence. After considering the evidence on record and the plea that there was non compliance with various mandatory requirements of the Act, the trial Court found the accused persons guilty and sentenced them to imprisonment for 10 years and to pay a fine of rupees one lakh each with default stipulation that in default of payment of fine each was to undergo further RI for two years.

Accused Sukhwinder Singh and Balbir Singh were directed to be taken to custody to undergo the sentence. Accused Kuldip Singh was absent and, therefore, the judgment was pronounced under Section 353 (6) of the Code of Criminal Procedure, 1973 (in short the 'Code'). The Chief Judicial Magistrate, Faridkot was requested for his arrest and execution of warrant of sentence.

The accused persons filed appeals before the Punjab and Haryana High Court bearing No. 331 SB/1989 and 426 SB/1989. Before the High Court the only point urged was that the mandatory requirements of Section 50 of the Act were not complied with. The plea was resisted by learned counsel for the State on the ground that there was no need for complying with the provisions of Section 50 of the Act because the search was made of bags and not of any person. The High Court came to hold that the accused persons were sitting on gunny bags. When two of the accused persons ran away from the place of occurrence, the Investigating Officer must have got suspicious that the bags contained contraband and, therefore, it was incumbent on the investigating officer to follow the mandatory provisions of Section 50 of the Act. It was held that in the absence of compliance with the requirements of Section 50 of the Act the conviction and sentence as recorded could not be sustained.

In support of the appeal, Mr. Bimal Roy Jad, learned counsel for the appellants submitted that the High Court fell into grave errors by holding that

A Section 50 was attracted to the facts of the case as no personal search was involved.

In response, learned counsel for the respondents 1 and 2 submitted that the High Court relying on the decision of this Court in *State of Punjab v. Baldev Singh*, [1999] 6 SCC 172 has rightly held that mandatory provisions of Section 50 of the Act have not been complied with on the facts of the case. That being so, the High Court's judgment is in order. It is to be noted that the High Court has failed to notice that respondent Kuldip Singh has not appeared in spite of service of notice.

C So far as non-compliance of Section 50 is concerned, the said provision reads as follows:

"50. *Conditions under which search of persons shall be conducted.*

D (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.

E (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).

F (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."

A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. See *Kalema Tumba v. State of Maharashtra and Anr.*, JT 1999 (8) SC 293, *Baldev Singh's case* (supra), *Gurbax Singh v. State of Haryana*, [2001] 3 SCC 28. The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh's case* (supra). Above being the position, the contention regarding non-compliance of Section 50 of the Act

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is also without any substance.

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A similar question was examined in *Madan Lal and Anr. v. State of Himachal Pradesh*, [2003] 6 Supreme 382.

In view of the aforesaid analysis of the legal position, the inevitable conclusion is that the High Court was not justified in directing acquittal of the accused persons for the purported non compliance with the requirements of Section 50 of the Act. The appeals are allowed. The respondents are directed to surrender to custody forthwith to serve remainder of the sentence, if any.

B

R.P.

Appeal allowed.

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