

STATE OF HARYANA

v.

VIDHYA DHAR

MARCH 1, 2002

[R.P. SETHI AND K.G. BALAKRISHNAN, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985—Sections 18 and 50—Procedural illegality in investigation—Recovery of opium from accused—Accused given opportunity to effect the search in presence of Gazetted Officer or Magistrate which was declined—Inspector took sample from opium and affixed his seal—Sub Inspector collected the sample—Station House Officer on verification of facts also affixed his own seal on the sample—Samples sent for chemical analysis and on basis of report charge sheet filed—Accused alleged tampering with the seal—Deposition of Sub-Inspector and Station House Officer—No cross-examination regarding tampering with seal—Trial Court convicted the accused—High Court set aside the conviction—On appeal, held evidence adduced by the prosecution showed no tampering with the seal—Hence no procedural illegality in the investigation—Acquittal set aside—Conviction by Trial Court restored.

On suspicion, Sub-Inspector along with some police personnel conducted search of the respondent-accused and recovered about 2,250 kgs. of opium. Respondent-accused was told that if he desired, the search could be effected in the presence of a Gazetted Officer or a Magistrate. However, he declined. Inspector took sample of opium and sealed with his seal. Sub-Inspector then collected the sample of the opium. After that respondent-accused along with these two packets was produced before the Station House Officer, who verified the facts from respondent-accused and witnesses and checked the case property and the sample. He affixed his own seal on both the packets containing sample and the residue. Thereafter sample of opium was sent for chemical analysis and on the basis of the report, charge-sheet was filed against the respondent-accused. Trial Court rejected the contention of the respondent-accused that there was tampering with the seal affixed on the packet containing the sample and held him guilty. However, High Court, on the basis of the evidence adduced by the prosecution, acquitted the respondent-accused holding that there was tampering of the seal and the respondent-accused was entitled to benefit of doubt. Hence the present appeal.

A Appellant-State contended that there was no tampering with the seal placed on the packet of opium sample collected and the evidence of the prosecution is very clear.

Allowing the appeal, the Court

B HELD : 1.1. On perusal of the evidence of prosecution witnesses, no defect can be perceived and it clearly shows that seal put on sample packet was found intact since Sub-Inspector did not say that the packet of the sample was opened and fresh seal was put thereon. Further, in the cross-examination of Station House Officer by the respondent's Counsel it was not suggested to him whether the seal put up by the Sub-Inspector was found tampered or not. In fact there was no cross-examination regarding the tampering of the seal. All that he deposed was that he checked and verified the facts and then affixed his seal on the sample as well as on the rest of the opium recovered from the respondent-accused. [155-B; 154-F-H; 155-A-B]

C 1.2. The prosecution successfully proved that 2 kilograms and 250 grams of opium was recovered from the respondent-accused and, therefore, there was no procedural illegality in the investigation. The finding of the High Court that there was tampering with the seal put by the investigating officer, and so the respondent was not entitled to get benefit thereof was without any basis since High Court did not appreciate the evidence adduced by the prosecution in the correct perspective. [155-C-D; 155-B-C]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1893 of 1996.

E From the Judgment and Order dated 17.4.96 of the Punjab and Haryana High Court in CrI. A.P. No. 366-SB/95.

J.P. Dhanda, Dhon Singh Nagar, K.P. Singh and Ms. Raj Rani Dhanda, Advocates for the Appellant.

Vishal Malik and Mr. R.C. Kohli for the Respondent.

F The Judgment of the Court was delivered by

G **K.G. BALAKRISHNAN, J.** This appeal is preferred by the State of Haryana challenging the judgment and order passed by the learned Single Judge of the High Court of Punjab and Haryana reversing conviction of the respondent, Vidhya Dhar, under Section 18 of the Narcotic Drugs and

Psychotropic Substances Act, 1985. The respondent was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 1,00,000 and in default thereof to undergo rigorous imprisonment for a period of one year. The facts of the case, in brief, are thus. A

On 4.12.1992, Sub Inspector Ram Chander, along with some police personnel was proceeding in a vehicle towards village Sangwan. When they reached the bus stand, they saw the respondent coming from the village side to the bus station. On seeing the police party, the respondent tried to escape. This aroused suspicion in the mind of Sub Inspector Ram Chander. The police party intercepted the respondent and tried to conduct a search on his person. The respondent was told that if he desired, the search could be effected in the presence of a Gazetted Officer or a Magistrate. The respondent, however, declined to have the search conducted either in the presence of a Gazetted Officer or Magistrate. This was recorded in the form of a statement, which was marked in the proceedings as Ex. PG. On conducting search of the respondent, a tin was recovered from the bag belonging to the respondent. It was found to contain about 2 kilogram and 250 grams opium. A sample was taken from the opium and sealed. Both the packets containing opium and its sample were taken into possession after preparing a recovery note. B C D

The respondent along with these two packets was produced before the Officer Incharge of Police Station, Tosham. The Officer Incharge verified the facts and affixed his own seal 'RKB' on both the packets containing sample and the rest of opium. The articles were deposited in the 'Malkhana'. Thereafter, the sample of the opium was sent for chemical analysis and on receipt of the report, the charge sheet was filed against the respondent. E

The respondent pleaded not guilty. In support of prosecution case, five witnesses were examined. The respondent pleaded that he was falsely implicated. The Addl. Sessions Judge, after consideration of the evidence, found the respondent guilty of the offence charged against him. The Sessions Court found that there was no violation of the provisions contained in Section 50 of the Narcotic Drugs & Psychotropic Substances Act and that the prosecution had proved recovery of 2 kilograms and 250 grams of opium from the possession of the respondent. The respondent had contended before the learned Sessions Judge that there was tampering with the seal affixed on the packet containing the sample. But that plea was rejected. F G

Aggrieved by the findings of the Sessions Judge, the respondent filed an appeal and the learned Single Judge acquitted the respondent on the sole H

A ground that there appeared to be some tampering with the seals affixed on the packet containing the sample. The learned Single Judge stated in the impugned judgment that PW-5, Inspector Amar Singh took sample and he put his seal 'AS' and entrusted the same to the Station House Officer and the Station House Officer put his seal 'RKB'. The learned Single Judge observed that
B Sub Inspector Ram Chander had deposed that he had verified and affixed his seal. The learned Single Judge was, therefore, of the opinion that if verification was done, PW-1 must have opened the packet and thereafter he must have put his seal 'RKB' and in that case the original seal 'AS' should not have been there on the packet. On this premise it was held that the chances of
C tampering could not be ruled out and the respondent accused was entitled to the benefit of doubt. This finding of the learned Single Judge is challenged before us.

We have heard Shri J.P. Dhanda, learned counsel for the appellant-State and Shri Vishal Malik, learned counsel for the respondent. It was submitted by learned counsel for the State of Haryana that there was no
D tampering with the seal placed on the packet of opium sample collected and the evidence of the prosecution is very clear on this aspect. We have perused the evidence adduced in this case. PW-4 Sub Inspector, Ram Chander, had collected the sample of the opium recovered from the respondent. PW-4 deposed: "The sample and the residue were sealed with the seal of AS. The
E seal after use was handed over to Badan Singh and the sample and the case property were taken into possession vide memo Ex. PH attested by me and PW Badan Singh. Case property is Ex.P1 and the sample is Ex. P2 and the 'thelais' Ex. P3. After that, the police party along with the accused and the case property went to the SHO, PS Tosham, who had verified the facts from
F the accused as well as from the witnesses and checked the case property and the sample. He affixed his own seal of "RKB" on the sample and the residue." PW-4 did not say that the packet of the sample was opened and fresh 'AS' seal put thereon.

Sub Inspector Rameshwar Kumar, who was also the Station House Officer, was examined as PW-1. He deposed : "I had verified the facts from
G SI Amar Singh, witnesses and the accused. Case property was found sealed with the seal of AS and the same seal was found on the sample. After verification of the case property and sample I also affixed my seal of "RKB" on the residue as well as the sample." PW-1 was cross-examined by the
H counsel for the respondent. It was not suggested to him whether the seal put by the Sub Inspector Ram Chander, was found tampered or not. In fact, there

was no cross examination regarding the tampering of the seal. All that he A
deposed was that he checked and verified the facts and then affixed his seal
on the sample as well as on the rest of the opium recovered from the
respondent.

On a perusal of the evidence of PW-1 and PW-4, we are unable to B
perceive any defect therein and it clearly shows that the seal put on the
sample packet was found intact. The learned Single Judge did not appreciate
the evidence adduced by the prosecution in the correct perspective.

The prosecution, in our opinion, successfully proved that 2 kilograms C
and 250 grams opium was recovered from the respondent and there was no
procedural illegality in the investigation. The finding of the learned Single
Judge that there was tampering with the seal put by the Investigating Officer
was without any basis and the respondent was not entitled to get benefit
thereof. As there was clear misreading of evidence, we are constrained to
reverse the finding of acquittal. We, therefore, set aside the impugned judgment D
of the learned Single Judge, allow this appeal and affirm the conviction and
sentence of the respondent as recorded by the Addl. Sessions Judge, Bhiwani.

N.J.

Appeal allowed.