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MEGH SINGH

v.

STATE OF PUNJAB

SEPTEMBER 15, 2003

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[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

C

Narcotic Drugs and Psychotropic Substances Act, 1985—Sections 15, 20, 34, 50 and 54—Appellant apprehended by police party as he was seen sitting on gunny bags containing contraband articles—Trial Court convicted and sentenced the appellant but acquitted the other co-accused giving him benefit of doubt—High Court upheld conviction and sentence holding that conscious possession is to be presumed unless the contrary is proved—On appeal Held, conscious possession and not mere custody without awareness of the nature of possession necessary—Once possession is established the person who claims that it was not a conscious possession has to establish it because the coming in possession is within his special knowledge—Not only possession but conscious possession has been established and the contrary has not been shown—Hence, conviction and sentence upheld.

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E

Section 50—Applicability—Held, only applicable in case of personal search of a person and does not extend to search of a vehicle or a container or a bag, or premises—Non compliance of provisions immaterial in the present case as there was no personal search.

F

Practice and Procedure—Similarity in criminal cases—One additional or different fact may differentiate between conclusions in two cases or two accused in the same case—Entire aspect may be altered by a single significant detail, which is more pronounced in criminal cases as adjudication is fact based.

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Words and Phrases—“Conscious Possession”—Meaning in the context of Narcotic Drugs and Psychotropic Substances Act, 1985.

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A police party on patrol duty apprehended three persons sitting on gunny bags containing poppy husk. The appellant was arrested on the spot and the others were arrested on later dates. Trial Court convicted and sentenced the appellant under Section 15 of the Narcotic

Drugs and Psychotropic Substances Act, 1985; however, it acquitted others giving them benefit of doubt. High Court upheld the conviction and sentence on appeal. It discarded the plea that the appellant was arrested on an earlier date and that there was no conscious possession of the contraband articles. Section 50 of the Act was also held inapplicable because there was no personal search of the appellant. Hence this appeal.

Appellant contended that as conscious possession has not been proved; that conviction cannot stand on a different footing from the co-accused who have been acquitted; and that there was non-compliance of the requirements of Section 50 of the Act.

Respondent contended that by application of the logic behind Section 54 of the Act, when physical possession is established, there is presumption of conscious possession; that mere acquittal of co-accused persons cannot be a factor to hold the appellant innocent; and that as there was no personal search Section 50 of the Act has no application.

Dismissing the appeal, the Court

HELD : 1. Unless the possession was coupled with requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of possession, Section 20 of the Narcotic Drugs and Psychotropic Substances Act, is not attracted. [725-D]

2. The expression "possession" is a polymorphous term, which assumes different colours in different contexts and may carry different meanings in contextually different backgrounds. Possession may be physical or constructive. The person to whom physical possession is given may hold it subject to the power or control of some other person. The word "possession" means the legal right to possession.

[725-E, 725-G, H]

Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors., A.I.R. (1980) SC 52 and *Gunwantilal v. The State of M.P.*, A.I.R (1972) SC 1756, relied on.

Avtar Singh & Ors. v. State of Punjab, [2002] 7 SCC 419, distinguished.

A *Health v. Drown*, (1972) 2 All. ER 561 (ML); *Sullivan v. Earl of Caitness*, [1976] 1 All. ER 844 (QBD), referred to.

B 3.1. The word “conscious” means awareness about a particular fact. It is a state of mind, which is deliberate or intended. Once possession is established the person who claims that it was not a conscious possession has to establish it because the coming in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. [725-F, 726-B, C]

C 3.2. In the present case not only possession but conscious possession has been established and it has not been shown that it was not conscious in the logical background of Sections 35 and 54 of the Act. [726-D]

D *Madan Lal & Anr. v. State of Himachal Pradesh*, [2003] 6 SCALE 483, relied on.

E 4. Section 50 of the Act 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. Therefore, non-compliance of its provisions in the present case are immaterial [726-E-F]

The State of Punjab v. Baldev Singh, JT (1999) 4 SC 595, followed.

F *Kalema Tumba v. State of Maharashtra & Anr.*, JT (1999) 8 SC 293 and *Gurbax Singh v. State of Haryana*, [2001] 3 SCC 28, relied on.

G 5. One additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between a case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based. [727-B, C]

H *Avtar Singh & Ors. v. State of Punjab*, [2002] 7 SCC 419, distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. A
452 of 2003.

From the Judgment and Order dated 15.7.2002 of the Punjab and
Haryana High Court in CrI. A. No. 57-SB of 2000.

Rishi Malhotra and Prem Malhotra (SCLSC) for the Appellant. B

Bimal Roy Jad for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Appeal preferred by appellant-Megh Singh
questioning his conviction under Section 15 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (for short the 'Act') was dismissed by
learned Single Judge of the Punjab and Haryana High Court by the
impugned judgment. He has questioned the legality thereof in the present
appeal. C
D

The compass of controversy as unfolded during trial by the prosecution
is as follows:

On 22.2.1993, police party headed by SI Chanan Singh, In-charge of
Police Station Dharamgarh (PW 1/B) was going on kacha road towards
drain from village Dharamgarh in connection with patrol duty and when
they reached near brick kiln, Santa Singh son of Bachan Singh met them
and joined in the police party. When the police party was little short of
the drain, they saw three persons sitting on gunny bags. Two of them fled
from the spot and the third one, accused-appellant Megh Singh was
apprehended. He disclosed the names of the persons who had run away
to be Baldev Singh and Pillu. Twenty-five bags containing poppy husk
were found at the spot. Two samples of 250 gms. were taken from each
bag and after taking the samples, weight of bags was found to be 36 kgs.
500gms. each. All the fifty samples and 25 bags of poppy husk were sealed
with seal 'CS' which after use was handed over to HS Mithu Singh (PW-
2). The case property was taken into possession vide recovery memo
Exhibit PC attested by witnesses including Santa Singh. On the basis of
ruqa Exhibit PE. F.I.R. Exhibit PE/1 was registered. Baldev Singh who had
run away from the spot was arrested on 27.2.1993 and Pillu Singh was H

A arrested on 10.3.1993. Case property was produced before Baldev Singh, SHO of Police Station, Sunam (PW-3) who verified the investigation and sealed the same with seal 'BS'. On chemical examination, the samples were found to be of poppy husk vide report Exhibit PK.

B Trial Court after considering the evidence on record held that the accusations against appellant-Megh Singh have been found established; accordingly convicted him under Section 15 of the Act and sentenced him to undergo RI for 10 years and to pay a fine of Rs.1 lakh with default condition of further RI for 1 year. Appellant challenged the conviction and sentence before the High Court. Primary stand was that accused had been arrested on 19.2.1993 and telegram had been sent in that regard to the police officials. It was contended that when benefit of doubt has been given to the other co-accused persons, there was no basis for convicting the accused-appellant. There was no material to show any conscious possession which is *sine qua non* for conviction under Section 15 of the Act. In any event, requirements of Section 50 were not complied with. High Court discarded the plea regarding arrest of Megh Singh on 19.2.1993 on the ground that the evidence on record establishes that the application/telegram was received on 24.2.1993 and merely because an earlier date was indicated, it cannot be said that the accused was really arrested on 19.2.1993. Coming to the plea of conscious possession it was held that the prosecution had produced ample evidence that accused was in physical possession and in terms of Section 54 of the Act conscious possession was presumed unless proved to the contrary. Accused has failed to do so. Therefore, conscious possession was established. Accordingly the appeal filed by the accused was dismissed. It was further held that Section 50 has no application because there was no personal search of the applicant.

F Consequentially conviction and sentence were upheld.

G Learned counsel appearing for the accused-appellant submitted that the facts of the case greatly resemble with that of *Avtar Singh and Ors. v. State of Punjab*, [2002] 7 SCC 419. Since conscious possession has not been proved, the conviction of the accused-appellant cannot stand on a different footing from those co-accused who have been acquitted. Non-compliance with requirements of Section 50 of the Act vitiates the conviction.

H In response, learned counsel for the respondent-State submitted that conscious possession has been established and by application of logic of

Section 54 of the Act when physical possession is established, there is A
presumption of conscious possession. Merely because co-accused persons
have been acquitted that cannot be a factor to hold the accused- appellant
innocent. It is submitted that since there was no personal search, Section
50 of the Act has no application.

Whether there was conscious possession has to be determined with B
reference to the factual backdrop. The facts which can be culled out from
the evidence on record is that the accused was sitting atop gunny bags
containing the contraband articles.

Section 20(b) makes possession of contraband articles an offence. C
Section 20 appears in chapter IV of the Act which relates to offence for
possession of such articles. It is submitted that in order to make the
possession illicit, there must be a conscious possession.

It is highlighted that unless the possession was coupled with requisite D
mental element, i.e. conscious possession and not mere custody without
awareness of the nature of such possession, Section 20 is not attracted.

The expression 'possession' is a polymorphous term which assumes E
different colours in different contexts. It may carry different meanings in
contextually different backgrounds. It is impossible, as was observed in
*Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil
Kumar Bhunja and Ors.*, AIR (1980) SC 52, to work out a completely
logical and precise definition of "possession" uniformly applicable to all
situations in the context of all statutes.

The word 'conscious' means awareness about a particular fact. It is F
a state of mind which is deliberate or intended.

As noted in *Gunwantlal v. The State of M.P.*, AIR (1972) SC 1756 G
possession in a given case need not be physical possession but can be
constructive, having power and control over the article in case in question,
while the person whom physical possession is given holds it subject to that
power or control.

The word 'possession' means the legal right to possession (See *Health H
v. Drown*, (1972) (2) All ER 561 (HL). In an interesting case it was

A observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See *Sullivan v. Earl of Caithness*, [1976] 1 All ER 844 (QBD).

B Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in *Madan Lal and Anr. v. State of Himachal Pradesh*, [2003] 6 SCALE 483.

C In the factual scenario of the present case not only possession but conscious possession has been established. It has not been shown by the accused-appellant that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.

D Now comes the question whether there was non-compliance of Section 50 of the Act.

E 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, *The State of Punjab v. Baldev Singh*, JT (1999) 4 SC 595, *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 is also without any substance.

F The decision in *Avtar Singh and Ors. v. State of Punjab*, [2002] 7 SCC 419 was rendered in a different factual background. In that case the articles were being carried in a truck. There were several persons in the truck. It had not been established by evidence that any one of them had any conscious possession. That also was not the only factor taken note of. While the accused was examined under Section 313 of the Code of

Criminal Procedure, 1973 (for short 'the Code'), the essence of accusations was not brought to his notice, more particularly with possession aspect. It was also noticed that the possibility of the accused persons being labourers of the truck was not ruled by the evidence. Since the decision was rendered on consideration of several peculiar factual aspects specially noticed in that case, it is of no assistance to the accused also. A B

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based. C

We find no substance in this appeal, which deserves dismissal, and we so direct.

A.Q.

Appeal dismissed. D