

STATE OF PUNJAB
v.
BALKAR SINGH AND ANR.

A

MARCH 16, 2004

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

B

Narcotic Drugs and Psychotropic Substances Act, :

S. 15—"Conscious possession"—Accused found sitting on a cluster of bags containing of poppy husk—Prosecution—Trial court held accused to have committed offence under s. 15—Acquittal by High Court—Held, the High Court committed no error in holding that there was no evidence to prove that the accused were in conscious possession of the poppy husk recovered by the police—The prosecution failed to discharge its obligation to prove the possession of the poppy husk by the accused—Recovery was effected from a field in a village—Accused belonging to different village—The police did not make any investigation as to how the 100 bags of poppy husk were transported to the place of incident—They also did not adduce any evidence to show the ownership of the poppy husk—The presence of respondents at the place from where the bags of poppy husk were recovered itself was taken as possession of these bags by the police—Police should have conducted further investigation to prove that these accused were really in possession of these articles.

C

D

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1144 of 1997.

From the Judgment and Order dated 24.7.96. of the Punjab and Haryana High Court in Crl. A. No. 297-SB of 1994.

F

Mrs. Naresh Bakshi for Bimal Roy Jad for the Appellant.

J.P. Dhanda, Mrs. Raj Rani Dhanda and V. Dhanda for the Respondents.

G

The following Order of the Court was delivered :

This is an appeal by the State of Punjab Challenging the acquittal of two accused persons by the High Court of Punjab and Haryana at Chandigarh. Respondents Balkar Singh and Munish Chand were tried by the Additional

H

A Sessions Judge, Bhatinda alleging that they committed the offence punishable under section 15 of the NDPS Act. On 5.12.1991 the SHO Balbir Singh, ASI Jarnail Singh, Sub-Inspector Kaur Singh along with some other Home Guard Officials were doing patrol duty. When their vehicle reached near Village Bhagwanpur, the patrol party turned to two groups and one party under the leadership of Balbir Singh proceeded to Village Lohgarh. When the patrol party under the leadership of Balbir Singh reached a place of one Km. away from bridge across Ghaghar river, they found a cluster of bags kept in field and the respondents sitting on them. Balbir Singh suspected that the bags must have been containing poppy husk. He apprised the accused of their right under section 50 of the NDPS Act. The accused did not raise any objection for search being conducted. Balbir Singh counted the number of bags and it was found that there were 100 bags and each bag contained poppy husk having weight of 40 kg. Out of each bag, 100 gm. of poppy husk was separated and he made samples. Later, the bags of Poppy Husk were taken into custody and kept in the Police Station. After investigation prosecution was launched against the respondents.

D The accused respondents alleged false implication, but no evidence was adduced. The Sessions Court held that the respondents committed the offence under section 15 of the NDPS Act as they were found in possession of the 100 bags of poppy husk. Aggrieved by the same, the respondents filed appeal and the High Court was pleased to acquit the respondents. This is challenged before us.

E We heard the counsel for the appellant. The High Court by the impugned judgment stated that the prosecution failed to prove that these respondents were in conscious possession of the poppy husk recovered by the police. The evidence by the prosecution consisted of the testimony of PW-1 Balbir Singh and PW-2 ASI Jarnail Singh. Both these witnesses deposed that they found the respondents sitting on the bags of poppy husk. The recovery was effected from a field in Village Lohgarh. The respondents belonged to different Villages. The respondent Balkar Singh is a resident of village Bira Bedi in District Hisar while respondent Munish Chand is a resident of Farukhabad. G The police did not make any investigation as to how these 100 bags of poppy husk were transported to the place of incident. They also did not adduce any evidence to show the ownership of the poppy husk. The presence of respondents at the place from where the bags of poppy husk was recovered itself was taken as possession of these bags by the police. In fairness, the H police should have conducted further investigation to prove that these accused

were really in possession of these articles. The failure to give any satisfactory explanation by the accused for being present on that place itself does not prove that they were in possession of these articles. Though the respondents raised a plea before the Session Court, the same was not considered by the Sessions Judge in the manner in which it should have been considered. We do not think that the High Court erred in holding that there was no evidence to prove that the respondents were in conscious possession of the poppy husk recovered by the police. The prosecution failed to discharge its obligation to prove the possession of the poppy husk by the respondents. We do not find any infirmity in the judgment passed by the High Court.

The appeal is dismissed.

R.P.

Appeal dismissed.