

STATE OF PUNJAB

V.

MALKIAT SINGH

Criminal Appeal No. 190 of 2005

APRIL 21, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ]**

Narcotic Drugs and Psychotropic Substances Act, 1985 – s.15 – Contraband articles recovered from room belonging to 'P' and allegedly leased out to respondent – Trial Court convicted respondent – High Court acquitted him on grounds that the alleged lease deed was not brought on record; that 'P' was not prosecuted and that there was nothing to show that respondent was having possession over the room in question – On appeal, held: No reason was indicated as to why 'P' was not examined and why during investigation, copy of the lease deed, showing the room to have been leased out to respondent, was not brought on record – No evidence was adduced to show possession of the room by respondent – Investigation was done in a shoddy manner – Judgment of the High Court did not suffer from any infirmity which warranted interference.

Contraband articles were recovered from a room belonging to one 'P' and allegedly leased out to the respondent. The trial court convicted the respondent under s.15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The High Court acquitted the respondent on grounds that the alleged lease deed was not brought on record; that even though the contraband articles were recovered from the room belonging to 'P', he was not prosecuted and that there was nothing to show that the respondent was having possession over the room in question. Hence the present appeal.

A **Dismissing the appeal, the Court**

HELD:. There was no reason indicated as to why 'P' was not examined and why during investigation, copy of the lease deed, showing the room to have been leased out to the respondent-accused, was not brought on record. No evidence was adduced to show possession of the room by respondent who was admittedly not the owner of the room. In addition, no question regarding the possession of the room in question was put which added to vulnerability of the prosecution version. Looking from any angle, the judgment of the High Court does not suffer from any infirmity to warrant interference. [Paras 5, 6] [65-G; 66-A; 66-B]

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D From the Judgement and Order dated 20.01.2004 of the Hon'ble High Court of States of Punjab & Haryana at Chandigarh in Criminal Appeal No. 20-DB of 2003.

E Kuldip Singh, R.K. Pandey, T.P. Mishra, H.S. Sandhu, Sanjay Katyal, for the Appellant.

J.L. Gupta, Nidhsh Gupta, Tarun Gupta, S. Janani, with them for the Respondents.

The Judgement of the Court was delivered by

F **DR. ARIJIT PASAYAT, J.**

G Challenge in this appeal is to the judgment of a Division Bench of Punjab and Haryana High court directing acquittal of the respondent who faced trial for alleged commission of offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'NDPS Act'). The respondent was sentenced to undergo twelve years rigorous imprisonment and to pay fine of rupees one lakh with default stipulation by learned Sessions Judge, Ludhiana.

H In appeal the High Court found that there were several

factors which justified the acquittal of the respondent. The first was that the recovery was from a room near a tube well belonging to one Pritam Singh. Though the prosecution claimed that the room was under the control of the respondent, no evidence was led in that regard. The stand of the prosecution was that the room in question was leased out to the present respondent for the purpose of storing the contraband articles. That lease deed if any was even not brought on record. If the narcotics have been recovered from room belonging to Pritam Singh's he was not prosecuted. There was nothing to show that the accused was having possession over the room in question. Question in that regard was put to him. With these conclusions the High Court directed acquittal.

The High Court was of the view that in case of such serious nature, the investigating agency was not very serious in conducting the investigation. It noted with concern that drug peddlers who are corroding the health of the nation are allowed to go scot free because of the ineffective investigation and for not collecting evidence to secure their conviction.

Learned counsel for the appellant State submitted that the presence of the respondent near the spot of occurrence had been established and therefore it can be safely said that he was connected with the storage of the contraband articles. In response, the learned counsel for the respondent submitted that even no question was put to the accused in his examination under ec.313 of the Code whether he was in possession or control of the room from where the contraband articles were recovered.

We find that the High court has noted with concern the shoddy investigation which was done. There was no reason indicated as to why Pritam Singh was not examined and why during investigation copy of the lease deed, showing the room to have been leased out to the respondent-accused, was obtained from Pritam Singh, if that was there. There is no reason as to why the same was not brought on record. Additionally, no

- A evidence was adduced to show the possession of the room by respondent who was admittedly not the owner of the room. In addition, as is rightly contended by learned counsel for the respondent, no question regarding the possession of the room in question was put which added to the vulnerability to the
- B prosecution version.

Looking from any angle, the Judgment of the High Court does not suffer from any infirmity to warrant interference.

Above being the position, the appeal fails and is dismissed.

B.B.B.

Appeal dismissed.