

STATE OF RAJASTHAN  
V.  
DAUL @ DAULAT GIRI  
Criminal Appeal No.18 of 2003

APRIL 28, 2009

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

*Narcotic Drugs and Psychotropic Substances Act, 1985 — ss. 8 and 18 — Respondent allegedly found in possession of contraband opium – Contraband samples collected for chemical analysis – PW1, SHO deposited the samples with PW8, the Malkahna In-charge, who handed over the same to PW5 – PW5 reached the Superintendent of Police office and gave the samples to 'J' at 10:00 a.m. and received back the samples from 'J' at 5:00 p.m the very same day and submitted the same with FSL – Conviction of respondent by trial court – Set aside by High Court on the premise that non-examination of 'J' rendered the prosecution version unacceptable – Justification of – Held: On facts, not justified – Role of 'J' was very limited; that is receiving sample at 10:00 a.m. and handing samples back at 5:00 p.m. on the very same day – Non-examination of 'J' did not affect the veracity of the prosecution version in any manner – No material to support the conclusion of High Court that there was possibility of tampering with the samples – FSL report clearly stated that the seals were intact and matched with the specimen seals – Judgment of trial court restored.*

**According to the prosecution, pursuant to receipt of secret information by PW1, SHO, the accused-respondent was encircled and then searched by the police party, on which he was found to be carrying about 6 kgs of opium. The trial court convicted the respondent under ss.8 and 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Respondent filed appeal before the High Court**

A which set aside the conviction on the premise that samples of the contraband opium, which were collected for purposes of chemical analysis, were in custody of one 'J' and non-examination of the said 'J' rendered the prosecution version unacceptable.

B Challenging the acquittal of the respondent, the State contended before this Court that the non-examination of 'J' was not fatal to the credibility of the prosecution version and that the entire scenario starting from seizure of the samples till their receipt at the Forensic Science Laboratory(FSL) and the report thereafter clearly proved that the samples were not only sealed but were also kept in proper and safe custody and hence there was no question or possibility of any tampering as concluded by the High Court.

D Allowing the appeal, the Court

HELD: The factual scenario goes to show that PW1 seized the articles and deposited the seized articles and samples with PW8 who was the Malkahna In-charge. PW8 handed the material to PW5 for depositing the sample in FSL. PW 5 reached the Superintendent of Police office and gave the samples to 'J' at 10:00 a.m. and received back the samples from 'J' at 5:00 p.m the very same day and also obtained forwarding letter. PW5 submitted the samples in FSL and obtained acknowledgement receipt. The role of 'J' is very limited; that is receiving sample at 10:00 a.m. and handing samples back at 5:00 p.m. It is not understandable as to how the non-examination of 'J' in any way affected the veracity of the prosecution version. The High Court came to an abrupt and unsustainable conclusion that because 'J' was not examined "possibility of the sample having been tampered with could not be ruled out." The conclusion is unsustainable in view of the FSL report which clearly stated that the seals were intact and matched with the

specimen seals. There is no material to support the conclusion of the High Court that there was possibility of tampering with the samples. Looked at from any angle, the judgment of the High Court is unsustainable and is set aside and that of the trial court is restored. [Paras 7, 9, 10] [944-B-F; 945-A-B]

*Hardip Singh vs. State of Punjab* 2008 (8) SCC 557 – referred to.

### Case Law Reference

2008 (8) SCC 557 referred to Para 8

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 18 of 2003

From the Judgment and Order dated 22.11.2001 of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in Criminal Appeal No. 615 of 1997

Manish Singhvi, Milind Kumar, for the Appellant.

Indra Makwana, for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.**

Challenge in this appeal is to the judgment of the learned Sessions Judge of Rajasthan High Court at Jodhpur directing acquittal of the respondent who faced trial for alleged commission of offence punishable under Sections 8 and 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and was convicted by learned Special Judge, NDPS cases, Chittorgarh in Sessions Case No. 252/97 (48/95). The trial Court convicted him to undergo sentence for ten years rigorous imprisonment and to pay fine of Rs.1,00,000/- with default stipulation.

Prosecution version as held during trial was that the respondent was found to be in possession of merely 6 Kg. of opium. PW.1 Jaswant Singh, SHO, Police Station Kanera

A District Chittorgarh prepared a Parchakayami (Ex.P/7) on  
15.6.1995 at about 7.15 p.m. stating inter-alia that on 15.6.1995  
at about 2.00 p.m., he received a secret information from  
B mukhbir to the effect that on that day before 6.00 p.m., one  
person, namely, Daul Giri (present accused respondent) S/o  
C Madhugiri, resident of Shamkhdo Ka Kheda having opium in  
his possession would pass through Palchha Ghata on foot from  
the village Badawali. That information was reduced into writing  
by Jaswant Singh (PW.1) and the same is Ex.P/2 and apart  
D from this, that information was also produced in Rojnamcha Ex.P/  
E 1A. The copy of the secret information was also sent by Jaswant  
Singh (PW.1) to superior officer Dy. PP Khetdan (PW.13) and  
Khetdan (PW.13) was also requested to come and join the  
raiding party. Thereafter, Jaswant Singh (PW.1) alongwith  
D Khetdan(PW.13), Manikant (PW.12), Reader of Dy. SP and other  
police officials and one independent motbir Parbat Singh (PW.6)  
E proceeded towards the spot in a Government vehicle at about  
4.00 p.m. and at about 4.15 p.m., they reached Badawali-  
Pallchha Road and made Nakabandi and during Nakabandi,  
at about 5.00 p.m., they saw one person having gunny bag on  
F his head coming on foot from Badawali and he was encircled  
and on being asked, he told his name as Daul Giri (present  
accused respondent). Thereafter, the accused was informed  
about the secret information that he had contraband opium and,  
therefore, he was to be searched. Before making search, the  
G accused appellant was given a notice Ex.P/3 under the  
provisions of Section 50 of the NDPS Act asking him whether  
he wanted to be searched before the Magistrate or Gazetted  
Officer and upon this, the accused gave his consent that he could  
be searched by Jaswant Singh (PW.1). Thereafter, he was  
searched in presence of two motbirs, namely, Khetdan (PW.13)  
H and Parbat Singh (PW.6) and during search; from the gunny  
bag, plastic bag containing black-brown substance was  
recovered and on being tested, it was assessed that it was  
nothing but contraband opium and on being asked, the accused  
told that he had no valid licence to keep that opium. On being  
weighed, its weight was found to be 6 k.g., out of which, two

samples of 30 grams each were taken for the purposes of chemical analysis and sealed separately on the spot and marked as A/1 and A/2 and the remaining opium was also sealed separately on the spot and marked as A. The fard-of search and seizure was prepared on the spot by Jaswant Singh (PW.1) and the same is Ex.P/4. The fard of specimen impression of seal is Ex.P/5. The accused was arrested through arrest memo Ex.P/6. Thereafter regular FIR Ex.P/8 was chalked out. Jaswant Singh (PW.1) handed over the seized articles and samples to Malkhana Incharge Bhanwarlal (PW.8), who deposited the same in the Malkhana and made entries in the Malkhana Register Ex.P/15A. Thereafter, one sample was handed over by Bhanwarlala (PW.8) to Surendra Singh (PW.5) for the purpose of depositing it in the FSL, Jaipur and Surendra Singh (PW.5) first took the sample to SP office, Chittorgarh and after obtaining a forwarding letter Ex.P/12 dated 20/6/1995 from SP office, Chittorgarh, he deposited that sample in FSL, Jaipur and obtained receipt Ex. P/13 dated 21/6/1995. The FSL report is Ex. P/16 in which it was reported that the sample contained in the packet marked A/1 gave positive tests for the chief constituents of the coagulated juice of opium poppy having 3.6 % (Three point six percent) morphine.

After investigation, charge-sheet was filed and as the accused pleaded to be innocent and trial was held in support of the prosecution version 14 witnesses were examined. The trial Court held that the accusation was established and, as indicated above, convicted him.

In appeal the only stand of the respondent which weighed with the High Court was that on the day when the samples were in the custody of one Jamnalal, the non-examination of aforesaid Jamnalal rendered the prosecution version unacceptable. Accordingly, the conviction was set aside and the respondent was directed to be acquitted.

In support of the appeal, learned counsel for the appellant – State submitted that the non-examination of Jamnalal could

- A not be fatal to the credibility of the prosecution version. In fact the entire scenario starting from the seizure of the samples till their receipt at the Forensic Science Laboratory (in short FSL) and the report thereafter clearly proves that the samples were not only sealed but were also kept in proper and safe custody.
- B According to him when the seal is intact, there is no question or possibility of any tampering as was held by the High Court. No one appeared for the respondent though notice has been served.

C The factual scenario goes to show that Jaswant Singh (PW.1), the I.O., seized the articles on 15/6/1995. The search memo is Ex. P.4 and the specimen impression of the seal Ex. P.5. PW.1 deposited the seized articles and sample with Bhanwarlal (PW.8) who was the Malkhana In-Charge in the Malkhana register in Ex. P.15A. PW.8 handed the material to Surendera Singh (PW.5) for depositing the sample in FSL. PW.5 D reached the Superintendent of Police office and gave the samples to Jamnalal at 10.00 a.m. and received back the samples from Jamnalal at 5.00 p.m. and also obtained forwarding letter which is Ex. P.12 and is dated 20/6/95. PW.5 E submitted the samples to FSL and obtained acknowledgment receipt it is Ex. P.13. The role of Jamnalal is very limited; that is receiving sample at 10.00 a.m. and handing samples back at 5.00 p.m. It is not understandable as to how the non-examination of Jamnalal in any way affected the veracity of the prosecution version. The High Court came to an attempt and unsustainable F conclusion that because Jamnalal was not examined "possibility of the sample having been tampered with could not be ruled out". The conclusion is unsustainable in view of the FSL report which clearly stated that the seals were intact and matched with the specimen seals.

- G In *Hardip Singh vs. State of Punjab* (2008 (8) SCC 557) it was held that when the seals are intact even in delay in sending the seals to the Laboratory is not in fatal to the prosecution case.

H In the instant case the position stands on a much better footing. There was in fact no delay and in fact the samples which

were kept in the SP office were received back on the very same day. There is no material to support the conclusion of the High Court that there was possibility of tampering with the samples. The observation as noted above clearly overlooks the clear statement of the FSL report that the seals were intact. A

Looked at from any angle, the judgment of the High Court is unsustainable and set aside and that of the trial Court is restored. The respondent shall surrender to custody to serve out the remainder of sentence. B

The appeal is allowed.

B.B.B.

Appeal allowed.