

A

STATE OF RAJASTHAN

v.

TARA SINGH

(Criminal Appeal No. 262 of 2006)

B

MARCH 29, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985
C – s. 50 – Accused found carrying a gunny bag containing
opium on his head – Search and seizure – Samples sent to
laboratory for analysis – Accused convicted and sentenced
D accordingly – High Court setting aside the conviction on two
grounds, viz: (i) non-compliance with s. 50 of the Act, and (ii)
absence of evidence to show as to when the sample had been
sent to the laboratory – On appeal, held: Provisions of s. 50
E would no longer be applicable to a search such as the one
made in the instant case as the opium had been carried on
the head in a gunny bag – However, there was no evidence
F to show as to when the sample had been sent to the laboratory
– Samples remained in some unknown custody for fifteen
days – High Court was fully justified in holding that the
sanctity of the samples had been compromised which cast a
doubt on the prosecution case – Thus, judgment of the High
Court on the second aspect does not call for interference –
Acquittal upheld.

State of Himachal Pradesh v. Pawan kumar (2005) 4
SCC 350 – referred to.

G

Case Law Reference:

(2005) 4 SCC 350

Referred to.

Para 2

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 262 of 2006.

H

From the Judgment & Order dated 17.10.2003 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Misc. Appeal No. 398 of 1999. A

Abhishek Gupta, Milind Kumar for the Appellant.

Naresh Kumar for the Respondent. B

The following Order of the Court was delivered

ORDER

1. This appeal against acquittal filed by the State of Rajasthan arises out of the following facts: C

1.1. At about 5:00p.m. on the 2nd February, 1988 the Station in charge of police station Sangdia received information through an informer that one Tara Singh would be coming near the Jhandewalan Sikhana river, carrying opium. The necessary entries etc. were made in the Police Station register and a raiding party was organised by the Police Officer. As the raiding party reached near Jhandewalan Sikhana at 6:00p.m. a person carrying a white coloured bag was seen coming from the opposite side and on seeing the police party took a sudden turn and started running away. He was chased and apprehended and on enquiry revealed his name as Tara Singh, the respondent herein. An offer of a search in terms of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'the Act'), was, accordingly, made to him and he stated that he would like to be searched in the presence of the Station incharge himself. He was, accordingly, searched and the bag that he was carrying was found to contain 8 kg. of opium. Samples of the opium were taken out and sent to the laboratory for analysis and the balance was deposited in the Malkhana. On the completion of the investigation, the respondent was charged under Sections 8/15 of the Act and was brought to trial. The trial court relying on the evidence of several witnesses who had constituted the raiding party as also D E F G H

A the report of the laboratory, held that the case against the respondent had been proved beyond doubt. He was, accordingly, sentenced to 10 years R.I. and to a fine of Rs. 1 lakh. An appeal was thereafter filed by the respondent in the High Court. The High Court allowed the appeal on two grounds:

B (i) that the provisions of Section 50 of the Act had not been complied with and the offer to the accused that he could be searched in the presence of a Gazetted Officer or Magistrate had not made to him; and (ii) that there was no evidence to show as to when the sample had been sent to the laboratory,

C as the forwarding letter dated 26th February, 1998, of the Superintendent of Police (Exhibits P20 and P21) sent along with the samples did not explain why the samples had reached the laboratory on the 9th March, 1998 and it was not thus clear where the samples had remained between the 26th February, 1998 and 9th March, 1998. The appeal was, accordingly,

D allowed and the respondent was, acquitted. It is in these circumstances that the present appeal has been preferred by the State.

2. At the very outset, it must be understood that the provisions of Section 50 would no longer be applicable to a search such as the one made in the present case as the opium had been carried on the head in a gunny bag. A Bench of this Court in *State of Himachal Pradesh v. Pawan Kumar* (2005) 4 SCC 350 after examining the discrepant views rendered in various judgments of this Court has found that Section 50 of the Act would not apply to any search or seizure where the article was not being carried on the person of the accused. Admittedly, in the present case, the opium was being carried on the head in a bag. Mr. Abhishek Gupta, the learned counsel

G for the appellant-State, therefore, appears to be right when he contends that the observations of the High Court that the provisions of Section 50 of the Act would not be applicable was no longer correct in view of the judgment in *Pawan Kumar's* case. We find, however, that the second aspect on which the

H High Court has opined calls for no interference. As per the

prosecution story the samples had been removed from the Malkhana on the 26th of February, 1998, and should have been received in the laboratory the very next day. The High Court has, accordingly observed that the prosecution had not been able to show as to in whose possession the samples had remained from 26th February, 1998 to 9th March, 1998. The High Court has also disbelieved the evidence of P.W. 6 and P.W.9, the former being the Malkhana incharge and the latter being the Constable, who had taken the samples to the Laboratory to the effect that the samples had been taken out on the 9th of March, 1998 and not on the 26th February, 1998. The Court has also found that in the absence of any reliable evidence with regard to the authenticity of the letter dated 26th February, 1998 it had to be found that the samples had remained in some unknown custody from the 26th February, 1998 to 9th March, 1998. We must emphasise that in a prosecution relating to the Act the question as to how and where the samples had been stored or as to when they had despatched or received in the laboratory is a matter of great importance on account of the huge penalty involved in these matters. The High Court was, therefore, in our view, fully justified in holding that the sanctity of the samples had been compromised which cast a doubt on the prosecution story. We, accordingly, feel that the judgment of the High Court on the second aspect calls for no interference. The appeal is, accordingly, dismissed. The respondent is on bail. His bail bonds stand discharged.

N.J.

Appeal dismissed.