

[2011] 5 S.C.R. 877

BAHADUR SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 2106 of 2008)

APRIL 26, 2011

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

Narcotic Drugs and Psychotropic Substances Act, 1985: ss. 18, 50 – Recovery of contraband goods – Nakabandi held by police party under the supervision of Superintendent of police, PW-3 – Allegation that on seeing the police party, the appellant and one 'DK' ran in different directions – Both apprehended – 10 kgs of opium allegedly found in bag which the appellant was carrying – Recovery of 10 kgs of opium from 'DK' Both tried separately – Conviction of 'DK' attaining finality – Trial court acquitted appellant on the ground that prosecution story was doubtful and the provisions in local newspaper, 20 kgs of opium was recovered from 'DS' but there was no reference to the appellant – High Court reversed the order of acquittal on the ground that the press note could not be taken in evidence – On appeal, held: Provisions of s. 50 was not applicable in the instant case – The opium was allegedly recovered, from a bag, which the appellant was carrying – High Court wrongly proceeded on the basis that press note was a news items, whereas it was a press noted issued by the SSP, veracity of which was accepted by PW-3 – The finding of High Court that the press note could not be relied upon was not correct – Trial court took view in favour of the accused on a consideration of the evidence, and as that view was clearly possible, High Court ought not have interfered in the matter in an appeal against acquittal – Appeal against acquittal – Evidence.

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2106 of 2008.

B From the Judgment and Order dated 29.05.2008 of the
High Court of Punjab and Haryana at Chandigarh in Criminal
Appeal No. 231-DBA of 1998.

Pradeep Gupta, Suresh Bharti and K.K. Mohan for the
Appellant.

C Jayant Sud, AAG, Harender Singh and Kuldeip Singh for
the Respondent.

The following order of the Court was delivered

O R D E R

D 1. This appeal is directed against the judgment and order
dated 29th May, 2008 of the High Court of Punjab & Haryana,
whereby the acquittal of the appellant-Bahadur Singh for an
offence punishable under Section 18 of the Narcotic Drugs &
E Psychotropic Substances Act, 1985, (hereinafter referred to as
'the Act') has been set aside and he has been convicted under
that provision and sentenced to undergo rigorous imprisonment
for 10 years and to pay a fine of Rs.one lakh and in default in
payment of fine, to undergo further rigorous imprisonment for
one year.

F 2. The facts are as under:-

G 3. At about 6.30 p.m. on the 5th December, 1995, a police
party headed by SHO Rajbir Singh held a special nakabandi
under the supervision of PW-3 Gurmeet Singh, Superintendent
of Police (Headquarters). At about 6.45 p.m. two persons were
spotted coming towards them. On seeing the police party, one
of the persons ran towards the taxi stand, whereas the other
attempted to turn towards Amlah Chowk. A party led by
H inspector Rajbir Singh followed the person proceeding towards
Amlah Chowk and apprehended him. He turned out to be

Bahadur Singh, the appellant. He was also found to be carrying a bag in his right hand which was suspected to contain contraband. An offer under Section 50 of the Act was made to him by inspector Rajbir Singh. The appellant stated that he would like to be searched in the presence of a Gazetted Officer. PW-3 Gurmeet Singh was accordingly requested to be present. The bag was searched and 10 Kgs. of opium was found therein. A sample of 20 grams was separated and the balance of the opium was sealed and was entrusted to PW Mohinder Singh. It appears that the person who had run towards the taxi stand was also apprehended by another police party and 10 kg. of opium was also recovered from him. That man was Darshan Khan. Two trials were held thereafter, one with respect to the appellant, Bahadur Singh and the other with respect to Darshan Khan. It is the admitted position that Darshan Khan's conviction has attained finality. Bahadur Singh was, however, tried by the Additional Sessions Judge, Ludhiana, who held that the Prosecution story was doubtful and accordingly acquitted him. In arriving at this conclusion, the trial court observed that the provisions of Sections 50, 55 and 57 of the Act had been violated. It was further found that as per the press note published in the Daily "Jagbani", Jalandhar (Ex.DD) dated 8th December, 1995, it had been brought out that 20 kgs. of opium had been recovered from Darshan Khan by SI Bhupinder Singh and there was no reference to the appellant. The trial court's judgment has been reversed in appeal by the High Court by observing that the provisions of Section 50 of the Act were not applicable in the facts of the present case and that in any event, the press note, Exhibit DD could not be taken in evidence and no reliance could thus be placed thereon, with regard to its contents.

4. Having heard learned counsel for the parties and having gone through the records and materials placed before us, we find that provisions of Section 50 of the Act would not be applicable in the present case. The opium had allegedly been recovered, from a bag, which the appellant was carrying, as per

A the prosecution story. We, however, find that the observations
of the High Court that the press note, Exhibit DD, could not be
relied upon appears to be unacceptable. We must note that the
High Court had proceeded on the basis that Exhibit DD was a
news item, whereas it is clear from this Exhibit that it was a
B press note issued by the SSP Khanna, Shri Arun Kumar Mittal.
We have gone through this document and find that it clearly
states that as per prior information that opium smugglers from
Madhya Pradesh would be selling opium, a police naka had
been organised and two persons had alighted from a bus and
C on seeing the police had run in the different directions and of
them, one person was the appellant and the other was Darshan
Khan and that 20 kilograms of opium had been recovered from
the bag carried by Darshan Khan. PW3 SP Gurmeet Singh, in
his cross-examination admitted that the press note had indeed
D been issued and published in the daily "Jagbani" dated 8th
December, 1995. On reading the press note, he stated that it
referred to the naka in which the alleged opium had been
recovered. In our view, the High Court's observation that Exhibit
DD being a news item could not be taken into evidence, is not
E correct, as the veracity of the contents of the document, had
been accepted by PW-3. We accordingly find that the recovery
of 10 Kgs. of opium from the appellant becomes suspect.

5. We may also highlight that the trial court had taken a
view in favour of the accused on a consideration of the
F evidence, and as that view was clearly possible, the High Court
should not have interfered in the matter in an appeal against
acquittal.

6. We, accordingly, allow this appeal, set aside the order
G of the High Court and order the acquittal of the appellant.

7. We also direct that the appellant, who is in custody,
shall be released forthwith if not wanted/required in connection
with any other case.

H D.G.

Appeal allowed.