

MOHINDER

v.

STATE OF HARYANA

(Criminal Appeal No. 1564 of 2008)

APRIL 8, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

*NARCOTIC DRUGS AND PSYCHOTROPIC  
SUBSTANCES ACT, 1985:*

*ss. 18 and 54 - Accused carrying a tin containing 3 ½ kg. opium - Conviction and sentence of 10 years RI with a fine of Rs. 1 lakh awarded by trial court affirmed by High Court - Held: In the light of oral and documentary evidence and in view of s. 54 of the Act and in the absence of any evidence from the accused discharging the presumption as to the possession of the contraband, there is no reason to interfere with conviction and the sentence.*

**The accused-appellant was apprehended with a tin suspected to contain contraband. He was produced before DSP (PW-5). The tin contained 3 ½ kg. of opium. The trial court convicted the appellant u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced him to 10 years RI and to pay a fine of Rs. 1 lakh. The High Court affirmed the conviction and the sentence.**

**Dismissing the appeal, the Court**

**HELD: 1.1 The prosecution is supported by the evidence of PWs-1, 5 and 6 apart from the evidence produced on record through PWs 2 and 4. Head Constable (PW-1) and I.O. (PW-6) explained the manner in which they had seen the appellant carrying a tin,**

A interception and seizure of the tin containing opium. Immediately after the message, within 10 minutes DSP (PW-5) had reached the scene and 3 ½ kgs of opium was recovered from the tin held by the appellant in his hand. Even though the only independent witness (PW-3) who  
B stood as a witness for recovery has not supported the prosecution and was declared hostile, however, he did not deny the existence of his signature on Ext.PA. [para 7] [559-G-H; 560-A-C]

C 1.2 Regarding the absence of evidence as to conscious possession, as rightly observed by the High Court, once the appellant was asked by the court that he was carrying a tin in his hand and opium was recovered therefrom, the aspect of conscious possession of the  
D contraband is presumed and in the absence of any contra evidence, there is no reason to disbelieve the prosecution version. [para 11] [561-A-C]

E 1.3 In the light of the materials placed by the prosecution in the form of oral and documentary evidence and in view of s. 54 of the Act and in the absence of any evidence from the accused discharging the presumption as to the possession of the contraband, this Court is in entire agreement with the conclusion arrived at by the courts below. [para 12] [561-D-E]

F 1.4 As regards reduction of sentence, it is not in dispute that possession of 3 ½ kgs of opium involves commercial quantity and, therefore, in terms of sub-s. (b) of s.18, imprisonment shall not be less than 10 years. Admittedly, there is no enabling provision to the court for  
G reduction of sentence by giving special or adequate reasons in the statute, particularly, in s.18. [para 13] [561-E-F]

From the Judgment and Order dated 04.07.2007 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 72-SB of 1994.

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Shubhashis R. Soren, Delhi Law Chambers for the Appellant.

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Kamal Mohan Gupta, Mohd. Zahid Hussain, Sanjeev Kumar for the Respondent.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** 1. This appeal has been filed against the final judgment and order dated 04.07.2007 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 72-SB of 1994 whereby the High Court dismissed the appeal preferred by the appellant herein and confirmed the order dated 05.02.1994 passed by the Court of Additional Sessions Judge, Sirsa in Sessions Case No. 11 of 1993 convicting him under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act') and sentenced him to undergo rigorous imprisonment (RI) for a period of 10 years and to pay a fine of Rs. 1 lakh, in default, to further undergo RI for a period of two years.

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## 2. Brief facts:

(a) According to the prosecution, on 23.08.1991 at about 1.30 p.m., S.I./SHO Dalbir Singh (PW-6), who was then posted at P.S. Ellenabad was present at Chowki of Mamera Khurd along with Head Constable Jagdish Rai (PW-1) and Constables Pratap Singh and Jang Singh and one Rameshwar (PW-3). The accused-appellant came there and on seeing the police party, he sneaked into the field of Narma crop. He was apprehended on suspicion by Dalbir Singh (PW-6). At that time, the appellant was carrying a tin in his hand and on suspecting that he was carrying narcotic substance, Dalbir Singh (PW-6) sent a V.T. Message to DSP Ram Gobind (PW-5) who

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A reached the scene at about 2 p.m. Dalbir Singh (PW-6) presented the appellant before DSP Ram Gobind (PW-5) along with Exh. PB for conducting the search of the tin carried by him in terms of the provisions of Section 50 of the Act.

B (b) On search being conducted by DSP Ram Gobind (PW-5), 3 ½ kgs of opium was found in the tin and out of the same, 200 gms. was separated from the same as sample and the residue contraband were sealed. An FIR dated 23.08.1991 came to be registered at Police Station Ellenabad by Dilbag Singh (PW-4) at 3.40 p.m. under Section 18 of the Act. The case property was deposited and duly sealed. Before reaching  
C the Police Station, S.I. Dalbir Singh submitted a report to the DSP Ram Gobind (PW-5) under Section 57 of the Act.

D (c) On 28.08.1991, the sample was handed over by Dilbag Singh to constable Khazan Singh (PW-2) for being taken to FSL, Madhuban and PW-2 delivered the said sample duly intact on 30.08.1991 at the FSL. A report dated 20.04.1992 was received from FSL, Madhuban to the effect that the sample was that of opium.

E (d) On completion of the evidence and hearing, learned Addl. Sessions Judge, Sirsa, by judgment and order dated 05.02.1994 in Sessions Case No. 11 of 1993 convicted the appellant and sentenced him to RI for 10 years and imposed a fine of Rs. 1 lakh, in default of payment of fine, shall further  
F undergo RI for a period of two years.

G (e) Aggrieved by the conviction and sentence awarded by the Addl. Sessions Judge, the appellant preferred Criminal Appeal No. 72 (SB) of 1994 before the High Court of Punjab and Haryana at Chandigarh. By impugned judgment dated 04.07.2007, the High Court confirmed the conviction and sentence as recorded by the trial Court and dismissed the appeal. Hence the present appeal by way of special leave.

H 3. Heard Mr. Shubhashis R. Soren, learned counsel for the

appellant and Mr. Kamal Mohan Gupta, learned counsel for the respondent-State.

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**Contentions:**

4. Mr. Soren, learned counsel for the appellant, after taking us through the entire materials mainly contended that the entire investigation is defective and not in accordance with Section 50 of the Act read with Section 100 of the Code of Criminal Procedure, 1973 (in short "the Code"). He also submitted that there was a delay of 2 days in sending the contraband for chemical analysis. He further pointed out that there is no evidence as to conscious possession of contraband. He also submitted that the appellant being a rustic villager, the imposition of sentence of 10 years is on the higher side.

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5. On the other hand, Mr. Gupta, learned counsel for the State submitted that there is no violation of any of the statutory provisions. Even otherwise, according to him, in the absence of any search, there is no question of compliance of Section 50 of the Act. He also submitted apart from the police officers, one independent witness was also examined. In respect of the allegation relating to delay of two days in sending the contraband to the laboratory, it is pointed out that in view of the fact that the container was duly packed/sealed, the appellant has no way prejudiced and nothing has been elicited from any of the prosecution witnesses. He further pointed out that in view of Section 54 of the Act, it is for the appellant to discharge his burden.

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6. We have carefully considered the rival contentions and perused the relevant materials.

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**Discussion:**

7. It is seen that the case of the prosecution is supported by the evidence of PWs-1, 5 and 6 apart from the evidence produced on record through PWs 2 and 4. Head Constable

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A Jagdish Rai, (PW-1) and I.O. Dalbir Singh (PW-6) explained the manner in which they had seen the appellant carrying a tin, interception and seizure of the tin containing opium. It is also seen that immediately after the message, within 10 minutes DSP (PW-5) had reached the scene and 3 ½ kgs of opium was recovered from the tin held by the appellant in his hand. Even though the only independent witness Rameshwar (PW-3) who stood as a witness for recovery has not supported the prosecution and declared hostile, however, as rightly pointed out by the state counsel, he did not deny the existence of his signature on Ex.PA.

8. We have also perused the evidence of DSP Ram Gobind (PW-5) who explained the recovery and drawing of the sample. He also made an entry of his visit in the logbook. Though, learned counsel for the appellant pointed out that the prosecution was not definite where the recoveries and writings were made either under a tree or sitting on the road, on perusal of the evidence of PWs 1, 5 and 6, we feel that the said discrepancies are trivial in nature and there is no serious infirmity in the version of PWs 1, 5 and 6.

9. Regarding the delay in sending the contraband for examination by the FSL, it was PW-2, who carried the samples from the Police Station to FSL at Madhuban but he was not asked any question in the cross examination, though opportunity was given to the defence. Even otherwise, FSL report Ex. P1 would show that the sample was received at the FSL in tact with the seal which tallied with the specimen seals forwarded. Accordingly, the said objection is liable to be rejected.

10. Even though it is argued that there is discrepancy as to the quantity of sample, it is highlighted by the state counsel that sample weighing 200 gms. was drawn by PW-5 himself and the weight of the same was found to be approximately 250 gms. by the FSL. It is relevant to note that the weight at FSL was inclusive of the container and not of the contraband alone drawn as a sample.

11. Regarding the absence of evidence as to conscious possession, it is brought to our notice that search was conducted by DSP leading to recovery of 3 ½ kgs of opium from a tin retained by the appellant. Nothing has been explained or denied by the appellant in his Section 313 statement nor examined anyone as a defence witness. As rightly observed by the High Court, once the appellant was asked by the court that he was carrying a tin in his hand and opium was recovered therefrom, the aspect of conscious possession of the contraband is presumed and in the absence of any contra evidence, there is no reason to disbelieve the prosecution version. Further, it is not the case of the appellant that incriminating circumstances were not put to him under Section 313 of the Code.

12. In the light of the materials placed by the prosecution in the form of oral and documentary evidence and in view of Section 54 of the Act and in the absence of any evidence from the accused discharging the presumption as to the possession of the contraband, we are in entire agreement with the conclusion arrived at by the trial Court and the High Court.

13. As regards the reduction of sentence, it is not in dispute that possession of 3 ½ kgs of opium involves commercial quantity and if that is so, in terms of sub-section (b) of Section 18, imprisonment shall not be less than 10 years. Admittedly, there is no enabling provision to the court for reduction of sentence by giving special or adequate reasons in the statute particularly in Section 18. Accordingly, we reject the request of the learned counsel for the appellant.

14. In the light of the above discussion, we are in entire agreement with the conclusion arrived at by the courts below. Consequently, the appeal fails and the same is dismissed.

R.P.

Appeal dismissed.