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SURENDER @ KALA

v.

STATE OF HARYANA

(Criminal Appeal No. 50 of 2016)

JANUARY 19, 2016

B

[V. GOPALA GOWDA AND UDAY UMESH LALIT, JJ.]

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Narcotic Drugs and Psychotropic Substances Act, 1985: ss.18, 50 – Appellant suspected to be in possession of opium without any permit or licence – Opted search in presence of Gazetted Officer – Personal search undertaken and recovery of opium weighing 1 Kg. – Courts below convicted him u/s.18 – Conviction challenged on the ground that the investigation was conducted by Sub-Inspector who himself was the complainant and therefore investigation was not proper and appellant was entitled to acquittal – Held: The search of the appellant was conducted in the presence of and under the instructions of the Gazetted Officer – The extracts of depositions of other prosecution witnesses show that it was not Sub-Inspector alone who was involved in the investigation – Interference with the order of conviction not called for.

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State by Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu v. Rajangam 2010 (15) SCC 369; Megha Singh v. State of Haryana 1996 (11) SCC 709 – held inapplicable.

Case Law Reference

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2010 (15) SCC 369 held inapplicable. Paras 9, 10, 11
1996 (11) SCC 709 held inapplicable. Paras 10, 11

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 50 of 2016

From the Judgment and Order dated 11.12.2014 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. S-318-SB of 2004.

Rakesh Dahiya, Brig. M. L. Khatter, Satyavan Kudalwal for the Appellant.

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Devender Kr. Saini, AAG, Vishwapal Singh, Sanjay Kumar Visen for the Respondent.

The Judgment of the Court was delivered by

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UDAY U. LALIT, J. 1. Leave granted.

2. This appeal is directed against the judgment and order dated 11.12.2014 passed by the High Court of Punjab and Haryana dismissing Criminal Appeal No. S-318-SB of 2004 preferred by the appellant against his conviction under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') for being in possession of 1 kg of opium without any permit or licence.

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3. According to the prosecution PW6 SI Satbir Singh was on usual patrol duty on 24.06.2002 along with other police officials at bus stand of village Bichpar, Distt Sonipat. Secret information was received by him that the appellant was selling opium and was roaming in the village in search of customers. This information was reduced to writing in the form of Ruqa Ext. PF and was sent to the Police Station for information, whereupon DDR Ext. PC was recorded. PW6 Satbir and other police officials reached the bus stand and saw the appellant coming from village Gangana side. He was apprehended. The appellant was told that he was suspected to be carrying opium in his possession and as such his personal search had to be undertaken and that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate. The appellant was given an appropriate notice vide Ext. PA under Section 50 of the Act and by his reply Ext. PA/1 he opted to be searched before a Gazetted Officer.

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4. Thereafter a wireless message was sent to PW4 Shyam Singh Rana, DSP Gohana who reached the spot. The appellant was produced before him and PW4 was also acquainted with the facts of the case. Thereafter, on the instructions of PW4, personal search of the appellant was undertaken which resulted in recovery of opium from the possession of the appellant. The opium was found in a polythene bag tied in a cloth around the stomach of the appellant. On weighment, it was found to be 1kg 50gms. A sample was taken and put in a small plastic bag while the remainder was put in a bag of cloth. The sample and the remainder were separately sealed and taken in possession vide memo Ext. PB. The seal was then handed over to PW1 ASI Bishamber Lal. Thereafter Ruqa Ext. PC was sent to the Police Station for registration of crime, whereupon FIR Ext. PC was recorded by PW2 Head Constable Om Parkash.

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A 5. The appellant along with the case property was produced before
PW3 Yad Ram SHO of Police Station who verified the fact and put his
own seal bearing impression "YR" on the sample as well as on the
remainder. Thereafter the sealed case property was handed over to the
B Investigating Officer who deposited the same with Malkhana. In due
course of time the FSL report Ext. PD was received wherein it was
opined that the sample in question was opium. After completion of
investigation the appellant was charge-sheeted and tried for having
committed the offence punishable under Section 18 of the Act.

6. The prosecution in support of its case examined six witnesses.
C PW1 ASI Bishamber Lal stated as under:-

"As contraband article was suspected with the accused so he
was served with a notice Ext. PA to opt about his search before a
Gazetted Officer or a Magistrate, which is bearing my signatures.
Accused opted for his search before a Gazetted officer vide
endorsement Ex. PA/1 which is bearing my signatures."

D PW2 Head Constable Om Parkash in his deposition stated as under:-

"On that day ASI Bishamber Lal deposited the case property
with me, which was sealed with seal SS."

E PW 3 SI Yad Ram in his deposition stated as under:-

"On 24.06. 2002, I was posted SI/HO P.S. Baroda. On that day
SI Satbir Singh had produced the accused now present in the
court, two sealed parcels and the witnesses before me. I verified
the investigation and affixed my own bearing inscription "YR". I
directed SI Satbir Singh to deposit the case property with seals
F intact with the MHC P.S. Baroda."

PW4 Shyam Singh Rana DSP stated as under:-

"I directed SI Satbir Singh to carry out the search of the accused.
During the course of search SI Satbir Singh recovered opium
wrapped in a cloth was tied with the stomach of the accused
underneath the shirt and the vest of the accused wrapped in a
polythene pack. On weighment it was found to be one kilogram.
SI Satbir Singh took out 50grams of opium from the recovered
bulk and sealed the sample and the remainder into two separate
parcels with the sealed bearing inscription SS. Both the sealed
G parcels were taken into possession vide recovery memo EX. PB
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which was signed by ASI Bishamber Lal and HC Suresh Kumar and was attested by me also.” A

7. In his statement under Section 313 Cr. P.C. the appellant denied the prosecution allegations and pleaded innocence. After considering the material on record and rival submissions, the Special Judge, Sonipat found the appellant guilty of offence punishable under Section 18 of the Act and by his judgment and order dated 14.11.2004 sentenced him to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 10000/- , in default whereof to undergo further rigorous imprisonment for a period of 8 months. B

8. The judgment of conviction and sentence was challenged by way of Criminal Appeal of S-318 –SB of 2004 in the High Court. After considering the entire material on record, the High Court by its judgment under appeal affirmed the view taken by the Trial Court and dismissed the appeal. The correctness of the view taken by the High Court is under challenge in the present appeal. C

9. It was submitted by Mr. Rakesh Dahiya, learned advocate appearing for the appellant that the investigation in the matter was conducted by PW6 SI Satbir Singh who himself was the complainant. Relying on the decision of this court in *State by Inspector of Police, Narcotic Intelligence Bureau, Madhurai, Tamil Nadu v. Rajangam*¹, the learned counsel submitted that the investigation by PW6 SI Satbir Singh was improper and the appellant was entitled to acquittal. D E

10. We have given anxious consideration to the submissions of the learned counsel. In *State v. Rajangam* (supra), the High Court had acquitted the accused. Relying upon the decision of this court in *Megha Singh v. State of Haryana*², the view taken by the High Court was affirmed by this Court in an appeal against acquittal. In *Megha Singh* the accused was tried under the provisions of the TADA Act and the Arms Act for being in possession of a country made pistol and three live cartridges. The prosecution did not examine any independent witness and simply relied upon the testimony of PW3 Investigating Officer. There was also discrepancy in the depositions of PW3 Investigating Officer and another police person namely PW2. In the light of these facts, it was observed in *Megha Singh* as under: F G

¹ 2010(15) SCC 369

² 1996(11) SCC 709

A “After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of the P.Ws.2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.”

D 11. In *Megha Singh*, the search was not conducted in the presence of a Gazetted Officer, as is required in a case under the Act. In the instant case the search of the appellant was conducted in the presence of and under the instructions of PW4. The extracts of depositions of other prosecution witnesses show that it was not PW6 S.I. Satbir Singh alone who was involved in the investigation. In our view the principle laid down in *Megha Singh* and followed in *State vs. Rajangam* does not get attracted in the present matter. Relevant to note that this was not even a ground projected in support of the case of the appellant and does not find any reference in the judgment under appeal. We therefore reject the submission.

F 12. Having gone through the entirety of the matter, we do not find any reason to differ from the view taken by the High Court. We therefore dismiss this appeal.

Devika Gujral

Appeal dismissed.

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