
(1987) 05 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 311-SB of 1987

Bhajan Singh @ Harbhajan Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-05-1987

Acts Referred:

Citation : (1987) 2 AICLR 804 : (1988) 1 RCR(Criminal) 358

Hon'ble Judges : Ujagar Singh, J

Advocate : Neena Tewatia, J.S. Dhillon, Advocates for appearing Parties

Judgement

Ujagar Singh, J.

1. Bhajan Singh appellant, aged 25 years was found in possession 20 kgs. of poppy husk without permit or licence on the 29th July, 1986 in the area of village Bhushtla by Harpal Singh PW 2, A.S.I. Deep Ram, and Din Dayal Sarpanch PW 5. The prosecution examined these witnesses and affidavits of MHC Pritpal Singh and Constable Narinder Singh, Exhibit P.A. and P.B. respectively were tendered in evidence.
2. In this statement under Section 313, Criminal Procedure Code, the appellant pleaded not guilty and alleged false implication.
3. The trial Court convicted the appellant under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to undergo rigorous imprisonment for 10 years and his sentence was made to run concurrently along with the sentences imposed upon him in two other cases.
4. After hearing the parties I am of the view that the appellant deserves acquittal in as much as the provisions of the Act have been ignored. In Karam Singh v. State of Punjab, 1987 (18) Recent Laws Reports 69, it has been held by I.S. Tiwana J., that a police officer empowered in this behalf by the State Government, through a general or a special order, or an officer subordinate to him, but superior in rank to a sepoy or constable duly authorised by such an

officer may arrest or search a person on having reason to believe that that person has committed an offence under Chapter IV of the Act, and that Section 42 of the Act empowers any such officer to enter, search seize and arrest, without warrant or authorisation. It has been further held that Section 43 of the Act provides that any officer of the departments mentioned in Section 42 of the Act would have the power to arrest, search and seize from a public place, and that Section 52 and 55 prescribe a procedure after arrest and cast a duty on the officer in charge of the police station to take charge and keep in safe custody all articles which may be seized under the Act within the local area of that police station, and such an officer has the right to affix his own seal on the sample and the articles or articles seized. It has also been ruled that section 57 casts a duty to report to his immediate superior within 48 hours. The provisions of Sections 41, 42, 43, 50, 51 and 55 of the Act have been held to be mandatory and contravention thereof vitiates the investigation and trial. In my judgments in *Gapi v. The State of Haryana* Cr. A. 619SB/1986 decided on 10.4.1987 and *Rajbir Singh v. The State of Punjab* Cr. A. No. 73SB/1987 decided on 30.4.1987. I have agreed with the observations in *Karam Singh's* case (supra). The provisions of the Act being mandatory have to be strictly construed especially in view of the minimum sentence of imprisonment and fine prescribed under the Act leaving no discretion to the trial Court to impose a lesser sentence of imprisonment or fine in any case whatsoever, irrespective of the quantum of recovery. In this case there is no evidence to show compliance with the said provisions of the Act.

5. In this view of the matter, I accept this appeal, set aside the conviction and sentence imposed by the trial Court and acquit the appellant of the charge.