

(2022) 07 RAJ CK 0107

In the Rajasthan High Court

Case No : S.B. Criminal Appeal No. 121, 172 Of 1989

Jagpal Singh And Ors

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 27-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374, 374(2), 454
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 18, 41, 42, 43, 50, 57
Arms Act, 1959 — Section 3, 25

Citation : (2022) 07 RAJ CK 0107

Hon'ble Judges : Dr.Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Doongar Singh, Jaipal Singh (Amicus Curiae), Gaurav Singh

Final Decision : Dismissed

Judgement

Dr. Pushpendra Singh Bhati, J

1. These Criminal Appeals have been preferred under Section 374 Cr.P.C. claiming for the following reliefs:-

In S.B. Criminal Appeal No. 121/1989

"It is, therefore, respectfully prayed that this appeal may kindly be allowed and the accused appellant may be acquitted of all the charges levelled against them."

In S.B. Criminal Appeal No. 172/1989

"It is, therefore, respectfully prayed that this appeal may kindly be accepted and the order of the seizure and confiscation of the Jeep to the State may be set aside and it may be ordered to be given back to the registered owner of the Jeep."

2. The above-numbered criminal appeal No.121/1989 has been preferred under Section 374(2) Cr.P.C. against the judgment, dated 31.08.1989, passed by the

Addl. Sessions Judge, Bhilwara in Sessions Case No. 90/1987 whereby the appellants- Jagpal Singh @ Ranka, Bhepa Ram and Satya Narayan were convicted under Section 8/18 N.D.P.S. Act, 1985 and Section 3/25 Arms Act, 1959; for the offence under Section 8/18 of the NDPS Act, each were sentenced to undergo 10 years R.I. along with a fine of Rs. 1,00,000/- and in default of payment of the same, they were to undergo further 3 years R.I. and; for the offence under Section 3/25 of the Arms Act, each were sentenced to undergo 3 years R.I. along with a fine of Rs. 100/-, in default of payment of which they were to undergo further imprisonment of 1 month.

2.1 The above-numbered criminal appeal No.172/1989 under Section 454 Cr.P.C. has been preferred against that part of the aforementioned impugned judgment, whereby the articles in question were ordered to be seized.

3. The controversy in the present matters is common, and the brief facts of the same as placed before this Court by the learned counsel for the appellants are that on 14.07.1987, the investigating officer Shivilal Joshi, P.W. 12 apprehended the accused-appellants (in criminal appeal No.121/1989), upon receiving information on the telephone from one D.Bhattacharya, the then A.S.I. Narcotics Department, Neemuch, that a vehicle travelling from Neemuch to Nimbaheda, at about 01:05 a.m. in the night in a green coloured Jeep with about 3/4 suspicious persons. And that, upon receipt of such information, a recovery of 10 kilograms opium and firearms was made by the police party. And that, subsequently upon completion of investigation against the accused-appellants (in criminal appeal No.121/1989), charges were framed against them for the offences under Sections 8/18 N.D.P.S. Act, 1985 and Section 3/25 Arms Act, 1959, and they were convicted and sentenced, alongwith the order of seizure of the articles in question, as above.

4. Learned counsel for the appellants submitted that the learned Court below has erred in passing the impugned judgment of conviction against the appellants (in criminal appeal No.121/1989), as they were falsely implicated under the charges for the offences against which they have been convicted, being Sections 8/18 N.D.P.S. Act, 1985 and Sections 3/25 Arms Act, 1959.

5. Learned counsel for the appellants further submitted that the learned Court below has incorrectly fastened the conviction, as aforementioned, upon the accused-appellants merely on the basis of the police witnesses, and that, recovery witnesses P.W.2 Shambhu Lal, P.W. 4 Ram Chander and P.W.5 Jagdish have turned hostile and not supported the version of the prosecution.

6. Learned counsel for the appellants also submitted that the learned Court below has not taken into consideration the fact that the statutory compliance, as mandated under Section 57 N.D.P.S. Act, 1985 has not been made and therefore the impugned order deserves to be quashed and set aside.

7. Learned counsel for the appellants further submitted that the samples were unsealed and that the seals were either broken or the recoveries so made,

alleged to have been made from the accused-appellants, are false and fabricated.

8. Learned counsel for the appellants further submitted that the recovery witness P.W. 4 Ramchandra, who subsequently turned hostile, stated that the weight of the contraband was taken using stones, and is therefore not reliable in determining the actual weight of the contraband so seized.

9. Learned counsel for the appellants thus, submitted that in view of the aforementioned backdrop -factual and legal- the impugned judgment of conviction and the order of sentence, alongwith consequential order of seizure of articles deserves to be quashed and set aside.

10. Learned counsel for the appellants placed reliance on the following judgments;

Boota Singh & Ors. Vs. State of Haryana 2021 (2) Crimes 164 (SC)

"The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to Accused Gurdeep Singh. The Registration Certificate of the vehicle, which has been placed on record also does not indicate it to be a Public Transport Vehicle. The explanation to Section 43 shows that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act. On the strength of the decision of this Court in Jagraj Singh alias Hansa MANU/SC/0704/2016 : (2016) 11 SCC 687, the relevant provision would not be Section 43 of the NDPS Act but the case would come Under Section 42 of the NDPS Act."

State Vs. Unkar Singh S.B. Criminal Leave to Appeal No. 27/2009 (Rajasthan High Court)

"Needless to say, the prosecution has to prove its case beyond a reasonable doubt. In the present case, it was the duty of the prosecution to prove the fact that 375 Kgs., of doda post powder was, indeed, recovered from the possession of Onkar Singh, that the samples and the remaining drugs were duly sealed and preserved. It was equally the duty of the prosecution to produce the remaining part of the contraband drugs before the learned trial Court."

11. On the other hand, learned Public Prosecutor opposed the submissions made on behalf of the appellants and submitted that the learned Court below has rightly passed the impugned order looking into the overall facts and circumstances of the case, and the evidences placed on record before it.

12. Learned Public Prosecutor submitted that the compliance of Section 57 is not mandatory, and that non compliance of the same does not vitiate the case of the prosecution.

13. Learned Public Prosecutor further submitted that the seal was intact and the same is evident from a perusal of the record, and therefore the conviction of the appellants, alongwith the order of seizure, is sustainable in the eye of the law.

14. Heard learned counsel for the parties and, perused the record of the case and the judgments cited at the Bar.

15. This Court observes that, as is evident from the F.S.L. report at Ex. P/25, that the seals affixed upon the contraband so seized by the concerned police authorities, were intact when sent for the purpose of F.S.L.

16. This Court further observes that looking into the overall facts and circumstances, Section 42 and 50 are not attracted in the present case.

16.1 The Hon'ble Apex Court in *State of Haryana Vs. Jarnail Singh and Ors.* (2004) 5 SCC 188 regarding the application of Section 42 and 50 made the following observations:-

"Having heard learned counsel for the parties we are of the view that the judgment and order of the High Court is clearly erroneous and must be set aside. A Constitution Bench of this Court in *State of Punjab vs. Baldev Singh M* 1999CriLJ3672 exhaustively considered the various provisions of the NDPS Act. As regards application of Section 50 of the NDPS Act, the Court came to the following conclusion : "On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

We, therefore, hold that in the facts of this case Section 50 of the NDPS Act was not applicable since the contraband was recovered on search of a vehicle and there was no personal search involved. The requirement of the proviso to Section 42 was also not required to be complied with since the recovery was made at a public place and was, therefore, governed by Section 43 of the Act which did not lay down any such requirement. Additionally, since the Superintendent of Police was a member of the search party and was exercising his authority under Section 41 of the NDPS Act, the proviso to Section 42 were not attracted."

17. This Court further observes that it is a settled position of law that the non-compliance of Section 57 of the Act of 1985 does not vitiate the entire case of the prosecution, as held by the Hon'ble Apex Court in case of *Gurmail Chand Vs. State of Punjab*: AIR 2020 SC 2161 wherein the position laid down in *Sajan Abraham v. State of Kerala* (2001) 6 SCC 692 was reiterated upon, in the following manner:-

"The provision has been held to be directory and to be complied with but mere not sending the report within the said period cannot have such consequence as to vitiate the entire proceeding. A three Judge Bench of this Court in *Sajan Abraham v. State of Kerala* (2001) 6 SCC 692 has held that non-compliance of Section 57 would not vitiate the prosecution case. In paragraph 12 following was

laid down:

The last submission for the Appellant is, there is non-compliance with Section 57 of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court, that PW5 has sent copies of FIR and other documents to his superior officer, which is not in dispute. Ext. P-9 shows that the copies of the FIR along with other records regarding the arrest of the Appellant and seizure of the contraband articles were sent by PW5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said to have prejudiced the Accused. This Section is not mandatory in nature. When substantial compliance has been made, as in the present case, it would not vitiate the prosecution case. In the present case, we find PW5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of Section 57 of the Act."

17. This Court, in light of the above made observations, finds that no cause for interference in the impugned judgment of conviction, alongwith the direction of seizure, is warranted.

18. Resultantly, the present appeals are without merit, and are hereby dismissed. The appellants, in S.B. Criminal Appeal No. 121/1989, are on bail, in pursuance of the order dated 18.08.1989 passed by this Hon'ble Court in S.B. Criminal Misc. Bail Application No.301/1989. Their bail bonds and sureties are forfeited; they are directed to be taken into custody forthwith and sent to the concerned Jail to undergo the remaining period of their sentence. All pending applications, if any, are disposed of. Record of the learned court below be sent back forthwith.