
(1997) 07 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9656-M of 1997

Kashmir Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Citation : (1997) 4 RCR(Criminal) 653

Hon'ble Judges : Sarojnei Saxena, J

Advocate : U.K. Agnihotri, K.S. Dhaliwal, Advocates for appearing Parties

Judgement

Dr. (Mrs.) Sarojnei Saxena, J.

1. On April 2, 1997, on suspicion accused was nabbed by ASI Ajaib Singh on the road leading from Shiv Majra to Bhatian. The accused was given an offer whether he wants to be searched before a gazetted officer or a Magistrate. In pursuance of his offer, Naib Tehsildar Shri Gian Parkash was summoned, before whom personal search of the accused was taken. It was found that he had in his possession 3 kgs and 500 grams of poppy husk. The contraband was seized from him. 200 grams of poppy husk was separated as a sample. Sample as well as the remainder were duly sealed by ASI Ajaib Singh. At that time Ajaib Singh was going from Shiv Majra to Bhatian in connection with patrolling, general/excise checking along with a police party. He joined Surjit Singh during this investigation. Recovery Memo was prepared, which was duly signed by him as well as by witnesses and Naib Tehsildar Gian Parkash. Ruqa was sent for registration of the case. At the spot ASI Ajaib Singh also recorded the statements of the witnesses.

2. Petitioner's learned counsel contends that provisions of sections 50, 52 and 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the NDPS Act) were not complied with. He also points out that ASI Ajaib Singh, who nabbed the accused, seized the contraband from his possession and lodged the FIR, has himself conducted the investigation, which is against the basic tenets of criminal jurisprudence. Thus, according to him, the petitioner is entitled to be

enlarged on bail.

3. During arguments, respondent's learned counsel submitted that though it was a case of chance recovery and not on the basis of any secret information received earlier by ASI Ajaib Singh, even then he followed the mandatory provisions of section 50 of the NDPS Act. Option was given to the accused to be searched either before a Magistrate or a gazetted officer. As he expressed his willingness to be searched before a Magistrate, Naib Tehsildar Gian Parkash was called and in his presence, personal search of the accused was taken and contraband was seized from his possession. Thus, according to him, this mandatory provision was duly complied with by the Investigating Officer. He also submits that immediately after effecting seizure, ASI Ajaib Singh sealed the contraband with his own seal and handed over the seal to another police official accompanying him. He also joined an independent witness during investigation. No doubt, he recorded the statements of the witnesses on the spot after the FIR was registered at the police station, but, according to him, on this basis alone it cannot be said that the whole of the investigation stands vitiated or the accused/petitioner is entitled to any benefit. After completing the investigation at the spot, ASI Ajaib Singh brought the accused along with seized contraband to the police station, produced him before the Station House Officer, who put the accused in the police lock up and sealed the contraband with his own seal and kept it in safe custody in the Police Station Malkhana. Thus, according to him, the provisions of section 52 as well as section 55 of the NDPS Act were duly complied with.

4. During arguments, entries made in the case diary were read over to show that the provisions of sections 50, 52 and 55 of the NDPS Act were duly complied with.

5. Petitioner's learned counsel, relying on *Megha Singh v. State of Haryana*, AIR 1995 S.C. 2339; *Gian Chand v. State of Rajasthan*, 1993 Cr.L.J. 3716; *Risala v. State of Haryana*, 1996(2) RCR 707 and *Harjinder Singh v. State of Punjab*, Cr.L. Misc. No. 6888M of 1997, decided on May 21, 1997, strongly stressed that since the investigation was also conducted by ASI Ajaib Singh, the whole of the investigation is against the basic principles of criminal jurisprudence, as Ajaib Singh ASI stands in the shoes of complainant in this case.

6. I have gone through all these authorities. So far as *Megha Singh's* case (*supra*) is concerned, that case was registered under section 6(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985, and under section 25 of the Arms Act. In that case pistol was seized by Head Constable from the accused. He arrested the accused and formal FIR was also lodged on his complaint. Thereafter he recorded the statement of the witnesses under section 161 Cr.P.C. The Apex Court observed that "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."

7. The judgments given in *Gian Chand's* case (*supra*), *Darshan Kumar v. State of*

Rajasthan, 1994, Cri. L.J. (NOC) 28 and Nathiya v. The State, 1992 Cri.L.J. 2342 were considered by this Bench in Piara v. The State, 1995(3) Recent C.R. 158, wherein disagreeing with the view expressed in the aforementioned judgments, I have held that in all these authorities provisions of section 67(c) of the Act were not adverted to. I have held that if the police officer, who makes search, seizes the contraband, arrests the accused, draws the sample, seizes the contraband articles as well as the sample, prepares the site plan and records the statement of the witness present at the time of search and seizure, he is empowered to perform all these duties under the provisions of sections 42(1), 43, 44, 55 and 67(c) of the Act. Thus, this point is not res integra. In Risala's case (supra) as well as in Harjinder Singh's case (supra), neither Piara's case (supra) was considered and distinguished nor these Single Benches have considered the provisions of section 67(c) of the Act.

8. On the basis of the aforementioned legal points, the petitioner is not entitled to be enlarged on bail, but there is another aspect of the case. The petitioner was arrested on April 2, 1997. Till today the challan is not yet filed. Only 3 Kgs and 500 Grams of poppy husk was recovered from his possession. The trial will take a much longer time. Considering this aspect of the case, the petition is hereby allowed. If the petitioner submits bail bonds in the amount of Rs. 30,000/ with one surety in the like amount, to the satisfaction of the Additional Sessions Judge, Kaithal, he be enlarged on bail.