

(1999) 09 SC CK 0089
In the Supreme Court Of India
Case No : Criminal A. No. 807 of 1997

Sarjudas and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-09-1999

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1), 83
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 50

Citation : (1999) 3 ACR 2238 : AIR 2000 SC 403 : (1999) AIRSCW 4546 :
(1999) 2 ALD(Cri) 893 : (2000) CriLJ 509 : (2001) 1 GLR 218 : (1999) 8 JT
118 : (1999) 6 SCALE 417 : (1999) 8 SCC 508 : (1999) 8 Supreme 548 : (2000)
1 UJ 18

Hon'ble Judges : S.N. Phukan, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Both the appellants have been convicted u/s 20(b)(ii) of the NDPS and Section 66(1)(b) and 83 of the Bombay Prohibition Act as, they were found in possession of charas weighing 7 kgs. and 419 grams without any licence or permit.

2. Various contentions regarding nonobservance of mandatory requirements of different provisions of the NDPS Act were raised before the trial Court but it found no substance in them and held that all those provisions were complied with in this case. The trial Court also found that the prosecution evidence could safely be relied upon eventhough there was some inconsistency in the evidence regarding the time at which the Panch witnesses were called. P.S.I. Chavda and the constable accompanying him had stated before the Court that the Panch witnesses were called before they had stopped the appellants. According to the Panch witnesses they were called thereafter. The Panchnama clearly states that the Panchas were called after P.S.I. Chavda had stopped the appellants while they were proceeding on the scooter on the road near Nursing Takri. This contradiction, in our opinion, is of no significance and the trial Court was right in not disbelieving the prosecution evidence on this ground.

3. The High Court also did not find any substance in any of the contentions raised on behalf of the appellants and dismissed the appeal summarily.

4. What is contended by the learned Counsel for the appellant is that the appellants were not informed of their right u/s 50 of the NDPS Act that they were entitled to be examined in presence of a Gazetted Officer or a Magistrate and, therefore, the search of the appellants was illegal and the evidence regarding recovery of charas from their possession could not have been relied upon.

5. We do not find any substance in this contention as the charas was not found on the person of the appellants but it was found kept in a bag which was hanging on the scooter on which they were riding. Therefore, this was not a case where the person of the accused was searched and from his person narcotic drug or psychotropic substance was found. The correct position of the law on this point has been stated by this Court in *State of Punjab Vs. Baldev Singh*,

6. It was also submitted that identity of the articles seized from the appellants and the articles examined by the Forensic Scientific Laboratory has not been established by the prosecution. The submission was that the seal which was affixed on the articles seized from the appellants was different from the seal which was found on the packet received by the Forensic Scientific Laboratory for analysis. There is no substance in this contention. The seal which was affixed on the seized articles, as stated by PSI Chavda in his evidence, was of Police Inspector, Sabarmati. The seal on the packet which was received by the Forensic Scientific Laboratory read "Police Inspector, Sabarmati, Ahmedabad City". A small lapse on the part of the PSI Chavda while deposing before the Court has led to this discrepancy which is more apparent than real. Sabarmati is a locality within Ahmedabad City. The Specimen of the seal sent to the Forensic Scientific Laboratory also tallied with the seal on the packet sent to it. Therefore it is not possible to hold that the seal which was found on the packet was different and therefore a doubt arises whether the material which was seized from the appellants was the same as was examined by the Forensic Scientific Laboratory.

7. It was lastly contended that in view of the enmity between the appellants and one Ram Swarup Das they were falsely involved. Even if enmity is assumed there is no material to show that the Police and the Panchas were in any way under the influence of Ram Swarup Das or there was any reason for them to oblige Ram Swarup Das by falsely implicating the appellants. It is also not believable that at the instance of Ram Swarup Das the Police had planted such a big quantity of charas worth Rs. 85,000/- to falsely implicate the appellants.

8. As we do not find any substance in this appeal the same is accordingly dismissed.