
(1995) 09 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 482-DBA of 1988

State of Punjab

APPELLANT

Vs

Gurmeet Singh

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Citation : (1996) 1 RCR(Criminal) 242

Hon'ble Judges : S.C.Datta, J and A.S.Nehra, J

Advocate : A.G. Masih, Anil Kumar Sharma, Advocates for appearing Parties

Judgement

S.C. Datta, J.

1. These three appeals are heard together as common questions of law are involved in all these appeals.

2. In Criminal Appeal No. 482DBA of 1988, the accused Gurmeet Singh stood trial under Section 15 read with Section 8(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 for being found in possession of 250 grams of poppy husk on 7.4.86 in the area of village Kularh. He was apprehended by police party headed by A.S.I. Amarjit Singh and two constables while they were on usual petrol duty. The accused was tried before the learned Additional Sessions Judge, Ludhiana who was pleased to acquit him, firstly, on the ground that the Officer who detained the accused was not empowered to conduct search and seizure of the contraband article. The second ground was that the investigation was not in accordance with the provisions of Chapter V of the Act.

3. Criminal Appeal No. 560DBA of 1988 arose out of the order of acquittal passed by learned Additional Judge, Barnala on 28.4.88. The accused Natha Singh faced trial before the learned Additional Sessions Judge, Barnala on a charge under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. According to the prosecution on 8.2.1986 in the area of village Kaire, the said accused Natha Singh was found in possession of 4 kilograms of poppy husk without any licence or permit. He was arrested by Head Constable Sher Singh in

the presence of Head Constable Jasbir Singh and another Constable Paramjit Singh. The learned Additional Sessions Judge was pleased to acquit the accused on the ground that the police officers were not empowered to conduct search and seizure. Moreover, the provisions of Section 50 of the said Act were not complied with.

4. Criminal Appeal No. 584DBA of 1988 arose out of order of acquittal passed by learned Additional Sessions Judge, Barnala on 4.6.88. Here again the accused Jagtar Singh had been sent up for trial for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 for having in his possession 6 kilograms of poppy husk without any licence or permit. He was arrested by S.I. Harpal Singh in the presence of Head Constable Jalvinder Singh on 31.10.86. The learned Additional Sessions Judge held that the Officer conducting the search and effecting seizure of the article was not empowered at the relevant time to do so. Moreover, he found that the mandatory provisions of Section 50 of the said Act having not been complied with, the accused was entitled to acquittal, Consequently, the learned Additional Sessions Judge was pleased to acquit the accused person.

5. The State of Punjab is the appellant in all these three appeals. We have heard learned counsel appearing for the State. It appears that in none of the cases, the Officers conducting the search and seizure of the contraband article was competent and empowered to do so. Nor there has been a compliance of the provisions of Section 50 of the Act. In this respect, it would be apt to refer to the latest authoritative pronouncement of the Apex Court in *State of Punjab v. Balbir Singh*, 1994(1) Crimes 753. Their Lordship held that on prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a gazetted officer or a magistrate as provided thereunder. It is, therefore, obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the gazetted officer or the magistrate, would amount to non compliance of Section 50. It has been further held that provisions of Section 50 *ibid* are mandatory and failure to comply with it would effect the prosecution case and would vitiate the trial. We find that there has been a total failure towards compliance of the provisions of Section 50 of the N.D.P.S. Act. Accordingly, the trials are vitiated. We are, therefore, of firm opinion that the learned Additional Sessions Judge was perfectly justified in acquitting all the accused persons. We see no ground for interference.

6. The appeals are without merit and hence dismissed.

Appeals dismissed.