
(1995) 07 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 349-DB of 1994

Suraj Bhan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 20-07-1995

Acts Referred:

Citation : (1995) 3 AICLR 291 : (1995) 3 RCR(Criminal) 515

Hon'ble Judges : S.C.Malte, J and H.S.Bedi, J

Advocate : Ashit Mallik, Varinder Singh, Advocates for appearing Parties

Judgement

S.C. Malte, J.

1. The appellantaccused came to be convicted of on offence under Section 20B of the Narcotic Drugs & Psychotropic Substances Act, 1985, (N.D.P.S. Act), and was sentenced to suffer rigorous imprisonment for 15 years and fine of Rs. 1,50,000/, in default rigorous imprisonment for three years.

2. Briefly stated, the prosecution case is as follows :

On 10.3.1992 Sub Inspector Man Singh along with other police men was present on patrol duty at the bus stand at Murthal, District Sonapat. Sub Inspector Man Singh then spotted that accused who was hurrying away in a suspicious manner on seeing the police party. The police party, therefore, stopped him and informed him that his bag will have to be searched. In the First Information Report, it is further stated that a notice in writing was served on the accusedappellant to inform him that if he requires, the search of the bag held by him would be in the presence of a gazetted officer. The prosecution case is that the said notice was signed by the accused, and the witnesses also attested it. The accused, however, is said to have indicated that he had full faith in Sub Inspector Man Singh, and he was at liberty to take search of the bag. Thereupon Sub Inspector Man Singh is said to have offered his personal search to the accused, and then the bag of the accused was searched. In the course of search Charas weighing about 1 kg. 200 grams was found in the said bag. A sample of 10 grams of Charas was

separated. The Charas thus recovered and the sample of the Charas thus separated come to be duly sealed in the presence of witnesses. First Information Report accordingly was also lodged in the Police Station and it was registered at about 2.00 p.m. on 10.3.1992. It may be noted here that the time of occurrence as mentioned in the FIR is 1.30 p.m. on 10.3.1992. This time factor has material significance while assessing veracity of the prosecution case.

3. The Sessions Judge, Sonapat, held the prosecution case proved and convicted and sentenced the accusedappellant as mentioned above.

4. Before us, the counsel for the appellant submitted that the provisions of Section 50 of the N.D.P.S. Act had not complied with while effecting the search of the bag which is said to be held by the appellant at the relevant time. It was further submitted that the appellant had serious grievance against the police officers, and also made complaint against them in the past. It was submitted that the evidence of prosecution in respect of claim that provisions of Section 50 were complied with, requires close scrutiny and deserves to be rejected. It was further submitted that in view of that the appellant was entitled to acquittal. Our attention was also invited to certain discrepant factors as regards the time of incident as found in the evidence of the witnesses and as mentioned in the First Information Report. It was submitted that the son of the accusedappellant had already made a telegraphic complaint to the D.I.G., Rohtak and had complained that his father (appellant) had been detained in the Police Station since 4.00 p.m. on previous day (i.e. 9.3.1992). It was claimed that because of such complaint made against the police officer, the appellant was falsely involved.

5. In this case we find that PW Man Singh, Sub Inspector of Police, who had lodged the complaint after searching the appellant, states in his deposition that on the day of occurrence he along with other police officers was on patrolling duty at about 9.30 a.m. He further states that at about 10.15 a.m. the appellant was spotted by them and was found to be hurrying away. The movements of the appellant, therefore, raised suspicion and he was apprehended. Thus, according to Sub Inspector Man Singh, the time of occurrence was 10.15 a.m. on 10.3.1992. The First Information Report lodged by him in the Police Station, however, in a very clear terms indicate that the time of occurrence was at 1.30 p.m. on 10.3.1992. The prosecution has not cared to invite the attention of this witness to the marked discrepancy of time of occurrence thus recorded at two different places. In the context of this, it may be noted that as per Exhibit DB, a certified copy of the telegram sent by the son of the accused, a grievance was already made that the accused had been detained in the Police Station since 4.00 p.m. on 9.3.1992. The telegram is dated 10.3.1992 and was despatched at 10.20 a.m. It was followed by a complaint dated 11.3.1992 by Rajesh Kumar the son of the accused. The said complaint was addressed to the Deputy Minister of Home Affairs, New Delhi. In the said complaint also a reference to the above mentioned telegram has been made. There are also allegations that an amount of Rs. 20,000/ had been demanded by Sub Inspector Man Singh, and since that

demand was not yielded to, the appellant accused was detained in the Police Station. In the set of these circumstances, it has become more imperative to closely scrutinise the claim made by the prosecution that the requirement of Section 50 of the N.D.P.S. Act were followed.

6. The provisions of Section 50 of the N.D.P.S. Act, in nutshell, make it mandatory that while effecting the search under Sections 41, 42 or 43 of the said Act, the officer thus authorised to take the search as per Section 42, should take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. This provision has a rider that such a procedure is to be followed if a person to be searched so requires. These provisions came to be considered in the various rulings. The recent out of these rulings is a case of *Ali Mustaffa Abdul Rahman Moosa v. State of Kerala*, JT 1994(6) 326. In that case before their Lordships, it was submitted that the presence of a gazetted officer at the time of search of a person suspected to have committed offence under the N.D.P.S. Act, is necessary only if such person requires that he should be produced before the gazetted officer or the Magistrate while effecting the search. While disposing of that argument. Their Lordships quoted with approval the observations made in the case of *State of Punjab v. Balbir Singh*, 1994(1) Recent Criminal Reports 737 : (1994)3 SCC 299. In nutshell it was observed that the language of Section 50 was clear and those provisions implicitly make it obligatory on the authorised officer to inform the person to be searched of his right. The same view was further endorsed in a case reported as *Mohinder Kumar v. The State, Panaji, Goa*, 1995(2) Recent Criminal Reports 599. In the case in hand, as per the testimony of Sub Inspector Man Singh, he had informed the accused in writing that if he (accused) requires, the search would be conducted before a gazetted officer or Magistrate. The said notice in writing is, however, not coming before the Court. Sub Inspector Man Singh admits in his deposition that the said notice was not found by him either in the police file or in the Court file. Such important notice in writing is missing from record. The only inevitable position would be that the claim made by the prosecution that such a notice was served, cannot be accepted on the basis of bald statement of Sub Inspector Man Singh, particularly when one finds that serious grievance in complaints had already been made by the accused and his son against this police officer.

7. The learned Sessions Judge, however, did not properly consider these various aspects as stated above. We find that the ratio of the reported judgments has also not been properly appreciated. He has also not scrutinised the evidence to ascertain the credibility of the claim made by the prosecution that requirement of Section 50 of the Act were duly complied with. He committed an error in accepting the statement of Sub Inspector Man Singh in respect of the compliance of Section 50 of the N.D.P.S. Act. But while doing so he did not give due weight to the circumstances militating against such claim. We, therefore, find that the prosecution has failed to bring home the offence against the accused appellant. Hence we allow this appeal and acquit the accused appellant. Fine, if paid, should

be refunded to the appellant. The appellant, if in jail, be set at liberty forthwith if not required in connection with any other case.