

(2016) 01 SC CK 0073

In the Supreme Court Of India

Case No : Criminal Appeal No. 50 of 2016 (Arising from the SLP (Crl.) No. 2082 of 2015)

Surender

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 161, Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, Section 50

Citation : (2016) 97 ACrC 485 : (2016) 93 ACrC 497 : (2016) 159 AIC 24 : (2016) 167 AIC 156 : (2016) 4 AICLR 939 : (2016) AIR(SCW) 508 : (2016) 2 AIRJharR 342 : (2016) AIRSC 508 : (2016) ALLMRCri 885 : (2016) 3 BLJud 155 : (2016) 1 BomCR(Cri) 697 : (2016) 4 CriCC 11

Hon'ble Judges : V. Gopala Gowda and U.U. Lalit, JJ.

Bench : Division Bench

Advocate : Rakesh Dahiya, M.L. Khatter and Satyavan Kudalwal, Advocates, for the Appellant; Devender Kr. Saini, AAG, Vishwapal Singh and Sanjay Kumar Visen, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

U.U. Lalit, J.—1. Leave granted.

2. This appeal is directed against the judgment and order dated 11.12.2014 passed by the High Court of Punjab and Haryana dismissing Criminal Appeal No. S-318-SB of 2004 preferred by the Appellant against his conviction Under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "Act") for being in possession of 1 kg of opium without any permit or licence.

3. According to the prosecution PW6 SI Satbir Singh was on usual patrol duty on 24.06.2002 along with other police officials at bus stand of village Bichpar, Distt. Sonipat. Secret information was received by him that the Appellant was selling opium and was roaming in the village in search of customers. This information

was reduced to writing in the form of Ruqa Ext. PF and was sent to the Police Station for information, whereupon DDR Ext. PC was recorded. PW6 Satbir and other police officials reached the bus stand and saw the Appellant coming from village Gangana side. He was apprehended. The Appellant was told that he was suspected to be carrying opium in his possession and as such his personal search had to be undertaken and that he had a right to be searched in the presence of a Gazetted Officer or a Magistrate. The Appellant was given an appropriate notice vide Ext. PA Under Section 50 of the Act and by his reply Ext. PA/1 he opted to be searched before a Gazetted Officer.

4. Thereafter a wireless message was sent to PW4 Shyam Singh Rana, DSP Gohana who reached the spot. The Appellant was produced before him and PW4 was also acquainted with the facts of the case. Thereafter, on the instructions of PW4, personal search of the Appellant was undertaken which resulted in recovery of opium from the possession of the Appellant. The opium was found in a polythene bag tied in a cloth around the stomach of the Appellant. On weighment, it was found to be 1 kg 50 gms. A sample was taken and put in a small plastic bag while the remainder was put in a bag of cloth. The sample and the remainder were separately sealed and taken in possession vide memo Ext. PB. The seal was then handed over to PW1 ASI Bishamber Lal. Thereafter Ruqa Ext. PC was sent to the Police Station for registration of crime, whereupon FIR Ext. PC was recorded by PW2 Head Constable Om Parkash.

5. The Appellant along with the case property was produced before PW3 Yad Ram SHO of Police Station who verified the fact and put his own seal bearing impression "YR" on the sample as well as on the remainder. Thereafter the sealed case property was handed over to the Investigating Officer who deposited the same with Malkhana. In due course of time the FSL report Ext. PD was received wherein it was opined that the sample in question was opium. After completion of investigation the Appellant was charge-sheeted and tried for having committed the offence punishable Under Section 18 of the Act.

6. The prosecution in support of its case examined six witnesses. PW1 ASI Bishamber Lal stated as under:

As contraband article was suspected with the accused so he was served with a notice Ext. PA to opt about his search before a Gazetted Officer or a Magistrate, which is bearing my signatures. Accused opted for his search before a Gazetted officer vide endorsement Ex. PA/1 which is bearing my signatures.

PW2 Head Constable Om Parkash in his deposition stated as under:

On that day ASI Bishamber Lal deposited the case property with me, which was sealed with seal SS.

Pw 3 SI Yad Ram in his deposition stated as under:

On 24.06.2002, I was posted SI/HO P.S. Baroda. On that day SI Satbir Singh had produced the accused now present in the court, two sealed parcels and the

witnesses before me. I verified the investigation and affixed my own bearing inscription "YR". I directed SI Satbir Singh to deposit the case property with seals intact with the MHC P.S. Baroda.

PW4 Shyam Singh Rana DSP stated as under:

I directed SI Satbir Singh to carry out the search of the accused. During the course of search SI Satbir Singh recovered opium wrapped in a cloth was tied with the stomach of the accused underneath the shirt and the vest of the accused wrapped in a polythene pack. On weighment it was found to be one kilogram. SI Satbir Singh took out 50 grams of opium from the recovered bulk and sealed the sample and the remainder into two separate parcels with the sealed bearing inscription SS. Both the sealed parcels were taken into possession vide recovery memo EX. PB which was signed by ASI Bishamber Lal and HC Suresh Kumar and was attested by me also.

7. In his statement Under Section 313 Code of Criminal Procedure the Appellant denied the prosecution allegations and pleaded innocence. After considering the material on record and rival submissions, the Special Judge, Sonipat found the Appellant guilty of offence punishable Under Section 18 of the Act and by his judgment and order dated 14.11.2004 sentenced him to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 10000/-, in default whereof to undergo further rigorous imprisonment for a period of 8 months.

8. The judgment of conviction and sentence was challenged by way of Criminal Appeal of S-318 -SB of 2004 in the High Court. After considering the entire material on record, the High Court by its judgment under appeal affirmed the view taken by the Trial Court and dismissed the appeal. The correctness of the view taken by the High Court is under challenge in the present appeal.

9. It was submitted by Mr. Rakesh Dahiya, learned Advocate appearing for the Appellant that the investigation in the matter was conducted by PW6 SI Satbir Singh who himself was the complainant. Relying on the decision of this Court in State by Inspector of Police, Narcotic Intelligence Bureau, Madhurai, Tamil Nadu v. Rajangam , 2010 (15) SCC 369, the learned Counsel submitted that the investigation by PW6 SI Satbir Singh was improper and the Appellant was entitled to acquittal.

10. We have given anxious consideration to the submissions of the learned Counsel. In State v. Rajangam (supra), the High Court had acquitted the accused. Relying upon the decision of this Court in Megha Singh v. State of Haryana , 1996 (11) SCC 709, the view taken by the High Court was affirmed by this Court in an appeal against acquittal. In Megha Singh the accused was tried under the provisions of the TADA Act and the Arms Act for being in possession of a country made pistol and three live cartridges. The prosecution did not examine any independent witness and simply relied upon the testimony of PW3 Investigating Officer. There was also discrepancy in the depositions of PW3 Investigating Officer and another police person namely PW2. In the light of these

facts, it was observed in Megha Singh as under:

After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of the P. Ws. 2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses Under Section 161 Code of Criminal Procedure 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.

11. In Megha Singh, the search was not conducted in the presence of a Gazetted Officer, as is required in a case under the Act. In the instant case the search of the Appellant was conducted in the presence of and under the instructions of PW4. The extracts of depositions of other prosecution witnesses show that it was not PW6 S.I. Satbir Singh alone who was involved in the investigation. In our view the principle laid down in Megha Singh and followed in State v. Rajangam does not get attracted in the present matter. Relevant to note that this was not even a ground projected in support of the case of the Appellant and does not find any reference in the judgment under appeal. We therefore reject the submission.

12. Having gone through the entirety of the matter, we do not find any reason to differ from the view taken by the High Court. We therefore dismiss this appeal.

13. Hon"ble Mr. Justice Uday Umesh Lalit pronounced the judgment of the Bench comprising Hon"ble Mr. Justice V. Gopala Gowda and His Lordship.

14. Leave granted.

15. The appeal is dismissed in terms of the signed reportable judgment.

16. Pending application(s), if any, stand(s) disposed of.