
Before V.K. Bali & P.K. Jain, JJ.

DALIP SINGH & ANOTHER,—*Appellants*

versus

STATE OF PUNJAB,—*Respondent*

Crl. A.No. 250-DB of 1995

14th October, 1997

Narcotic Drugs and Psychotropic Substances Act, 1985—S. 50—Provisions of—Mandatory in nature— Compliance of said provisions in cases of chance recovery—Held, not required.

[Gurpreet Singh @ Pappi & another v. State of Punjab, 1997(1) C.C. Cases 297 (HC), not followed]

Held, that the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are not attracted in case of search without prior information regarding the commission of an offence under the Act. From the stage an officer has reason to believe that the accused persons were in possession of narcotic drugs, he is bound to comply with the provisions of the Act. Section 50 of the Act is not applicable to the case of a chance recovery.

(Paras 13 & 16)

Mr. R.S. Ghai, Sr. Advocate with Mr. Bipan Ghai, Advocate,
for the appellants.

Mr. Navdeep Singh, AAG (Pb.), *for the respondent.*

JUDGMENT

P.K. JAIN, J.

(1) This appeal is directed against the judgment/order, dated April 27, 1995, passed by the Additional Sessions Judge, Barnala, whereby the appellants have been convicted under section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and each of the appellants has been sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of Rs. 1,00,000 and in default of payment of fine to further undergo rigorous imprisonment for 3 years.

(2) The facts, which can be gathered from the records of the trial Court, are that on 2nd August, 1991 DSP Sardul Singh (PW

2) along with SI Kulwant Singh and other companions was on patrolling. After checking the vehicles at Handiaya Chowk, they reached the revenue limits of village Ghunas where they met HC Balwinder Singh along with Para-Military force who had just then detained truck No. PBD-2159. Dalip Singh appellant was at the steering wheel and appellant Mohinder Singh was sitting behind him in the driver's cabin. After disclosing his designation, DSP Sardool Singh (PW 2) conducted the search of the truck which was found to contain 79 bags of poppy husk. Each bag weighed about 40 Kgs. Two samples of 250 gms. each were taken out of each bag separately. The sample parcels and the gunny bags containing the remaining contents were sealed with the seal bearing the impression 'SS'. Specimen of the seal (Exhibit PG) was prepared. The sample parcels and the gunny bags were duly sealed and the said truck, — *vide* memo Exhibit PH. Personal search of both the appellants were taken, — *vide* memo. Exhibit PJ and PK. Ruqa-Exhibit PD was sent to Police Station, Tapa, at 3.15 a.m. on 3rd August, 1991 through HC Balwinder Singh, on the basis of which SHO/SI Des Raj recorded the formal first information report (Exhibit PD/1).

(3) Immediately after recording the F.I.R. SHO/SI Des Raj along with HC Balwinder Singh reached the spot of occurrence and took over the investigation of the case. DSP Sardool Singh (PW-2) handed over 79 bags containing poppy husk and 158 samples of 250 gms. each, duly sealed with the seal of 'SS' along with both the appellants to SI Des Raj. Rough site plan (Exhibit PE) of the place of recovery was prepared, case property was deposited with the MHC. Thereafter the case property was produced before the concerned Judicial Magistrate at Barnala along with application-Exhibit PF, on which orders-Exhibit PF/1 were passed. Sealed sample parcels were deposited in the office of Chemical Examiner, Chandigarh, on 6th August, 1991 and the report-Exhibit PA was received. After completing the investigation, a charge-sheet was filed in the Court.

(4) A charge under sections 15/25 of the Act was framed against both the appellants, who pleaded not guilty and claimed trial.

(5) In support of its case, the prosecution examined three witnesses. DSP Sardool Singh (PW 2) and SI Kulwant Singh (PW 3) are the witnesses of recovery of the gunny bags containing poppy husk from the truck of the appellants, whereas SI Des Raj (PW 1)

is the Investigating Officer. Two affidavits (Exhibits PB and PC) sworn by Constable Shamsher Singh and MHC Ajit Singh and report (Exhibit PA) received from the Chemical Examiner were tendered in evidence.

(6) In their examination under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), each of the two appellants denied the allegations of the prosecution and pleaded false implication. It has been stated that on 30th July, 1991, the police had raided the house of Beant Singh at the instance of one Bhajan Singh, that Major Singh and Beant Singh made good their escape and instead the police arrested the appellant and also took the truck owned by appellant Dalip Singh. It may be stated that appellant Dalip Singh made a statement on 31st January, 1995 that he was the owner of truck No. PBD-2159, and was also the owner thereof on 2nd August, 1991.

(7) In their defence, the appellants examined two witnesses—Satpal Singh (DW 1) and Beant Singh (DW 2), who have supported the version put forward by the appellants. Beant Singh (DW 2) has further stated that he had given telegrams after about 3 days of the arrest of the appellants. Certified copies of telegram (Exhibits DC, DD and DE), and copy of the order dated, 27th July, 1992 (Exhibit DB) were tendered in defence evidence.

(8) On an appraisal of the evidence produced on the record, the Additional Sessions Judge, Barnala, while disbelieving the defence version, convicted and sentenced the appellants, as stated above. Hence the appeal.

(9) We have heard the learned counsel for the parties, who have taken us through the record of the trial Court.

(10) Shri R.S. Ghai, Sr. Advocate, learned counsel for the appellants, has assailed the conviction of the appellants firstly on the ground that the provisions of Section 50 of the Act were not complied with by DSP Sardool Singh (PW 2) before conducting the search of the truck. It has been pointed out by the learned counsel that the provisions of Section 50 of the Act are mandatory in nature and non-compliance thereof is fatal to the prosecution. While elaborating this argument, the learned counsel has further contended that the provisions of Section 50 are necessary to be complied with even in respect of search of vehicles. In support of this plea, reliance has been placed upon three decisions of the Apex Court rendered in *Mohinder Kumar v. The State, Panaji, Goa*, (1)

1. AIR 1995 SC 1157.

State of Punjab v. Jasbir Singh and others (2) and *State of Punjab v. Labh Singh etc.* (3). Reference has also been made by the learned counsel to the judgments of this court delivered in *Kulwant Singh and Another v. Assistant Collector Customs* (4) *State of Punjab v. Tarlok Singh*, (5) and *Gurpreet Singh @ Pappi and another v. State of Punjab*, (6). Reliance has also been placed upon a decision of the Delhi High Court rendered in *Amarjit Singh and another v. State (Delhi Administration)* (7).

(11) On the other hand Shri Navdeep Singh, learned Asstt. Advocate General for the State of Punjab, has argued that the provisions of Section 5 of the Act cannot be invoked in the present case because there was chance recovery and DSP Sardool Singh had no prior information that the appellants would be coming along with narcotic drugs. It has been further argued by the learned D.A.G. that the provisions of Section 50 of the Act can be invoked only to the search of a person and cannot be invoked in respect of the search of a conveyance in view of the provisions of Section 49 of the Act. Reliance has been placed upon a judgment of the Full Bench of the Bombay High Court in *Ebanerzer Adebaya @ Monday Obtor v. B.S. Rawat, Collector of Customs, R and I, New Delhi* (8).

(12) After giving our careful thought to the respective arguments advanced at the Bar, we are of the view that the provisions of Section 50 of the Act are not attracted to the facts and circumstances of the present case. From the testimony of D.S.P. Sardool Singh (PW 2) and SI Kulwant Singh (PW 3), it is evident that they were on patrolling and were checking the vehicles. It has been clarified by SI Kulwant Singh (PW 3) that they had checked about 20 vehicles at 'T' point and about 35 vehicles at Handiaya chowk and then proceeded to the spot of occurrence, where HC Balwinder Singh along with para-military force was found present, who had just then detained truck No. PBD-2159 owned by appellant Dalip Singh. DSP Sardool Singh (PW 2) after disclosing his designation, conducted the search of the truck which was found to contain 70 bags of poppy husk, each bag said to contain 40 kg. In other words, neither DSP Sardool Singh nor any other police officer or the member of the para-military force had any prior information

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2. 1996 SCC (Cri.) 1
 3. 1996 (3) C.C. Cases 90 (SC)
 4. 1996 (1) C.C. Cases 142 (HC)
 5. 1996 (2) R.C.R. 288
 6. 1997 (1) C.C. Cases 297 (HC)
 7. 1995 (2) R.C.R. 578
 8. 1996 (3) R.C.R. 206 (FB)

that any narcotic drug was being carried or transported in the said truck by the appellants.

(13) The provisions of Section 50 of the Act have been considered exhaustively by the Apex Court in a well-known judgment rendered in *State of Punjab v. Balbir Singh*(9), While summoning up the conclusions, their Lordships laid down the following law:—

“If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr.P.C. and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.”

Thus, in case of search without prior information regarding the commission of an offence under the act, the provisions of Section 50 of the Act would not be attracted.

(14) Learned counsel for the appellants has drawn our pointed attention to the following observations made by a Division Bench of this Court in *Gurpreet Singh's case* (supra) in para 8 of the judgment, which reads as under:—

“We are further of the view, in the light of the Supreme Court Judgment in *Mohinder Kumar v. The State of Panaji Goa*, 1995 (2) R.C.R. 599, the provisions of Section 50 of the Act had to be complied with even in case of chance encounter.”

Respectfully, we beg to differ. In *Mohinder Kumar's case* (supra), the apex Court never held that the provisions of Section 50 of the Act are attracted even in the case of

chance recovery, rather their Lordships reiterated the law as enunciated in *Balbir Singh's case* (supra).

(15) In that case Mohinder Kumar and his accomplice were sitting in the *varandah*. On seeing the police party, they hurriedly entered the house. This aroused the suspicion of the police party, which, after arranging Panches, entered the house and questioned the accused persons. The Sub-Inspector noticed a white plastic bag lying by the side of accused Mohinder Kumar. On search of the bag, the same was found to contain two polythene packets of *charas* like substance. The packets were weighed, the samples were drawn and the same were sealed and seized. Then the person of the accused was searched and two pieces of *charas* from the right pocket of his pant were recovered weighing about 10 gms. At the instance of the accused, further recovery was effected from the adjoining room, where a shoulder bag was found containing *charas*, from which also samples were separately sealed.

(16) In para 2 of the judgment, while making a reference to the law laid down in *Balbir Singh's case* (supra), their Lordships re-stated the Rule as under:—

“After analysing the provisions of the Act, this Court has stated that if a police officer, without prior information, makes a search and effect arrest of persons and during such search he stumbles on a chance recovery of any narcotic drug or psychotropic substance and if he happens to be a police officer who is not empowered under the Act to effect search and seizure, he should inform the empowered officer as required by the Act. If he himself happens to be the empowered Officer, then from that stage onwards the investigation must be carried out in accordance with the provisions of the Act.” While dealing with the merits of the case in para 3 of the judgment, their Lordships observed as under:—

“In the instant case, the facts show that he accidentally reached the house while on patrolling duty and had it not been for the conduct of the accused persons in trying to run into the house on seeing the police party he would perhaps not have had occasion to enter the house and effect search. But when the conduct of the accused persons raised a suspicion he went there and effected the search, seizure and arrest. It was, therefore, not on any prior information but he purely accidentally

stumbled upon the offending articles and not being the empowered persons being in custody of the offending articles, he sent for the panches and on their arrival drew up the panchnama. In the circumstances, from the stage he had reason to believe that the accused persons were in custody of narcotic drugs and sent for panches, he was under an obligation to proceed further in the matter in accordance with the provisions of the Act.”

These observations in themselves make clear that from the stage an officer has reason to believe that the accused persons were in possession of narcotic drugs, he is bound to comply with the provisions of the Act. Before conducting the search of the accused and recovery of 2 pieces of *charas* weighing 10 grams from the right pocket of his pant, the Sub Inspector was bound to comply with the provisions of Section 50 of the Act. Since he failed to do so, it was held by their Lordships that the accused was entitled to be acquitted. In other words, Section 50 of the Act was never held to be applicable to the case of a chance recovery, instead, the law laid down in *Balbir Singh's case* (supra) was restated and followed with approval. The learned counsel for the appellants has not been able to point out any decision of the apex Court wherein the aforesaid law laid down in *Balbir Singh's case* might have been over-ruled or modified in any manner. Therefore, the contention of the learned counsel for the appellants based upon the provisions of Section 50 of the Act is devoid of any merit.

(17) The next contention of the learned counsel for the appellants is that the prosecution has failed to rule out the possibility that the sample parcels were not tampered with by anybody till they reached the hands of the Chemical Examiner. While developing this argument, the learned counsel has contended that the affidavits (Exhibits PB and PC) sworn by Constable Shamsher Singh and MHC Ajit Singh were never put to the appellants in their examination under Section 313 of the Code and as such the same was not be taken into consideration as a substantive piece of evidence against the appellants.

(18) After perusing the record of the case, we are unable to agree even with this contention. According to the testimony of DSP Sardool Singh (PW 2), he had handed over 79 bags duly sealed with the seal of 'SS' and 158 sample parcels duly sealed with the

same seal along with the specimen impression of the seal to SHO/ SI Des Raj on the spot. It has come out in the evidence of SI Des Raj (PW 1) that he had deposited the case property with MHC Ajit Singh and thereafter it was produced before the concerned Judicial Magistrate also along with an application (Exhibit PF) on which order (Ext. PF/1) was passed and the case property was redeposited with MHC Ajit Singh. The affidavit (Exhibit PC) sworn by MHC Ajit Singh corroborates the testimony of SI Des Raj (PW-1). It further shows that he had handed over 79 sealed sample parcels along with the seal impression on 5th September, 1991 to Constable Shamsher Singh with a direction to deposit the same in the office of the Chemical Examiner, Punjab, at Chandigarh, after obtaining a docket from the office of S.S.P., Sangrur. The affidavit (Exhibit PB) sworn by Constable Shamsher Singh duly corroborates the facts sworn by MHC Ajit Singh and it is further clear there from that he obtained the docket from the office of S.S.P., Sangrur, on 5th August, 1991 and then deposited the sealed sample parcels along with the seal impression and the docket in the office of Chemical Examiner, Chandigarh, on 6th August, 1991, and handed over the receipt to MHC Ajit Singh on 7th August, 1991. These two affidavits further go to show that these sealed sample parcels were not tampered with by anybody till the same remained under their care and custody. Exhibit PA, the report of the Chemical Examiner, further goes to show that these 79 sample parcels were received on 6th August, 1991 with the seals intact which tallied with the specimen seal received therewith. Thus, there is a complete chain of evidence produced by the prosecution which indicates beyond doubt that the 79 sample parcels were not tampered with by anybody from the time these were drawn and sealed at the spot on 2nd August, 1991 and till the same reached the office of the Chemical Examiner on 6th August, 1991.

(19) The real grievance of the learned counsel for the appellants appears that the contents of these two affidavits were not put to the accused persons in their examination under Section 313 of the Code, which omission is fatal to the prosecution case. This contention appears to be misconceived. Both the appellants were specifically questioned regarding the drawing of 15 samples from 79 bags, converting the same into sealed parcels and then depositing in the *malkhana* with the Moharrir Head Constable. Both the affidavits—Exhibits PB and PC were also put to the appellants and they were questioned regarding sending of the samples to the office of the Chemical Examiner and the receipt of

the report—Exhibit PA from the said office. Moreover, when these two affidavits were tendered in evidence, the defence made a specific statement that the accused persons did not want to cross-examine these two officials. In other words, the appellants never challenged, but accepted, the factual position as contained in these two affidavits. Even otherwise, the appellants have failed to show that any prejudice has been caused to them on account of some omission or defect in their examination under section 313 of the Code. A fair and proper opportunity of explaining all the circumstances appearing in evidence against them was afforded but the reply was that the same were incorrect. We do not find that there was any irregularity or illegality in examining the appellants under the said provision of the Code, nor the learned counsel for the appellants has been able to point out that any prejudice has been caused to the appellants thereby. Accordingly, this contention also stands repelled.

(20) A faint attempt has been made by the learned counsel for the appellants to contend that the defence plea raised by the appellants is duly supported by the testimony of two witnesses i.e. Satpal Singh (DW 1) and Beant Singh (DW 2) and the three telegrams (Exhibits DC, DD and DE). It is, thus, contended that the appellants have been falsely implicated and their defence plea has been rejected erroneously.

(21) After carefully going through the testimony of Satpal Singh (DW 1) and Beant Singh (DW 2), we are of the definite view that they are procured and tutored witnesses and no reliance can be placed on their testimony. According to their testimony the police had come on 30th July, 1991 to arrest Major Singh and Beant Singh but they slipped away, and instead the police brought both the appellants alongwith Satpal Singh, Sukdev Singh and Gurdial Singh to the Police Station. Dalip Singh and Mohinder Singh were let off by the police on the next day but detained the remaining three at the instance of one Bhajan Singh. On the third day, these three were let off but the appellants were detained on the condition that they would be let off on producing Beant Singh and Major Singh, and after 5 to 7 days, it was revealed that the appellants had been involved in this false case. This entire story appears to be a fairy tale, having no connection, whatsoever, with the arrest of the appellants. The three telegrams (Exhibits DC, DD and DE) addressed to the President of India, the Governor of Punjab and the Sessions Judge, Punjab and Haryana High Court, Chandigarh, respectively, do not indicate that the appellants had been lifted by

the police on 30th July, 1991 and were brought to the office of DSP, Barnala. The trial Court was justified in observing that these telegrams by way of defence only and do not contain any grain of truth therein. These telegrams do not even corroborate the testimony of Satpal singh (DW 1) and Beant Singh (DW 2). So, the testimony of the two witnesses examined in defence and the three telegrams have been rightly rejected as being incredible and unreliable.

(22) Lastly, the learned causal for the appellants has argued that the sentence imposed upon the appellants is quite disproportionate to the facts and circumstances of the case. It has been pointed out by the learned counsel that the appellants are not previous convicts and do not have any past criminal history and they are only the bread earners in their respective families. Keeping in view the nature of the narcotic drug found in possession of the appellants and the aforesaid circumstances, we are of the view that a sentence of 10 years rigorous imprisonment, which is the minimum under the Act, would meet the ends of justice.

(23) As a result of the above discussion, this appeal succeeds in part. While upholding the conviction of the appellants under section 15 of the Act, the sentence of rigorous imprisonment imposed upon each of the two appellants is hereby reduced from 14 to 10 years. The sentence of fine with its default clause and the orders regarding confiscation of truck No. PBD-2159 are hereby maintained.

S.C.K.

Before M.L. Koul, J.

BIKKAR SINGH & OTHERS,—*Appellants*

versus

STATE OF PUNJAB,—*Respondent*

Crl. A. 392/SB of 1997

8th August, 1997

Code of Criminal Procedure, 1973—Ss. 452 read with S. 454 and 482—Confiscation of vehicle in which convict was caught carrying poppy husk—Trial Court cannot straight-away confiscate property in favour of State without enquiring into its ownership and establishing that the vehicle was used knowingly by owner for committing offence u/s 15 of N.D.P.S. Act—Order of confiscation