

Before : G. C. Mital and S. S. Sodhi, JJ.

AMRIT SINGH,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Criminal Appeal No. 513-DB of 1987.

27th September, 1989.

*Narcotic Drugs and Psychotropic Substances Act, 1950—Ss. 18 & 50—Only police officials examined as witnesses—No independent witness examined—Lack of corroboration—Effect of—Search not made in the presence of a gazetted officer—Scope of S. 50.*

*Held*, that the law is, of course, well settled that the testimony of a witness is not to be doubted or looked upon with suspicion merely because he happens to be a police official, but it is, at the same time, a very well-recognized rule of caution, adopted by the Courts, to look for corroboration to the testimony of such witnesses by independent witnesses, particularly, when the time, place and circumstances are such that independent witnesses are easily available.

(Para 11)

*Held*, that a reading of Section 50 would show that if any person to be searched so requires, he has to be taken to a gazetted officer or to the nearest magistrate and then searched in his presence. The provisions of Section 50 of the Act are mandatory. To give meaning and content to the clear legislative intent underlying the safeguards provided by Section 50 of the Act, cogent and reliable evidence and not merely the statement of a Police Officer, must be brought on record to establish that the person to be searched was informed of his right to be searched in the presence of a gazetted officer or magistrate, but he chose to decline this offer.

(Paras 14, 15 & 16)

*Appeal from the order of Shri Suresh Chand Jain, Addl. Sessions Judge, Karnal, dated 19th October, 1987, convicting and sentencing the appellant.*

*Charge : Under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.*

*Sentence : R.I. for 14 years and a fine of Rs. 1,00,000 or on failure to suffer further R.I. for one year.*

*Misc. Sessions Case No. 31 of 1987 Sessions Trial No. 61 of 1987 F.I.R. No. 230, dated 1st March, 1986. Police Station :—City Panipat, Under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.*

R. S. Cheema, Advocate and Sartej Singh, Advocate, for the Appellant.

Ram Avtar Singh, Addl. A.G., Haryana, for the Respondent.

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### ORDER

*S. S. Sodhi, J.*

(1) The challenge in appeal here is to the conviction of the appellant—Sub-Inspector Amrit Singh of the Uttar Pradesh Police under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'), for being found in possession of 4 kilograms of opium.

(2) According to the prosecution at about 5 P.M. on March 1, 1986, when Sub-Inspectors Narpal Singh and Joginder Singh along with other police officials were out on patrol near the bus-stand Panipat, they saw the appellant—Sub-Inspector Amrit Singh carrying a brief-case coming from the Southern Gate of bus-stand. Seeing the police party, he retreated, whereupon suspicion was aroused and the police party then over-powered him near the gate. Amar Singh Lambardar of village Dhansauli also happened to come there at that time. On search of the brief-case, four kilograms of opium was recovered.

(3) The present case came to be registered at police station 'City' Panipat on the report of Sub-Inspector Joginder Singh regarding the apprehension and search of the appellant—Amrit Singh and the recovery from him of the said four kilograms of opium. The first information report recorded thereon being exhibit PC/1.

(4) The case of the prosecution rests upon the testimony of P.W.1 Sub-Inspector Narpal Singh and P.W.2 Sub-Inspector Joginder Singh. Both these witnesses deposed in a similar fashion namely; that they saw the appellant coming from inside the bus-stand holding a brief-case exhibit P/1 in his hand. Seeing the police party, he tried to retrace his steps upon which they became suspicious and apprehended him. Amar Singh Lambardar, who happened to be present at the bus-stand also joined them. Sub-Inspector Joginder Singh, after offering himself for search, informed Amrit Singh that if he so desired, his search would be carried out in the presence of a gazetted officer. Amrit Singh, however, declined this offer and he was thereafter searched. It was from the brief-case exhibit P/1, that the appellant was carrying, that four kilograms of opium wrapped in a wax paper was recovered. 25 grams of opium was taken from it as a sample and the opium was thereafter sealed.

(5) When examined under Section 313 of the Code of Criminal Procedure, 1973, Amrit Singh denied the prosecution case and pleaded innocence. It was specifically stated by him that at the time of his arrest, he had asked the police party to conduct his search in the presence of a gazetted officer, but this was not acceded to.

(6) Further, it was stated by the appellant Amrit Singh that he had gone to village Sanauli on February 28, 1986 to meet Hari Krishan and Rattan Lal in whose family the son of his friend had been married. There were differences between the spouses and he had gone there to get these differences sorted out. They did not, however, agree to his proposal and he then told them that it would lead to no good result if they did not send their daughter to the house of bridegroom. He then came to Panipat to go on to Agra and at about 10 A.M. when he was at the bus-stand Panipat. Inspector Sowarn Singh caught him and took him in a car to C.I.A. Karnal where he was falsely implicated in this case.

(7) In defence, four witnesses were examined. The testimony to note is that of D.W.1 Bhalu Ram Moharrir Head-Constable of police Station 'City', Panipat, who deposed that the case property of the present case came to him from the C.I.A. Staff Karnal on March 17, 1986 while D.W. 4 Hukam Singh stated that at about 10 A.M. a year-and-half ago, he was standing outside the gate of police station 'Saddar' Panipat when he heard some noise between Amrit Singh and Inspector Sowarn Singh. Hearing this noise, he went there and saw Amrit Singh saying that he was a police inspector and asking why he was being harassed. The appellant was then taken in a car and when he enquired from Inspector Sowarn Singh, he was told that the appellant was only to be interrogated. The car was then taken towards Karnal. About 2 to 3 months after this incident, Amrit Singh met him in the court compound at Panipat and on enquiry he told him that he had been falsely implicated in some opium case, but had not been told of the quantity of opium attributed to him. He then disclosed his name to the appellant and under-took to depose in his favour about the true facts as seen by him.

(8) The learned trial Judge, after taking into account, the material on record, convicted the appellant under Section 18 of the Act and sentenced him to 14 years' rigorous imprisonment and a fine of Rs. 1,00,000.

(9) The stringent minimum punishment prescribed by the Act, namely; ten years' rigorous imprisonment and fine of Rs. 1,00,000

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renders it incumbent upon the court to weigh with due care and caution, the evidence brought on record, by the prosecution to establish its case against a person charged of having committed an offence under this Act.

(10) It will be seen that both the witnesses to the apprehension, search, and recovery of the opium from the appellant Amrit Singh are police officials. The sole independent witness associated by them, at the relevant time, was not examined. He was given up as having been won over. It would further be pertinent to note that the presence of this witness Amar Singh Lambardar was, on the face of it, a purely chance visit there. He being of village Dhansauli.

(11) The law is, of course, well settled that the testimony of a witness is not to be doubted or looked upon with suspicion merely because he happens to be a police official, but, it is, at the same time, a very well-recognized rule of caution, adopted by the courts, to look for corroboration to the testimony of such witnesses by independent witnesses, particularly, when the time, place and circumstances are such that independent witnesses are easily available. In the present case, as mentioned earlier, the place of apprehension and search of the appellant was the bus-stand. Admittedly, there were number of persons present there at that time. What is more, nearby was also an Octroi Post. No effort was made to associate any person from the locality whose presence there, at that time, could be said to be natural and probable.

(12) The other curious feature of this case is that the recovered opium was taken to C.I.A. Staff Karnal and not to police station 'City' Panipat which was only about 60 yards from the place of recovery. No explanation to account for this is forthcoming. Here, a reference to the provisions of sub-section (3) of Section 52 of the Act would show that both the person arrested as also the article seized are required to be forwarded to the Officer Incharge of the nearest police station. It was obviously in clear disregard of this provision of law that both the appellant and the recovered opium were taken to the C.I.A. Staff Karnal rather than to police station 'City' Panipat. It was only on March 17, 1986 that as per the testimony of D.W-1 Moharrir Head Constable Bhale Ram that this opium was deposited in this police station.

(13) While considering this aspect of the case, it must be observed that reference to the affidavit of Head Constable Ram Bhaj

exhibit PF/1 makes interesting reading, in that, all it mentions, is regarding the deposit of a sample of 25 grams of opium. The material on record is silent with regard to the remaining quantity of opium said to have been recovered from the appellant at that time, except regarding its deposit at police station 'City' Panipat on March 17, 1986.

(14) The most glaring and serious flaw, however, in the prosecution case, is with regard to the manner of the search of the appellant-Amrit Singh, in the context of the provisions of Section 50 of the Act. A reading thereof would show that if any person to be searched so requires, he has to be taken to a gazetted officer or to the nearest magistrate and then searched in his presence. According to both the P.W-1, Sub-Inspector Narpat Singh and P.W.2-Sub-Inspector Joginder Singh, such option was given to the appellant, but was declined by him. In other words, this safeguard provided by Section 50 of the Act is said to have been waived by the appellant and all we have to prove this is the word of two police officers.

(15) The provisions of Section 50 of the Act are mandatory in terms and it also stands so settled by judicial precedents, one of which is provided by the judgment of this Court in *Hakam Singh v. Union Territory* (1). Reference may here also be made to the judgment of the Division Bench of the High Court of Himachal Pradesh in *State of Himachal Pradesh v. Sudarshan Kumar* (2), where, it was held that the person about to be searched must be informed of his right, under Section 50 of the Act, to be searched in the presence of a Magistrate or a Gazetted Officer. Violation of this provision, it was held, would *per se* be fatal to the prosecution case. Further, it was observed that such offer, should as far as practical be made in the presence of two independent and respectable witnesses of the locality and if the designated officer fails to do so, the onus would be on the prosecution to prove that association of such witnesses was not possible on the facts and circumstances of a particular case.

(16) In dealing with the provisions of Section 50 of the Act, it cannot, but be observed that, it would be rendering them negatory if the safeguard provided thereby, to the person apprehended, to be

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(1) 1988 (2) Chandigarh Law Reporter 75.

(2) 1989(2) Chandigarh Law Reporter 240.

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searched in the presence of a gazetted officer or magistrate, can be brushed aside on merely the bald statement of a police officer, that such offer was declined by him. As is well-known, the legislature has always been somewhat wary of accepting statements made to the police, as would be apparent from the provisions of Section 162 of the Code of Criminal Procedure, whereby statements made by an accused to the police, in the course of investigation, are made inadmissible and if such statement is a confession, it is also hit by Section 25 of the Evidence Act. The Provisions of Section 50 of the Act have thus to be construed in this context. To give meaning and content to the clear legislative intent underlying the safeguard provided by Section 50 of the Act, cogent and reliable evidence and not merely the statement of a Police Officer, must be brought on record to establish that the person to be searched was informed of his right to be searched in the presence of a gazetted officer or magistrate, but he chose to decline this offer. In *Sudarshan Kumar's case* (supra), it has no doubt been suggested that such offer should be made before two reliable and independent witnesses, but with respect, it would be appropriate and more in consonance with the interest of justice that as a rule of general practice, the person apprehended should be taken before a gazetted officer or magistrate and searched in his presence. The stringent minimum punishment prescribed by the Act clearly renders such a course imperative. Search otherwise than before a gazetted officer or magistrate should, therefore, be the exception and that too for sound and convincing reasons founded upon reliable material on record. The onus of showing that the person to be searched declined such option being upon the prosecution.

(17) Seen in this light, there can be no escape from the conclusion that violation of the provisions of Section 50 of the Act, in the case of the appellant—Amrit Singh, stands writ large. This and the other circumstances, as pointed out earlier render the conviction of the appellant wholly unsustainable and it is accordingly hereby set aside. The bail bonds of the appellant, who is on bail, are hereby discharged and the fine, if paid, is ordered to be refunded to him. This appeal is consequently hereby accepted.

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