

Avtar Singh

Vs

State of Punjab

Criminal Appeal No. 208 of 1981

(S. R. Pandian, M. Fathima Beevi JJ)

26.03.1992

JUDGMENT

1. On a tip off, the police party consisting of PWs 1, 2 along with four constables and one Darshanlal intercepted a taxi bearing Registration No. PNO 1497 in which the appellant was found travelling. The taxi was driven by the driver-cum-owner (PW 3). One briefcase Ex.P 1 which was lying underneath the feet of the appellant was opened by the key furnished by the appellant. Inside the briefcase there was another small attache case Ex. P2 which was also opened by another key furnished by the appellant himself. The attache case was found to contain 9 kilograms of opium wrapped in glazed paper and covered by clothes. The contraband, the clothes, the suitcase and the attache case were all recovered under Ex.PA attested by two witnesses, namely, S. Pal (PW 3) and Darshan Pal (not examined). On this recovery the appellant was prosecuted before the trial court which on finding him guilty of the offence punishable under Section 9 of the Opium Act convicted thereunder and sentenced him to undergo rigorous imprisonment for, a period of three years and pay a fine of Rs. 2,000/- in default to suffer imprisonment for a period of six months.
2. The appellant feeling aggrieved by the judgment of the trial court filed an appeal before the First Appellate Court which affirmed the judgment of the trial court and dismissed the appeal but reduced the sentence of imprisonment from 3 years to 2 years while retaining the fine amount with the default clause.
3. As against the judgment of the First Appellate Court the appellant preferred a revision before the High Court which dismissed the revision in limine. Hence this present appeal.
4. The learned counsel appearing on behalf of the appellant took us through the judgment of the courts below in detail and the evidence of the witnesses and contended that the prosecution has not satisfactorily established the actual and conscious possession of the contraband and that there is violation of Sec. 165(5) and Sec. 100(4) of the Code of Criminal Procedure on account of the non-observance of those provisions.
5. The questions for our consideration are whether the appellant was in actual possession of the opium and whether the seizure of the contraband is within the bounds of law or whether there is any illegality vitiating the entire proceedings of the prosecution. At the outset we may state that there is absolutely no illegality in the proceedings and the submission made by the learned counsel that there is violation of Sections 165(5) and 100(4) of the Code of Criminal Procedure cannot be countenanced. Possession in fact is manifested by the exercise of exclusive control as the object is

capable of. PW 3, though did not support the prosecution case in its entirety has stated that the appellant was the first passenger in his taxi on that day. It is in the evidence of PWs 1 and 2 that the suitcase in which the contraband, namely, opium weighing 9 kilograms was found kept underneath the feet of the appellant himself and the suit-case and the attache case were found locked. The keys for opening the suit-case as well as the attache case were furnished only by the appellant himself. These telling circumstances unmistakably establish that the prosecution has not only proved the possession but also the actual and conscious possession of the contraband. Further the suit-case Ex. P1 was in the physical possession and custody of the appellant. For all the reasons stated above, we see absolutely no reason to interfere with the concurrent findings of fact by all the courts. Hence the appeal is dismissed. Appeal dismissed.

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