

State of Punjab

Vs.

Jasbir Singh and Others

Criminal Appeal No. 1594 of 1995

(K. Ramaswamy, S. B. Majmudar JJ)

28.11.1995

ORDER

1. Leave granted.

2. Having considered the evidence we find it difficult to set aside the order of acquittal recorded by the Additional Sessions Judge. Though the offence involved is of a considerable magnitude of 70 bags containing 34 kgs. of poppy husk, each without any permit/licence, this Court is constrained to confirm the acquittal for the reasons that the mandatory requirements of Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 has not been complied with. Protection given by Section 50 is a valuable right to the offender and compliance thereof intended to be mandatory. In case the police officers had prior knowledge that illegal transport of the contraband is in movement and persons are in unlawful possession and intends to intercept it, conduct search and consequentially to seize the contraband, they are required to inform the offender that he has the right that the search will be conducted in the presence of a gazetted officer or a Magistrate. Thereafter on their agreeing to be searched by the police officers, the search and seizure of the contraband from their unlawful possession would become legal and valid. However, the evidence collected in breach of mandatory requirement does not become inadmissible. It is settled law that evidence collected during investigation in violation of the statutory provisions dose not become inadmissible and the trial on the basis thereof does not get vitiated. Each case is to be considered on its own backdrop. The learned Additional Sessions Judge did not accept the evidence of the police officers on the ground that it was open to them, at the time of the search, to take in writing from the accused that they had no objection to the search being conducted and that they were informed of their right and they waived the search in the presence of a gazetted officer. It is a matter of appreciation of evidence and that having considered the totality of the facts and circumstances, the learned Additional Sessions Judge was not inclined to accept the prosecution case in the absence of anything in writing. The view expressed by the Additional Sessions Judge cannot be said to be unwarranted or unjustified. Under the circumstances, we are constrained to confirm the order of acquittal though the High Court unfortunately did not deal with the case properly.

3. The appeal is accordingly dismissed.