

State of Rajasthan

Vs

Gopal

Criminal Appeal No. 69 of 1992

(G. N. Ray, G. B. Pattanaik JJ)

23.10.1997

ORDER

1. In this appeal, the order of acquittal passed by the Rajasthan High Court, Jaipur Bench on 2-9-1988 in SB Criminal Appeal No. 333 of 1988 is under challenge. The respondent was convicted for the offence under Section 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") by the learned Sessions Judge, Ajmer in Sessions Case No. 80 of 1987. For the aforesaid offence, the respondent-accused was sentenced to 10 years' rigorous imprisonment together with a fine of rupees 1,00,000 in default of payment, further rigorous imprisonment for two years.

2. The prosecution case in short was that on 12-4-1986 the accused was apprehended by Head Constable Amanullah at the platform of Ajmer Railway Station at about 7.45 a.m. When the said Constable had been checking the passengers who had been getting down from the train, the accused tried to avoid the Head Constable, but he was apprehended and interrogated by the said Head Constable and the said Head Constable felt that something was kept in the pocket of the accused. Thereafter a plastic bottle of glucose had been found in possession of the accused and it transpired that it contained opium. Opium weighing 800 gm was recovered from the possession of the accused. Two samples each of 30 gm were taken from such seized opium and such samples were sealed in two packets. One sample was sent to the Forensic Science Laboratory for examination. From the report of the Forensic Laboratory, it transpired that the seized article was opium having 6.02% morphine.

3. In passing the order of acquittal, the High Court has noted that the seizure of the narcotic substance was doubtful because the seal on the sample sent for chemical analysis could not be compared with the seal on the seized article kept in the Police Malkhana because the seal on the sample sent to analyst could not be produced in the Court for verification. Even the seal which was put on the seized article kept in the Police Malkhana could not be ascertained excepting the word "Ajmer". It may be stated here that since the said article had been seized on the railway platform according to the prosecution case, the seal of the Stationmaster had been used, but the Stationmaster was not examined to prove whether the seal put on the seized article and kept in the Police Malkhana really contained the seal of the Stationmaster.

4. The accused was apprehended by the Head Constable and thereafter was taken to the Railway Police Station and the search and seizure had been conducted there. The accused was not given any option to exercise his discretion for being searched in the presence of a magistrate or before a gazetted police officer. Therefore, mandatory provisions of Section 50 had also not been complied with. In the aforesaid facts, the order of acquittal is not required to be interfered with by this Court.

This appeal, therefore, fails and is dismissed. The bail bonds furnished by the respondent shall stand discharged.