

SUPREME COURT OF INDIA

Birakishore Kar

Vs.

State of Orissa

Crl.A.No.69 of 1997

(G. T. Nanavati and S. S. M. Quadri JJ.)

12.08.1999

ORDER

1. The appellant is questioning in this appeal his conviction by the trial Court under Section 50 of the NDPS Act 1985 based upon the finding that he did possess and transport poppy straw without a licence. The High Court has confirmed his conviction after reappreciating the evidence.

2. It was not in dispute that the appellant was travelling by Howrah-Puri Sri Jaganath Express on the night between 18-9-1991 and 19-9-1991 and that when the train had arrived at platform No. 1 of the Balasore Railway Station and it was searched by PW-1 and the Officers accompanying him. The appellant was found lying on a plastic bag in one of the compartments of that train. The said plastic bag was then seized and on verification, it was found containing 10 Kgs. of poppy straw. The only defence raised by the appellant was that the said plastic bag was not found from his possession. The trial Court and the High Court after appreciating the evidence of PW-1 and PW-4 has held that the appellant was in possession of that plastic bag. Some other points were also raised before the High Court but the High Court did not find any substance therein.

3. What is now contended by the learned Counsel for the appellant is that the mandatory requirement of Section 50 of the N.D.P.S. Act, 1985 viz. that the person to be searched should be told about his right to be examined in presence of a Magistrate or a Gazetted Officer was not

complied with in this case. This contention is really misconcieved. In this case it was not the person of the appellat which was searched. He was found sitting on a plastic bag which belonged to him and which contained poppy straw. As pointed out by this Court in State of Punjab v. Baldev Singh: 1999CriLJ3672 Section 50 would come into play only in the case of search of a person as distinguished from search of any premise etc. As we do not find any substance in this appeal, it is dismissed.