SUPREME COURT OF INDIA

State of Haryana

Vs.

Vikram Singh

Crl.A.No.1001 of 2000

(N. Santosh Hegde and Doraiswamy Raju JJ.)

22.01.2002

JUDGMENT

Santosh Hegde,J.

1.Being aggrieved by the judgment of the High Court of Punjab & Haryana at Chandigarh passed in Criminal Appeal No.442-SB/1988, the State of Haryana is in appeal before us. The respondent herein was charged with an offence punishable under Section 18 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (for short 'the Act'), and was tried for the same by the Additional Sessions Judge, Ambala, who found him guilty of the said offence and sentenced him to undergo R.I. for 10 years and to pay a fine of RS.1 lakh. It was further directed that in default of payment of fine, he shall undergo further RI for 5 years.

2. It was the prosecution case that on 24.1.1987 the respondent, when apprehended and searched, was found carrying 15 kg. of opium. The prosecution case further stated that as required under Section 50 of the Act, the respondent was duly informed of his right of being searched before a Gazetted Officer or a Magistrate but he declined that offer, and based on the Panchnama of search and the evidence of the three witnesses, he was found guilty by the learned Additional Sessions Judge and sentenced, as stated above.

3. In appeal, the High Court came to the conclusion that the prosecution has not established that as a matter of fact, the respondent was informed of his right under Section 50. It also noticed that the FIR filed in the case did not contain any averment to the effect that an offer to be searched before a Gazetted Officer or a Magistrate was made, hence, held that the prosecution case, that such an offer was made was an afterthought. It also came to the conclusion that the oral evidence of the prosecution witnesses cannot be relied upon and the Panch witness who was examined, was a stock witness who had earlier, in similar cases, given evidence on behalf of the prosecution and in this case had turned hostile, therefore, it was not safe to rely upon such evidence, accordingly, allowed the appeal and set aside the conviction and sentence imposed on the respondent.

4. As stated above, the State is in appeal before us. We have heard learned counsel for the parties and perused the records. It is an admitted fact that the offer of search as stipulated

under Section 50 of the Act is not supported by any documentary evidence. Both in regard to this factum of offer of search and to establish its case, the prosecution relies upon the oral evidence. In our opinion, the High Court has rightly come to the conclusion that PW-1 who was examined in this regard has turned hostile and has not supported the case of the prosecution. The High Court has also noticed the fact that PW-1 was a stock witness for the Police. That being the case, the High Court felt it was not safe to rely on the evidence of PW-1, the Inspector, and PW-3, the Assistant Sub-Inspector. In such circumstances, we are not persuaded to take a contrary view. More so in the background of the fact, the search and seizure in this case was not proved to be in accordance with law.

5. In the result, we find no infirmity in the impugned judgment of the High Court. Accordingly, this appeal fails and the same is dismissed.