

SUPREME COURT OF INDIA

State of Haryana

Vs.

Pirithi Singh

Crl.A.No.356 of 1998

(B. N. Agarwal and A. S. Lakshmanan JJ.)

22.01.2004

ORDER

1. Heard the parties.

2. The sole respondent was convicted by trial court under Section 18 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (hereinafter referred to as the NDPS Act) and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs. one lakh, in default to suffer further rigorous imprisonment for a period of two years. On appeal being preferred before the High Court of Punjab and Haryana, the conviction of respondent has been set aside and he has been acquitted of the charge. Hence, this appeal by special leave.

3. From a bare perusal of the impugned order it would appear that only ground for setting aside conviction of appellant which weighed with the High Court was that the provisions of Section 50 of the NDPS Act were not complied. In the present case, according to prosecution case and evidence, opium was not recovered from person of the accused but recovered from a bag which he was carrying. It has been submitted that the provision of Section 50 is applicable only in those cases where recovery is from person of the accused and not from the bag carried by him. Reference in this connection, may be made to a decision of this Court in *Kalema Tumba Vs. State of Maharashtra & Anr.*], wherein it was observed that as heroin was found from a bag belonging to the accused, there was no recovery from his person and, therefore, the provision of Section 50 of the NDPS Act shall have no application. In view of this, we are of the opinion that High Court was not justified in acquitting the respondent of the charge.

4. Accordingly, the appeal is allowed, impugned order of acquittal rendered by the High Court is set aside and that of conviction passed by the trial court is restored. Bail bonds of the respondent who is on bail are cancelled and he is directed to be taken into custody forthwith for undergoing the remaining period of sentence.