

SUPREME COURT OF INDIA

Union of India

Vs.

Major Singh

Crl.A.No.353 of 2000

(B. N. Agarwal and A. K. Mathur JJ.)

30.11.2005

JUDGMENT

B. N. Agarwal, J.

1. Heard learned counsel for the parties.

2. The Respondents were convicted by the trial court under Section 8 read with Section 15 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (for short, 'the Act') and each one of them was sentenced to undergo rigorous imprisonment for a period of 15 years and to pay fine of Rs. 1.5 lacs; in default to undergo further imprisonment for a period of one year. On appeal being preferred by the accused persons, the High Court acquitted all the respondents. Hence, this appeal by special leave.

3. The High Court has recorded the acquittal on two counts; firstly, the provisions of Section 50 of the Act and secondly, under Section 42(2) of the Act have not been complied with. So far as Section 50 of the Act is concerned, in the present case, the same shall have no application as the search and seizure was made from a truck and not from person of any of the accused persons. This question has been examined by a Three Judge Bench of this Court in the case of *State of H.P. vs. Pawan Kumar*, (relied on), in which it has been categorically laid down that search of a bag, briefcase or any such article or container which is being carried by a person is not search of a person, as such the provisions of Section 50 of the Act would not apply in case search and seizure is not made from person of the accused. In the present case, as the search and seizure have not been made from the person of the accused but from the truck, the provisions of Section 50 of the Act shall have no application. #

4. Turning now to Section 42(2) of the Act, in this regard, it may be stated that from the prosecution case and evidence it would be clear that search and seizure was made of a public carrier at a public place and 127 bags of poppy straw (opium) was seized from a public carrier. This point is also concluded by a judgment of this Court in the case of *State of Haryana vs. Jarnail Singh and others*, (relied on), in which it has been categorically laid down that if a public conveyance is searched in a public place, the officer making the search

is not required to record his satisfaction as contemplated by the proviso to Section 42 for searching the vehicle between sunset and sunrise. In the case in hand the search was made of a public conveyance at a public place between sunrise and sunset. Therefore, the provisions of Section 42(2) of the Act shall have no application to the case. This being the position, the High Court was not justified in acquitting the respondents and the trial court was quite justified in convicting them.

5. Accordingly, the appeal is allowed, the impugned order of acquittal rendered by the High Court is set aside and conviction and sentence recorded by the trial court against the respondents are restored. Bail bonds of the respondents who are on bail are cancelled and they are directed to be taken into custody forthwith to serve out the remaining period of sentence for which compliance report must be sent to this Court within a period of one month.