

# SUPREME COURT OF INDIA

State of Haryana

Vs.

Mai Ram son of Mam Chand

Crl.A.No.211 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

31.07.2008

## JUDGMENT

### **Dr. Arijit Pasayat, J.**

1. Challenge in this appeal is to the judgment of the learned Single Judge of the Punjab and Haryana High Court, directing acquittal of the respondent (hereinafter referred to as the accused'). The respondent was found guilty of offence punishable under Section 17 of the *Narcotic Drugs Psychotropic Substance Act, 1985* (in short `NDPS Act') by learned Additional Sessions Judge III, Hissar. He found the accused guilty of the offence punishable under Section 17 of the Act and was sentenced to undergo imprisonment for 10 years

2. Background facts giving rise to the trial are as follows:

On 3.1.1988, Ishwar Singh, Sub Inspector along with ASI Ram Kishan and 3 Constables was present at platform No.3 near Railway Bridge. At about 8.30 p.m. one train came from the side of Sadalpur, Chandgi Ram PW was also with the police party at that time. Accused Mai Ram alighted from that train and started walking towards the engine. He was carrying one bag (Ex.P1) in his right hand. On suspicion, he was stopped. First of all, the Sub Inspector served him with a notice Ex. PA and told him that he (S.I.) suspected that he (accused) was carrying some contraband article like opium and Ganja etc. and if he (accused) wanted he could be searched before the Magistrate or the Gazetted Officer. But the accused gave in writing that he (S.I.) could search him himself and the accused also made an endorsement Ex.PA/1 to this effect. Then the Sub Inspector gave his search to the accused and there after searched bag (Ex.P1) carried by the accused which contained 1-1/2 kgs. of opium, without any licence or permit. The S.I. took 25 grams of opium as a sample out of the recovered opium and put the remaining opium in tin box (Ex.P.2). He then sealed the sample and tin-box (Ex.P2) with the seal of IS and the seal after use was given to Chandi Ram PW. The articles were taken into possession vide memo Ex.P.3 attested by the PWs. Thereafter, the personal search of the accused was effected and a ticket Ex.P3 and a cash amount of Rs.45/- were also recovered from his possession which were

taken into possession vide the recovery memo Ex.PC attested by the PWs and thumb marked by the accused. The accused was arrested after telling him the grounds of arrest. Rueda Ex.PD was sent to the Police Station on the basis of which formal F.I.R./ Ex. PD/1 was recorded. Rough site plan Ex.PE with correct marginal notes was prepared. Statement of witnesses was recorded. After returning to the Police Station, the case property was deposited with the MMC with the seals intact. The S.I. also telephonically informed the Dy. S.P. regarding seizure of opium. After the investigation, the accused was challenged by the Sub Inspector Ishwar Singh.

3. Learned Trial Judge found that the prosecution established its case and accordingly convicted and imposed sentence as aforesaid.

4. An appeal was filed before the Punjab and Haryana High Court. Learned Single Judge allowed the appeal holding that there was violation of the provisions of Section 50 of the Act. It was noted that elaborate reasons were not recorded about the suspicion about the accused being in possession of opium. It was also noted that the recovery was said to have been effected at the railway station and many independent witnesses would have been available. But only police officials were examined as PWs.1 and 2. There was no evidence to show that the seals were intact.

5. Learned counsel for the appellant-State submitted that Section 50 has no application because there was no question of personal search and the search was of bag which was carried by the accused. Additionally, there was no requirement in law to record the reasons for the suspicion. Further, the accused was apprehended when he got down at the railway station about 8.30 p.m. PWs 1 and 2 categorically stated in their evidence that no other person was willing to be a witness. Merely because the official's witnesses were examined, that cannot be a ground to suspect the prosecution version. There was not even a suggestion during the examination of the witnesses that the seals were not intact. Therefore, the High Court's reasoning and conclusions are not sustainable.

6. Leaned counsel for the respondent-accused on the other hand submitted that the respondent is presently about 70 years old. The quantity stated to have been recovered is about 1.5 kilos. Subsequently, there has been amendment and by notification dated 2.10.2001 the commercial quantity is 2.5 kg.

7. It is submitted that after 20 years, and having already suffered some year of custody, respondent should not be asked to surrender to custody.

8. The Trial Court record categorical finding that the requisite procedure was followed and even if there was no requirement for giving a notice in terms of Section 50 of the Act as no personal search was made, requisite procedures were followed. There is nothing in law that elaborate reasons for entertaining a suspicion about an accused, carrying contraband articles should be recorded. The High Court was clearly in error in holding that the reason for the suspicion was not recorded. So far as the examination of only official witness is concerned, it is to be noted that the only independent witness who was examined to speak about the

seizure did not support the prosecution version. No material was brought on record by the defence to discredit the evidence of the official witnesses. The ultimate question is whether the evidence of the official witness suffers from any infirmity. In the instant case nothing of the nature could be pointed out. Further PWs 1 and 2 categorically stated that no other person was willing to depose as witness. Therefore, the High Court was clearly in error in holding that the prosecution version became vulnerable for non-examination of persons who were not official witnesses.

9. It is to be noted that Trial Court found that the seals were intact as deposed by the official witnesses. The High Court came to an abrupt conclusion that there was no evidence to show that the seals were intact.

10. As rightly submitted by learned counsel for the State no such question was raised and on the contrary the Trial Court found that the evidence of official witnesses clearly establish that the seals were intact.

11. So far as the applicability of Section 50 is concerned, the High Court's view is clearly indefensible. Section 50 reads as follows:

"50. Conditions under which search of persons shall be conducted. -

(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the gazetted officer or the Magistrate referred to in sub-section (1).

(3) The gazetted officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female."

12. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. [(See *Kalema Tumba v. State of Maharashtra and Anr.*<sup>1</sup>, *State of Punjab v. Baldev Singh*<sup>2</sup> and *Gurbax Singh v. State of Haryana*<sup>3</sup>]. The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh's* case (supra). A similar question was examined in *Madan Lal and Anr. v. State of Himachal Pradesh*<sup>4</sup>.

13. Above being the position, the finding regarding non-compliance of Section 50 of the Act is also without any substance.

14. Looked from any angle the judgment of the High Court is clearly indefensible and is set aside.

15. Respondent shall surrender to custody forthwith to serve the remainder of sentence.

<sup>1</sup>(*JT 1999 (8) SC 293*)

<sup>2</sup>(*1999 (6) SCC 172*)

<sup>3</sup>(*2001 (3) SCC 28*)

<sup>4</sup>(*2003 (6) Supreme 382*)