

**SUPREME COURT OF INDIA**

Bhola Singh

Vs.

State of Punjab

Crl.A.No.448 of 2006

(Harjit Singh Bedi and Chandramauli Kr.Prasad,JJ.,)

08.02.2011

**ORDER**

1. We have heard the learned counsel for the State. This appeal by way of special leave arises out of the following facts:

“On 22nd November, 1999 PW.6-Sub-Inspector Manohar Singh along with other police officials was present on the bridge over the seepage drain near village Akkanwali. One Janak Raj, was also along with them. At about 7.00 a.m. Truck No. RJ-31 G-0859 driven by accused Bansilal came from the side of village Akkanwali. The truck was stopped on the signal of Sub-Inspector Manohar Singh and on enquiry the Driver disclosed his name as Bansilal son of Neki Ram, resident of Mira Khan Ki Dhani, Village Maur Bingar, Police Station, Fatehabad. Three other persons namely Nirbhai Singh, Gora Singh and Gurmit Singh were found sitting on the bags which were lying in the body of the truck. It also came to the notice of the Sub-Inspector that Gora Singh and Gurmit Singh were the brothers-in-law of Nirbhai Singh.

2. An offer under Section 50 of the Narcotic Drugs and Psychotropic Substances Act ( hereinafter called the `Act') was made to the accused. They opted to be searched in the presence of a Gazetted Officer. DSP Baljit Singh (PW.1) was then requested to reach the spot. The truck was thereafter searched and 16 bags of poppy husk each containing 30 kg. were found in the truck. Samples etc. were taken and sent to the laboratory for analysis which opined that the contraband was indeed poppy husk. It also transpired during the investigation that Bhola Singh, the appellant before us, was a co-owner of the truck. He along with others was accordingly charged for an offence punishable under Section 15 of the Act whereas Bhola Singh and Bansilal were also charged under Section 25 thereof. The Trial Court on a consideration of the evidence convicted the accused and sentenced them to undergo 12 years RI each and a fine of rupees one lakh and in default of payment, RI for two years.

3. The matter was thereafter taken in appeal by the accused. The High Court dismissed the appeal and it is the admitted case that the SLP filed by the accused other than the appellant herein has also been dismissed by this Court.

4. We have gone through the judgment of the Trial Court and High Court insofar as Bhola Singh is concerned. We see that he was not present at the spot and the allegation against him is that he was the co-owner of the truck and that while purchasing the truck he had given his residential address in Rajasthan whereas he was a resident of Haryana. The High Court has accordingly drawn a presumption under Section 35 of the Act against him to hold that by giving a fake address his culpability was writ large on the facts of the case.

5. Mr. T.N. Razdan, the learned counsel for the appellant has raised only one argument before us during the course of the hearing. He has pointed out that there was no evidence that the appellant had been involved in the smuggling of contraband and even if the prosecution story that he was the co-owner of the truck and had given a wrong address while purchasing the truck was correct, these factors could not fasten him with any liability under Sections 15 and 25 of the Act. He has also submitted that the "culpable mental state" and the conditions for the applicability of Section 35 of the Act were not made out.

6. Mr. Kuldip Singh, the learned counsel for the State of Punjab, has however supported the judgment of the Trial Court. We however repeatedly asked the learned counsel as to whether there was any evidence as to the involvement of the appellant, other than that he was the co-owner of the truck and that he had given a wrong address. The learned counsel fairly stated that there was no other evidence against the appellant.

7. We have considered the arguments advanced by the learned counsel. We see that Section 25 of the Act would not be applicable in the present case as there is no evidence to indicate that Bhola Singh the appellant had either knowingly permitted the use of the vehicle for any improper purpose. The sine qua non for the applicability of Section 25 of the Act is thus not made out. The High Court has however drawn a presumption against the appellant under Section 35 of the Act. This provision is reproduced below:

"35. Presumption of culpable mental state:- (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation:-In this section "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact. (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.: While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in

*Noor Aga vs. State of Punjab and Anr*<sup>1</sup>. while upholding the constitutional validity of Section 35 observed that as this Section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come in to play. Applying the facts of the present case to the cited one, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting Narcotics still lay on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidence which the prosecution seeks to rely on is the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana while registering the offending truck cannot by any stretch of imagination fasten him, with the knowledge of its misuse by the driver and others. We accordingly allow the appeal, set aside the judgments of the Courts below and order the appellant's acquittal. His bail bonds shall stand discharged.

Judgment Referred.

<sup>1</sup>(2008) 16 SCC 0417