

CASE NO.:
Appeal (crl.) 452 of 2003

PETITIONER:
Megh Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 15/09/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Appeal preferred by appellant-Megh Singh questioning his conviction under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act') was dismissed by learned Single Judge of the Punjab and Haryana High Court by the impugned judgment. He has questioned the legality thereof in the present appeal.

The compass of controversy as unfolded during trial by the prosecution is as follows:

On 22.2.1993, police party headed by SI Chanan Singh, In-charge of Police Station Dharamgarh (PW 1/B) was going on kacha road towards drain from village Dharamgarh in connection with patrol duty and when they reached near brick kiln, Santa Singh son of Bachan Singh met them and joined in the police party. When the police party was little short of the drain, they saw three persons sitting on gunny bags. Two of them fled from the spot and the third one, accused-appellant Megh Singh was apprehended. He disclosed the names of the persons who had run away to be Baldev Singh and Pillu. Twenty-five bags containing poppy husk were found at the spot. Two samples of 250 gms. were taken from each bag and after taking the samples, weight of bags was found to be 36 kgs. 500 gms. each. All the fifty samples and 25 bags of poppy husk were sealed with seal 'CS' which after use was handed over to HS Mithu Singh (PW-2). The case property was taken into possession vide recovery memo Exhibit PC attested by witnesses including Santa Singh. On the basis of ruqa Exhibit PE. F.I.R. Exhibit PE/1 was registered. Baldev Singh who had run away from the spot was arrested on 27.2.1993 and Pillu Singh was arrested on 10.3.1993. Case property was produced before Baldev Singh, SHO of Police Station, Sunam (PW-3) who verified the investigation and sealed the same with seal 'BS'. On chemical examination, the samples were found to be of poppy husk vide report Exhibit PK.

Trial Court after considering the evidence on record held that the accusations against appellant-Megh Singh have been found established; accordingly convicted him under Section 15 of the Act and sentenced him to undergo RI for 10 years and to pay a fine of Rs.1 lakh with default condition of further RI for 1 year. Appellant challenged the conviction and sentence before the High Court. Primary stand was that accused had been arrested on 19.2.1993 and telegram had been sent in that regard to the police officials. It was contended that when benefit of doubt has been given to the other co-accused persons, there was no basis for convicting the accused-appellant. There was no material to show any conscious possession which is sine qua non for conviction under Section 15 of the Act. In any event, requirements of Section 50 were not

complied with. High Court discarded the plea regarding arrest of Megh Singh on 19.2.1993 on the ground that the evidence on record establishes that the application/telegram was received on 24.2.1993 and merely because an earlier date was indicated, it cannot be said that the accused was really arrested on 19.2.1993. Coming to the plea of conscious possession it was held that the prosecution had produced ample evidence that accused was in physical possession and in terms of Section 54 of the Act conscious possession was presumed unless proved to the contrary. Accused has failed to do so. Therefore, conscious possession was established. Accordingly the appeal filed by the accused was dismissed. It was further held that Section 50 has no application because there was no personal search of the applicant. Consequentially conviction and sentence were upheld.

Learned counsel appearing for the accused-appellant submitted that the facts of the case greatly resemble with that of Avtar Singh and Ors. v. State of Punjab (2002 (7) SCC 419). Since conscious possession has not been proved, the conviction of the accused-appellant cannot be stand on a different footing from those co-accused who have been acquitted. Non-compliance with requirements of Section 50 of the Act vitiates the conviction.

In response, learned counsel for the respondent-State submitted that conscious possession has been established and by application of logic of Section 54 of the Act when physical possession is established, there is presumption of conscious possession. Merely because co-accused persons have been acquitted that cannot be a factor to hold the accused-appellant innocent. It is submitted that since there was no personal search, Section 50 of the Act has no application.

Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record is that the accused was sitting atop gunny bags containing the contraband articles.

Section 20(b) makes possession of contraband articles an offence. Section 20 appears in chapter IV of the Act which relates to offence for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

It is highlighted that unless the possession was coupled with requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. (AIR 1980 SC 52), to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

As noted in Gunwantlal v. The State of M.P. (AIR 1972 SC 1756) possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the person whom physical possession is given holds it subject to that power or control.

The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL)). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat

which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness (1976 (1) All ER 844 (QBD)).

Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in Madan Lal and Anr. v. State of Himachal Pradesh (2003 (6) SCALE 483).

In the factual scenario of the present case not only possession but conscious possession has been established. It has not been shown by the accused-appellant that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.

Now comes the question whether there was non-compliance of Section 50 of the Act.

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. (JT 1999 (8) SC 293), The State of Punjab v. Baldev Singh (JT 1999 (4) SC 595), Gurbax Singh v. State of Haryana (2001(3) SCC 28). 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). Above being the position, the contention regarding non-compliance of Section 50 of the Act is also without any substance.

The decision in Avtar Singh and Ors. v. State of Punjab (2002 (7) SCC 419) was rendered in a different factual background. In that case the articles were being carried in a truck. There were several persons in the truck. It had not been established by evidence that any one of them had any conscious possession. That also was not the only factor taken note of. While the accused was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Code'), the essence of accusations was not brought to his notice, more particularly with possession aspect. It was also noticed that the possibility of the accused persons being labourers of the truck was not ruled by the evidence. Since the decision was rendered on consideration of several peculiar factual aspects specially noticed in that case, it is of no assistance to the accused also.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based.

We find no substance in this appeal, which deserves dismissal, and we so direct.