

CASE NO.:  
Appeal (crl.) 1067 of 2005

PETITIONER:  
STATE OF RAJASTHAN

RESPONDENT:  
DAULAT RAM

DATE OF JUDGMENT: 23/08/2005

BENCH:  
B.P. SINGH & S.H. KAPADIA

JUDGMENT:  
J U D G M E N T  
[Arising out of SLP(Crl.)No.1114 of 2004]

Heard counsel for the parties.  
Delay condoned.  
Special leave granted.

This appeal by special leave has been preferred by the State of Rajasthan against the judgment and order of the High Court of Judicature for Rajasthan at Jodhpur dated 25th April, 2003 in S.B.Criminal Appeal No.261 of 2000. The High Court by its judgment and order allowed the appeal preferred by the respondent and set aside the order of conviction and sentence passed by the Special Judge, NDPS Cases, Chittorgarh dated 5th May, 2000. The trial court had convicted the respondent of the offence under Section 8/18 of the NDPS Act and sentenced him to undergo 12 years rigorous imprisonment and to pay a fine of rupees one lakh, in default of payment of fine, to further undergo one year's rigorous imprisonment.

The facts of the case are that Mangilal, SHO police station, Nimbahera received a secret information at about 4.00 a.m. on 2nd July, 1997 from an informer to the effect that the respondent was carrying 16 kgs. of contraband opium and was likely to pass through Arnoda Bandh with a view to sell that opium. He recorded the information received in the Rojnamacha and sent copy thereof to the Superintendent of Police and the Deputy Superintendent of Police, Chittorgarh and the Circle Officer, Nimbahera through Ramdayal, Constable(PW-2). He himself proceeded towards the spot indicated by the informant along with PW3 Rais Mohd. Constable and other Constables. They proceeded in a jeep which was driven by Shakir Hussain and on the way they picked up 2 panch witnesses, namely, Om Prakash PW-13 and Bherulal PW1. PW-16 Hari Singh, Dy. Superintendent of Police, Chittorgarh and Prithvi Singh, PW9, SHO, police station, Chanderiya had also been informed. When Mangilal, PW-8 reached the spot, he found a person carrying a bag on his head going towards Karpa Ram Ji Ki Khedi. He was accosted by the police party in the presence of PW16, Dy.S.P. and PW9 S.H.O. Police Station, Chanderiya who had also reached that spot. That person disclosed his name as Daulat Ram (respondent herein). He was informed of the fact that he was suspected of carrying contraband opium and that he was to be searched. He was also given an option under Section 50 of the NDPS Act and asked by PW8 Mangilal as to whether he wanted to be searched before a Magistrate or a Gazetted officer or by PW8 Mangilal, SHO himself. The respondent agreed to be searched by PW8 Mangilal and did not opt to be searched before a Gazetted officer or a Magistrate. The respondent who was carrying the bag on his head was searched. The bag which he was having on his head was also opened and found to contain 2 polythene bags containing some substance, brown-black in colour. On being tested, it was found to be opium. The respondent had no valid license to possess opium. Thereafter, necessary steps were taken to prepare samples which were duly sealed and sent for chemical examination to the forensic laboratory, which submitted a report adverse to the respondent to the following effect:

"On chemical and micro-chemical examination, each of the samples contained in packets marked A1 and B-1 gave positive test for the major chemical constituents of coagulated juice of opium poppy and the sample marked A1 and B-1 were found to contain 5.32% and

5.26% morphine respectively."

The respondent was put up for trial before the Special Judge, NDPS Cases who found him guilty of the offence under Section 8/18 of the NDPS Act. The appeal preferred by the respondent, as noticed earlier, was allowed by the High Court and he was acquitted of the charges levelled against him.

The judgment of the High Court proceeds on the basis that if a bag carried by a person on his head is searched and found to contain contraband opium, it would amount to a personal search, and, therefore, the provisions of Section 50 of the NDPS Act would be applicable.

In the instant case, the High Court held that the respondent was carrying a bag on his head which was searched and found to contain contraband opium. According to the High Court this amounted to a personal search of the respondent and, therefore, Section 50 of the NDPS Act was attracted. The High Court considered the evidence on record and came to the conclusion that the option given to the respondent under Section 50 of the NDPS Act was only a partial option and, therefore, there was no proper or strict compliance of the mandatory provisions of Section 50 of the NDPS Act. Consequently, it found that the respondent was entitled to an acquittal.

The question as to what constitutes personal search within the meaning of Section 50 of the NDPS Act came up for consideration by a Bench of this Court in the case of State

of H.P. Vs. Pawan Kumar [2005 (4) SCC 350], wherein it has been held:

"The word "person" has not been defined in the Act. Section 2(xxix) of the Act says that the words and expressions used herein and not defined but defined in the Code of Criminal Procedure have the meanings respectively assigned to them in that Code. The Code of Criminal Procedure, however, does not define the word "person". Section 2(y) of the Code says that the words and expressions used therein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that Code. Section 11 of the Indian Penal Code says that the word "person" includes any company or association or body of persons whether incorporated or not. Similar definition of the word "person" has been given in Section 3(42) of the General Clauses Act. Therefore, these definitions render no assistance for resolving the controversy in hand. ....Therefore, the most appropriate meaning of the word "person" appears to be - "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear. ....A bag, briefcase or any such article or container, etc., can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder

or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in section 50 of the Act.

In view of the principles laid down in the aforesaid judgment of this Court, there is no scope for the argument that in the facts and circumstances of this case, the provisions of Section 50 of the NDPS Act were attracted. The judgment and order of the High Court must, therefore, be set aside.

Counsel for the appellant submitted that a person cannot be compelled to give evidence against himself. He submitted that once the police had accosted the respondent, who was suspected of possessing contraband opium, he must be deemed to be under arrest, and if he was under arrest, any confession made by him cannot be used against him. We do not find that in this case, the respondent was under arrest merely because he was questioned by the police on suspicion. Moreover, there is nothing on record to suggest that he was compelled to make a confession. The submission that compelling a person to be searched amounts to confession must be rejected. We do not find any other reason to support the judgment of acquittal passed by the High Court.

We, therefore, set aside the impugned judgment and order of the High Court and restore the judgment and order of the Special Judge, NDPS Cases, Chittorgarh dated May 5, 2000.

The appellant shall be taken into custody forthwith to serve out the remainder of the sentence. The appeal is accordingly allowed.