

1994 Supp (2) Supreme Court Cases 276 : 1994 Supreme Court Cases (Cri) 1229

(BEFORE K. JAYACHANDRA REDDY AND YOGESHWAR DAYAL, JJ.)

SURAJMAL KANIA LAL SONI . . Appellant;

Versus

STATE OF GUJARAT . . Respondent.

Criminal Appeal No. 677 of 1990[±], decided on May 12, 1994

A. Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 42(1) — Mere some vague information passed on to the officer conducting search and seizure not required to be reduced into writing

(Para 4)

B. Narcotic Drugs and Psychotropic Substances Act, 1985 — Ss. 50 and 57 — Whether the police officer before making search informed the accused that he had a right to be taken to a Gazetted Officer for conducting search and whether the police officer sent a report to the higher authorities as required under S. 57 — Questions being of fact not allowed to be raised for the first time in appeal before the Supreme Court — Practice and procedure

(Para 6)

State of Punjab v. Balbir Singh, (1994) 3 SCC 299 : 1994 SCC (Cri) 634 : JT (1994) 2 SC 108, relied on

C. Constitution of India — Art. 136 — Concurrent findings of lower courts that the accused was found in possession of a rexine bag containing opium — No interference by Supreme Court called for

(Para 5)

Appeal dismissed

S-M/13096/SR



Advocates who appeared in this case:

S.K. Gambhir, Advocate, for the Appellant;

Anip Sachthey, Advocate, for the Respondent.

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J.— The appellant Surajmal Kania Lal Soni was convicted by the trial court under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short) and sentenced to undergo RI for 10 years and to pay a fine of Rs 1,00,000 in default of payment of which to undergo RI for three years for being in illegal and unauthorised possession of 9 kgs and 75 gms opium. The appeal preferred by him was dismissed by the High Court.

2. The prosecution case is as follows. Police Inspector P.S. Patil of Navapura Police Station, on information from some informant, kept watch along with his staff members near Kasam Dula's Dargah at Bagikhana Road, Vadodara. At about 10 p.m. the appellant was seen proceeding in a suspicious manner. He was stopped and he was asked to give his name and a search was made and his rexine bag was searched in which the opium was found. The appellant had no pass or permit. A panchnama was

duly prepared. The samples were sent to the Chemical Examiner and after receiving his report, the charge-sheet was laid.

3. The appellant in his statement under Section 313 CrPC stated that he was falsely implicated. Both the courts below accepted the prosecution case and convicted him.

4. In this appeal the main submission is that the Police Inspector did not reduce the information into writing and therefore the mandatory provision has been violated. It must be noted that according to the Police Inspector, only some vague information was passed on to him. No informant as such came and gave the information which as per the relevant section was to be reduced into writing.

5. The learned counsel appearing for the appellant also submitted that there is no clinching evidence that the appellant was in possession of the opium. This is purely a question of fact. The evidence adduced by the prosecution is to the effect that the opium was found in the rexine bag and it has been accepted by both the courts below and we see no grounds to come to a different conclusion.

6. The only other important submission made was that there is no proof that Section 50 of the Act has been complied with. According to the learned counsel, the police officer who searched did not say that he informed the accused that he has got a right to be taken to a Gazetted Officer for conducting the search. This Court in *State of Punjab v. Balbir Singh*¹ has pointed out that whether there was compliance or not, would be a question of fact. No foundation has been laid in the cross-examination of the Police Inspector as to whether the police officer informed the accused as required under Section 50 of the Act. The learned counsel also submitted that there was no compliance of Section 57 namely that there is no material to show that the Police Inspector has sent a report to the higher authorities as required under Section 57 of the Act.

7. These are all questions which have been raised for the first time in this Court and to a large extent they depend on the evidence adduced and the basis



giving scope for such contentions. We see no material on the basis of which these contentions can be raised at this belated stage. Only appreciation of evidence is involved in this appeal and both the courts below have accepted the prosecution evidence as mentioned above. We see no merits in this appeal. It is accordingly dismissed.

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[†] From the Judgment and Order dated 22-1-1990 of the Gujarat High Court in CrI. A. No. 72 of 1989

¹ (1994) 3 SCC 299 : 1994 SCC (Cri) 634 : JT (1994) 2 SC 108