

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Cr.Acq.Appeal No. D-123/2010

Date of order: - 29.10.2014

State of J&K and ors.

v

Surinder Singh and ors.

Coram:

Hon'ble Mr. Dhiraj Singh Thakur, Judge

Hon'ble Mr. Bansi Lal Bhat, Judge

Appearing counsel:

For the Appellant petitioner(s) : Mr. Mohd. Salim Malik, Dy.AG

For the respondent(s) : Mr. Sachin Gupta, Adv. and

Mr. Varut Gupta, Adv.

Appearing counsel:

For appellant(s) : Mr. Gagan Basotra, Sr. AAG

For respondent(s) :

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|----|---|---------|
| i) | Whether approved for reporting in Digest/Journal/Media | Yes/No. |
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| ii) | Whether approved for reporting in Digest/Journal | Yes/No |
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Per Bansi Lal Bhat-J

This appeal is directed against the judgment dated 07.05.2010 passed by learned Principal Sessions Judge, Kathua in case titled “***State v. Surinder Singh and ors***” by virtue whereof respondents (hereinafter referred to as the ‘accused’) have been acquitted of offence under Sections 8/15/20 NDPS Act.

The prosecution case is that on 10.10.2004, on the basis of specific inputs, a raid was conducted on the residential house of accused. Charas weighing 250 grams each was allegedly recovered from personal search of accused Surinder Singh and Surjit Kour. The house search yielded 30 Kg poppy straw and 2.5 kg charas. The

contraband was seized and sealed on spot. SHO sent a docket to Police Station Kathua, based whereon case under FIR No. 271/2004 for commission of offence under Sections 8/15/20 NDPS Act was registered. The investigation culminated in filing of chargesheet against the accused, who pleaded not guilty to the charges framed against them and claimed to be tried. The prosecution has adduced evidence to bring home guilt of the accused. On consideration of the evidence adduced at the trial, learned Sessions Judge acquitted the accused of charges framed against them.

Heard and considered.

Admittedly, SHO had prior information regarding possession of charas and poppy straw by accused for the purpose of sale and it was on the basis of such information that he organized raid in the house of accused. Accused Surinder Singh and Surjit Kour were subjected to personal search and charas weighing 250 grams is alleged to have been recovered from each of them. This is said to have preceded the house search yielding consignment of poppy straw and charas. Since personal search of the above named two accused was conducted on the basis of prior information, it was imperative upon the searching Officer to apprise the accused of their statutory right of being searched in presence of designated Gazetted Officer or a Magistrate. The factum of giving a meaningful option to the accused in this regard has to be established by prosecution at the trial. This could be done by proving the memo of option prepared as a contemporary record of the event by

the searching Officer. It is well settled that non-compliance of the mandatory provisions of Section 50 of NDPS Act in regard to providing of meaningful option to the accused to be searched in presence of designated Gazetted Officer or a Magistrate goes to the root of the matter and failure to adhere to the same renders the search illegal. It is also not disputed that compliance of the statutory requirement cannot be presumed. Learned Sessions Judge has rightly observed in the impugned judgment that the provision of Section 50 of NDPS Act have not been complied with.

Learned Sessions Judge found that the entire exercise of search and seizure of contraband was shrouded in mystery and the statutory safeguards had been observed in breach. He has referred to the testimony of witnesses in this regard to arrive at the conclusion that the entire exercise of recovery and seizure of contraband from possession of accused was doubtful. It appears that the contraband was allegedly seized on 10.10.2004 and the same was received in FSL on 08.11.2004. There is no evidence on record to show where the seized contraband and samples were kept during the intervening period of one month. Prosecution has led no evidence to prove that after seizure of contraband and taking of representative samples, the same were kept in Malkhana in safe custody. In absence of link evidence it is difficult to hold that the samples examined in FSL represented the substance recovered from the accused.

Viewed in the context of afore-stated considerations, we find no substantial and compelling reasons to take a

view different from one taken by learned Trial Judge on appreciation of evidence. The findings recorded by learned Sessions Judge are justified and the impugned judgment does not suffer from any legal infirmity.

The appeal is, accordingly, dismissed.

(Bansi Lal Bhat) (Dhiraj Singh thakur)

Judge

Judge

Jammu,
29.10.2014
B.Ram