RAM SINGH

v.

CENTRAL BUREAU OF NARCOTICS

(Criminal Appeal Nos. 451-452 of 2005)

APRIL 28, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985.

ss. 8 and 18—'Conscious possession'—Recovery of opium from a room belonging to a hotel—Conviction of the servant of the hotel on the basis of his confessional statements that he brought the opium to the hotel from the house of its owner on his direction and opium tablets were sold to truck drivers—Affirmed by High Court—Held: Control over the goods is one of the tests to ascertain conscious possession so also the title – A servant of a hotel cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control – There is no evidence on record to suggest that the accused was in occupation of the room from where opium was recovered – Further, the evidence clearly points out that title to the opium vested in the owners of the hotel – In the face of the state of evidence it is difficult to hold that the accused was in conscious possession of the opium—Conviction and sentence of accused set aside—Evidence Act, 1872—ss.25 and 26.

EVIDENCE ACT, 1872

ss. 25 and 26 – Confession made to officer of Central Bureau of Narcotics—Held: The officers of the Central Bureau of Narcotics are not police officers within the meaning of ss.

A *25 and 26 of the Evidence Act and, therefore, confessions made before them are admissible in evidence – Code of Criminal Procedure, 1973—s. 173.*

Confession – Evidentiary value of – HELD: A confession, B *if it is voluntary, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of the accused – However, before solely acting on confession, as a rule of prudence, the court requires some corroboration but as an abstract proposition of law it cannot be said that a conviction cannot be maintained solely on the basis of the* C *confession made u/s 67 of the Act.*

The appellant, who was working as a servant in a hotel, was arrested in connection with recovery of 2.1 kg. of opium from a room adjoining the kitchen of the hotel. D **While in custody of the Investigating Officer, namely, the Inspector, Central Bureau of Narcotics (P W-8), the appellant made two confessional statements (Ext. P-12 and Ext. P-15) to the effect that he had been working in the hotel for two months and he brought the opium to the** E **hotel from the house of its owner on his direction; and that the opium tablets used to be sold to the truck drivers. The trial court held that the appellant was in possession of the opium and, accordingly, convicted him u/s 8 read with s.18 of the Narcotic Drugs and Psychotropic** F **Substances Act, 1985 and sentenced him to 10 years RI and to pay a fine of Rs. 1 lac. The High Court affirmed the conviction and the sentence.**

In the instant appeal filed by the accused, the questions for consideration of the Court were: (i) whether G **the confessions made before the officers of the Central Bureau of Narcotics were admissible in evidence; (ii) whether the confessions made were voluntary in nature and if so without corroboration, could it form the basis**

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for conviction; and (iii) whether the appellant could be said to be in possession of the opium or selling the same. A

Allowing the appeals, the Court

HELD: 1.1 The officers of the Central Bureau of Narcotics are not police officers within the meaning of ss. 25 and 26 of the Evidence Act, 1872 and, therefore, confessions made before them are admissible in evidence. [para 10] [977-A-B] B

1.2 The important attribute of police officer is not only to investigate but also to launch prosecution by filing a report or charge-sheet. True it is that s. 53 of the Narcotic Drugs and Psychotropic Act, 1985, confers powers on the Central Government to invest officers of the specified categories, the powers of an officer-in-charge of police station, but that itself shall not make them the police officers within the meaning of ss. 25 and 26 of the Evidence Act. The power to submit report u/s 173 of the Code of Criminal Procedure, 1973 is necessary to make the officers of the Central Bureau of Narcotics police officers within the meaning of ss.25 and 26 of the Evidence Act. The officers with whom lie the powers of search, seizure and investigation under the Act have not been conferred with the power to submit report u/s 173 of the Code. Such officer is required to lay complaint in the Court of Special Judge for prosecuting an accused. Thus, the confessions made by the appellant before PW.6 and PW.8 are admissible in evidence and cannot be thrown out of consideration. [para 8 and 10] [975-A-E; 977-B] C D E F G

Raj Kumar Karwal vs. Union of India and others, 1990 (2) SCC 409; and *Kanhaiyalal vs. Union of India,* 2008 (4) SCC 668 – relied on

2.1 It is evident from s.24 of the Evidence Act that a H

A **confession made by an accused is rendered irrelevant in criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise with reference to the charge against the accused. A confession, if it is** B **voluntary, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of the accused. However, before solely acting on confession, as a rule of prudence, the court requires some corroboration but as an abstract proposition of law it** C **cannot be said that a conviction cannot be maintained solely on the basis of the confession made u/s 67 of the Act. [para 12] [977-F-H; 978-A]**

2.2 When an accused is made aware of the confession made by him and he does not make complaint D **within a reasonable time, the same shall be a relevant factor to adjudge as to whether the confession was voluntary or not. In the instant case, the appellant was produced before the court on several dates and at no stage he made any complaint before the Special Judge** E **of any torture or harassment in recording the confession. It is only when his statement was recorded u/s 313 CrPC that he retracted and denied making such a confession and went to the extent of saying that his signatures were obtained on blank pages. In the facts and circumstances** F **of the case, the confessional statements made by the appellant were voluntary in nature and could form the basis for conviction. [para 13] [978-D-G]**

M. Prabhulal v. Assistant Director, Directorate of G *Revenue Intelligence,* **2003 (8) SCC 449 – relied on.**

3.1 In sum and substance the confession of the appellant is that he was working in the hotel for the last two months and brought the opium from the house of the hotel-owner to the hotel, where it was being sold in

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tablets to the truck-drivers. In the confession appellant has not stated or for that matter none of the witnesses have deposed that he was involved in selling the opium-tablets. Therefore, the appellant cannot be held guilty for selling opium. [para 15] [980-B-C]

3.2 It is trite that to hold a person guilty, possession has to be conscious. Control over the goods is one of the tests to ascertain conscious possession so also the title. Once an article is found in possession of an accused it could be presumed that he was in conscious possession. A servant of a hotel cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control. In the facts of the instant case, it is difficult to hold that opium was in possession of the appellant. There is no evidence on record to suggest that the appellant was in occupation of the room from where opium was recovered. Further, the evidence clearly points out that title to the opium vested in the owners of the hotel. The confession given by the appellant was only that he was servant of the owners of the hotel from where the opium was recovered. In the face of the state of evidence it is difficult to hold that the appellant was in conscious possession of the opium. Section 18 of the Act prescribes punishment for possession and that possession has to be conscious. In the facts of the instant case, it is difficult to hold that the appellant was in possession of the opium and, therefore, his conviction and sentence cannot be sustained. [para 15] [980-D-H; 981-A-B]

Case Law Reference:

1990 (2) SCC 409	relied on	para 8
2008 (4) SCC 668	relied on	para 9
2003 (8) SCC 449	relied on	para 13

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 451-452 of 2005.

From the Judgment & Order dated 23.03.2004 of the High Court of Judicature of Madhya Pradesh at Indore in Crl. Appeal No. 1179 & 1523 of 1999.

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Sushil Kumar Jain, Puneet Jain, Nil Kumar Verma, Pratibha Jain for the Appellant.

Ashok Kumar Srivastava, Sushma Suri for the Respondent.

C The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Appellant aggrieved by his conviction and sentence is before us with the leave of the Court.

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2. According to the prosecution a secret information led to recovery of 2.1 Kgms. of opium by PW.7, Abdul Mazid, the District Opium Officer from a room adjoining the kitchen of a hotel situated at Sagrana on Neemuch-Chittor road. Appellant was working as servant in the said hotel. Jagdish Mawal (PW.6) E the then Deputy Commissioner of Narcotics was one of the members of the search party, who had seized the opium, drawn the seizure memo and recorded the statement (Ex.P/12) of the appellant on the same day. PW.8, Mahaveer Singh, at the relevant time was working as Inspector in the Central Bureau F of Narcotics and on 19th July, 1997 itself at 23:45 hrs., he was appointed as the Investigating Officer of the case. He produced the appellant before the Special Judge on 20th July, 1997 and at his request appellant was remanded to his custody till 21st July, 1997. He recorded the statement (Ex.P/15) of the G appellant on 20th July, 1997. In the statement (Ex.P/12) appellant confessed that the opium seized was brought by him in the hotel. In another confessional statement (Ex.P/15) recorded by the Investigating Officer appellant confessed that he had been working in the hotel for the last two months and

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brought the opium to the hotel from the house of its owner on his direction. He further confessed that opium tablets used to be sold to the truck drivers at the rate of Rs.30/- per tola. A

3. Opium seized was sent to the Forensic Science Laboratory for examination which found presence of 4.31 per cent of morphine in it. After the confessional statement recorded by the Investigating Officer on 20th July, 1997 he produced the appellant before the Special Judge on 21st July, 1997 along with the case diary and the copy of the same was furnished to him. B C

4. Both the confessional statements of the appellant recorded by the officers of the Central Bureau of Narcotics were considered admissible in evidence and relying on the same the trial court held that the appellant was in possession of opium and accordingly convicted him under Section 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the "Act") and sentenced him to undergo rigorous imprisonment for ten years and fine of Rs.1 lakh, in default to suffer rigorous imprisonment for two years. The order of conviction and sentence has been affirmed by the High Court in appeal. D E

5. Mr. Sushil Kumar Jain, learned Counsel appearing on behalf of the appellant submits that the two confessional statements made by the appellant before the authorities of Central Bureau of Narcotics are not only inadmissible in evidence but also not voluntary and further not corroborated by any other evidence and, therefore, the order of conviction and sentence is fit to be set aside. He further submits that if the confessional statements are taken in their entirety the appellant cannot be held to be in possession of opium or selling the opium so as to attract the mischief of Section 8/18 of the Act. F G

6. Mr. Ashok Kumar Shrivastava, learned Counsel appearing on behalf of the respondent, however, contends that confessional statements made by the appellant are admissible H

A and voluntary and that clearly establish the guilt of the appellant and, therefore, he was rightly convicted and sentenced.

7. In view of the rival submissions questions which fall for determination in this appeal are as follows:

B (i) Whether the confessions made before the officers of the Central Bureau of Narcotics are admissible in evidence;

(ii) Whether the confessions made were voluntary in nature and if so without corroboration, can it form the basis for C conviction; and

(iii) Whether the appellant can be said to be in possession of the opium or selling the same.

8. In order to answer these questions it is expedient to D examine the scheme of the Act. Section 42 of the Act confers on specified categories of officers power of entry, search, seizure and arrest without warrant or authorization. Section 43 thereof confers the power of seizure and arrest. Section 51 of the Act, inter alia, provides application of the provisions of Code E of Criminal Procedure to all warrants issued and arrests, searches and seizures made under the Act in so far as they are not inconsistent with its provisions. Power to call for information to the officers specified is conferred by Section 67 of the Act and the confessions in the present case have been F recorded in exercise of the said power. Section 25 of the Evidence Act makes confessional statement given by an accused before police officers inadmissible in evidence which cannot be brought on record by the prosecution to obtain conviction. Further Section 26 of the Evidence Act in no G uncertain terms provides that the confession made while in custody of police officer cannot be proved against accused to support the criminal charge. Therefore, what needs to be considered is as to whether the officers of the Central Bureau of Narcotics, who had recorded the confessions, are police H officers within the meaning of Section 25 and 26 of the

Evidence Act. True it is that Section 53 of the Act confers powers to the Central Government to invest officers of the specified categories, the powers of an officer-in-charge of police station but that itself, in our opinion, shall not make them the police officers within the meaning of Section 25 and 26 of the Evidence Act. The officers with whom lie the powers of search, seizure and investigation under the Act have not been conferred with the power to submit report under Section 173 of the Code of Criminal Procedure. Such officer is required to lay complaint in the Court of Special Judge for prosecuting an accused. In our opinion the power to submit report under Section 173 of the Code of Criminal Procedure is necessary to make the officers of the Central Bureau of Narcotics police officers within the meaning of Section 25 and 26 of the Evidence Act. The important attribute of Police Officer is not only to investigate but also to launch prosecution by filing a report or charge-sheet. In view of the pronouncement of this Court in the case of *Raj Kumar Karwal vs. Union of India and others,* 1990 (2) SCC 409, this question does not need much discussion. This was a case under the Narcotic Drugs and Psychotropic Substances Act itself and on review of large number of authorities, this Court came to the following conclusion in paragraph 22 of the judgment which reads as follows:

> ".....The important attribute of police power is not only the power to investigate into the commission of cognizable offence but also the power to prosecute the offender by filing a report or a charge-sheet under Section 173 of the Code. That is why this Court has since the decision in Badku Joti Savant v. State of Mysore AIR 1966 SC 1746, accepted the ratio that unless an officer is invested under any special law with the powers of investigation under the Code, including the power to submit a report under Section 173, he cannot be described to be a 'police officer' under Section 25, Evidence Act....."

9. This Court had the occasion to consider this question

A further in the case of *Kanhaiyalal vs. Union of India,* 2008 (4) SCC 668, wherein it has been held as follows:

> **"44.** In addition to the above, in Raj Kumar Karwal v. Union of India this Court held that officers of the Department of Revenue Intelligence who have been vested with powers of an officer in charge of a police station under Section 53 of the NDPS Act, 1985, are not "police officers" within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him. It was also held that power conferred on officers under the NDPS Act in relation to arrest, search and seizure were similar to powers vested on officers under the Customs Act. Nothing new has been submitted which can persuade us to take a different view.
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> **45.** Considering the provisions of Section 67 of the NDPS Act and the views expressed by this Court in Raj Kumar Karwal case with which we agree, that an officer vested with the powers of an officer in charge of a police station under Section 53 of the above Act is not a "police officer" within the meaning of Section 25 of the Evidence Act, it is clear that a statement made under Section 67 of the NDPS Act is not the same as a statement made under Section 161 of the Code, unless made under threat or coercion. It is this vital difference, which allows a statement made under Section 67 of the NDPS Act to be used as a confession against the person making it and excludes it from the operation of Sections 24 to 27 of the Evidence Act."

10. From what has been observed above, the officers vested with the powers of investigation under the Act are not police officers and, therefore, the confessions recorded by such officers are admissible in evidence. Therefore, the question posed at the outset is answered in the affirmative and it is held

that officers of the Central Bureau of Narcotics are not police officers within the meaning of Section 25 and 26 of the Evidence Act and, hence, confessions made before them are admissible in evidence. In view of aforesaid there is no escape from the conclusion that the confessions made by the appellant before PW.6, Jagdish Mawal and PW.8, Mahaveer Singh are admissible in evidence and cannot be thrown out of consideration.

11. Now we proceed to consider the second question set out at the outset and in order to answer that we deem it appropriate to reproduce Section 24 of the Indian Evidence Act which reads as follows:

> **"24.Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.**—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

12. From the plain reading of the aforesaid provision it is evident that a confession made by an accused is rendered irrelevant in criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise with reference to the charge against the accused. A confession, if it is voluntary, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of the accused. However, before solely acting on confession, as a rule of prudence, the Court requires some corroboration but as an abstract proposition of law it cannot be

A said that a conviction cannot be maintained solely on the basis of the confession made under Section 67 of the Act.

13. Bearing in mind the principles aforesaid, now, we proceed to consider the facts of the present case. Appellant's first confession was recorded by PW.6, Jagdish Mawal on 19th July, 1997 and he was produced before the Court on 20th July, 1997 and he made no grievance in regard to the confession recorded. Another confession was recorded on 20th July, 1997 and, thereafter, he was produced before the Special Judge on 21st July, 1997 and a copy of the police diary was handed over to him. This obviously would had contained the confessions made by him. No complaint about the same was made then also. Thereafter appellant was produced before the Court several times but he never retracted his confession. The appellant retracted the confession made by him for the first time in his statement under Section 313 of the Code of Criminal Procedure. In our opinion, when an accused is made aware of the confession made by him and he does not make complaint within a reasonable time, same shall be a relevant factor to adjudge as to whether the confession was voluntary or not. Here in the present case appellant was produced before the Court on several dates and at no stage he made any complaint before the Special Judge of any torture or harassment in recording the confession. It is only when his statement was recorded under Section 313 of the Code of Criminal Procedure that he retracted and denied making such a confession and went to the extent of saying that his signatures were obtained on blank pages. In the facts and circumstances of the case we are of the opinion that the confessional statements made by the appellant were voluntary in nature and could form the basis for conviction. The view which we have taken above finds support from the judgment of this Court in the case of *M. Prabhulal v. Assistant Director, Directorate of Revenue Intelligence,* 2003 (8) SCC 449, in which it has been held as follows:

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"It has been established that the Customs Office was about 20 km from the place where the truck and the car were apprehended. Having regard to the large quantity of the heroin, the said vehicles with Accused 2, 3 and 6 were brought to the Customs Office. *Further, Accused 1 and 2 did not know Tamil. A Hindi-knowing officer had to be arranged. There was, under the circumstances no delay in recording the statements of the appellants. Further, it is also to be borne in mind that the appellants did not make any complaint before the Magistrate before whom they were produced complaining of any torture or harassment. It is only when their statements were recorded by the trial Judge under Section 313 of the Code of Criminal Procedure that a vague stand about the torture was taken. Under these circumstances, the confessional statements cannot be held to be involuntary. The statements were voluntarily made and can, thus, be made the basis of the appellants' conviction.*"

(underlining ours)

14. Same view has been reiterated by this Court in the case of *Kanhaiyalal* (supra) in which it has been observed as follows:

"Since it has been held by this Court that an officer for the purposes of Section 67 of the NDPS Act read with Section 42 thereof, is not a police officer, the bar under Sections 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. Since a conviction can be maintained solely on the basis of a confession made under Section 67 of the NDPS Act, we see no reason to interfere with the conclusion of the High Court convicting the appellant."

A The second question posed at the outset is thus answered accordingly.

15. Now we proceed to consider the last question, i.e, whether the appellant can be held guilty for being in possession or involved in selling the opium so as to attract the mischief of Section 8/18 of the Act. In sum and substance the confession of the appellant is that he was working in the hotel for the last two months and brought the opium from the house of the hotel-owner to the hotel, where it was being sold in tablets to the truck-drivers. In the confession appellant has not stated or for that matter none of the witnesses have deposed that he was involved in selling the opium-tablets. Therefore, the appellant cannot be held guilty for selling opium. Whether in the state of evidence appellant can be held guilty for possessing the opium only on the ground that he brought the opium from the house of the owner to the hotel is another question which requires adjudication. It is trite that to hold a person guilty, possession has to be conscious. Control over the goods is one of the tests to ascertain conscious possession so also the title. Once an article is found in possession of an accused it could be presumed that he was in conscious possession. Possession is a polymorphous term which carries different meaning in different context and circumstances and, therefore, it is difficult to lay down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes. A servant of a hotel, in our opinion, cannot be said to be in possession of contraband belonging to his master unless it is proved that it was left in his custody over which he had absolute control. Applying the aforesaid principle when we consider the facts of the present case it is difficult to hold that opium was in possession of the appellant. There is no evidence on record to suggest that the appellant was in occupation of the room from where opium was recovered. Further the evidence clearly points out that title to the opium vested in the owners of the hotel. The confession given by the appellant was only that he was servant of the owners of the hotel from where the opium was recovered.

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In the face of the state of evidence it is difficult to hold that the appellant was in conscious possession of the opium. Section 18 of the Act prescribes punishment for possession and that possession, in our opinion, has to be conscious. In the facts of the present case it is difficult to hold that the appellant was in possession of the opium and, therefore, his conviction and sentence cannot be sustained. A B

16. In the result, the appeals are allowed, impugned judgment of conviction and sentence is set aside. Appellant is on bail, his bail bonds are discharged. C

R.P. Appeals allowed.