

[2009] 8 S.C.R. 51

STATE OF RAJASTHAN
v.
SHANTI
(Criminal Appeal No.957 of 2003)

APRIL 21, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Narcotic Drugs and Psycotropic Substances Act, 1985:

Sections 9, 10, 42(2), 50, 55 and 57 – Opium – Seizure of – Accused arrested – Trial Court found there was violation of Sections 42(2), 50, 55 and 57 and acquitted the accused – Appeal by State was dismissed by the High Court – On appeal, Held: Section 50 will apply only when there is personal search – Also there has been non-compliance with the requirement of Section 42(2) as recorded by the trial court and High Court – Thus, there is no merit in the appeal.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 957 of 2003.

From the Judgment & Order dated 08.03.2002 of the High Court of Judicature of Rajasthan in S.B. CrI. Appeal No. 356 of 1991.

Manish Singhvi and Milind Kumar for the Appellant.

Nanita Sharma for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard learned counsel for the State and for the respondent.

2. Challenge in this appeal is to the judgment of the learned single Judge of Rajasthan High Court at Jodhpur

- A dismissing the appeal filed by the State questioning the correctness of the judgment of acquittal recorded by learned Additional District and Sessions Judge No.2, Hanumangarh. Two persons faced trial for alleged commission of offences under Sections 8 and 18 of the Narcotic Drugs and Psycotropic Substances Act, 1985 (in short the 'NDPS Act').

3. Allegation was that on 18/1/1999 the Station House Officer, Police Station Pilibanga received secret information that the respondent Shanti and her son Darshan alongwith her husband Shankar Lal were habitually indulging in the sale and purchase of opium and the respondent Smt. Shanti was expected to come with opium near a particular place. The police officer reached the place and found that the respondent was carrying a bag in her hand. She was stopped and searched. The bag was found to carry about 10 kgs. of opium. On the information given by her, another 20 kgs. were seized from near her residential house. Accused Shankar Lal was also arrested in connection with the second recovery of 20 kgs. of opium. Charge-sheet was filed after investigation. As the accused persons pleaded innocence trial was held. The trial Court found that there was violation of the provisions of Section 42 (2), 50, 55 and 57 of the NDPS Act and acquitted the accused. Questioning the acquittal, the High Court was moved by the State. The High Court did not find any substance in the appeal filed by the State and dismissed it.

4. So far as the present appeal is concerned, it has to be noted that the special leave petition was dismissed against the respondent No.2 i.e. Shankar Lal and notice was issued qua the present respondent.

5. Learned counsel for the appellant stated that Section 50 had no application because there was no personal search. It is also pointed out that Sections 55 and 57 are not mandatory. The prosecution version was clearly established. Learned counsel for the respondent on the other hand submitted that the trial Court and the High Court have found that there was non-

compliance with the requirement of Sec.42(2).

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6. So far as the conclusions regarding Sec.50 recorded by the trial Court and the High court are concerned, they same are not in line with what this Court has said. Section 50 has application only when there was personal search. In the instant case the samples were collected, after seizure, from her bag. Nevertheless, there has been non-compliance with the requirement of Sec.42(2) as recorded both by the trial Court and the High Court. That being so there is no merit in this appeal.

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The appeal is dismissed accordingly.

G.N.

Appeal dismissed.