

STATE OF RAJASTHAN

v.

RATAN LAL

Criminal Appeal No. 860 of 2004

MARCH 31, 2009.

(DR. ARIJIT PASAYAT, D.K. JAIN AND DR.
MUKUNDAKAM SHARMA, JJ)

*NARCOTIC DRUGS AND PSYCHOTROPIC SUB-
STANCES ACT, 1985:*

s. 50 – Search of ‘person’ of suspect – Accused found in possession of a bag containing opium – Prosecution – Acquittal by trial court for non-compliance with requirement of s.50 – High Court refusing leave to State Government to file appeal – HELD: A bag, briefcase or any such article or container etc. cannot be treated as body of human being – High Court has not considered true effect of s.50 – Leave granted to State Government to file appeal, which shall be heard by High Court on merits.

The respondent was found in possession of a bag containing a large quantity of opium. The trial court acquitted him on the ground that requirements of s.50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 were not complied with. Subscribing to the said view, the High Court refused leave to the State Government to file appeal.

Allowing the appeal of the State, the Court

HELD : In view of this Court’s decision in *Pawan Kumar, a bag, briefcase or any such article or container etc. can, under no circumstances, be treated as body of a human being. The High Court has not considered the true effect of s.50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Leave is granted to the State**

A **Government to file appeal, which shall be heard by the High Court on merits. [para 5 and 6] [229-B; 232-E]**

State of H.P. vs. Pawan Kumar 2005 (3) SCR 417 = (2005) 4 SCC 350 – relied on.

B **Case Law Reference**

2005 (3) SCR 417 relied on para 5

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 860 of 2004

C From the Judgement and Order dated 27.02.2004 of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in S.B. CrI. Leave to Appeal No. 52 of 2004.

Rishi Malhotra, Milind Kumar, for the Appellant.

D The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

E 1. Challenge in this appeal is to the order passed by learned single Judge of Rajasthan High Court at Jodhpur refusing to grant leave against the judgment of acquittal passed by learned Special Judge, NDPS cases, Udaipur.

F 2. The accused faced trial for alleged commission of offences punishable under Sections 8 and 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') for being in illegal possession of a large quantity of opium. The trial Court directed acquittal only on the ground that there was non-compliance with requirements of Section 50 of the Act. The State filed an application for grant of leave to file appeal against such judgment. The High Court dismissed the application holding
G that since there was non-compliance of mandatory requirement of Section 50 of the Act and there was no need for grant of leave.

H 3. Learned counsel for the appellant submitted that in fact the recovery was made from a polythene bag and therefore Section 50 has no application.

4. There is no appearance on behalf of the respondent.

5. The position relating to applicability of Section 50 of the Act when the search is of a bag, brief case or an article it was considered by a three Judge Bench of this Court in (2005) 4 SCC 350 (State of H.P. vs. Pawan Kumar and State of Rajasthan vs. Bhanwar Lal) in para 7, 8 10, 11 and 27 in Pawan Kumar's case it was held as follows:

"7. 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.

8. One of the basic principles of interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some

A manifest absurdity (See Craies on Statute Law, Seventh Edn. page 83-85). In the well known treatise - Principles of Statutory Interpretation by Justice G.P. Singh, the learned author has enunciated the same principle that the words of the Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the Statute to suggest the contrary (See the Chapter - The Rule of Literal Construction - page 78, Ninth Edn.). This Court has also followed this principle right from the beginning. In *Jugalkishore Saraf v. M/s Raw Cotton Co. Ltd.* AIR 1955 SC 376, S.R. Das, J. said: (SCR p.1374)

D "The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

E A catena of subsequent decisions have followed the same line. It, therefore, becomes necessary to look to dictionaries to ascertain the correct meaning of the word "person".

F 10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the Section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad commonsense manner and, therefore, not a naked or nude body of a

H

human being but the manner in which a normal human being will move about in a civilized society. 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 clothings". In a civilized 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.

11. 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

A 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.

B 27. Coming to the merits of the appeal, the High Court allowed the appeal on the finding that the report of the Chemical Examiner had to be excluded and that there was non compliance of Section 50 of the Act. The learned Judges of this Court, who heard the appeal earlier, have recorded a unanimous opinion that the report of the
C Chemical Examiner was admissible in evidence and could not be excluded. In view of the discussion made earlier, Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was
D allegedly recovered from the bag, which was being carried by the accused. The High Court did not examine the testimony of the witnesses and other evidence on merits. Accordingly, the matter has to be remitted back to the High Court for a fresh hearing of the appeal."

E 6. In the instant case, the High Court has not considered the true effect of Section 50 of the Act. It would be appropriate to direct the High Court to hear the appeal on merits. Leave to appeal is granted to the appellant-State to file the appeal which shall now be heard by the High Court on merits.

7. The appeal is allowed.

R.P.

Appeal allowed.