

K. CHITHHAYAN

v.

STATE OF TAMIL NADU

(Criminal Appeal No. 827 of 2005)

May 15, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ]

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

ss 42(2), 43 and 50 – Search of bag belonging to accused conducted in a public place-Bag contained contraband item – Conviction by trial court and sentence of 10 years RI – Upheld by High Court – HELD: Since search was made in public place and not in a building, s. 43 and not s.42(2) was applicable-As there was no personal search, s.50 has no application – There is no infirmity in judgment of High Court to warrant interference.

The appellant was found carrying 2 kg Diazepam in a bag. The trial court convicted him u/s 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced him to 10 years rigorous imprisonment. The conviction and sentence was upheld by the High Court.

In the instant appeal it was contended for the appellant that the courts below failed to take into consideration that there was non-compliance of requirements of sections 42(2) and 50 of the Act.

Dismissing the appeal, the Court

HELD: 1. So far as Section 42(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is concerned, it is to be noted that search was made in public place and not in a building and, as such, Section 43 and not Section 42(2) of the Act was applicable. [para 6] [945-D-E]

A *State of Punjab vs. Baldev Singh* 1999 (6) SCC 172;
State of Haryana v. Jarnail Singh and Ors. 2004 (5) SCC 188
 - relied on

B 2. As regards applicability of Section 50 of the Act, there was search of the bag carried by the appellant and there was no personal search. Therefore, Section 50 of the Act has no application. [para 7] [942-F]

State of H.P v Pawan Kumar 2005 (4) SCC 350-relied on

C 3. There is no infirmity in the judgment of the High Court to warrant interference. [para 8] [942-G]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
 No. 827 of 2005

D From the final Judgment and Order dated 4.8.2003 of the High Court of Judicature at Madras in C.A. No. 653/2001

K. Sarada Devi for the Appellant.

R.Shunmugasundaram, S.J.Aristotle, Prabu Ramasubramanian and V.G. Pragasam for the Respondent.

E The Judgment of the Court was delivered by

F **Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Madras High Court upholding the conviction of the appellant for offence punishable under Section 8 (c) read with Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'Act') and sentence of 10 years rigorous imprisonment and a fine of Rs. 1,00,000/- as was imposed by learned Special Judge, Salem.

G 2. Background facts in a nutshell are as follows:

H Veerannan (PW-1), Sub Inspector of Police, attached to N.I.B. C.I.D., Salem on 16.12.1999 at about 9.00 A.M. along with Vellingiri (PW-4), Head Constable No.910 and other Police party on secret information were patrolling at Pethanayakkampalaym Bus Stop. They found activities of the

appellant/accused, who stood near the bus stop with a yellow colour bag on his right hand, at about 12.00 noon, to be suspicious. P.W.1 after introducing himself, conveyed to him that he is entitled for the conduct of the search before a Gazetted Officer or a Judicial Magistrate. The accused gave consent to be searched by the official himself. Accordingly, P.W.1 searched his bag in the presence of the two independent witnesses namely Duraisamy (PW-2), Village Administrative Assistant and Duraisamy Assistant (PW-3) and P.W.4 Head Constable and found 2 Kilograms of Diazepam. P.W.1 seized the same under Ex.P2 mahazar in the presence of the said witnesses. He took two samples of 25 grams each marked as M.O.2 and affixed the seal and the rest of the contraband was sealed, which is marked as M.O.1. The appellant/accused was arrested under Ex.P3 arrest memo, a copy of which was served on him. The accused was brought to the Office, and a case was registered in Crime No. 91/99 under Sec. 20(b) (1) of the Act. Ex.P4 printed F.I.R. was prepared. The accused was taken to the concerned Court along with the F.I.R and the material objects. A detailed report under Ex.P5 under Sec.57 of the Act was prepared and sent to the higher officials. Sankarapandian (PW-6), Inspector of police, NIB CID, Salem took up further investigation after obtaining Ex.P5 and other relevant records from PW-1. He proceeded to the site of occurrence and also to the house of the accused, made a search in front of the witnesses, prepared Ex.P7 search memo, examined PWs 1 to 4 and recorded their statements. The investigating officer (PW-6) made a request under Ex.P8 to the Court for sending M.O.2 for chemical analysis. Accordingly, the sample was analysed by Arulanandam (PW-5) Scientific Assistant attached to the Forensic Laboratory, who found that the sample under M.O.2 is diazepam. PW-5 sent Ex.P6 report to the Court. On 19.1.2002 PW-6 examined PW-5 and recorded his statement. On completion of the investigation, PW-6 filed a charge sheet against the accused under Section 22 of the Act.

Since the accused pleaded innocence the trial was held.

A Six witnesses were examined and several exhibits and material objects were brought on record. In his examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') the accused-appellant flatly denied the accusations. He examined his wife as PW-1. The trial Court found that the prosecution has been able to establish its accusations. Two grounds were taken before the High Court relating to the alleged non compliance of the mandatory provisions of Sections 42(2) and the other 50 of the Act. The High Court did not find any substance. Accordingly, the appeal was dismissed.

C 3. In support of the appeal, learned counsel for the appellant submitted that even if the prosecution case is accepted in toto there is clear material to show the contravention of the requirements of Sections 42(2) and 50 of the Act.

D 4. Learned counsel for the respondent-State supported the judgments of the trial Court and the High Court.

5. Sections 42(2) and 43 of the Act are as under:

E "42(2)-Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

F 43. Power of seizure and arrest in public place.-Any officer of any of the departments mentioned in section 42 may-

G (a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable

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under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; A

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company. B

Explanation.-For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public." C

6. So far as Section 42(2) is concerned it is to be noted that search was made in public place and not in a building and as such what was applicable was Section 43 and not Section 42 (2) of the Act. The decision of this Court in *State of Punjab vs. Baldev Singh* (1999 (6) SCC 172) is clearly applicable to the facts of the present case. The view in *Baldev Singh's* case (supra) was re-iterated in *State of Haryana v. Jarnail Singh and Ors.* (2004 (5) SCC 188). D E

7. So far as the applicability of Section 50 of the Act is concerned, it is to be noted that there was search of the bag carried by the appellant and there was no personal search. It has been held in *State of H.P. v. Pawan Kumar* (2005 (4) SCC 350) that when there is no personal search and the search is effected in relation to a bag, Section 50 of the Act has no application. F

8. Above being the position, we find no infirmity in the judgment of the High Court to warrant interference. The appeal is without merit and is dismissed accordingly. G

R.P.

Appeal dismissed.

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