A CENTRAL BUREAU OF NARCOTICS

v.

BAHADUR SINGH

(Criminal Appeal No. 630 of 2004)

B **NOVEMBER 24, 2010**

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

Narcotic Drugs and Psychotropic Substances Act, 1985:

C

ss. 8/18, 42 and 47 – Recovery of opium from a box lying in a Dhaba – Servant in the Dhaba prosecuted as the key was recovered from him – Conviction by trial court – Acquittal by High Court – HELD: High Court has gone through the entire D *evidence and rightly recorded that there was no independent witness of the alleged recovery as all the independent witnesses had resiled from their initial version and that even the two official witnesses had given discrepant statements with the result that they too could not be relied upon, that there was* E *no evidence to identify the owner of the dhaba, that the confession allegedly recorded at the instance of the accused could not be believed and that there appeared to be a complete violation of ss. 42 and 57 of the Act – Even assuming that the independent witnesses are not willing to come forward in such matters and the requirement of* F *independent witnesses was not necessary, the statements of both the official witnesses were also unreliable – Since the judgment of the High Court proceeds primarily on an appreciation of the evidence, the same is not interfered with – Confession – Constitution of India, 1950 – Article 136.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 630 of 2004.

From the Judgment and Order dated 09.04.2003 of the

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High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Appeal No. 668 of 1999. A

J.S. Attri, Niraj Jha and Sushma Suri for the Appellant.

Doongar Singh, V.J. Francis, Anupam Mishra and Vivek Khandari for the Respondent. B

The following order of the Court was delivered

ORDER

1. This appeal by way of special leave has been filed by the Central Narcotics Bureau impugning the judgment of the High Court of Judicature for Rajasthan, whereby the respondent Bahadur Singh, has been acquitted of an offence punishable under Section 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter called the 'Act']. C D

2. As per the prosecution story, at 6:00p.m. on the 5th of December, 1997, information was received by P.K. Sharma, Inspector of the Central Bureau of Narcotics which was recorded by him in Exhibit P7 that Bahadur Singh and Shyam Singh who were servants in the Dhaba belonging to one Bhanwar Singh situated on the Chittorgarh-Mangalwad Highway near village Nardhari, had struck a deal to sell about 20 kgs of opium to a truck driver and as the exchange was likely to take place sometime during the night of 5th/6th of December, 1997, at about 2:00 or 3:00a.m., the accused could be apprehended if a raid was conducted. The raiding party consisting of P.W. 6 Inspector, Rajendra Kumar and P.W.10 Narayan Singh amongst others proceeded from Neemuch to the Dhaba and as they reached that place Bhanwar Singh, the alleged owner of the Dhaba, and Shyam Singh ran away though the respondent Bahadur Singh was apprehended. A notice under Section 50 of the Act was, accordingly, served on him and he was also searched and a key was recovered from his person. A box lying in the dhaba which was locked was opened with the key and 17.450kgs. of opium was seized E F G H

A therefrom. An FIR was thereupon lodged and after investigation, a case was filed in Court. The trial court on a consideration of the evidence convicted and sentenced Bahadur Singh, respondent, to 15 years rigorous imprisonment and a fine of Rs. 2 lacs under Section 8/18 of the Act. An appeal was B thereafter taken by the accused to the Rajasthan High Court which has, by the impugned judgment, set aside the order and judgment of the trial court and acquitted the accused. In arriving at its conclusion, the High Court has gone through the entire evidence and recorded several categoric findings which the C learned counsel for the appellant has attempted to challenge. It has first been recorded that there was no independent witness of the alleged recovery as all the independent witnesses had resiled from their initial versions and that even the two official witnesses, P.W. 6 and P.W. 10, had given D discrepant statements with the result that they too could not be relied upon. The Court has also held that there was no evidence to identify the owner of the dhaba as the land belonged to Kishan Singh P.W. 4 as per the statement of the Patwari P.W.9 and that P.W. 4 had come in evidence and stated that Bahadur Singh had nothing to do with the aforesaid dhaba/land. The E Court has further held that the confession allegedly recorded at the instance of the accused could not be believed as the statement Ex. P18 was discrepant on material particulars and, finally, that there appeared to be a complete violation of Sections 42 and 57 of the Act.

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3. We see from a perusal of the judgment of the High Court that a very comprehensive discussion has been made on the evidence. Even assuming for a moment that independent witnesses are not willing to come forward in such matters and G further assuming that the requirement of independent witnesses was not necessary, we are of the opinion that the statements of P.Ws. 6 and 10 both officials, were also unreliable. The High Court has gone through their statements carefully and has given a categoric finding that they differed with each other in material H particulars. The evidence of P.W. 9 and P.W. 4 when read

together makes the ownership of the Dhaba completely confusing and uncertain. We also find that no reliance can be placed on the confessional statement of the accused. A

4. In any case, in the light of the fact that the judgment of the High Court proceeds primarily on an appreciation of the evidence, we are not inclined to interfere in this matter. The appeal is dismissed. B

R.P. Appeal dismissed.