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STATE OF PUNJAB

v.

LEELA

(Criminal Appeal No. 463 of 2005)

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APRIL 23, 2009

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

Narcotic Drugs and Psycotropic Substances Act, 1985:

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s.15, 50 and 55 – Conviction by trial court u/s 15 – Acquittal by High court for non examination of independent witness and non compliance of provisions – Held: In the instant case, there is no finding that evidence of official witnesses suffers from any infirmity – Section 50 has no application to the facts of the case – Provisions of s.55 are directory – Besides, there is no reason indicated as to how accused was prejudiced by Dy.S.P. putting his seal on seized articles instead of S.H.O. – Judgment of High Court set aside and that of trial court restored.

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The respondent-accused faced trial for commission of the offence punishable u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The prosecution case was that the police got the information that the respondent and his companion were habitually selling poppy husk. The police reached the specified place and saw the respondent and his companion sitting on some bags of poppy husk. During the trial the companion of the respondent jumped bail and he was declared a proclaimed offender. The trial culminated in conviction of the respondent. He was sentenced to 11 years R.1 and to pay a fine of Rs.1,00,000/-. On appeal, the High Court accepted the pleas of the accused that no independent witness was examined and that there was non-

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compliance of s.55 of the Act. Accordingly he was acquitted. Aggrieved, the State filed the appeal. A

Allowing the appeal, the Court

HELD: 1. As regards the evidence of official witnesses, the elementary question is whether the evidence of official witness suffers from any infirmity. In the instant case, there is no finding in that regard. Besides, s.50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has no application as there was no personal search. [Para 13] [73-E-G] B C

2. So far as the plea of non-compliance with provision of s.55 of the Act is concerned, the said provisions are directory in nature. Besides, in the instant case, seal on the seized article in question was put by the Deputy Superintendent of Police, who was higher in rank than the SHO and there is no reason indicated as to how the accused has been prejudiced. There is no doubt about the authenticity of the official act and the High Court ought not to have held that there was non-compliance of the provisions. [Para 13] [73-C-E] D E

3. In the circumstances, the acquittal of the respondent is clearly unsustainable. The judgment of the High Court is set aside and that of the trial court restored. [Para 14] [74-A-B] F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 463 of 2005.

From the Judgment & Order dated 03.12.2004 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 166-DB of 2002. G

Ranbir Yadav (Kuldip Singh) for the Appellant.

A S. Janani and Deepak Goel for the Respondent.

The Judgment of the Court was delivered by

B **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a Division bench of Punjab and Haryana High Court directing acquittal of the respondent who was convicted by learned Special Judge Sh. Inderjit Kaushik, Patiala, for offence punishable under Sec.15 of the Narcotic Drugs and Psychotic Substances Act, 1985 (in short 'NDPS Act'). Allegation against the accused was that he was found to be in possession of poppy husk weighing a large quantity in seven bags.

2. The prosecution version in a nut shell is as follows:

D 3. On February 20, 1999 Sub-Inspector Ajmer Singh (PW.5), along with other police officials, was on patrol duty in police vehicle PB-11A-7849 driven by Sarmukh Singh. The patrol party was present at the bridge on a drain about 20- kms. South of Police Station, Sadar, Patiala. At 7 a.m. secret information was received by Sub-Inspector Ajmer Singh that E Leela and his co-accused Pritam Singh @ Billu (proclaimed offender) were habitually selling poppy husk and in case a raid was conducted they could both the apprehended red handed from near the bridge over the drain in Bhanri.

F 4. The Investigator proceeded to the spot and also informed D.S.P. Kulshinder Singh (PW.1) on the wireless. When the police officials reached the bridge on the drain, they saw two persons sitting on bags, who on seeing them tried to run away. The police officials stopped their vehicle, got down and over-powered Leela as well as Pritam Singh @ Billu. At that time Joga Singh had also reached at the spot. The Investigator told the accused that he wished to search the bags and that search could be conducted in the presence of a Gazetted Officer or a Magistrate. The accused opted for search before a Gazetted Officer. The Investigator recorded their H

consent statements and the accused put their signatures on the statements. In the meanwhile, D.S.P. Kulshinder Singh (PW.1) also reached the spot in a police Gypsy. In the presence of the witnesses and the D.S.P., the Investigator checked the seven bags which were lying on the ground and from each bag poppy husk was recovered. The bags were numbered 1 to 7. Two samples of 250 grams each of the contraband article were taken out from the bags and put in separate parcels. The remaining poppy husk was weighed and each was found to have contained 34.5 kgs. of poppy husk. Fourteen sample parcels and the seven bags of poppy husk were sealed. The seal after use was handed over to Assistant Sub-Inspector Mohinder Singh (PW.4). Since Leela and Pritam Singh @ Billu had committed an offence punishable under Section 15 of the NDPS Act report was sent to Police Station, Sadar, Patiala at 9.30 a.m. and on its basis formal F.I.R. was registered at the Police Station at 10.40 a.m. on February 20, 1999. Report of the case was received by Additional Chief Judicial Magistrate at 5.35 p.m. on the same day.

5. In the meanwhile, the Investigator arrested the accused and took into possession the case property. On the personal search of the accused some cash was recovered, Rs.65/- from Leela and Rs.95/- from Pritam Singh @ Billu. Cash was also taken into possession. The accused were informed of the grounds of their arrest vide memo signed by Assistant Sub-Inspector Mohinder Singh (PW.4) and Joga Singh. Site plan of the place of the occurrence was prepared.

6. On return to the police station, case property and the accused were produced before S.H.O. Gurchain Singh (PW.6) who verified the facts and directed the Investigator to deposit the case property with the M.H.C.

7. On the following day the accused as well as the case property were produced before the Area Magistrate. The sample of the recovered contraband was examined by the Chemical Examiner who reported that the sample was of poppy

- A husk. After completion of the investigation the accused were sent up for trial. At some stage Pritam Singh was released on bail and he jumped bail. The record is unclear regarding the date of his release and the order on the basis of which he was released. Be that as it may, efforts were made to procure
- B Pritam Singh's presence by the Court but without success. Consequently, Pritam Singh @ Billu was declared a proclaimed offender by the learned Special Judge on September 1, 2001.

8. Charges were framed against Leela on September 6, 2001 to which he pleaded not guilty and claimed to be tried.

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9. Prosecution examined the DSP-Kulshinder Singh (PW.1), C. Faquir Chand (PW-2), MHC Sahib Singh (PW.3), ASI-Mohinder Singh (PW.4) and SI-Ajmer Singh (PW.5) and Gurchain Singh (PW.6), SHO, Patiala police station. The
- D accused denied various items of prosecution evidence which appeared against them and pleaded false implication.

10. The accused examined A.S.I. Devinder Singh (DW.1), Joga Singh (DW.2). The trial Court came to the conclusion that the accused was believed to be in possession of seven bags
- E of contraband therefore he was convicted and sentenced to undergo 11 years R.I. and to pay a fine of Rs.1,00,000. In appeal two stands were basically taken. First was that there was no independent witness examined and secondly there was violation of the provisions of Sec.50. It was found that two bags
- F were torn and so far as the other five bags are concerned the seals were smudged. The High Court accepted the stand of the accused and directed acquittal.

11. In support of the appeal, learned counsel submitted that
- G the fact that no independent witness was examined on account of that one Joga Singh who was called to be a witness of the recovery was non-available and was not examined. There is no legal bar on conviction being recorded solely on the evidence of the witnesses. Additionally, the seized articles in questions
- H were put by the Deputy Superintendent of Police (PW 1) who

was higher in rank to the officer who was the SHO at the relevant point of time. In any event as noted in the High Court's judgment the SHO was one Gurchain Singh who is stated in the High Court judgment as DSP. It is to be noted that there is perverse for which seals of two officers is required to be given under Sec.55. The investigator has ensured that there is more than transparency in the action taken and there is no apprehension or any imperfect procedure being adopted.

12. Learned counsel for the respondent on the other hand submitted that there has been clear violation of Sec.55 of the Act and no serious effort was made to involve any independent witness and on the other hand Joga Singh who was made a member of the party did not support the prosecution version.

13. It is not in dispute that provision of Sec. 55 are directory in nature. In the instant case, the DSP who was examined as PW.1 is an officer and was higher in rank or of the same rank as the SHO in the instant case. There is no reason indicated as to how the accused has been prejudiced by PW.1 putting his seal instead of the SHO. The provisions are directory and as there is no doubt about the authenticity of the official act, the High Court ought not to have held that there was non-compliance of requirement of Sec. 50. Coming to the plea as confined to the conclusion that official witnesses were examined in the Court the conviction could not be maintained. Firstly Sec.50 of the Act has no application as there was a personal search. The issue has been examined in several cases and it has been held that clearly shows that the official witnesses have been examined. It is not sufficient to doubt the evidence of the official witnesses. The elementary question is whether the evidence of official witness suffers from any infirmity. In the instant case there is no finding in that regard. Coming to the plea of the respondent accused that the seals were found smudged, it is to be noted that the trial Court has noticed this aspect and held that they were produced before the Court after one year and by the time of production there is likelihood the

A seal getting protection or get smudged.

14. Above being the position, the acquittal of the respondent by the High Court is clearly unsustainable. The judgment of the High Court is set aside and that of the trial court is restored. The respondent shall surrender to custody to serve out the remainder of sentence.

15. The appeal is disposed of.

R.P.

Appeal disposed of.