

Before S.P. Bangarh, J.

**NOOR MOHIMAD SON OF JAMALAU
@ JAMALUDIN—Petitioner**

versus

STATE OF HARYANA—Respondent

CRA No. ■-389-SB of 1992

APRIL 09, 2013

Narcotic Drugs and Psychotropic Substances Act, 1985 - Ss. 42, 50, 55, 57 - Appellant was found in possession of 4 kg opium in the bag in his right hand - Appellant was convicted u/s 18 and sentenced to undergo RI for 10 Years and fine of Rs.1 Lac - Appellant contended that the Trial Court erred in not deriving correct inferences of non-compliance of Sections 42, 50, 55 and 57 - Sole independent witness did not support prosecution case - Appeal dismissed.

Held, that Hon'ble Supreme Court of India in 'Ajmer Singh V. State of Haryana (2010) 3 Supreme Court Cases, 746' while placing reliance upon 'Madan Lal V. State of H.P. (2003) 7 SCC, 465' held that a bare reading of Section 50 of the Act shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises. In Ajmer Singh's case (supra), Hon'ble Supreme Court of India also placed reliance upon State of HP V. Pawan Kumar (2005) 4 SCC 350, wherein, it was held that a bag, brief case or any such article or container etc. can, under no circumstances, be treated as body of a human being.

(Para 24)

Further held, that so, in view of the judgments supra, the provisions of Section 50 of the Act will come into play only in case of personal search of the accused and not of some baggage like bag, article or container etc. which (accused) may be carrying.

(Para 25)

Further held, that the recovery of opium in this case was not effected from the search of any building, conveyance or place. That was made only from the bag being carried by the appellant in his right hand. On suspicion, appellant was detained by PW-4, who was fully empowered to detain him on suspicion. He was fully competent to effect the recovery of bag being carried by the appellant in his right hand, without the presence of the Gazetted officer or Magistrate.

(Para 29)

Further held, that it is no doubt true that if a person is not informed of grounds of his arrest, his further detention may become invalid or unlawful, but it cannot be said that his initial arrest itself becomes illegal. It has come in the evidence of PW-3 and PW-4 that after recovery of opium, grounds of arrest were intimated to the Respondent. So, it cannot be held that compliance of Section 52 of the Act was not made by the Investigating Officer. Contention raised by learned counsel for the appellant in this regard, being devoid of merit is, hereby repelled.

(Para 32)

Further held, that in the case of 'Roop Singh Vs. State of Punjab 1996 (1) RCR (Cr) 146' decided by this Court independent witness was won over and given up; case was based on official witnesses; there was nothing on the record to reach at the conclusion that police officer was malicious and interested in falsely framing upon the case; testimony of police officials could not be shaken in their detailed cross-examination. In view of this judgment, benefit of doubt cannot be accorded to the Appellant.

(Para 38)

Further held, that there is delay of 11 days in sending the sample to the FSL for analysis. This delay is not fatal to the case of prosecution, as that delay has not been used for fabricating the sample parcel and the case property. The fact remains that case property remained in possession of PW/1, PW/2, PW/4 and PW/5. Their testimonies, during cross-examination, could not be shattered.

(Para 41)

Ashit Malik, Advocate, *for the appellant.*

G.S. Sandhu, AAG, Haryana, *for the respondent.*

S.P. BANGARII, J.

(1) The case of the prosecution is that on 17.09.1989, Maha Singh the then Assistant Sub Inspector of police station City Panipat at about 3.00 p.m. along with other police officials, was present near Adarsh Udyog Factory Panipat situated along side G.T. road, where Ramesh Chand PW met the police party and was joined in the police party. Immediate, thereafter, appellant along with a woman was seen coming on foot along side G.T. road from Delhi side carrying a bag Ex.P1 in his right hand, who on seeing the police party changed their directions towards east, that aroused suspicion in the mind of Maha Singh, Assistant Sub Inspector, who apprehended the appellant and Munni Bai and told them that they are to be searched, in case, they so desired, the same could be done in the presence of some gazetted officer. Both, the appellant and Munni Bai opted to be searched without the presence of a gazetted officer, by Maha Singh, the then ASI (Supra) and the latter searched the appellant, that resulted into a bag Ex.P1 containing 4 Kgs of opium wrapped in a polythene paper. The appellant could not produce any permit, therefor. 200 grams of opium were drawn as a sample from the bulk opium, that was put in a small tin box, while the remaining opium was put in another tin box.

(2) Both the boxes were made into parcels, that were sealed by Maha Singh, the then ASI with his seal bearing impression 'MS'. The case property including the bag Ex.P1 was seized vide recovery memo Ex.PA, that was attested by Dhan Ran HC and Ramesh Chand public witness. Seal after used was handed over to the latter. Later, ruqa Ex.PB was sent by Maha Singh, the then ASI to Police Station City, Panipat, where formal FIR Ex.PB/1 was recorded by Rameshwar Dutt, the then SI. Later, Maha Singh the then ASI prepared rough site plan Ex.PC of the place of recovery of opium and arrested the appellant after informing him the grounds of arrest.

(3) On return to the police station, the case property was deposited with Om Parkash HC. A separate case was registered and investigated against Munni Bai. On return to the police station, appellant and the case property were produced before Kedar Singh Rathi SHO, who verified the facts from all concerned and affixed his own seal bearing letter 'KSR' on case property. Later, Maha Singh the then ASI deposited the case property with Om Parkash HC, who sent the sample parcel in this case to the

Forensic Science Laboratory, Madhuban through Pawan Kumar Constable and the former vide report Ex.PD declared the contents of the sample parcel to be of opium.

(4) After completion of investigation, Station House Officer of Police Station City, Panipat, instituted police report under Section 173 Code of Criminal Procedure (Cr.P.C.-for short) against the appellant, before the learned Illaqa Magistrate to the effect that it appeared that he has committed an offence punishable under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Act-for short).

(5) On presentation of police report, copies of documents, as required under Section 207 Cr.P.C. were furnished to the appellant by the learned Illaqa Magistrate, who later committed the case to the Court of Session, that was entrusted to learned trial Court, where charge under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 was framed against the appellant, whereto, the latter, pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

(6) At the trial, the prosecution examined, as many as, six witnesses whose testimonies are as under: -

(7) PW-1 Om Parkash HC No. 160 testified that on 17.09.1989, he was posted in Police Station City, Panipat, on that day, Maha Singh ASI deposited two sealed parcels of opium duly sealed with the seals bearing impressions 'KSR' and 'MS' and he sent the sample parcel of opium of this case to Forensic Science Laboratory, Madhuban for analysis through Pawan Kumar Constable No. 1122 and the latter deposited the case property with the former and, so long as, the case property remained in his possession, no one tampered, therewith.

(8) PW-2 Pawan Kumar Constable testified that on 28.09.1989, he was posted in Police Station City, Panipat and on that day, Om Parkash HC (PW-1) handed over to him, one sealed parcel of opium duly sealed with the seals of 'KSR' and 'MS' for deposit, thereof, in the office of Forensic Science Laboratory, Madhuban and he deposited the sealed parcel on the same day with the Laboratory (supra) and on return to the police station, he handed over the road certificate to Om Parkash HC (PW-1). He further testified that, so long as, the sealed parcel remained in his possession, no one tampered, therewith.

(9) PW-3 Dhan Raj HC testified that on 17.09.1989, he was posted in Police Station City, Panipat and on that day, he along with Maha Singh ASI and other police officials was present at G.T. road near Adarsh Factory, Panipat, where, Ramesh Chander PW met them and was joined in the police party and appellant along with Munni Bai came on foot on the G.T. road, from the side of Delhi carrying bag Ex.P1. On seeing the police party, both changed their directions towards east, that aroused suspicion in the mind of Maha Singh ASI and he apprehended both and told them, that they are to be searched and if, they so desired, that could be conducted in the presence of a gazetted officer. He further testified that the appellant and Munni Bai opted to be searched without the presence of a gazetted officer and later, Maha Singh ASI gave his personal search to them and after that, he searched the appellant, that resulted in recovery of 4 Kgs of opium and the appellant could not show any permit or license for keeping that opium in his possession. He further testified that 200 gms of opium were separated as sample. Both, the sample opium and remaining opium were made into two separate parcels, that were sealed with the seal bearing impression 'MS' and the seal after use was handed over to Ramesh Chand PW. Bag Ex.P1, sealed parcel Ex.P2 and the sample parcel were seized vide memo Ex.PA, that was attested by him and Ramesh Chand PW and his statement was recorded at the spot.

(10) PW-4 Maha Singh, the then ASI also testified that on 17.09.1989, he was posted in Police Station City, Panipa, on that day, he along with other police officials was present at the G.T. road near Adarsh Udyog Factory, Panipat, situated near the NFL colony, where, Ramesh Chand PW met them and was joined in the police party. At about 3.00 p.m. appellant along with a woman was seen coming from the side of Delhi on foot on the G.T. road, carrying a bag Ex.P1 in his right hand and on seeing the police party, the appellant and Munni Bai changed their directions towards east and that aroused suspicion and he apprehended both and told them that they are to be searched and, if they so desired, that could be conducted before some gazetted officer. He further testified that the appellant and Munni Bai declined the offer and, thereafter, in accordance with law, he searched the appellant, that resulted in recovery of 4 Kgs of opium wrapped in a paper from the bag Ex.P1 being carried by the appellant, who could not produce any permit for possessing that.

(11) He further testified that 200 gms of opium were separated as sample and was put in a small tin box while remaining opium was put in another tin box and both the boxes were sealed with his seal bearing impression 'MS' and the bag Ex.P1, parcel of remaining opium Ex.P2 and sample parcel were seized vide memo Ex.PA, that was attested by Dhan Ran IHC (PW-3) and seal after use was handed over to Ramesh Chand PW. He further testified that later, he sent ruqa Ex.PB to the police station, where formal FIR Ex.PB/1 was recorded by Rameshwar Dutt SI and later, he prepared the rough site plan Ex.PC of the place of recovery of opium and recorded the statements of witnesses and after informing the grounds of arrest to the appellant, he arrested him.

(12) He further testified that after the investigation at the spot, he took the appellant and Munni Bai in two cases along with the case property to the police station and produced them before Kedar Singh Rathi Inspector the then SHIO, who verified the facts from all concerned and put his own seal bearing impression 'KSR' on the parcels and later, he (PW-4) deposited the case property with MHC and subsequently, sealed sample parcel was sent to the Forensic Science Laboratory, Madhuban and the latter vide report Ex.PD opined the contents of the sample parcel to be of opium. Bag Ex.P1 and sealed parcel Ex.P2 were shown to this witness during his deposition.

(13) PW-5 Ramesh Chand testified that nothing was recovered from the appellant in his presence. This witness was declared hostile to the respondent/prosecution and was cross-examined by the learned Public Prosecutor for the respondent/prosecution before the learned trial Court.

PW-6 Kedar Singh Rathi, the then SHIO of Police Station City, Panipat, testified that on 17.09.1989, Maha Singh ASI had produced before him, the appellant along with the case property and the PWs and he verified the investigation of the case from the appellant and all others and had affixed his own seal bearing impression 'KSR' on the case property, that was later deposited with the concerned MHC with seals, thereon, intact. Bag Ex.P1 and tin box containing opium Ex.P2 were produced during the deposition of this witness.

(14) After the closure of prosecution evidence, appellant was examined under Section 313 Cr.P.C, wherein, he denied the allegations of the prosecution, pleaded innocence and false implication in this case.

(15) Appellant gave his own version that he had been apprehended by Dhan Raj HC (PW-3) from the Bus Stand, Panipat and nothing had been recovered from him.

(16) Appellant was called upon to enter in defence, but he closed the same without examining any witness in defence.

(17) After hearing both the sides, as also, after perusing the evidence and documents on the record, the learned trial Court vide impugned judgment of conviction and order of sentence passed in Sessions case No. 60 of 1991, emanating from FIR No. 794 dated 17.09.1989 under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station City, Panipat, convicted the appellant for commission of offence punishable under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- and in default, thereof, to further undergo rigorous imprisonment for two years. Aggrieved, thereagainst, the appellant, has come up with this appeal with prayer for acceptance, thereof, and for his acquittal of offence punishable under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985, wherefor, he was charged by the learned trial Court.

(18) Learned counsel for the appellant and learned Assistant Advocate General, Haryana for the respondent have been heard and record of the learned trial Court perused with their assistance.

(19) Learned counsel for the appellant contended that the learned trial Court did not examine the evidence with the requisite objectivity in the case, who also never looked into the glaring infirmity in the prosecution case. He also contended that he learned trial Court erred in not deriving correct inferences of non compliance of Sections 50, 82, 55 and 57 of the Act.

(20) Learned counsel for the appellant also contended that the sole independent witness in the investigation of the case did not support the case while appearing as PW5 and, therefore, in view of his testimony, the

testimonies of other prosecution witnesses should have been discarded and benefit of doubt should have been accorded to the appellant by the learned trial Court.

(21) On the other hand, learned Assistant Advocate General for the State of Haryana / respondent contended that there is no illegality or impropriety in the impugned judgment and order of sentence that may be upheld and affirmed.

(22) First of all, it is to be seen as to whether compliance of Section 50 of the Act was required to be made in this case. Section 50 of the Act reads as under:-

50. Conditions under which search of persons shall be conducted-

(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female

(5) When an officer duly authorised under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973(2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy two hours send a copy thereof to his immediate official superior.]

(23) Sub Section 1 of Section 50 of the Act provides that when the empowered officer is about to search any suspect person, he shall, if the person to be searched, so requires, take him to the nearest gazetted officer or the Magistrate for the purpose. It is to be seen that the recovery of the opium from the appellant was not made from his personal search, that was made from a bag being carried by him in his right hand. This bag being carried by the appellant in his right hand was visible to the Investigating Officer (PW4) and other members of the police party.

(24) Hon'ble Supreme Court of India in *Ajmer Singh* versus *State of Haryana (1)*, while placing reliance upon *Madan Lal* versus *State of H.P. (2)*, held that a bare reading of Section 50 of the Act shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises. In *Ajmer Singh's case (supra)*, Hon'ble Supreme Court of India also placed reliance upon *State of H.P. versus Pawan Kumar (3)*, wherein, it was held that 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 which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to conclude these articles within the ambit of the word 'person' occurring in Section 50 of the Act.

(1) (2010)3 SCC 746

(2) (2003)7 SCC 465

(3) (2005) 4 SCC 350

(25) So, in view of the judgments **supra**, the provisions of Section 50 of the Act will come into play only in case of personal search of the accused and not of some baggage like bag, article or container etc. which (accused) may be carrying.

(26) In this view of the judgments **supra**, Section 50 of the Act has no application to the facts and circumstances of the case, as opium was recovered from a bag that was being carried by the appellant, as per the deposition of PW3 and PW4, who in candid words deposed that the appellant was apprehended, while he was carrying bag containing opium in his right hand. PW4, thus, could effect the recovery of opium from the appellant without the presence of the gazetted officer or Magistrate. So, compliance of Section 50 of the Act was not required to be made in this case, which would have been required to be made in the case opium had been recovered from the 'person' of the appellant i.e if he had concealed the contraband/opium in his clothes or in the pockets of his clothes. Therefore, the contention of the learned counsel for the appellant raised in this regard is repelled.

(27) Now it is to be seen as to whether Section 42 of the Act has been complied with in this case or not.

(28) For facility, Section 42 of the Act is reproduced as under:-

42. Power of entry, search, seizure and arrest without warrant or authorisation. -

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, or controlled substance in

respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset,-

(a) Enter into and search any such building, conveyance or place;

(b) In case of resistance, break open any door and remove any obstacle to such entry;

(c) Seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV relating to such drug or substance; and

(d) Detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under subsection (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

(29) The recovery of opium in this case was not effected from the search of any building, conveyance or place. That was made only from the bag being carried by the appellant in his right hand. On suspicion, appellant was detained by PW4, who was fully empowered to detain him on suspicion.

He was fully competent to effect the recovery of bag being carried by he appellant in his right hand without the presence of the gazetted officer or Magistrate.

(30) After the recovery of opium from the appellant, PW4 sent ruqa Ex.PB to police station, where formal FIR Ex.PB/1 was recorded by Rameshwar Dutt, SI. Later, the copies of FIR Ex.PB/1 were sent to the superior / higher police officers of PW4, as also, to the Ilaqa Magistrate, as per law. All this is made out from the depositions of PW3 and PW4. Compliance of Section 42 of the Act was, thus, made by PW4 at the time of recovery of the opium from the appellant. There is, thus, no force in this contention raised by the learned counsel for the appellant and is, hereby, repelled.

(31) Now it is to be seen as to whether Section 52 of the Act was complied with or not. Section 52 of the Act reads as under:-

52. Disposal of persons arrested and articles seized. -

(1) Any officer arresting a person under Section 41, Section 42, Section 43 or Section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to-

(a) The officer-in-charge of the nearest police station, or

(b) The officer empowered under Section 53.

(4) The authority or officer to whom any person or article is forwarded under sub section (2) or subsection (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

(32) It is no doubt true, that if a person is not informed of grounds of his arrest, his further detention may become invalid or unlawful, but it cannot be said that his initial arrest itself becomes illegal. It has come in the evidence of PW3 and PW4 that after recovery of opium, grounds of arrest were intimated to the respondent. So, it cannot be held that compliance of Section 52 of the Act was not made by the investigating officer. Contention raised by learned counsel for the appellant in this regard, being devoid of merit is, hereby, repelled.

(33) It may be mentioned here that PW5 Ramesh Chander was associated in the police party, but he did not support the prosecution version during trial and denied the alleged recovery of opium from the appellant in his presence. This deposition rightly did not weigh in the mind of the learned trial Court to acquit the appellant of the charge framed against him. PW5 Ramesh Chander was rightly not relied upon by the learned trial Court, as possibly, he would have been won over by the appellant.

(34) When there is unanimous evidence of PW3 and PW4 to the effect that a bag containing 4 kgs of opium was recovered from the appellant and when these witnesses were subjected to searching cross examination by the learned counsel for the appellant before the learned trial Court and the long cross examination failed to elicit anything worth the name, which could possibly cause any dent in their testimony, the case of the prosecution could not be repelled simply on the basis of testimony of PW5 Ramesh Chander, who deposed that nothing had been recovered from appellant in his presence.

(35) The testimony of PW3 could not be given precedence over the testimonies of PW3 and PW4, who are not alleged to have any animus or hostility towards the appellant prior to the day of recovery.

(36) It is well settled that the independent witnesses are generally averse to depose in favour of prosecution, as they are afraid of the fact that deposing in favour of prosecution may expose them to serious consequences. Learned counsel for the appellant failed to explain the circumstances, whereunder, PW5 signed the recovery memo Ex.PA, when it was blank. He was not an illiterate person. Therefore, it was not required

of him to sign the blank papers on the asking of the police. Even, if he had signed the blank papers, he should have complained to the superior officers of PW3 and PW4 for getting from him blank papers signed. Now, he shall be precluded from claiming that due to fear or hostility from PW3 and PW4, he did not complain against them to their higher officers for getting his signatures on the blank papers. He thus, kept silent on a matter whereon, he should have acted with alacrity by informing the higher officers of PW3 and PW4 for getting his signatures on the blank papers. His silence in the matter, whereon, he should have acted with alacrity is indeed, intriguing and it must be held that he was won over by the appellant, as claimed the respondent, whose statements should be considered at par with that of non official witnesses. A person just roaming in the street cannot be given precedence over a gazetted officer or Magistrate.

(37) Even, it was held in *Darshan Khan* versus *State of Punjab* (4), by this Court that conviction can be based on testimony of official witnesses. When PW3 and PW4, in whose presence recovery of opium was made from the appellant are not alleged to have any animus or hostility against the latter, their testimonies were rightly not repelled by the learned trial Court who, thus, rightly placed reliance, thereon, for holding the appellant guilty of commission of offence punishable under Section 18 of the Act.

(38) In the case of *Roop Singh* versus *State of Punjab* (5), decided by this Court independent witness was won over and given up; case was based on official witnesses; there was nothing on the record to reach at a conclusion that police officer was malicious and interested in falsely framing upon the case; testimony of police officials could not be shaken in their detailed cross examination. In view of this judgment, benefit of doubt cannot be accorded to the appellant.

(39) Compliance of Section 55 of the Act was also made by the prosecution in the case in hand. PW4 on return to police station produced the case property before PW6 Kaidar Nath Rathee, Inspector, who was working as SHO of police station City Panipat. According to his deposition,

(4) 1999(1) RCR (Crl.) 269

(5) 1996(1) RCR (Crl.) 146

he verified the investigation of the case from appellant and all others and affixed his seal bearing impression KSR on the parcels and after sealing these parcels, he deposited those with MHC in an intact condition. Evidence of this witness, during cross examination, could not be shattered. So, in these circumstances, it must follow that Section 55 of the Act was also complied with.

(40) Case property was duly produced in the Court during trial. There is nothing on the record to show that the parcel Ex.P2 did not bear the particulars of the case. There is nothing on the record that plastic bag Ex.P1 did not bear the particulars of the case. There is no cross examination upon PW3 and PW4, that case property that was produced during trial pertained to some other case. Tin box containing opium Ex.P2 was also produced during the deposition of PW6.

(41) There is delay of 11 days in sending the sample to the FSL for analysis. This delay is not fatal to the case of prosecution, as that delay has not been used for fabricating the sample parcel and the case property. The fact remains that case property remained in possession of PW1, PW2, PW4 and PW6. Their testimonies, during cross examination, could not be shattered. It is their evidence that, so long as, the sample parcel and case property remained in their possession, no one tampered, therewith. There is, thus, no evidence on the record to suggest that the sample parcel was ever tampered with during investigation till its deposit with the FSL, who in its report Ex.PD opined that the contents of the sample parcel were opium.

(42) In these circumstances, it follows that the appellant was found in possession of 4 kgs of opium on 17.09.1989 in the area of City Panipat without any licence or permit. Learned trial court, thus, rightly convicted and sentenced him vide impugned judgment and order of sentence that do not suffer from any illegality or impropriety.

Resultantly, the appeal fails and is, hereby, dismissed.