

KULDEEP SINGH
v.
STATE OF PUNJAB
(Criminal Appeal No. 1842 of 2010)

SEPTEMBER 23, 2010

[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985:

s. 42 – *Non-collection of samples of contraband at initial stage of seizure – Seizure of 150 kg poppy husk concealed in four bags – Contraband sealed and taken to Police Station – S.H.O. at the Police Station broke open the seals, mixed the contraband, took samples and again sealed the bags – Conviction of accused – HELD: Non-collection of samples at the initial stage of seizure was a defect, which could not have been cured in the manner in which it was done by opening the bags which had been sealed by PW-2 and mixing the contents thereof – The seizure and collection of samples was not in accordance with the provisions of s.42 of the Act and the entire procedure stood vitiated as a result – Conviction and sentence set aside – Interpretation of Statute.*

s. 42 – *Information regarding contraband to be recorded and sent to superior officer – On receipt of secret information, Police Officer on patrol duty seized the contraband – Information recorded thereafter and sent to superior officer – HELD: There was substantial compliance of the provision.*

Interpretation of Statutes:

Strict construction – HELD: Provisions of NDPS Act have to be construed strictly.

Karnail Singh vs. State of Haryana 2009 (11) SCR 470 = 2009 (8) SCC 539 - referred to.

A **Case Law Reference:**

2009 (11) SCR 470 referred to **para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1842 of 2010.

B From the Judgment & Order dated 22.7.2008 of the High
Court of Punjab and Haryana at Chandigarh in Criminal Appeal
No. 628 of 1997.

C Rajesh Sharma, Yogesh Dahiya, Shalu and Sahil Bali for
the Appellant.

Jayant K. Sud, Atul Shai, Aman Raj Gandari and Kuldip
Singh for the Respondent.

D The following order of the Court was delivered

ORDER

Leave granted.

E This appeal is directed against the judgment and order
dated 22nd July 2008, passed by the Punjab & Haryana High
Court, in CrI. Appeal No. 628-SB of 1997, dismissing the
F appeal of the appellant which had been filed by the appellant
against his conviction by the learned, Special Judge, Sangrur,
under Section 15 of the Narcotic Drugs & Psychotropic
Substance Act, 1985 (NDPS Act). According to the case of the
prosecution, P.W.3, Mr. Malkiat Singh, Sub-Inspector of Police
Station, Bhawanigarh, was said to have been on patrol duty
G when a secre information was received by him that the
appellant was dealing with Poppy Husk from his residence. On
receipt of the said information the said Malkiat Singh, along
with Head Constable Gurmail Singh, Constable Gamdoor
Singh, Head Constable, Jagga Ram, PHG Rajinder Singh and
SPO Hari Singh, went to the house of the appellant and upon
questioning him they came to learn that he had concealed

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certain amount of contraband. Based on the said part of the information which was admissible under Section 27 of, the Evidence Act, a recovery was made of four bags of Poppy Husk. At the time of seizure of the said contraband, no samples were taken by P.W.3. The same was seized by Mr. Malkiat Singh, who also sealed the same with his seal, and thereafter, the four bags were taken to the Police Station where the Station House Officer, Gurmail Singh, broke open the seals and mixed the contents of the four bags together, and took the samples therefrom and resealed the bags with his seal. At that point of time, the poppy Husk was weighed and found to be 150 kilograms of Poppy Husk in all. A charge was framed against the appellant under Section 15 of the NDPS Act, and, ultimately, he was found guilty and sentenced to 10 years' rigorous imprisonment and to pay a fine of Rs. 1,00,000/-, in default, to undergo rigorous imprisonment for a further period of two and a half years.

Aggrieved by the said order of conviction, the appellant moved the High Court, which agreed with the findings of the Trial Court, and dismissed the appeal. It is against the said order of dismissal that the instant Special Leave petition was filed, and this appeal arises therefrom.

Mr. Sahil Bali, learned advocate for the appellant, submitted that in view of what has been stated hereinabove by the Investigating Authorities, it would be evident that the provisions of Section 42 of the aforesaid Act had not been complied with, and that, as has been held in several cases by this Court, since the provisions of the Act are very stringent they have to be construed very strictly also. Mr. Bali urged that by not taking samples at the initial time of seizure, P.W. 3, Malkiat Singh had committed an error which could not have been rectified in the manner done by the Station House Officer (P.W.2.). He also urged that since the information received by PW-3, Mr. Malkiat Singh, has not been reduced into writing and forwarded to his Senior officer, the seizure also stands vitiated

A under Section 42 of the N.D.P.S. Act.

It was lastly contended by Mr. Bali that even Roqa, which was subsequently sent could not wipe out the illegalities with regard to the collection of samples and, accordingly, the conviction and sentence of the appellant was liable to be set
B aside.

On behalf of the State of Punjab, Mr. Atul Sahi, learned advocate, appearing with Mr. Sud, submitted that there had been substantial compliance with the provisions of Section 42 of the
C aforesaid Act having particular regard to the fact that the secret information was received by Mr. Malkiat Singh when he was on patrol duty, and, therefore, had no opportunity to write down such information in writing and send the same to his Superior Officer prior to raiding of the appellant's premises. It was urged
D that once the seizure had been effected, the evidence was recorded in writing, and, thereafter, sent to the Superior Officer.

As to the legality of mixing of the samples in the Police Station, reliance was placed on a Constitution Bench decision of this Court in *Karnail Singh Vs. State of Haryana*, (2009) 8
E SCC 539, wherein the provisions of Section 42 were also considered and it was felt that where non-compliance of Section 42 did not cause any prejudice to the accused, the same would not vitiate the prosecution case.

Having considered the submissions made on behalf of the parties, while we are willing to accept the propositions advanced on behalf of the State of Punjab as far as substantial compliance of Section 42 of the NDPS Act, 1985, is concerned, we are unable to accept the latter part of the
F submissions relating to collection of samples at the Police Station from the seized goods which had been sealed by P.W. 3, Malkiat Singh. Non-collection of samples at the initial stage of seizure was a defect, which could not have been cured in the manner in which it was done by opening the bags which
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had been sealed by Malkiat Singh and mixing the contents thereof. A

Accordingly, as indicated hereinabove, since the provisions of the aforesaid Act have to be construed strictly, we have no other option but to hold that the seizure and collection of samples was not in accordance with the provisions of Section 42 of the Act and the entire procedure stood vitiated as a result thereof. B

Accordingly, the appeal is allowed. The judgment of conviction and sentence of the appellant passed by the learned Sub-Judge in Special Case No. 27/93, are set aside. In the event the fine imposed has already been paid, the same is to be refunded to the appellant. C

R.P. Appeal allowed. D