

NARAYANASWAMY RAVISHANKAR  
v.  
ASSTT. DIRECTOR, DIRECTORATE OF REVENUE INTELLIGENCE

OCTOBER 3, 2002

[B.N. KIRPAL, CJ., ARIJIT PASAYAT AND S.B. SINHA, JJ.]

*Narcotic Drugs and Psychotropic Substances Act, 1985:*

*Ss. 42, 43, 50 and 57—Heroin recovered from suitcase belonging to accused—Search and seizure taking place at the Airport—Trial court acquitting the accused for non-compliance of ss.42 and 50—High Court convicting and sentencing him for 10 years RI—In appeal before Supreme Court pleas of non-compliance of ss. 42 and 57 raised by accused were rejected—Held, the search and seizure having taken place at a public place, namely, the Airport, provisions of s. 43 were applicable—Therefore, non-compliance of s.42, if any, is wholly irrelevant—As regards alleged non-compliance of s. 57, the record shows that arrest of accused was revealed to superior officer, namely, the Deputy Director—No search and seizure was conducted on the person of the accused and, therefore, provisions of s.50 were not attracted—High Court rightly convicted the accused.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 770 of 2002.

From the Judgment and Order dated 18.2.2002 of the Chennai High Court in Crl.A.No. 346 of 1992.

N. Natarajan, Senthil Jagadeesan and V. Ramasubramanian for the Appellant.

B. Krishna Prasad (NP) for the Respondent.

The following Order of the Court was delivered :

We have heard the learned counsel for the appellant.

In the instant case, according to the prosecution, 5940 gms. of heroin concealed in the bottom of a suitcase alleged to be belonging to the appellant

A was recovered when he was attempting to transport the same from the International Airport, Chennai to Singapore. The recovery memo was prepared on 5th January, 1987 at 3.00 A.M. and thereafter the appellant was arrested on that day at 2.00 P.M. The trial court acquitted the appellant by holding that mandatory provisions like Section 42 and Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") had not been complied with.

In appeal, the High Court reversed the decision of the trial court and convicted the appellant and sentenced him to 10 years' imprisonment and to pay a fine of Rs. 1 lakh and in default to undergo RI for one month.

C In this appeal, it has been contended by the learned senior counsel for the appellant that the provisions of Section 42 of the NDPS Act have not been complied with. He further states that there was delay in arresting the appellant which had not been explained and further that the provisions of Section 57 of the NDPS Act which are mandatory in nature have not been D complied with.

In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the Airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the E NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant. Furthermore, in the Mahazar which was prepared, it is clearly stated that the seizure was made by PW-1. The Mahazar was no doubt drawn by one S Jayanth. But, the F contention of the learned senior counsel that prosecution version is vulnerable, because Jayanth has not been examined, is of no consequence because it is PW-1 who has conducted the seizure. With regard to the alleged non-compliance of Section 57 of the NDPS Act, the High Court has rightly noted that PW-3 has stated that the arrest of the accused was revealed to his immediate superior officer, namely, the Deputy Director.

G It was also contended by the learned senior counsel that the ground on which the appellant was arrested was not communicated to him. We find no merit in this because the arrest memo clearly indicates the offence stated to have been committed by the appellant under the NDPS Act. Further, the record also shows that copy of the arrest memo Exh. P-20 was received by H the appellant.

In the instant case, no search or seizure was conducted on the person of the accused and, therefore, the provisions of Section 50 of the NDPS Act were not attracted. The High Court was, therefore, right in coming to the conclusion which it did. A

We do not find any merit in this appeal which is, accordingly, dismissed. B

R.P.

Appeal dismissed.