Bharti Arora vs The State Of Haryana on 13 December, 2024

Author: B.R. Gavai

Bench: Prashant Kumar Mishra, B.R. Gavai

2024 INSC 976 REP

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1699 OF 2011

BHARTI ARORA ...APPELLA

VERSUS

THE STATE OF HARYANA ...RESPONDEN

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JUDGMENT

B.R. GAVAI, J.

I. INTRODUCTION:

1. The present appeal challenges the final judgment and order dated 14th October 2010, passed by the learned Single Date: 2024.12.13 14:01:18 IST Reason:

> Judge of the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No. 2194 of 2008, whereby the learned Single Judge dismissed the Criminal Revision filed by the appellant herein and upheld the order dated 30th May 2008 passed by the Presiding Officer1, Special Court, Kurukshetra wherein the learned Special Judge

placed the typed and dictated order relating to the proceedings initiated against the appellant for the offence punishable under Section 58 of the Narcotic Drugs and Psychotropic Substances Act, 19852 in a sealed cover to be delivered by the successor learned Special Judge.

II. FACTS:

2. Shorn of details, the facts leading to the present appeal are as under:

2.1. The appellant was posted as the Superintendent of Police3, Kurukshetra from the period 21st May 2004 to 18th March 2005.

2.2. On 6th January 2005, Inspector Ram Kumar, along with other Police officials, was present at the 'T' point in village Masana on G.T. Road, District Kurukshetra in a Government 'Special Judge' hereinafter.

'NDPS Act' hereinafter.

'S.P' hereinafter.

Vehicle, for the purpose of patrolling. Secret information was received that one Ran Singh, who was involved in the sale of Opium, was having a large quantity of Opium with him and could be apprehended. Based on this, a raiding party was formed which reached the residence of Ran Singh. Shri Virender Kumar Vij, Deputy Superintendent of Police4, reached the spot and he directed a search to be conducted. Ran Singh was found near his residence, and he had covered himself in a blanket. He was apprehended and was found holding a white coloured plastic bag in his right hand. The plastic bag was searched and Opium weighing 8 Kgs. 700 grams was recovered. Based on the aforementioned facts, a First Information Report5 No. 08 of 2005 was registered at Police Station, Shahbad, Kurukshetra for the commission of offence punishable under Section 18 of the NDPS Act. As per the report of the Forensic Science Laboratory, Haryana, Madhuban, Karnal, the material recovered was found to be Opium.

'D.S.P.' hereinafter.

'F.I.R.' hereinafter.

2.3. On 8th January 2005, an application was filed by Ran Singh through a relative, wherein he claimed that he was innocent, and that the Opium had been planted upon him by one Surjeet Singh and others. The appellant, utilizing her powers as the S.P., took cognizance of the application and directed Shri Ram Phal, D.S.P. to conduct an inquiry. The inquiry was conducted, and the report was submitted on the same day, wherein it was revealed that Ran Singh was innocent, and the Opium had been planted by Surjeet Singh, Angrez Singh and Mehar Deen. The report was sent to the appellant on the next day, i.e. 9th January 2005, and on the same day, the discharge report of Ran Singh was prepared. A discharge application was filed by Ran Singh on 10th January 2005

before the learned Special Judge, but the same was dismissed by order dated 20th January 2005. 2.4. The appellant was transferred on 18th March 2005, and joined as S.P., Government Railway Police, Haryana. Meanwhile, the investigation was concluded and the final report under Section 173 of the Code of Criminal Procedure, 19736, was filed on 24th March 2005. The final report revealed 'Cr.P.C.' Hereinafter.

that the Opium was planted by Surjeet Singh, Angrez Singh and Mehar Deen and they were made the accused persons. 2.5. Ran Singh filed another application for discharge on the grounds that he was not named in the final report, but the learned Special Judge vide order dated 27th September 2005 dismissed the discharge application observing that the conduct of the Investigating Agency is suspicious and further, requested the Director General of Police, Haryana and Inspector general of Police, Ambala Range, Ambala to conduct an enquiry into the matter, as commercial quantity of Opium was involved and the Police officers involved in the case had sought discharge of the prime accused after merely three days of his arrest. Pursuant to the order dated 27th September 2005, the report was submitted wherein it was maintained that Ran Singh was innocent, and that the Opium was planted by the three accused due to some pre-existing enmity. 2.6. The trial was conducted, and the learned Special Judge vide final judgment dated 22nd February 2007 convicted Ran Singh and acquitted Surjeet Singh, Angrez Singh and Mehar Deen. The learned Special Judge observed in the said judgment that the story wherein Ran Singh was implicated by the trio was made up by the Senior Police officials including the appellant herein and it has been found to be false and concocted, and hence Show-Cause Notice must be issued to them as to why proceedings under Section 58 of the NDPS Act must not be initiated against them.

2.7. The learned Special Judge vide order dated 26th February 2007 issued Show-Cause Notice to the appellant under Section 58 of NDPS Act and directed her to remain present before the court on 15th March 2007. Pursuant to the said order, the appellant appeared before the learned Special Judge along with her counsel and the matter was adjourned to 12 th April 2007 for filing of her reply to the notice. The reply was filed by the appellant.

2.8. The appellant challenged the Show-Cause Notice dated 26th February 2007 by way of Criminal Revision No. 956 of 2007 before the High Court, which was dismissed vide order dated 19th May 2008. It was observed that, prima facie, the allegations made against the appellant herein cannot be said to be false or not based on material on record. However, it was clarified that nothing stated in the said order shall be construed as an expression of opinion on the merits of the case.

2.9. On the next day, i.e. 20th May 2008, the learned Special Judge was informed of the decision of the High Court dated 19th May 2008 and the matter was fixed for 22nd May 2008 for the personal presence of the appellant as well as the then D.S.P. Ram Phal.

2.10. On 22nd May 2008, the appellant filed an application for exemption from personal presence on the ground that she was directed by the I.G. of Police, Railways & Technical Services, Haryana to coordinate with the Investigating teams at Jaipur, in connection with the 'Samjhauta Bomb Blast' which had taken place on 13th May 2008. The learned Special Judge observed that the letter dated 20th May 2008 issued by the I.G. directing her to report to Jaipur was obtained to avoid her

personal presence in the court and placed the matter on 24th May 2008 and directed her to be present and further directed her to produce proof of her visit to Jaipur on 20th and 22nd May 2008. 2.11. On 24th May 2008, another exemption application was filed by the appellant on the ground that she was still investigating the 'Samjhauta Bomb Blast' at Jaipur. The learned Special Judge dismissed the exemption application and issued a Bailable Warrant against the appellant. The next date of hearing was set to 27th May 2008.

2.12. On 26th May 2008, a Transfer and Postings Order was passed by the High Court of Punjab and Haryana and the learned Special Judge who had been hearing the case of the appellant and the original NDPS case was transferred from Kurukshetra to Panipat as 'Additional District and Sessions Judge'.

2.13. On 27th May 2008, another exemption application was filed along with an adjournment application seeking adjournment for one week on the ground that some agitation had commenced, which was mainly targeting the railway properties and the appellant, being the S.P., was directed to supervise and ensure the maintenance of Law and Order personally. The learned Special Judge, vide order dated 27th May 2008, directed the appellant to be present on the next day along with D.S.P. Ram Phal. On the next day, i.e. 28th May 2008, another exemption application for a period of one week was filed by the appellant on the ground of some agitation. The learned Special Judge adjourned the case to the next day, i.e. 29th May 2008 and observed that in the exemption applications, a personal hearing is being sought, but the appellant has not appeared before the court even once after the dismissal of the Revision petition by the High Court vide order dated 19th May 2008.

2.14. On 29th May 2008, the learned Special Judge observed that the appellant was not present, and neither was any exemption application filed, and it was directed that one more chance for personal hearing must be given to the appellant and in case she does not appear, it would be presumed that she does not want to avail any opportunity of hearing. The matter was adjourned to the next day, i.e. 30 th May 2008.

2.15. On 30th May 2008, the learned Special Judge observed that neither was the appellant present nor any application for exemption had been filed. Further, before the order could be pronounced, an objection was raised on behalf of the appellant that in sensitive matters, orders should not be pronounced after the receipt of the transfer orders by the judicial officer. The learned Special Judge placed the typed and dictated order in a sealed cover and adjourned the matter to 4th June 2008.

2.16. Aggrieved by the order dated 30th May 2008, the appellant filed Criminal Revision No. 2194 of 2008 before the High Court of Punjab and Haryana at Chandigarh. The learned Single Judge of the High Court, vide the impugned final judgment and order dated 14th October 2010 dismissed the Criminal Revision and upheld the order of the learned Special Judge dated 30th May 2008. It was further directed that the Special Court, Kurukshetra would open the sealed cover on 27th October 2010 and pronounce the order then and there, and carry further proceedings as required by law. The appellant was directed to remain present before the Special Court, Kurukshetra on the date fixed, i.e. 27th October 2010. The Director General of Police, Haryana and Home Secretary, Haryana were

directed to ensure the presence of the aforesaid persons.

2.17. Aggrieved by the impugned final judgment and order dated 14th October 2010, the appellant has filed this Criminal Appeal.

2.18. This Court, vide order dated 26th October 2010 issued notice and stayed the operation of the impugned final judgment and order dated 14th October 2010. 2.19. This Court, vide order dated 16th August 2011, granted leave in the matter.

III. SUBMISSIONS:

3. We have heard Shri A.N.S. Nadkarni, learned Senior Counsel appearing on behalf of the appellant and Shri Lokesh Sinhal, learned Senior Additional Advocate General ('Sr. AAG' for short) appearing on behalf of the respondent-State at length.

4. Shri Nadkarni, learned Senior Counsel appearing on behalf of the appellant submitted that, firstly the findings given by the learned Special Judge in its judgment and order dated 22nd/24th February 2007, while convicting Ran Singh and acquitting Surjeet Singh, Angrej Singh and Mehar Deen, wherein adverse findings have been recorded against the appellant, are contrary to the principles of natural justice. It is submitted that no notice was given to the appellant prior to recording of the adverse findings against her and the said findings were recorded ex-parte.

5. Shri Nadkarni submitted that, even on merits, the said findings were totally unwarranted. He submitted that the appellant had served as S.P., Kurukshetra only from 21st May 2004 to 18th March 2005. It is submitted that, during that period, the appellant was neither a part of the raiding team, search team, nor the investigating team, that carried out the operation against Ran Singh on 6th January 2005. It is submitted that even the charge-sheet was filed against the accused persons only after the appellant was transferred from Kurukshetra. It is therefore submitted that no act or omission could be attributed to the appellant covered by Sections 42, 43 and/or 44 of the NDPS Act. He submitted that, as such, on the basis of such bald allegations by the accused persons, at the stage of final hearing, the issuance of notice on the premise that the appellant had committed an offence punishable under Section 58 of the NDPS Act was itself not sustainable.

6. Shri Nadkarni further submitted that the findings of the learned Special Judge are totally contradictory. On one hand, the learned Special Judge came to a specific finding that there was no violation of Sections 42, 50 and 55 of the NDPS Act; on the other hand, the learned Special Judge has issued a notice on the premise that the appellant and the other officers are guilty of an offence punishable under Section 58 of the NDPS Act. It is further submitted that the very approach of the learned Special Judge in issuing notice under Section 58 of the NDPS Act merely two days after the judgment and order dated 22nd/24th February 2007 and thereafter rushing the proceedings in a hurried manner would show that the learned Special Judge was predetermined to convict the appellant. It is submitted that this is clear from the said order of the learned Special Judge which was kept in a sealed cover and opened by this Court on 24th October 2024.

7. Shri Nadkarni submitted that the learned Special Judge failed to take into consideration that the exemptions were required to be granted to the appellant since the appellant was required to attend important duties pertaining to law and order. In a short span of ten days, the learned Special Judge had adjourned the matter on seven days which shows the hurried manner in which the learned Special Judge was proceeding with the matter. It is submitted that the very conduct of the learned Special Judge of dictating the order after the transfer order was issued on 26th May 2008 and keeping it in a sealed cover on 30th May 2008 for pronouncement later on, itself shows the predetermined mind of the learned Special Judge.

8. Shri Nadkarni further submitted that the punishment for an offence punishable under Section 58 of the NDPS Act is less than 3 years. It is therefore submitted that, in view of Section 36-A(5) of the NDPS Act, the proceedings against the appellant for the offence punishable under Section 58 ought to have been carried out as a summary trial by the learned Magistrate. It is submitted that the summary trial will have to be conducted as a summons case and the procedure as required under Sections 251 to 259 of the Cr.P.C. would be required to be followed. However, the learned Special Judge has passed the judgment contrary to the said provisions. In this respect, reliance is sought to be placed on the judgment of this Court in the case of Tofan Singh v. State of Tamil Nadu7.

9. Shri Nadkarni submitted that the procedure adopted by the learned Special Judge is full of lacunae. He submitted that neither the copies of the police report and other documents referred to in Section 207 of the Cr.P.C. were supplied to the (2021) 4 SCC 1 : 2020 INSC 620 appellant nor was the appellant asked under Section 251 of the Cr.P.C. whether she pleads guilty or not. He submitted that neither the prosecution witnesses were examined nor was the appellant given an opportunity to cross-examine the witnesses. He submitted that the appellant was not given an opportunity to explain the circumstances appearing in evidence against her as required under Section 313 of the Cr.P.C.

10. Shri Nadkarni submitted that the only role of the appellant was forwarding the representation received by her to the subordinate authorities. He submitted that, as such, she was acting in discharge of her official duties. It is therefore submitted that the appellant's bona fide action was squarely protected by Section 69 of the NDPS Act read with Section 76 of the Indian Penal Code, 1860. Shri Nadkarni submitted that the findings against the appellant in the judgment and order dated 22nd/24th February 2007 were rendered without arraying the appellant as additional accused. It is submitted that the procedure adopted by the learned Special Judge was contrary to the Constitution Bench judgment of this Court in the case of Sukhpal Singh Khaira v. State of Punjab8.

11. Shri Nadkarni further submitted that the learned Special Judge could not have taken cognizance for the offence punishable under Section 58 of the NDPS Act against the appellant in the absence of a valid sanction under Section 197 of the Cr.P.C.

12. Shri Nadkarni further submitted that the appellant is a highly meritorious officer, and she has received outstanding grading in her CRs and is also a recipient of the Presidential Medal.

13. The State has also supported the stand taken by the appellant. The State has also reiterated that the appellant was required to attend to an urgent law and order situation on account of the bomb blasts in Samjhauta Express and also the agitation. It further submitted that, though there were voluminous evidence against the accused persons Surjeet Singh, Angrej Singh and Mehar Deen, the learned Special Judge had acquitted them. It is submitted that the State had preferred an appeal challenging the acquittal of the said 3 (2023) 1 SCC 289 : 2022 INSC 1250 accused persons which is pending before the High Court. It is stated that Ran Singh who was convicted has also filed an appeal challenging his conviction before the High Court.

14. With the assistance of the parties, we have examined the material placed on record.

IV. CONSIDERATION:

15. The only finding against the appellant in the judgment and order of conviction/acquittal dated 22nd/24th February 2007 is thus:

> "50. The powers under section 42, 43 and 44 of the Act have been given to the police officers with regard to seizure, search and arrest. As per provisions under section 58 of the Act, any person empowered under sections 42, 43 and 44 of the Act who vexatiously and unnecessarily detains, searches or arrests any person or wilfully and maliciously give false information causing an arrest, shall be liable for punishment. In the foregoing paragraphs, it has been observed that the recovery of commercial quantity of opium was effected from the conscious possession of accused Ran Singh. After three days of his arrest, at the behest of then Superintendent of Police Smt. Bharti Arora and with the help of Ram Phal the then DSP and Ram Kumar, investigating officer, the prosecution case was formulated that the commercial quantity of opium was planted by accused Surjit Singh with the help of accused Angrej Singh and Mehardeen in the heap of dung cakes outside the house of accused Ran Singh. The story made up by the senior police officers has been found to be false and concocted which makes Smt. Bharti Arora the then Superintendent of Police, Ram Phal the then DSP and Ram Kumar Inspector liable for prosecution under section 58 of the Act. Hence, separate notices to Smt. Bharti Arora the then Superintendent of Police, Kurukshetra, Ram Phal the then DSP and Ram Kumar Inspector be given to show cause as to why proceedings under section 58 of the N.D.P.S. Act be not initiated against them. It is not out of place to mention here that accused Surjit Singh remained in custody w.e.f. 8.1.2005 till 29.8.2005 and accused Angrej Singh and Mehardeen remained in custody w.e.f. 8.1.2005 to 25.5.2005."

16. It can thus be seen that the reasons given by the learned Special Judge are that the present appellant and the other police officers have though exercised their powers under Sections 42, 43 and 44 of the NDPS Act, they were not exercised in a bona fide manner. The findings are beset with several legal infirmities pointed out hereinbelow.

17. We find that the judgment and order dated 22nd/24th February 2007 passed by the learned Special Judge so also the order dictated by the learned Special Judge on 30th May 2008 and kept it in a sealed cover to be pronounced by the successor of the learned Special Judge are unsustainable in law for more than one reason. Further, there has also been gross violation of principles of natural justice. a. Interpretation of the provisions of the NDPS Act and Cr.P.C.:

18. It will be relevant to refer to Section 36-A (5) of the NDPS Act, which reads thus:

> "36-A. Offences triable by Special Courts.—(1) .....
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> (2) ..... (3) .....
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> (4) .....
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> (5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily."

19. It will also be relevant to refer to Section 58 of the NDPS Act, which reads thus:

> "58. Punishment for vexatious entry, search, seizure or arrest.—(1) Any person empowered under Section 42 or Section 43 or Section 44 who—
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> (a) without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building, conveyance or place;
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> (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated under this Act, or of seizing any document or other article liable to be seized under Section 42, Section 43 or Section 44; or
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> (c) vexatiously and unnecessarily detains, searches or arrests any person, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.
>
> (2) Any person wilfully and maliciously giving false information and so causing an arrest or a search being made under this Act shall be punishable with imprisonment for a term which may extend to two years or with fine or with both."

20. A perusal of sub-section (1) of Section 58 of the NDPS Act would reveal that if any person empowered under Section 42 or Section 43 or Section 44, who, without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building, conveyance or place, or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated

under the Act, or of seizing any document or other article liable to be seized under Section 42, Section 43 or Section 44; or vexatiously and unnecessarily detains, searches or arrests any person shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both. Sub-section (2) thereof provides that any person, who wilfully and maliciously gives false information and so causes an arrest or a search being made under this Act shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

21. The notice which was given by the learned Special Judge to the appellant and other police officers was for the offence punishable under Sections 58(1) and (2) of the NDPS Act. As such, it could be seen that the proceedings which were initiated by the learned Special Judge against the appellant were for the offence punishable for which the maximum sentence provided in the NDPS Act was up to two years. Section 36-A (5) of the NDPS Act which begins with the non- obstante clause provides that notwithstanding anything contained in the Cr.P.C., the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily. It could thus be seen that even if the proceedings were to be initiated against the appellant for the offence punishable under Section 58 of the NDPS Act, the appellant was required to be tried summarily.

22. A bench of learned three Judges of this Court in the case of Tofan Singh (supra) was considering a question as to whether officers of departments other than the police, on whom the powers of an officer in charge of a police station under Chapter XIV of the Cr.P.C., have been conferred, are police officers or not within the meaning of Section 25 of the Evidence Act. This Court answered the question that the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act. This Court observed thus:

> “145. A third anomalous situation would arise, in that under Section 36-A(1)(a) of the NDPS Act, it is only offences which are punishable with imprisonment for a term of more than three years that are exclusively triable by the Special Court. If, for example, an accused is tried for an offence punishable under Section 26 of the NDPS Act, he may be tried by a Magistrate and not the Special Court. This being the case, the special procedure provided in Section 36-A(1)(d) would not apply, the result being that the Section 53 officer who investigates this offence, will then deliver a police report to the Magistrate under Section 173 CrPC. Absent any provision in the NDPS Act truncating the powers of investigation for prevention and detection of crimes under the NDPS Act, it is clear that an offence which is punishable for three years and less can be investigated by officers designated under Section 53, leading to the filing of a police report. However, in view of Raj Kumar Karwal [Raj Kumar Karwal v. Union of India, (1990) 2 SCC 409 : 1990 SCC (Cri) 330] , a Section 53 officer investigating an offence under the NDPS Act can end up only by filing a complaint under Section 36-A(1)(d) of the NDPS Act. Shri Lekhi's only answer to this

> anomaly is that under Section 36-A(5) of the NDPS Act, such trials will follow a summary procedure, which, in turn, will relate to a complaint where investigation is undertaken by a narcotics officer. First and foremost, trial procedure is post-investigation, and has nothing to do with the manner of investigation or cognizance, as was submitted by Shri Lekhi himself. Secondly, even assuming that the mode of trial has some relevance to this anomaly, Section 258 CrPC makes it clear that a summons case can be instituted "otherwise than upon complaint", which would obviously refer to a summons case being instituted on a police report—see John Thomas v. K. Jagadeesan [John Thomas v. K. Jagadeesan, (2001) 6 SCC 30 : 2001 SCC (Cri) 974] (at para 8)."
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> 23. It could be seen that while answering the said question, in paragraph 145, Nariman, J., while penning down the majority judgment has observed that under Section 36-A(1)(a) of the NDPS Act, it was only offences which were punishable with imprisonment for a term of more than three years that were exclusively triable by the Special Court.
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> 24. It is thus clear that the statutory scheme, according to the provisions of Section 36-A(5) of the NDPS Act, prescribes that, for convicting a person under Section 58 of the NDPS Act, he/she must be tried summarily.
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> 25. Section 260 of the Cr.P.C. provides that the power to try summarily is with any Judicial Magistrate, any Metropolitan Magistrate or any Magistrate of the first class specially empowered in this behalf by the High Court. Section 262 of the Cr.P.C. provides that the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned. A detailed procedure has been provided for trial of summons cases by the Magistrate under Section 251 to 259 of the Cr.P.C.

26. It is thus clear that the learned Special Judge could not have conducted the proceedings against the present appellant for the offence punishable under Section 58 of the NDPS Act inasmuch as such proceedings could have been conducted only by a Magistrate. Undisputedly, the procedure as required under Chapter XX i.e. Sections 251 to 256 of the Cr.P.C. has also not been followed.

b. Good Faith:

27. It will be relevant to refer to Section 69 of the NDPS Act, which reads thus:

> "69. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of the Central Government or of the State Government or any other person exercising any powers or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made thereunder."

28. It could thus be seen that Section 69 of the NDPS Act provides immunity to the Central Government, State Government or any officer of the Central or State Government or any other person exercising any powers or discharging any functions or performing any duties under this Act or any rule or order made thereunder from civil or criminal proceedings.

29. This Court, in the case of General Officer Commanding, Rashtriya Rifles v. Central Bureau of Investigation and Another9, after considering various earlier pronouncements, observed thus:

> "69. A public servant is under a moral and legal obligation to perform his duty with truth, honesty, honour, loyalty and faith, etc. He is to perform his duty according to the expectation of the office and the nature of the post for the reason that he is to have a respectful obedience to the law and authority in order to accomplish the duty assigned to him.
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> 70. Good faith has been defined in Section 3(22) of the General Clauses Act, 1897 to mean a thing which is, in fact, done honestly, whether it is done negligently or not. Anything done with due care and attention, which is not mala fide, is presumed to have been done in good faith. There should not be personal ill will or malice, no intention to malign and scandalise. Good faith and public good are though the question of fact, are required to be proved by (2012) 6 SCC 228 : 2012 INSC 196 adducing evidence. (Vide Madhavrao Narayanrao Patwardhan v. Ram Krishna Govind Bhanu [AIR 1958 SC 767] , Madhav Rao Jivaji Rao Scindia v. Union of India [(1971) 1 SCC 85 : AIR 1971 SC 530] , Sewakram Sobhani v. R.K. Karanjiya [(1981) 3 SCC 208 : 1981 SCC (Cri) 698 :
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> AIR 1981 SC 1514] , Vijay Kumar Rampal v. Diwan Devi [AIR 1985 SC 1669] , Deena v. Bharat Singh [(2002) 6 SCC 336] and Goondla Venkateswarlu v. State of A.P. [(2008) 9 SCC 613 : (2008) 3 SCC (Cri) 829])
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> 71. In Brijendra Singh v. State of U.P. [(1981) 1 SCC 597 : AIR 1981 SC 636] this Court while dealing with the issue held : (SCC p. 602, para 18) "18. ... The expression has several shades of meaning. In the popular sense, the phrase 'in good faith' simply means 'honestly, without fraud, collusion, or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme'. (See Words and Phrases, Permanent Edn., Vol. 18-A, p.

91.) Although the meaning of 'good faith' may vary in the context of different statutes, subjects and situations, honest intent free from taint of fraud or fraudulent design, is a constant element of its connotation. Even so, the quality and quantity of the honesty requisite for constituting 'good faith' is conditioned by the context and object of the statute in which this term is employed. It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context."

72. For the aforesaid qualities attached to a duty one can attempt to decipher it from a private act which can be secret or mysterious. An authorised act or duty is official and is in connection with authority. Thus, it cannot afford to be something hidden or non- transparent unless such a duty is protected under some law like the Official Secrets Act.

73. Performance of duty acting in good faith either done or purported to be done in the exercise of the powers conferred under the relevant provisions can be protected under the immunity clause or not, is the issue raised. The first point that has to be kept in mind is that such an issue raised would be dependent on the facts of each case and cannot be a subject-matter of any hypothesis, the reason being, such cases relate to initiation of criminal prosecution against a public official who has done or has purported to do something in exercise of the powers conferred under a statutory provision. The facts of each case are, therefore, necessary to constitute the ingredients of an official act. The act has to be official and not private as it has to be distinguished from the manner in which it has been administered or performed.

74. Then comes the issue of such a duty being performed in good faith. "Good faith" means that which is founded on genuine belief and commands a loyal performance. The act which proceeds on reliable authority and accepted as truthful is said to be in good faith. It is the opposite of the intention to deceive. A duty performed in good faith is to fulfil a trust reposed in an official and which bears an allegiance to the superior authority. Such a duty should be honest in intention, and sincere in professional execution. It is on the basis of such an assessment that an act can be presumed to be in good faith for which while judging a case the entire material on record has to be assessed.

75. The allegations which are generally made are, that the act was not traceable to any lawful discharge of duty. That by itself would not be sufficient to conclude that the duty was performed in bad faith. It is for this reason that the immunity clause is contained in the statutory provisions conferring powers on the law enforcing authorities. This is to protect them on the presumption that acts performed in good faith are free from malice or ill will. The immunity is a kind of freedom conferred on the authority in the form of an exemption while performing or discharging official duties and responsibilities. The act or the duty so performed are such for which an official stands excused by reason of his office or post.

76. It is for this reason that the assessment of a complaint or the facts necessary to grant sanction against immunity that the chain of events has to be looked into to find out as to whether the act is dutiful and in good faith and not maliciously motivated. It is the intention to act which is important."

30. It could be seen that this Court observed that anything done with due care and attention, which is not mala fide, is presumed to have been done in good faith. It has been observed that there should not be personal ill will or malice, no intention to malign and scandalise. It has been observed that good faith and public good are though a question of fact, they are required to be proved by adducing evidence. This Court held that as to whether the performance of duty acting in good faith either done or purported to be done in the exercise of the powers conferred under the relevant provisions

can be protected under the immunity clause or not, would depend upon the facts of each case and cannot be a subject matter of any hypothesis. It has been held that for availing such immunity, the act has to be official and not private.

31. This Court further observed that 'good faith' means, that which is founded on genuine belief and commands a loyal performance. It has been held that the provisions of immunity clauses are made to protect the officers on the presumption that the acts performed in good faith were free from malice or ill will. This Court held that the act which may appear to be wrong or a decision which may appear to be incorrect was not necessarily a malicious act or decision. It has been held that the presumption of good faith therefore could be dislodged only by cogent and clinching material and so long as such a conclusion was not drawn, a duty in good faith should be presumed to have been done or purported to have been done in exercise of the powers conferred under the statute. It has been held that there has to be material to attribute or impute an unreasonable motive behind an act to take away the immunity clause.

c. Violation of Principles of Natural Justice:

32. A perusal of the judgment and order dated 22nd/24th February 2007 would reveal that the allegations against the present appellant were raised for the first time during the arguments on behalf of the three accused persons who have been acquitted by the learned Special Judge. It will be relevant to refer to paragraph 49 of the said judgment and order dated 22nd/24th February 2007, which reads thus:

> "49. During the course of arguments, it was argued by learned defence counsel on behalf of accused Surjit Singh, Angrej Singh and Mehardeen that since the senior police officers had shifted the recovery of opium from the name of accused Ran Singh to the names of plantation by accused Surjit Singh, Angrej Singh and Mehardeen, action under section 58 of the N.D.P.S. Act be taken against the senior police officers who are responsible for the same....."

33. After recording thus, the learned Special Judge has given its findings in paragraph 50 which are reproduced hereinabove. It is thus clear that the learned Special Judge recorded the findings against the appellant as well as the other police officers without even issuing notice to them.

34. The facts in the present case are somewhat similar to the facts which fell for consideration before this Court in the case of State of West Bengal and Others v. Babu Chakraborthy10. In the said case, the accused persons were convicted for an offence punishable under the NDPS Act. In the appeal preferred by them, while allowing the appeal, the (2004) 12 SCC 201 : 2004 INSC 492 High Court made several strictures and observations against two officers of the West Bengal Police in an IPS Cadre. In the said case also, the allegations against the said officers were with regard to violation of provisions of Section 42 of the NDPS Act. This Court, after considering various earlier judgments, observed thus:

> "30. Replying to the arguments of Mr Viswanathan, Mr Tapash Ray, learned Senior Counsel submitted that the operating portion of the impugned judgment clearly brings out the perversity in the judgment. According to him, the strictures that have been passed against the appellants by the Division Bench of the High Court are wholly unjustified and are liable to be expunged. He is right in his submission. In our view, the High Court was not justified and correct in passing observations/strictures against Appellants 2 and 3 without affording an opportunity of being heard, and it is in violation of a catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial court to lodge a complaint to the Magistrate having jurisdiction for prosecuting Appellants 2 and 3 for having committed an offence under Section 58 of the Act read with Sections 166 and 167 of the Penal Code, 1860 is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against Appellants 2 and 3.
>
> 31. As rightly pointed out by Mr Tapash Ray, the observations of the High Court in the impugned judgment passing strictures against the appellants have been made while against the record of the case and penalise the two police officers who were discharging their official duties as per the law. The action taken by Appellants 2 and 3 has been taken in the case of discharging of their official duties.

While discharging their duties, the official would have violated certain provisions. That does not, in our opinion, enable the court to pass strictures against the officials and order compensation. There is no evidence or circumstance to show that there were any mala fides on the part of these officers."

35. The learned Special Judge, without even giving notice to her, only on the basis of the arguments advanced at the stage of final hearing of the matter, made adverse observations against her by almost finding her guilty of the offence punishable under Section 58 of the NDPS Act. Moreover while doing so, neither any notice nor was any opportunity of being heard given to her. After the said judgment and order of conviction/acquittal was recorded by the learned Special Judge on 22nd/24th February 2007, within 2 days, a notice under Section 58 of the NDPS Act was issued to the appellant on 26th February 2007. The appellant, in response to the said notice, appeared before the learned Special Judge on 15th March 2007 and on 12th April 2007, she also filed a reply. In the meantime, the appellant approached the High Court challenging the said show-cause notice dated 26th February 2007. The High Court, vide order dated 19th May 2008, refused to entertain the revision with the observation that the order passed by the learned Special Judge should not be construed as an expression of opinion on the merits of the matter. Immediately on the very next day of the passing of the said order of the High Court, the learned Special Judge proceeded to hear the matter at a lightning speed. Within 10 days, from 20th May 2008 to 30th May 2008, the learned Special Judge directed the matter to be heard on 7 dates. Though the transfer order was issued on 26th May 2008 and the learned Special Judge was directed to immediately relinquish the post/charge, the learned Special Judge again kept the matter on 27th May 2008, 28th May 2008,

29th May 2008 and finally on 30th May 2008. During the said period, the appellant was directed to supervise and ensure the maintenance of law and order inasmuch as the situation had deteriorated on account of some agitation. The same was also brought to the notice of the learned Special Judge. However, on 30th May 2008, the learned Special Judge proceeded to dictate and type the order and kept the same in a sealed cover. It is thus clear that the learned Special Judge had given a complete go-bye to all the principles of natural justice.

36. It is a well-settled principle of law that justice should not only be done but should be seen to be done. In this respect, it will be relevant to refer to the following passage from Jackson's Natural Justice (1980 Edn.):

> "The distinction between justice being done and being seen to be done has been emphasised in many cases. . . .
>
> The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery, C.J.'s judgment in R. v. Home Secretary [(1977) 1 WLR 766, 772] , ex. p. Hosenball, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice". It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland [(1971) 2 Lloyd's Rep 515] Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done.
>
> In R. v. Thames Magistrates' Court, ex. p. Polemis [(1974) 1 WLR 1371] , the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge. It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same. That is mixing up doing

justice with seeing that justice is done (per Lord Widgery, C.J. at p. 1375)."

37. This Court, in the case of P.D. Dinakaran (I) v. Judges Inquiry Committee and Others11 has also observed thus:

> 41. In this case, we are concerned with the application of first of the two principles of natural justice recognised by the traditional English Law i.e. nemo debet esse judex in propria causa. This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and (iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself (2011) 8 SCC 380 : 2011 INSC 452 has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.
>
> 42. A pecuniary (bias) interest, however small it may be, disqualifies a person from acting as a Judge.

Other types of bias, however, do not stand on the same footing and the courts have, from time to time, evolved different rules for deciding whether personal or official bias or bias as to subject-matter or judicial obstinacy would vitiate the ultimate action/order/decision.

43. In R. v. Rand [(1866) LR 1 QB 230] the Queen's Bench was called upon to consider whether the factum of two Justices being trustees of a hospital and a friendly society respectively, each of which had lent money to Bradford Corporation on bonds charging the corporate fund were disqualified from participating in the proceedings which resulted in issue of certificate in favour of the corporation to take water of certain streams without permission of the mill owners. While answering the question in negative, Blackburn, J. evolved the following rule:

> "... There is no doubt that any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter; and if by any possibility these gentlemen, though mere trustees, could have been liable to costs, or to other pecuniary loss or gain, in consequence of their being so, we should think the question different from what it is: for that might be held an interest. But the only way in which the facts could affect their impartiality, would be that they might have a

tendency to favour those for whom they were trustees; and that is an objection not in the nature of interest, but of a challenge to the favour. Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act; and we are not to be understood to say, that where there is a real bias of this sort this Court would not interfere; but in the present case there is no ground for doubting that the Justices acted perfectly bona fide; and the only question is, whether in strict law, under such circumstances, the certificate of such Justices is void, as it would be if they had a pecuniary interest; and we think that R. v. Dean and Chapter of Rochester [(1851) 17 QB 1] is an authority, that circumstances, from which a suspicion of favour may arise, do not produce the same effect as a pecuniary interest."" CONCLUSION:

38. As already stated hereinabove, the matter went to the High Court in revision. The High Court, by the impugned judgment and order refused to interfere with the same and upheld the order dated 30th May 2008. The said impugned judgment and order was stayed by this Court vide order dated 26th October 2010.

39. When we opened the sealed cover on 24th October 2024 and perused the order dated 30th May 2008 passed by the learned Special Judge, it became clear to us that the learned Special Judge had acted in a predetermined manner. Though the judgment and order of conviction/acquittal dated 22nd/24th February 2007 was challenged by both the State and Ran Singh in an appeal and which appeal was admitted, the learned Special Judge has observed that the judgment and order of conviction/acquittal dated 22nd/24th February 2007 has not been challenged and has become final. It therefore reflects total non-application of mind. We therefore find that the order dated 30th May 2008 passed by the learned Special Judge is also liable to be set aside on the said ground.

40. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The judgment and order dated 14th October 2010

passed by the High Court in Criminal Revision No. 2194 of 2008 is quashed and set aside;

(iii) The observations made by the learned Special Judge in the judgment and order of conviction/acquittal dated 22nd/24th February 2007 in paragraphs 49 and 50 stand quashed and set aside; and

(iv) The notice issued by the learned Special Judge dated 26th February 2007 to the appellant under Section 58 of the NDPS Act and all subsequent proceedings including the order dictated and typed on 30th May 2008 by the learned Special Judge shall stand quashed and set aside.

41. Pending application(s), if any, shall stand disposed of.

.....J. [B.R. GAVAI] .....J. [PRASHANT KUMAR MISHRA] .....J. [K.V. VISWANATHAN] NEW DELHI;

DECEMBER 13, 2024.