State Of Haryana vs Ranbir Alias Rana on 5 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1796, 2006 AIR SCW 2022, (2006) 3 CTC 48 (SC), (2006) 41 ALLINDCAS 14 (SC), 2006 (5) SCC 167, 2006 (5) SRJ 451, 2006 (41) ALLINDCAS 14, 2006 CRILR(SC&MP) 402, 2006 (4) SCALE 113, 2006 (3) CTC 48, 2006 ALL MR(CRI) 1826, 2006 CRILR(SC MAH GUJ) 402, (2006) 3 SUPREME 358, (2006) 3 EASTCRIC 136, (2006) 2 KER LT 370, (2006) 34 OCR 197, (2006) 3 PAT LJR 117, (2006) 2 RECCRIR 513, (2006) 2 CURCRIR 87, (2006) 2 ALLCRIR 1983, (2006) 4 SCALE 113, (2006) 2 UC 1179, (2006) 3 JLJR 117, (2006) 1 BOMCR(CRI) 705, (2006) 55 ALLCRIC 522, (2006) 2 CHANDCRIC 217, (2006) 2 CRIMES 106, (2006) 102 CUT LT 215, MANU/SC/1877/2006, 2006 CHANDLR(CIV&CRI) 6, (2005) 4 RECCRIR 996, (2006) 2 EFR 1, (2006) 6 SCJ 214, 2006 (3) ANDHLT(CRI) 47 SC, 2006 (1) ALD(CRL) 673, (2006) 3 ANDHLT(CRI) 47

Author: S.B. Sinha

Bench: S.B. Sinha, P.P. Naolekar

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           CASE NO.:
Appeal (crl.)  650 of 1999

PETITIONER:
State of Haryana

RESPONDENT:
Ranbir alias Rana

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
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J U D G M E N T S.B. SINHA, J :

The State of Haryana is in appeal before us from a judgment and order dated 19.08.1998 of the High Court of Punjab and Haryana in Criminal Appeal No.715 of 1996 allowing the appeal preferred by the respondent herein from a judgment of conviction and sentence dated 05.08.1996 passed by the learned Additional and Sessions Judge in Sessions Case No.37 and Sessions Trial No.118 of 1994 under Sections 20 of the Narcotic Drugs and Psychotropic Substances Act (for short, 'the

Act').

The prosecution case against the respondent was as under :

On 15.11.1993 when a police party, comprising of Sub-Inspector Dunger Singh, Constable Randhir Singh, Head Constable Omkar, Constable Umed Singh and Head Constable Om Prakash, were proceeding from Bamla to CIA staff Bhiwani and reached the point on Rohtak-Bhiwani Road near Sanjeev M. College, the respondent was seen coming from the opposite direction, i.e., from the side of Bhiwani on foot, holding a plastic bag of white colour. Having seen them, the respondent allegedly turned towards his left side on the road as a result whereof a suspicion as regard his conduct arose in their mind. The respondent was, thereafter, taken into custody. A notice was allegedly served on the respondent by the Sub Inspector to the effect "you (accused) have some contraband in your possession and your search is to be effected in the presence of a gazetted police officer or a magistrate", if he so desired. The respondent is said to have had no objection if the search was conducted in presence of a gazetted officer or a magistrate available at the spot. An intimation was thereafter sent to the DSP, Headquarters, Bhiwani who reached the spot along with his staff. The respondent was allegedly searched in his presence and on a search of the plastic bag, which the respondent was carrying, a 'pipi' containing 'charas' weighing 2 kg. was found. The incharge of the police party separated 50 grams of 'charas' by way of sample of the seized contraband and made a sealed parcel thereof. Remaining amount of the seized article was said to have been separately sealed and the entire property was taken into possession wherefor a recovery memo. was prepared. The respondent accused could not produce any licence or permit for possession of the said contraband articles. Therefore a 'ruqa' was sent to the police station for registration of the case and a formal First Information Report was lodged.

On charged of possession of the said contraband article, the respondent was put on trial.

The learned Sessions Judge found the appellant to be guilty of the said offence and sentenced him to undergo rigorous imprisonment for a period of 10 years and pay a fine of Rs.1,00,000/-. The respondent filed an appeal thereagainst before the High Court.

Before the High Court only contention which was raised was that the mandatory provision of Section 50 of the Act had not been complied with. According to the respondent although the article in question was found from a bag, it was obligatory on the part of the Dy. S.P. to bring it to his notice that he had a right to be searched by a magistrate or a gazetted officer and he having not been informed of his right, the judgment of conviction and sentence was vitiated in law.

The High Court in its judgment proceeded on the basis that Section 50 of the Act is mandatory in character. It was held :

"Reverting to the facts in hand, the notice, Ex.PW-4/A, is very material. A close reading of this notice only indicates that SI Dungar Singh had given the option to the appellant by informing him that his search was to be conducted in the presence of a gazetted police officer or a magistrate. Beyond that, he notice, Ex.PW- 4/A is silent. SI Dungar Singh never apprised the appellant that he had the right to be searched in the presence of a Magistrate or a gazetted officer as mentioned in Section 42 of the Act. Even the reply, Ex.PW-4/B, given by the appellant is not in consonance with the provisions of section 50 of the Act. The reply simply states that the appellant was ready to give the search in the presence of a Magistrate or a gazetted police officer at the spot. Further, the accused has stated vide Ex.PW-4/B that he had full confidence in the I.O. Strange enough, the reply of the appellant has not been attested by HC Randhir Singh or HC Om Kar who, of course, have attested the notice, Ex.PW-4/A, allegedly given by SI Dungar Singh. This indicates that PW-4/A, and PW-4/B have been prepared at a different state and, unfortunately, and for the benefit of the appellant "

The question as regards applicability of Section 50 of the Act need not detain us for long. We may notice that in view of conflict in the opinions of different benches as also difference of opinion between two judges of this Court in State of Himachal Pradesh v. Pawan Kumar [(2004) 7 SCC 735] the question was referred to a larger Bench. A three-Judge Bench of this Court in State of Himachal Pradesh etc. v. Pawan Kumar [(2005) 4 SCC 350] relying on or on the basis of a large number of decisions and in particular the decision of the Constitution Bench of this Court in State of Punjab v. Baldev Singh [(1999) 6 SCC 172] clearly held that Section 50 of the Act would be applicable only in a case of personal search of the accused and not when it is made in respect of some baggage like a bag, article or container etc. which the accused at the relevant time was carrying.

Before us, however, the learned counsel appearing on behalf of the respondent placed strong reliance on another three-Judge Bench of this Court in Namdi Frnacis Nwazor v. Union of India and Another [(1998) 8 SCC 534], wherein the following observations were made :

"3. On a plain reading of sub-section (1) of Section 50, it is obvious that it applies to cases of search of any person and not search of any article in the sense that the article is at a distant place from where the offender is actually searched. This position becomes clear when we refer to sub-section (4) of Section 50 which in terms says that no female shall be searched by anyone excepting a female. This would, in effect, mean that when the person of the accused is being searched, the law requires that if that person happens to be a female, the search shall be carried out only by a female. Such a restriction would not be necessary for searching the goods of a female which are lying at a distant place at the time of search. It is another matter that the said article is brought from the place where it is lying to the place where the search takes place but that cannot alter the position in law that the said article was not being carried by

> the accused on his or her person when apprehended. We must hasten to clarify that if that person is carrying a handbag or the like and the incriminating article is found therefrom, it would still be a search of the person of the accused requiring compliance with Section 50 of the Act. However, when an article is lying elsewhere and is not on the person of the accused and is brought to a place where the accused is found, and on search, incriminating articles are found therefrom it cannot attract the requirements of Section 50 of the Act for the simple reason that it was not found on the accused person. So, on the facts of this case, it is difficult to hold that Section 50 stood attracted and non- compliance with that provision was fatal to the prosecution case."

It was urged that this Court in Pawan Kumar (supra) wrongly distinguished Namdi Francis Nwazor (supra) stating that the observations made therein (underlined by us) were obiter and did not lay down a law.

We may at once notice the observations made in Pawan Kumar (supra) as regards Namdi Francis Nwazor (supra) which is in the following terms :

> "The Bench then finally concluded that on the facts of the case Section 50 was not attracted. The facts of the case clearly show that the bag from which incriminating article was recovered had already been checked in and was loaded in the aircraft. Therefore, it was not at all a search of a person to which Section 50 may be attracted. The observations, which were made in the later part of the judgment (reproduced above), are more in the nature of obiter as such a situation was not required to be considered for the decision of the case. No reasons have been given for arriving at the conclusion that search of a handbag being carried by a person would amount to search of a person. It may be noted that this case was decided prior to the Constitution Bench decision in State of Punjab v. Baldev Singh. After the decision in Baldev Singh this Court has consistently held that Section 50 would only apply to search of a person and not to any bag, article or container, etc. being carried by him."

We do not agree with the contention of the learned counsel for the respondent that in Namdi Francis Nwazor (supra), the observation of this Court constituted a dicta and not an obiter. The appellant therein was apprehended at the International Airport, New Delhi. He had already checked in his baggage. The said baggage was cleared but later on, the same was called to the customs counter at the airport and upon examination thereof, it was found to be containing 153 cartons of tetanus vaccine, which having been opened, found to be containing 152 cartons of ampoules whereas the remaining one carton carried a polythene packet containing brown-coloured powder packet with black adhesive tape, which was suspected to be heroin and which was then seized.

It is in that context the court clearly came to the opinion that the provisions of sub-section (1) of Section 50 was not required to be complied with. The said conclusion was arrived at, inter alia, upon noticing the provision of sub-section (4) of Section 50 of the Act. It was, therefore, not necessary for the Bench, with utmost respect, to make any further observation. It was not warranted in the fact of

the said case. A decision, it is well-settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a view point or sentiments which has no binding effect. See Additional District Magistrate, Jabalpur etc. v. Shivakant Shukla etc. (1976) 2 SCC 521]. It is also well-settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. [See Division Controller, KSRTC v. Mahadeva Shetty and Another [(2003) 7 SCC 197] In Director of Settlements, A.P. and Others v. M.R. Apparao and Another [(2002) 4 SCC 638], it was held :

> " An obiter dictum as distinguished from ratio decidendi is an observation of the court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such a obiter may not have binding precedent but it cannot be denied that it is of considerable weight ."

We may usefully refer to an observation of Delvin J. made in Behrens v. Pertraman Mills, (1957) 2 QB 25], which is in the following terms :

> " if the Judge gives two reasons for his decisions, both are binding. It is not permissible to pick out one as being supposedly the better reason and ignore the other one; nor does it matter for this purpose which comes first and which comes second. But the practice of making judicial observation obiter is also well established. A judge may often give additional reasons for his decision without wishing to make them part of the ratio decidendi; he may not be sufficiently convinced of their cogency as to want them to have the full authority of the precedent, and yet may wish to state them so that those who later may have the duty of investigating the same point will start with some guidance. This is the matter which judge himself is alone capable of deciding, and any judge who comes after him must ascertain which course he has adopted fro the language used and not by consulting his own preference."

Although the said observation of Delvin J. has been subjected to some criticism, it throws some light on the subject; but may not be treated to be an authority.

We are satisfied that the observations made in Namdi Francis Nwazor (supra) is merely an obiter and does not constitute a ratio decidendi. The three-judge Bench of this Court in Pawan Kumar (supra), therefore, correctly distinguished the same. It was, thus, not necessary for the Bench to follow the judgment of a coordinate bench in Pawan Kumar (supra) as was argued by the learned counsel.

For the reasons aforementioned, the impugned judgment cannot be sustained. The judgment of the High Court is, therefore, set aside and that of the learned Sessions Judge is restored. The appeal is accordingly allowed.