

STATE OF PUNJAB

v.

RAM PAL

(Criminal Appeal No. 291 of 2004)

MARCH 26, 2009

**[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA
AND P. SATHASIVAM, JJ.]**

Narcotic Drugs and Psychotropic Substances Act, 1985 – s. 25, 35 and 54 – Conviction u/s. 25 – Acquittal holding that conscious possession not established – On appeal, held: Law relating to conscious possession dealt with in a case decided by Supreme Court – Since the accused not represented, matter remitted to High Court to decide the case in accordance with decision passed by Supreme Court.

Words and Phrases – ‘Conscious’ and ‘Possession’ – Meaning of in the context of Narcotic Drugs and Psychotropic substances Act, 1985.

Respondent-accused was charged u/s. 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 with co-accused. Respondent was convicted u/s. 25 of the Act. High Court directed acquittal on the ground that conscious possession had not been established. Hence the present appeal.

Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1. The expression “possession” is a polymorphous term which assumed different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, to work out a completely logical and precise definition of “possession” informally applicable to all situations in the

A context of all statutes. The word “conscious” means awareness about a particular fact, it is a state of mind which is deliberate or intended. Possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control. The word “possession” means the legal right to possession. [Paras 4, 5, 6 and 8] [604-B, C; 604-D; 604-E]

C *Spdt. and Remembrancer of Legal Affairs, W.B. vs. Anil Kumar Bhujja* (1980) 1 SCR 323 and *Gunwantlal vs. State of M.P.* (1973) 1 SCR 508, relied on.

D 2. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position E in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. [Para 9] [604-G]

F 3. Since the respondent is not represented the impugned judgment is set aside and the matter is remitted to the High Court for deciding the matter afresh in the light of what is stated by this court in *Madan Lal's* case. [Para 9] [605-B]

G *Madan Lal and Anr. vs. State of H.P.* 2003 (7) SCC 465, relied on.

Case Law Reference:

	2003 (7) SCC 465	Relied on.	Para 3
H	(1980) 1 SCR 323	Relied on.	Para 4

(1973) 1 SCR 508**Relied on.****Para 6****A**

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 291 of 2004.**

From the Judgment & Order dated 25.02.2003 of the High Court of Punjab & Haryana at Chandigarh in CrI. Appeal No. 441-DB/2002.

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Kuldip Singh, R.K. Pandey, T.P. Mishra and Sanjay Katyal for the Appellant.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of acquittal recorded by a Division Bench of the Punjab and Haryana High Court directing acquittal of the respondent who faced trial for alleged commission of offence punishable under Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'Act'). He was sentenced to undergo rigorous imprisonment for a period of 11 years and to pay a fine of Rs. 1,00,000/- with default stipulation by the learned Single Judge, Patiala.

D**E**

2. So far as co-accused Amirk Singh is concerned, he was convicted under Section 15 of the Act and was awarded the same sentence. Two separate appeals were filed. It needs to be mentioned here that respondent Ram Pal was also charged for offence punishable under Section 15 of the Act but in view of the conviction recorded in respect of Section 25 of the Act no sentence was awarded. Therefore, no separate sentence was imposed in respect of accusation relatable to Section 15 of the Act. The High Court primarily directed acquittal on the ground that conscious possession has not been established.

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3. Learned counsel for the appellant-State submitted that the position in law relation to conscious possession has been dealt with in detail by this court in *Madan Lal and Anr. vs. State of H.P.* 2003 (7) SCC 465. The High Court has not kept the

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A correct position in view.

4. There is no appearance on behalf of the respondent.

B 5. The expression "possession" is a polymorphous term which assumed different Colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Spdt. & Remembrancer of Legal Affairs, W.B. vs. Anil Kumar Bhujja* to work out a completely logical and precise definition of "Possession" uniformly applicable to all situations in the context of all statuses.

C 6. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

D 7. As noted in *Gunwantlal vs. State of M.P.* possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

E 8. The word "possession" means the legal right to possession. In an interesting case it was observed that whereas person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same.

F 9. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

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10. Normally we would have decided the matter taking note of what is stated in *Madan Lal and Anr. vs. State of H.P.* 2003 (7) 465. But the respondent is not represented and, therefore, we deem it proper to set aside the impugned judgment and remit the matter to the High Court afresh in the light of what is stated by this court in *Madan Lal* case (supra). The present judgment will cover the case of accused Ram Pal only.

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11. The appeal is allowed to the aforesaid extent.

K.K.T.

Appeal allowed.