

conductor of the bus have given a lie to the statement of PW1 Dudhnath Ram, we have scrutinised his evidence with a great care but the same does not inspire confidence. *Jagdish v. State of M.P.*, (SC) 2002 AIR (SCW) 2765 : 2002 AIR (SC) 2540 : 2002(1) AICLR 268 : 2003(9) SCC 159 : 2001(10) JT 330

Alleged recovery of contraband affected from pocket of shirt – No plea that meant for personal use – Effect -

Here the brown sugar was kept in the shirt pocket of the appellant and the appellant completely denied having been in possession of the narcotic drug. When questioned under Section 313 Criminal Procedure Code he did not have a specific case that drug was for his personal use. The counsel for the appellant drew our attention in the decision of *Alpesh Kumar v. State of Rajasthan (JT 2002(10) SC 219)* wherein this Court held that even in the absence of a specific plea if the circumstances show that the narcotic drug was for personal use, the Court would be at liberty to draw an inference and hold that the drug was for personal use. In that case, the narcotic drug was recovered from the accused in the form of two cigarettes and the Court drew presumption that the drug in his possession may have been for his personal consumption. *Basheer @ N.P. Basheer v. State of Kerala*, (SC) 2004(4) Supreme 312 : 2004(3) R.C.R.(Criminal) 427 : 2004(3) Apex Criminal 250 : 2004(5) SCC 659 : 2004 CriLJ 3837 : 2004(2) Crimes 197 : 2004 AIR (SC) 4617

Amendment incorporated in the act – Standing order not superseded – Effect

There are two other aspects that need to be noted at this stage. The first is that notification dated 16th January, 2015 does not in terms supersede Standing Order No. 1/89 insofar as the said Standing Order also prescribes the procedure to be followed for disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Specific overriding of the earlier Standing Order would have avoided a certain amount of confusion which is evident on account of simultaneous presence of Standing Order No. 1/89 and notification dated 16th January, 2015. For instance in para (1) of Standing Order No. 1/89 only certain narcotic drugs and psychotropic substances enumerated therein could be disposed of while notification dated 16th January, 2015 provides for disposal of all Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. Again in terms of Standing Order No. 1/89 the procedure for making of application was marginally different from the one stipulated in Notification dated 16th January, 2015 not only insofar as the procedure related to the officers who could make the application is concerned but also in relation to the procedure that the DDC would follow while directing disposal. In both the notifications are prescribed the limits upto which the disposal could be directed. *Union of India v. Mohanlal (SC) : 2016(1) R.C.R.(Criminal) 858 :*

Appointment of empowered officer – Competent by way of general or special order by Central Government/State Government -

Sub-section (2) of Section 41 further enables the State Government to empower any officer of the gazetted rank of the revenue, drug control, excise, police or any other department by a general or special order to perform the said function. The said sub-section also confers power on such empowered gazetted officer to authorise any officer, subordinate to him but superior in rank to a peon, sepoy or a constable to perform the said function, for which the general or special order has empowered him. Section 42 is the power of entry, search, seizure and arrest without any warrant or authorisation. Section 50, which is supposed to be the minimum safeguard afforded to an accused, provides that when a search is about to be made of a person under Section 41 or Section 42 or Section 43, and if the person so requires, then the said person of whom search is about to be made has to be taken to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. *Ahmed v. State of Gujarat, (SC) 2000(5) Supreme 731 : 2000(3) Crimes 188 : 2000(3) R.C.R.(Criminal) 759 : 2000 AIR (SC) 2790 : 2000 CriLJ 4008 : 2000(7) SCC 477 : 2000(6) Scale 94 : 2000(9) JT 416*

Arresting person himself lodged the complaint – Acting in dual capacity – Not proper -

We have also noted another disturbing feature in this case. P.W.3, Sri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation. *State By Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu v. Rajangam (SC) 2010(15) SCC 369*

Chemical examination of opium – Required to ascertain exact quantity of morphine there in –

Opium is essentially derived from the opium poppy plant. The opium poppy gives out a juice which is opium. The secreted juice contains several alkaloid substances like morphine, codeine, thebaine etc. Morphine is the primary alkaloid in opium. Opium is a substance which once seen and smelt can never be forgotten because opium possesses a characteristic appearance and a very strong and characteristic scent. Thus, it can be identified without subjecting it to any chemical analysis. It is only when opium is in a mixture so diluted that its essential characteristics are not easily visible or capable of being apprehended by the senses that a chemical analysis

Conduct of accused trying to run away from the spot on seeing police party - Relevant consideration to be considered -

The submission of the learned counsel for the appellants is that they were only moving in the truck and had no knowledge what the bags contained. As the evidence on record would show, two of the accused persons were sitting by the side of the driver and the rest of the accused persons were sitting on the body of the truck. 110 bags of poppy husk weighing 4180 kgs. were in the truck. At the instance of the police when the truck was stopped, had the accused-appellants no knowledge about the contents of the bags, they would not have run away from the spot. That apart, they absconded for few days from their village. They have not taken the plea that they were taking any lift in the truck and their presence in the truck has been proven by the prosecution. It is not a small bag lying in the corner of the truck that the accused-appellants can advance the plea that they were not aware of it. In the instant case, there were 110 bags of poppy husk being carried in the truck. Their presence which has been proven, establishes their control over the bags. The circumstances clearly establish that they were aware of the poppy husk inside the bags and in such a situation, it is difficult to accept that they were not in conscious possession of the said articles. *Kulwinder Singh v. State of Punjab (SC) 2015(5) JT 545 : 2015(6) SCC 674 : 2015(3) SCC(Cri) 345 : 2015(4) Crimes 153 : 2015(2) CCR 366 : 2015(6) Scale 1 : 2015(2) Law Herald (SC) 1499*

Confessional statement made before authority during interrogation – Can be taken into account after strict scrutiny -

The law involved in deciding this appeal has been considered by this Court from as far back as in 1963 in Pyare Lal Bhargava's case (supra). The consistent view which has been taken with regard to confessions made under provisions of Section 67 of the Narcotic Drugs and Psychotropic Substances Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Evidence Act, but with the caution that the Court should satisfy itself that such statements had been made voluntarily and at a time when the person making such statement had not been made an accused in connection with the alleged offence. In addition to the above, in the case of *Raj Kumar Karwal v. Union of India and others, 1990(1) RCR(Criminal) 719 : (1990)2 SCC 409*, this Court held that officers of the Department of Revenue Intelligence who have been vested with powers of an Officer-in-Charge of a police station under Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985, are not "police officers" within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him. It was also held that power conferred on officers under the Narcotic Drugs And Psychotropic Substances Act

Act read with Section 42 thereof, is not a police officer, the bar under Sections 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. Since a conviction can be maintained solely on the basis of a confession made under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, we see no reason to interfere with the conclusion of the High Court convicting the appellant. *Kanhaiyalal v. Union of India*, (SC) 2008(1) Crimes 154 : 2008(1) R.C.R.(Criminal) 610 : 2008(1) Recent Apex Judgments (R.A.J.) 140 : 2008(3) SCC 668 : 2008 AIR (SC) 1044 : 2008(4) SCC 668 : 2008(2) SCC(Cri) 474 : 2008(1) JT 286 : 2008(1) Scale 165 : 2008(1) SCR 350

Confessional statement made before authority during interrogation – Can be taken into account after strict scrutiny -

We have, in this case, the confessional statement (Ext.P-3) made by the appellant which corroborates the evidence of P.W.1. It was, however, submitted by Mr. Lalit that the Courts below had committed a grave error in relying upon the said confessional statement and this Court also should not rely upon the same as the accused had retracted the same and categorically stated that it was not voluntarily made by him. He submitted that the said statement was made while he was in custody and as stated by the appellant in his statement under Section 313 Criminal Procedure Code, 1973 it was given by him under threat and pressure. P.W.1 had taken the appellant to her office and the confessional statement came to be recorded at about 8 P.M., no doubt, while the appellant was in custody of P.W.1. But that by itself cannot be regarded as sufficient to hold that the confessional statement was made by the appellant under pressure or compulsion. No complaint was made by the appellant when he was produced before the Magistrate on the next day nor he had made any complaint thereafter till his statement came to be recorded under Section 313 Criminal Procedure Code, 1973. It was only during the trial that a suggestion was made to P.W.1 and subsequently when the appellant gave a statement under Section 313 Criminal Procedure Code, 1973 he stated that the confessional statement was given by him under threat and pressure. Even while giving his statement under section 313 Criminal Procedure Code, 1973 the appellant had not stated what was the nature of the threat given to him or in which manner the pressure was brought upon him. It was a vague statement. If in such circumstances the trial Court held that the confessional statement was voluntarily made and thought it safe to rely upon the same it cannot be said that it committed any error in doing so. We are also of the view that the said confessional statement was made by the appellant voluntarily and, therefore, it can be used against him. *Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras*, (SC) 1999(6) Supreme 81 : 1999(3) R.C.R.(Criminal) 499 : 1999 AIR (SC) 2355 : 1999 CriLJ 3663 : 1999(3) Crimes 133 : 1999(6) SCC 1 : 1999(4) Scale 89 : 1999(4) JT 540