

**State of Rajasthan Vs. Devi Singh**

**State of Rajasthan Vs. Devi Singh**

**SooperKanoon Citation :** [sooperkanoon.com/770586](http://sooperkanoon.com/770586)

**Court :** Rajasthan

**Decided On :** Mar-16-2009

**Reported in :** 2009(2)WLN241

**Judge :** Bhanwaroo Khan, J.

**Appellant :** State of Rajasthan

**Respondent :** Devi Singh

**Disposition :** Appeal dismissed

**Judgement :**

**Bhanwaroo Khan, J.**

1. After having received a secrete information about cultivation of crop of opium, the Station House Officer, Police Station Kelwada along with motbirs reached at the field of accused respondent Devi Singh on 21.03.2004 where accused respondent was present. He was informed about the information and after giving the personal search informed accused respondent Devi Singh to search the field for cultivation of opium plants in his field and after giving a notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, (hereinafter referred to as 'the Act') took search of the field and 105 plants of opium poppy were recovered from the agricultural field of accused respondent Devi Singh. Two samples weighing 250 each were taken and sealed. Rest of the plants which weighing

2.500 Kg were sealed separately. On completing formality accused respondent Devi Singh was arrested on the spot and a case under Section 8/18 of the Act was registered. After investigation challan was filed against respondent. On the basis of the material and evidence produced by the prosecution along with the challan, the learned trial Court framed charges against accused respondent to which he denied, pleaded not guilty and claimed trial. To prove its case, the prosecution examined 16 witnesses and also produced some documents. In his statement under Section 313 Cr.P.C. the accused respondent denied to have cultivated the opium plants and pleaded that the land does not belong to him. He never cultivated opium in the field.

2. Learned trial Court after hearing both the sides and after going through the entire evidence came to the conclusion that there is no evidence either oral or documentary to this effect that the respondent has any right over the land from which opium plants were recovered and there was also no evidence on record that it was the accused respondent who cultivated the opium plants in the field. After relying on the decision report in 2004 Cr.L.R. (SC) 415, the learned trial Court acquitted accused respondent, against which judgment, the present leave to appeal has been filed by the State Government.

3. Heard learned P.P. and perused the material and evidence available on the record of the case.

4. Learned Public Prosecutor has contended that the trial Court has wrongly reached at the conclusion that the field from where the opium plants were recovered does not belong to the accused respondent as the accused respondent was found in the field itself at the time of search and recovery and the field belongs to the accused respondent himself. Learned P.P. further contended that the trial Court has wrongly interpreted the evidence produced by the prosecution and thus, has requested for grant of leave to appeal.

5. The relevant witnesses in this case are PW.2 Ramji Lal, PW.8 Rajendra Singh Chaudhary and PW.10 Raghuveer and PW.11 Kesari Lal. PW.2 Ramji Lal has denied his presence at the field from where the opium plants were recovered. This witness has been declared hostile. PW.10 Raghuveer and PW.11 Kesari Lal have

denied about recovery of any opium plants from the field of Devi Singh and have been declared hostile. Both these witnesses have also deposed that the field belongs to all the three brothers of Devi Singh and there was no partition. In their cross-examination they have stated that Devi Singh was not living in the village Pahadi and was living in M.P. and that they never seen Devi Singh cultivating the field. PW.8 Rajendra Singh Chaudhary was the Patwari of the area and prepared the Jamabandi Ex. P. 15 which clearly reveals that the agricultural field jointly belongs to all the Khatedars and Devi Singh alone was not in exclusive possession of the same. Thus, from the evidence available on record it is clear that there is no evidence either oral or documentary to show that it was the respondent accused who was having exclusive possession over the field and it was he who cultivated the recovered poppy plants. To bring home the guilt charged it was necessary for the prosecution to have proved that the agricultural field on which the poppy plants were being cultivated was in exclusive possession of accused respondent Devi Singh and said cultivation was done by him alone. The Jamabandi also reveals that the field from which the poppy plants were got uprooted does not exclusively belong to respondent Devi Singh. In absence of it, it cannot be ascertained that the respondent Devi Singh who cultivated the poppy plants. The learned trial Court has rightly relied on the decision of the Supreme Court wherein it was specifically held that if the property from which any contraband is recovered does not belong exclusively to the accused then the liability cannot be fasten on him. The prosecution in the present case has failed to prove beyond reasonable doubt that the field from which the poppy plants were recovered was in exclusive possession of accused respondent Devi Singh. Therefore, the trial Court has committed no error or illegality in acquitting accused respondent Devi Singh. The judgment has been passed after proper appreciation of the evidence in accordance with the law laid down by the Apex Court in the cited case. The leave to appeal lacks merit and deserves to be dismissed.

6. Consequently, leave is refused and the leave to appeal is, dismissed.