

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 880/2002

SEHDEV

..... Appellant

Through Ms. Anu Narula, Advocate.

versus

STATE

..... Respondent

Through Mr. Jaideep Malik, APP.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER
20.05.2009

1. This appeal is directed against the judgment dated 8th August 2001 passed by the learned Additional Sessions Judge (ASJ) Delhi, convicting the appellant for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It is also directed against the order dated 23rd August 2001 sentencing the appellant to rigorous imprisonment (RI) for ten years and to pay a fine of Rs.1 lakh and in default of payment of fine to undergo a further RI for a period of one year.

2. It may be mentioned that in terms of the nominal roll submitted by the jail authorities, as on 11th September 2008, the Appellant had

completed eight years, eight months and nine days of imprisonment. Thereafter his sentence was suspended by this Court by an order dated 21st January 2009 by which time he had completed more than nine years of imprisonment.

3. According to the prosecution on 9th January 2000 SI Satender Kumar was on patrolling duty along with Inspector Jagbir Singh Malik and Head Constable (HC) Rajbir, Constable Amit and Constable Vijay in the area of Police Station (P.S.) Keshav Puram. At around 4.30 p.m. they were present near the T-point, Ring Road, near the Britannia Biscuit Factory. At around 4.40 p.m., a blue line bus route No.861 stopped at the Britannia bus stop. Some passengers including the Appellant alighted from the bus. The appellant is stated to have been holding a *potli* in his hand. He came walking towards the T-point for about 20-25 steps. However, on seeing the police party, he turned on his heels and moved quickly in the opposite direction. On suspicion, he was chased and apprehended at around 4.40 p.m. On enquiry the police ascertained his name and that he was a resident of a jhuggi at village Khayala. On checking, his *potli* was found to contain a polythene bag containing *charas*, both in the form of sticks and plates. He was served with the notice under Section 50 NDPS Act and according to the prosecution he declined the offer to be searched personally before a Magistrate since all that he was carrying had already been detected.

Some passersby were asked to join the investigation but they declined. SI Satender Kumar, under the direction of Inspector Jagbir Singh Malik, then undertook the search of the appellant. However, nothing incriminating recovered from his person. The polythene bag stated to contain *charas* in the form of sticks weighing around 800 grams and in the form of plates weighing around one kg, was seized. Two samples weighing 50 grams each were taken out from the *charas* in stick form as well as in the shape of plates. The samples and the residual quantities were then packed in separate *pullandas*. In all, five *pullandas* were prepared and sealed with the seal of SKT. The same seal was also placed on the CFSL form which was filled at the spot. The seal after use was handed over to Inspector Jagbir Singh. Rukka was prepared by SI Satender Kumar and sent to the police station through Constable Amit Kumar for registration of the FIR. All the *pullandas* and CFSL forms sealed with SKT were handed over to Constable Amit Kumar for being handed over to the SHO. It is stated that at the police station, the SHO put a seal of SPY on the *pullandas* and the form CFSL and the case property along with the form CFSL was deposited in the *malkhana*.

4. After registering the FIR the investigation was handed over to ASI Yashvir Singh who then formally arrested the accused and prepared the site plan. During the investigation, samples were sent to the CFSL, Chandigarh which confirmed the quantity seized to be *charas*.

5. On behalf of the prosecution, thirteen witnesses were examined. On behalf of the defence, one witness was examined. After analyzing the evidence, the learned ASJ came to the conclusion that the appellant was guilty of the offence under Section 20 NDPS Act and sentenced him in the manner indicated hereinbefore.

6. During the pendency of this appeal, the samples were further sent to the Central Revenue Control Laboratory (CRCL) for further testing for the presence of the Tetra Hydro Cannabinol (THC). The report dated 27th May 2008 of the CRCL indicated that there was very low percentage of THC in the samples but this could be on account of the metabolic conversion of THC into the Cannabinol (CBN) for a variety of reasons.

7. Ms. Anu Narula, the learned counsel, appearing for the Appellant submitted first that the evidence on record has not supported the case of the prosecution as regards the time of arrest, the manner of seizure as well as the preparation of documents at the site. She points out that although the Appellant is stated to have been apprehended around 4.40 p.m., the arrest memo in fact shows the time of arrest to be 6.45 p.m. In his statement under Section 313 CrPC, the Appellant had stated that he had been falsely implicated in the case. According to him, at around

12 noon on 9th January 2000 he was present in his jhuggi and having food when two persons in uniform and two persons in plain clothes called him to the police station. They took him to the Britania Chowk in a private maruti van and falsely implicated him. He further stated that Girdhari Lal s/o Asharfi Lal and Partap Singh s/o Megh Nath were present in his jhuggi at that time.

8. It is further pointed out that Pratap was examined as DW1. He confirmed that he was present in the jhuggi with the Appellant on 9th January 2000. Between 1.30 p.m. to 2.00 p.m. four persons took away the Appellant in a white Maruti van. It is pointed out that this evidence has not been even adverted to by the learned ASJ.

9. Ms. Narula then criticizes the manner in which the police had chanced upon the Appellant as carrying *charas* without any secret information whatsoever. She points out that the Britania Chowk is an extremely crowded place particularly at around 4.30 p.m. It is unlikely that the police party was unable to associate any independent witness. She points out that it would be highly improbable for a person carrying *charas* to walk 20-25 steps towards the police knowing that he was carrying *charas*. She points out that the CFSL forms and the arrest memo, *panchnama* etc., are stated to have been written at the spot. However, the evidence of PW3 shows that the documents were filled up

elsewhere. Finally, she submits that the deposit of the sealed parcels in the *malkhana* and their removal for being sent to the CFSL at Chandigarh have not been proved by producing the register maintained at the *malkhana*. There are no entries in the register to support the version of the about removal of the sample to the CFSL Chandigarh. She submits that the procedure has to be strictly adhered to and any deviation therefrom would result in benefit of doubt having been given to the Appellant.

10. Mr. Jaideep Malik, the learned APP submits that the depositions of the police witnesses are consistent and fully support the case of the prosecution. He submitted that there was nothing to show that the police had falsely implicated the appellant and that there was no ground made out to extent any benefit of doubt to the Appellant.

11. This Court proposes to first consider the question of the arrest of the appellant. Admittedly, he is the resident of the jhuggies at Khayala. His version in the statement under Section 313 CrPC supported by the evidence of DW1, is that at around 1.30 p.m. to 2.00 p.m. when he was having lunch in his jhuggi, four policemen, two in uniform and two in plain clothes took him away. This has not been controverted by the prosecution. The evidence of DW1 on this aspect has not been

discredited. It is surprising that the learned ASJ has not discussed this part of the evidence at all.

12. To this Court, the manner in which the police accidentally chanced upon the Appellant carrying a *potli* containing *charas*, is shrouded in mystery. Unlike other NDPS cases, this case is not based on any secret information. The police did not in fact belong to the area where they were patrolling and where the arrest took place. They were of P.S. Keshav Puram. It is indeed unexplained how among the several persons who were in a blue line bus, the police party somehow zeroed in on the appellant holding a *potli* containing *charas* in his hand. It is indeed unbelievable that the appellant walking towards the T-point for about 20-25 steps and towards the policemen when, according to the prosecution, the appellant knew that he was carrying *charas* weighing around 1.8 kg.

13. The arrest memo on record indicates the time of arrest to be 6.45 p.m. This is glaringly inconsistent with the version of the prosecution that the Appellant was arrested at 4.40 p.m. This cannot be brushed aside as a mistake or merely as the time of 'formal' arrest of the appellant. The arrest memo is supposed to indicate the precise date and time of the apprehension of the appellant. The concept of an 'informal'

arrest as contrasted with a 'formal' arrest is not envisaged under the CrPC or the NDPS Act. The arrest memo has been marked through PW5 HC Rajbir Singh. He in fact states that the Appellant "chased and was apprehended at 4.40 p.m." In fact, he also states that he is the one who prepared the arrest memo which was signed by him. The arrest memo is wholly inconsistent with the version of the prosecution and creates considerable doubt as to the time of arrest of the appellant.

14. PW3 SI Satender Kumar states that he is the author of the seizure memo Ex.PW1/C. Although he identified his signature thereon, he stated that he has not himself written out the said seizure memo but that it was dictated by him and reduced to writing by Constable Vijay Kumar. However, Ex.PW3/B is the report which he says he prepared on 10th January 2000 under Section 57 of the NDPS Act which was sent to the ACP District Crime Cell. He further states that he was the one, who prepared the *rukka* being Ex.PW3/A. A comparison of Ex.PW3/A which is at page 185 of the trial court record and Ex.PW3/B which is at page 302 (which is a carbon copy the original of which is at page 173 of the trial court record) shows that there is a vast difference in the writing of the documents. It appears that Ex.PW3/B was written by PW3 SI Satender Kumar whereas Ex.PW3/A was not.

15. In his examination-in-chief, PW3 states that the documents were prepared at the spot and then sent to the police station through Constable Amit Kumar. In his cross-examination however, he contradicts himself by stating that “the writing work was done while sitting in the shed of the bus stand”. He then states that “I remained at the spot till 9.30 p.m. on that date. I did not prepare any document. I cannot give any reason as to why I did not prepare any document myself. I cannot say what documents were prepared by the I.O. when the constable had returned back with the FIR number.” If in fact the rukka was not prepared by PW3, and Constable Vijay Kumar has not been examined, then it is unclear as to who wrote it up and where. The confusion is confounded by PW6 Constable Amit Kumar who states that it was IO who was writing the documents “by sitting on the footpath.”

16. To say the least, these witnesses do not inspire any confidence at all. It is wholly unclear as to when the above documents were prepared, where they were prepared and when exactly they were sent to the police station. The timing is unclear. It appears to this Court that the police has gone about preparing the documents of this case without any concern for the factual position. The record is riddled with uncertainties about the exact manner of the arrest, for preparation of the documents and their being sent to the police station for registration of the FIR.

17. The learned counsel for the appellant is also right in doubting the record of the police station regarding removal of the samples for being sent to the CFSL Chandigarh for testing. The photocopy of the register which forms part of the trial court record makes no mention of the exact date and time of the removal of the sample to the CFSL Chandigarh and their being deposited again at the malkhana. Two witnesses are relevant in this regard. PW10 Constable Megh Singh states that at around 7 p.m. he was called by the SHO along with register No. 19 and he made an entry in register No.19 regarding deposit of the case property. However, the register no. 19 was never produced in court as is evident from the cross-examination of this witness. PW11 HC Jogender Singh states that on 21st January 2000 he was instructed by ASI Jasbir Singh to collect two sealed *pullandas* from the *malkhana mohrrar* and hand them over to the CFSL at Chandigarh. However, there no record was brought by this witness to prove the fact. The prosecution therefore failed to prove when the samples were removed from *malkhana* and when they were sent to the CFSL Chandigarh. This also creates a considerable doubt on the version of the prosecution.

18. In view of the numerous inconsistencies in the record which do not support the case of the prosecution, this Court is of the view that benefit of the doubt resulting therefrom should go to the appellant.

19. The impugned judgment and order on sentence of the learned ASJ dated 8th August 2001 and 23rd August 2001 respectively are hereby set aside. The appeal is allowed. The appellant is acquitted and shall be set at liberty forthwith. The bail bonds and surety stand discharged.

20. The appeal stands allowed accordingly with no orders as to costs.

21. This Court places on record its appreciation of the competent presentation of the case by Ms. Anu Narula, learned counsel appearing as amicus curiae on behalf of the appellant.

S. MURALIDHAR, J.

MAY 20, 2009

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