

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 2nd December, 2009*
Judgment Delivered on: 7th December, 2009

+ **CRL.R.P. No.282/2003**

HARI SINGH Petitioner
Through: Mr. K.P. Singh, Adv.

Versus

GOVT. OF NCT OF DELHI Respondent
Through: Mr. Manoj Ohri, APP for the State.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 4th November, 1983 SI Chander Prakash, PW-7 alongwith SI Kanta Prasad PW-6, Jagbir Singh PW-4, Constable Om Prakash and other members of the raiding party were patrolling in the area of Lajpat Nagar. At about 4 PM, secret information was received that at about 5 PM some persons peddling in heroin, a contraband and a dangerous drug under the provisions of the Dangerous Drugs Act, 1930, would be supplying heroin near the Bangla Desh Chansri. Raiding party was organized.

2. At 5.05 PM scooter No. DEQ 7815 driven by Bahadur Singh of which Kuldeep Singh was the pillion rider came from the side of

Moolchand. Simultaneously, a motorcycle number 9416 was also seen coming which was driven by the petitioner Hari Singh; the pillion rider was Purshottam. The petitioner Hari Singh took out a packet from the basket of his motorcycle and gave it to his co-accused Purshottam. On the signal of the secret informer all the accused persons i.e. Kuldeep, Bahadur Singh and Purshottam were apprehended. Hari Singh, however, managed to flee. He was arrested subsequently i.e. three days later on 7/11/83. From the possession of the co-accused Purshottam one packet containing 1 kg. of heroin was recovered. FIR No. 539/83 was registered pursuant to the aforesaid recovery.

3. Another FIR i.e FIR No.538/83 was registered against the other two persons, namely, Kuldeep and Bahadur Singh who were the driver and pillion rider of the scooter No. DEQ 7815. Separate recovery was effected from those persons.

4. The heroin recovered from co-accused Purshottam was seized and sealed. The investigating officer of this case is Chander Prakash PW-7. He has on oath deposed that a packet was found wrapped in a khaki paper. 10 gram of heroin was taken out as a sample and the remaining heroin was seized; two separate pullandas were made and sealed with the seal of KPS and the seal after use was handed over to SI Jagbir Singh. The recovery memo is Ex. PW-4/A.

5. SI Jagbir Singh examined as PW-4 has corroborated this version of PW-7 and has deposed that the seal after use was handed over to him.

6. SI Kanta Prasad was examined as PW-6. He has deposed that his seal had been affixed on the sample parcel as also on the remaining contraband. Form CFSL was also filled.

7. The two sealed pullandas were deposited with MHCM HC Shiv Lal examined as Pw-3. He has deposed that on 4/11/83 SI Kanta Prasad of the Special Staff has deposited one bag and two packets with him. These packets were sealed with the seal of KPS and entry to the said effect was made in register no. 19; said entry is Ex.PW-3/A. His testimony is silent on the deposit of the CFSL form.

8. The sample packet was thereafter taken to the CFSL through Vijay Pal PW-1. PW-1 had deposed that on 29/11/83 he was posted at the Special staff south district Lajpat Nagar. On that day he received a sample parcel duly sealed from the MHCM HC Shiv Lal which was deposited by him on the same day in an intact condition in the office of CFSL; nobody tampered with the seal as long it remained in his custody. In his cross-examination Pw-1 has stated that there was only one seal on the pullanda, it was sealed with the seal of IO Chander Prakash.

9. It is this version of PW-1 which has been brought forth as an argument by the learned defence counsel to substantiate his submission that the possibility of the tampering of the sample cannot be excluded. PW-1 has deposed that the sealed sample packet which he had taken from PW-3 to deposit in the CFSL bore the seal of IO Chander Prakash. This version of PW-1 is clearly in contrast with the version as set up by the prosecution and as has

been testified by the PW-3,PW-4, PW-6 and PW-7 all of whom have stated that sealed sample bore the seal of KPS. It is argued that the sample which had been seized from the spot had the seal of KPS but the sample which had been sent to the CFSL and analyzed by the scientific expert was a sample which bore the seal of Chander Prakash. It has thus not been proved by the prosecution that the sample analyzed by the CFSL was in fact the seized sample i.e. the sample which had been seized from the possession of the co-accused Purshottam. In these circumstances, benefit of doubt has accrued in favour of the petitioner entitling him to an acquittal.

10. In the alternate it has been argued that if this Court is not inclined to alter the conviction of the petitioner, he is entitled to the grant of probation. On this count it has been submitted that the petitioner is more than 80 years of age as on date, his driving licence and identification papers have been shown to the Court to substantiate this argument. It is further submitted that the offence relates to the year 1983; it was an offence under Section 14 of the Dangerous Drugs Act, 1930 and the maximum punishment prescribed for such an offence was imprisonment which may extend to 3 years with or without fine. It is submitted that the intention of the legislature can be gathered from the fact that this offence is punishable with a fine only and in this circumstances, keeping in view the fact that the petitioner has already suffered an incarceration of about one month he be granted the benefit of probation.

11. The trial court vide judgment dated 11/1/90 had convicted both the accused i.e. Purshottam and Hari Singh for the offence under Section 14 of the Dangerous Drugs Act, 1930. Vide order of sentence dated 17/1/90 both the petitioners had been sentenced to undergo RI for a period of two years and to pay a fine of Rs. 5000/- in default of payment of fine to undergo SI for three months.

12. In appeal conviction of the accused petitioner had been maintained; his sentence had been modified and RI two years had been reduced to RI one year; fine amount had been raised from Rs. 5000/- to Rs. 25000/- and in default of payment of fine, petitioner had to undergo SI for one year. This judgment is dated 29th March, 2003.

13. This revision petition has been preferred against this impugned judgment.

14. Record has been perused. This Court is sitting in revision where the powers of the Court are confined to test the legality, correctness and the propriety of an impugned order, finding or sentence.

15. The Dangerous Drugs Act, 1930 had been incorporated to control certain operations relating to dangerous drugs and to increase and render a uniformity on the penalties for the offences relating to such operations. This Act stood repealed by the new legislation i.e. the Narcotic Drugs & Pshycotropic Substances (NDPS) Act 1985 which now takes care of offences relating to a narcotic drug or a psychotropic substance.

16. The petitioner has been held guilty under Section 14 of the said Act. Section 23 of the said Act deals with the powers of the seizure of an article which the officer of the rank described in the said Section has reason to believe to be liable for confiscation under Section 33 or any other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III of the said Act relating to such a drug.

17. In the instant case the testimony of the witnesses discussed supra clearly shows that the possibility of the tampering of the sample cannot be excluded. Whereas PW-7 the investigating officer has categorically stated that sample which was seized from the spot alongwith the balance case property was sealed with the seal of KPS which version has been corroborated by PW-3,4 and PW-6 yet PW-1 who had taken this sample from PW-3 to the CFSL has deposed otherwise. He has categorically stated that the sample which he had taken to the CFSL bore the seal of IO Chander Prakash.

18. This variance in the version of the said witnesses, in the view of this Court goes to the root of the matter as it cannot be said beyond reasonable doubt that the sample which had been sent from the Malkhana to the CFSL was in fact the same which had been seized by the investigating officer from the co-accused Purshottam. The report of the CFSL Ex.PW-5/A is also silent on the description of the sample which have been received in the department; it merely states that the sealed parcel with the seal

intact as per the official specimen enclosed has been received. The said specimen which would be the specimen seal affixed on the CFSL form has not been exhibited; in fact no witness of the prosecution has deposed about the deposit of CFSL form in the Malkhana or its consequent despatch with the sample pullanda to the CFSL. The CFSL expert has come into the witness box as PW-5. On oath PW-5 has deposed that he had received one sealed parcel with the seal of KPS. He is also silent on the receipt of the CFSL form.

19. Section 82(1) of the NDPS Act had repealed the Dangerous Drugs Act of 1930. Sub-clause 2 is the savings clause and states that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any of the enactments repealed by sub-section 1 shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

20. In 1989 (39) DLT 456 Pradeep Kumar Vs. State it has been held by a coordinate Bench of this Court that Section 55 and 52(3) of the Narcotic Drugs and Psychotropic Substances Act, which are provisions dealing with a seizure under the NDPS Act are not to be treated as an empty formality but are substantive provisions to ensure the authenticity of the recovery.

21. In 1988 (1) FAC 107 Delhi Patel Robertson Cowan Vs. State a Bench of this Court had held that where the sample which has been seized from the accused in that case bore two seals i.e. of BDS and VM; testimony of the witness showed that what was sent

for analysis to be analyzed was not what was seized from the appellant; the possibility of tampering of the sample could not be excluded; benefit of doubt had been given to the petitioner entitling him to be an acquittal.

22. In the instant case as well the prosecution having failed to prove that the sample analyzed by the CFSL was in fact the same sample which had been seized from the co-accused benefit of doubt has accrued in favour of the petitioner, the consequence of which would be that the petitioner is entitled to an acquittal. The petitioner is accordingly acquitted of the charges leveled against him. His bail bond and surety bond stand discharged. Fine deposited by him be remitted back.

23. Appeal allowed on the aforestated terms.

(INDERMEET KAUR)
JUDGE

December 7, 2009
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