

+ **CRL.A. 213/2006**

CHANYANGBA TAMANG Appellant
Through Mr.Rajesh Mahajan, Advocate.

versus

M.S.RAMAN, AIR CUSTOMS OFFICER Respondent
Through Mr.Pramod Bahugana, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

V.K.JAIN, J (ORAL)

1. This is an appeal against the judgment dated 28.11.2005 and Order on Sentence dated 29.11.2005 whereby the appellant was convicted under Section 21 and 28 of NDPS Act read with Section 23 thereof and was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 lakh or to undergo rigorous imprisonment for six months under Section 21(c) of NDPS Act and was further sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 lakh or to undergo simple imprisonment for six years in default under Section 23 of NDPS Act read with Section 28 thereof. The substantive sentences were to run

concurrently.

2. The case of the prosecution, in brief, is that on 11.7.2000, the appellant was intercepted at I.G.I. Airport at the exit gate of arrival hall and was asked whether he was carrying any contraband goods, Narcotic or Psychotropic substance to which he replied in negative. He was thereafter searched in the presence of two independent witnesses after serving notice under Section 50 of NDPS Act upon him. It was noticed that the appellant was looking uneasy and nervous. On questioning, he admitted to have concealed capsules filled with heroin inside his stomach by swallowing them and agreed to eject them voluntarily within few hours. After about five hours, he ejected 38 capsules through his rectum. Each of the capsules was found to have a layer of silver foil and another layer of polythene. White coloured powder substance was recovered from the capsules. A pinch of that substance was taken as sample from each of the capsules and on testing by the test kit, it was found to be heroin. The total quantity ejected by the appellant was found to be 374 grams. After drawing two representative samples, the entire quantity was sealed.

Statement of the appellant was recorded on 12.7.2007 wherein he admitted the search and recovery from him.

3. During trial, the respondents produced a number of witnesses in support of its case. PW-1 M.S.Raman, Air Custom Officer, stated that on 11.7.2000, the appellant came to I.G.I. Airport from Lahore on Flight No.PK 270, he was stopped at the exit gate and was asked whether he was

carrying any contraband on his person to which he replied in negative. Since the witness was not satisfied with the reply, two independent witnesses were called and the same question was again put to the appellant. He reiterated the reply given earlier. A notice under Section 50 of NDPS Act PW-1/B was then given to him which was replied to by the appellant vide writing from point A to A on notice, which the appellant himself signed at point B. The appellant was taken inside the office and searched but nothing was recovered. Since the appellant was very nervous, he was further interrogated and after questioning, he admitted that he had sealed capsules containing heroin and he further agreed to eject the same and after a period of five hours, the appellant had ejected 38 capsules. The capsules were in the form of polythene over the layer of silver foil inside which the heroin was concealed. Thereafter the heroin found in the capsules was mixed and two capsules weighed five gram were taken out. The total quantity of heroin was found to be 374 grams. On testing the substance with the aid of Field Testing Kit, it was found to be heroin. The entire material was thereupon seized under NDPS Act.

4. PW-2 Shri R.Shyju is the official with whom the case property was deposited after seizure from the appellant. He has further stated that he had taken the samples to C.R.C.L. and handed over the same to the Assistant Chemical Examiner in intact conditions against receipt Ex.PW-2/C on the same day and that there was no tempering with the samples so long as the same remained in his custody.

5. PW-4 Shri Rajan Nandi collected the remnants of samples from C.R.C.L. and deposited the same with customs. PW-5 Shri Narinder Kumar is the chemical examiner who analyzed the substance sent to C.R.C.L. and found the same to be heroin vide his report Ex.PW-5/A.

6. PW-6 Shri V.B.Chaurasia, Asst. Chemical Examiner had received the samples in C.R.C.L. on 12.7.2000, with seals intact on them and had taken the sample and given it to PW-5 Narinder Kumar, who kept the same in a store room in his presence. On 13.7.2000, the sample was taken out from store room in the presence of Narinder Kumar and the analysis was carried out by him. He found that the sample contained around 81 per cent of dicaetyl morphin(heroin). The testimony of other witnesses being formal in nature, need not be discussed.

7. In his statement, Ex.PW-1/A, the appellant has admitted his arrival at I.G.I. Airport on 11.7.2000 on Flight No.PK-270 and has also admitted that he was intercepted at the exit, when he walked through green channel. He, however, denied rest of the allegations against him including his having ejected 38 capsules containing heroin.

8. The learned counsel for the appellant states that considering the evidence produced during trial, the appellant does not dispute his conviction on merits. He further states that the only prayer being made by the appellant is to reduce the sentence imposed upon him in default of payment of fine.

9. The appellant has already spent more than nine years in custody.

Keeping in view all the facts and circumstances of the case including the inability of the appellant to pay the amount of fine despite having been in jail for more than nine years, while maintaining the substance sentence of ten years awarded to him, the sentence imposed upon the appellant in default of payment of fine is reduced to one month each under Section 21(c) and 23 read with Section 28 of NDPS Act.

CRL.A. 213/2006 stands disposed of.

NOVEMBER 30, 2009
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V.K. JAIN,J