

**Raghubeer Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Aug-11-2000

**Reported in :** 2001CriLJ365

**Judge :** S.K. Agarwal, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 19; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Rules 5, 7, 8, 9, 10, 11, 12, 13, 13(1), 13(2), 13(3), 13(4), 13(5), 14, 15, 22, 23, 25 and 26

**Appeal No. :** Cri. Appeal No. 164 of 1997

**Appellant :** Raghubeer

**Respondent :** State of U.P.

**Advocate for Def. :** A.K. Shukla, A.G.A.

**Advocate for Pet/Ap. :** Amar Saran, B.D. Shukla and Molvi Nasruddin, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**S.K. Agarwal, J.**

1. Heard learned counsel for the appellant and learned A.G.A. Sri A.K. Shukla.

2. The present appeal arises out of a judgment and order dated 31-1-1997 passed by Sri Nalin Mohan Lal IV Additional Sessions Judge, Budaun, in S.T. No. 28 of 1992 convicting the appellant under Section 19 of [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred to as the 'Act' only) and sentencing him to undergo 10 years R.I. and a fine of Rs. 1,00,000/- in default of payment of fine the appellant is further to undergo R.I. for two years.

3. Brief facts of the case are that according to the Register of Lambardar the appellant had extracted 2 Kgs. of opium within five days commencing from 24-3-1986 to 28- 3-1986. On 4-4-1986 when the initial weightment in accordance with Rule 14 was made it was found to be 2 Kgs. When on 24- 4-1986 it was weighed again at the Government Centre it was found to be only 550 gms. In this manner the appellant was charged for embezzlement of 1.405 Kgs. of opium and consequently charge under Section 19 of the Act was framed against him for embezzlement of the said quantity of opium and the trial resulted into his conviction, as aforesaid.

4. The prosecution, in support of its case, has examined P.W. 1 Jorawar, P.W. 2 Ashok Kumar Gupta, P.W. 3 Brij Lal and P.W. 4 D.D. Kuril. The first three witnesses are concerned with weighment, classification of the opium, its subsequent weighment and custody. The last witness, i.e. P.W. 4, is the Officer Narcotics and has filed the complaint in Court for prosecution of the appellant.

5. Learned counsel for the appellant has raised following submissions :-

Firstly, the prosecution of the appellant has been made without complying with the provisions of Rule 13(5). Secondly, it is not clear from the evidence whether the article, after initial weighment, was left in the custody of the cultivator and after verification and classification, as required under Rule 15 of Chapter III of the N.D.P.S. Rules, 1985 who took it into custody, and what was its weight at the time of its deposit. A perusal of Rules 14 and 15 in conjunction with Rule 13 clearly indicate that after the opium is weighed, examined and classified, it cannot be left by the Department with the cultivator. The last submission is that the evidence is cryptic and does not indicate clearly that in the period in question the menace of Nil Gai and other natural calamities had not affected the production of opium in the

area. It is also clear from the evidence of the witnesses that there was no standard measurement fixed for production of opium per acre. In order to appreciate the above said arguments it is necessary to examine the provisions and the evidence closely.

6. The prosecution under Section 19 of the abovesaid Act pertains to embezzlement of opium by cultivators. For easy reference Section 19 is quoted below :

19. Punishment for embezzlement of opium by cultivator - Any cultivator licensed to cultivate the opium poppy on account of the Central Government who embezzles or otherwise illegally disposes of the opium produced or any part thereof shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

7. The procedure for cultivation, extraction and weighing, examination and classification of any opium cultivated and so extracted is provided by Chapter III of the Rules. According to Rule 5 of this chapter cultivation can be permitted by Central Government on the tracts notified by it from time to time and in accordance with the conditions of a licence issued by the District Opium Officer under Rule 8. Rule 6 fixes fees for licence. Rule 7 prescribes specific form for issuing such a licence. Such licence can be issued according to Rule 7 on Form No. 1. Rule 8 prescribes the manner in which the licence is to be issued by the concerned authority, i.e. District Opium Officer or the Central Government itself. Rule 9 lays down that licence is to specify the area of cultivation. Rule 10 provides designation of Lambardar. It is the duty, according to this Rule, of the District Opium Officer to designate one of the cultivators of opium poppy as Lambardar in each village where opium poppy was allowed to be cultivated. His functions are to be governed and specified by the Narcotics Commissioner. Rule 11 prescribes power for withholding or cancellation of licence. Rule 12 lays down the procedure for measurement of land under cultivation of any cultivator in accordance with conditions of licence. The land is to be measured by a proper officer in the

presence of the cultivator concerned and the Lambardar of the village. It is to be attested by the cultivator and Lambardar. The entries are to be made in the records to be maintained by Lambardar in accordance with the specifications provided to him by the Narcotics Commissioner in this behalf. The record has to bear their signature or thumb impression. The record is to bear testimony to the correctness of the measurement. These measurements are subject to further checks by an officer specified by Narcotics Commissioner in this behalf. Rule 13 lays down procedure for the preliminary weighment. According to Sub-rule (1) of Rule 13 the cultivator shall, during the course of harvesting, produce every day before the Lambardar each day's collection of opium from his crop for weighment. Sub-rule (2) lays down the duty of Lambardar for making arrangements to weigh such opium and for making necessary entries in the records to be maintained by him as specified by the Narcotics Commissioner. Sub-rule (3) lays down the regulation for certification by signature or thumb impression the entries to be made in the register so maintained by the Lambardar about the preliminary weighment of day today extraction of opium so produced before him by the cultivator. Sub-rule (4) speaks of check to be made by the proper officer of this preliminary weighment of opium collected by the cultivators with reference to the entries with the Lambardar's record and he has to indicate his finding therein which shall be attested by him and the Lambardar under their signature with date on which such checking is conducted. The dates are to be mentioned by the Lambardar also regarding his entries. Sub-rule (5) lays down the principle to deal with variations in the two weighments. According to it if there is any variation found in the preliminary weighment recorded by Lambardar during the check conducted by the proper officer then it has to be enquired into by the proper officer in order to ascertain the liability of the cultivator for punishment under Section 19 of the Act. This deviation, thus, puts a rider on the prosecution of the cultivator under Section 19. According to this rule a prosecution under Section 19 can be undertaken only after such an enquiry is conducted and completed by the proper officer. Rule 14 prescribes the mode for the delivery of opium produced by the cultivator. Rule 15 prescribes mode to handle opium after it is delivered by the cultivator at the specified place. Rest of the rules are not of much consequence, except Rule 22 and 23, which provides for confiscation of adulterated opium and adjudication of

such adulterated opium. Rest of the rules are procedural in nature. There is a provision under Rule 25 regarding adjustment of cultivators' account and recovery of dues from the cultivators. For ready reference Rule 25 is quoted as under :

25. Adjustment of cultivators' account and recovery of dues from the cultivators.- The accounts of the cultivators for a particular crop year shall be adjusted by the District Opium Officer at the time of issuing of licences for the subsequent crop year and any balance that may remain due from the cultivators shall be recovered and any amount due to them be paid.

Rule 26 speaks of weights and scales. According to it the weights and scales for use at the weighment centres and the Government Opium Factory shall be caused to be examined at the appropriate time by the Deputy Narcotics Commissioner or the General Manager, as the case may be.

8. A careful scrutiny of Rules 13, 14 and 15 lays down two different stages of weighment, which includes examination and classification of cultivated opium as well. The first stage is provided by Rule 13, which talks of preliminary weighment. This weighment is to be done by Lambardar, who is a person appointed from amongst the cultivators in a particular village. It is the duty of the Lambardar to make arrangement to weigh day today extracted opium from such cultivation. He has to maintain a record for this purpose in the form of a register, which must contain entries of the preliminary weighment and also bear date of weighment, his signature and the signature or thumb mark of the cultivator. The cultivator and the Lambardar both have to attest these entries made in such record and they have also to sign or put thumb mark on the same with dates as well. This attestation is by way of certification of the quantity of opium weighed on a particular date. Sub-rule (4) lays down procedure to be adhered to after the preliminary weighment is over, by Lambardar. This subsequent weighment is by way of a check of the weightment made by the lambardar. This is to be conducted by a proper Officer designated for this purpose by the Narcotics Commissioner. He is required to compare and make entries in the register of the Lambardar regarding day to day weightment made by him in the record. Such findings are to be attested by him and the Lambardar both. They are not only required to sign but also put the date

underneath it. Sub-rule (5) is pertaining to variations between the quantity of opium produced by the cultivator indicated in the Lambardar's record and as weighed and found by the proper officer during his check. It further provides that this variation shall be enquired into by the proper officer in order to ascertain the liability of the cultivator for punishment under Section 19 of the Act. This is a very important provision occurring in Sub-rule (5) which provides that any prosecution of a cultivator shall be undertaken only after due enquiry and verification of the variations in weighment by the proper officer. As a matter of fact it constitutes a fetter in the prosecution of any cultivator under Section 19. Its non-compliance from its language itself appears to be fatal for the prosecution. This is a beneficial provision made in the Act in the form of Sub-rule (5) to save the interest of the cultivator. It has to be interpreted strictly and no slackness in its interpretation, in my opinion, is permissible. Sub-rule (5), it appears to me, clearly is mandatory in nature. After these two stages Rule 14 provides for the delivery of opium produced. For ready reference, Rule 14 is quoted below.

14. Delivery of opium produced-All opium, the produce of land cultivated with opium poppy, shall be delivered by the cultivators to the District Opium Officer or any other officer duly authorised in this behalf, by the Narcotics Commissioner at a place as may be specified by such officer.

Thus, this rule clearly indicates the stage when the opium so produced by a cultivator shall have to be delivered to the District Opium Officer or any officer so authorised in this behalf by the Narcotics Commissioner. The place also is to be notified where it is to be delivered by the cultivator. In the same breath Rule 15 also is significant. It is quoted below for reference :

15. Opium to be weighed, examined and classified - All opium delivered by the cultivators to the District Opium Officer or any other officer authorised as aforesaid, shall, in the presence of the concerned cultivator or any person authorised by him and the Lambardar of the village, be weighed, examined and classified according to its quality and consistence and forwarded by the District Opium Officer to the Government Opium Factory in such manner as may be specified by the Narcotics Commissioner.

9. From a perusal of this rule it appears that this is clearly the stage before despatch of the opium to the Government factory and after it is deposited by the cultivator. According to Rule 14 the District Opium Officer has to notify the place where the opium is to be delivered by the cultivators. After delivery of the opium by the cultivator it is to be examined, weighed and classified according to its quality and consistence and the District Opium Officer is required to forward such opium to the Government factory in the manner as specified by the Narcotics Commissioner. In this manner this is the last stage. These rules provide clearly what is to happen after the check weighing and return of his finding in the register of Lambardar by the proper Officer is made or conducted. This check is in the nature of a second weighing. The sequence of Rules 12, 13, 14 and 15 indicate clearly that after the check is over the opium ought not be left with the cultivator. It has to be taken to a designated place and it is to be received by the District Opium Officer or a designated officer in this behalf. After its re-weight, examination and classification, according to its quality and consistence by the District Opium Officer or any other officer authorised by Rule 14 it has to be despatched to the Government factory. The safeguard is also to be read in Rule 15, inasmuch as the last weighing, examination and classification is to be done in the presence of the concerned cultivator or any person so authorised by him for this purpose and also the Lambardar of the village. This is yet another check contemplated by the Act and the Rules made under the above said Act. These very checks imposed by law clearly indicate that after the second weighing of the articles, opium or poppy cannot be retained by the cultivator. It has to be passed on or deposited with the department. This is rendered unequivocal by the provisions contained in Rule 15, as already elaborately discussed earlier.

10. The evidence produced by the prosecution in this case runs short of its obligation. None of the officials produced on behalf of the department have categorically stated that after the second weighing the cultivated opium was left with the cultivator for its production at any specified place on a specified date. In the absence of such an evidence it is open to contention and rightly contended by the learned counsel for the appellant that the prosecution of the appellant under Section 19 is mischievous. The evidence of P.W. 1 shows that the produce of 24th, 25th, 26th, 27th and 28th March in its total weight was 2 Kgs. P.W. 1's

statement, who was a Lambardar, shows that on 4-4-1986 Brij Lal, Deputy Inspector, belonging to Opium Department, visited the village. He had weighed opium of Raghubeer himself and found the same to be 2 Kgs., as noted in the measurement book maintained by the Lambardar. The entry was made with regard to this fact by P.W. 1 in his register. His evidence further shows that the weighment noted against Raghubeer in the register was based on the estimate given by Raghubeer himself, although he claimed initially that he had weighed it but he has clearly admitted in cross-examination that he had no measuring scale and weights. He has further admitted that he used to make entries in his register on the statements of the cultivators. The weights are put into the register on the basis of visual estimations as well. In these circumstances, so far as the evidence of P.W. 1 is concerned, he has further admitted that the appellant has also no measurement or weights. He has clearly admitted further that in the year in question crops were badly affected on account of dubious weather. It has further come in his testimony that crops of Rghubeer was damaged beyond redemption by Neel Gai (blue boons). In further cross-examination he has come out with the statement that after the formation of seeds cultivators used to extract opium and the measurements are entered into the weighment register on their statements. This statement categorically proves and establishes that no entries in the register were made by Lambardar on the basis of any actual weighment. No reliance can be placed on the estimations of the Lambardar as the law requires him to do proper weighing on a scale before making entries in his register. A. Kumar Gupta (P.W. 2) Deputy Inspector in the Department, is the person who had made check weighment, as required by Sub-rule (4) of Rule 13, meaning thereby that he was the proper officer or authorised officer as contemplated by this rule. He has proved the measurement of the land allotted to Raghubeer, the appellant, which according to him was 15 acre. He had further proved that a licence for the above measurement was issued to the appellant. He has produced the field book and entries made in column No. 8 of this book. According to him in column No. 21 of this book weight of opium deposited by the appellant is shown as 550 gms. He had stated that the appellant had deposited this opium on 24-4-1986, but this witness has not stated that these entries and these measurements were made after compliance of Rule 15 in this register and this weighment was made in the

presence of the cultivator and the Lambarder, as required by Rule 15. He had stated that weighment was done by him but the classification was to be done by the District Opium Officer. He had further stated that in accordance with his order classified opium is sent for further weighment on the weighment scale. He had stated that he made this measurement as Sl. No. 'A'. He had further stated that the appellant's opium was suspected to be adulterated. It was suspected after appellant's opium was found to be 550 gms. No payment was made to appellant due to this reason. He had further proved that Brij Lal, P.W. 3, Deputy Inspector of the Department had found the opium belonging to the appellant in record No. 7 as 2 kg. He had made his verification entries regarding the same in register of Lambardar. He had proved his handwriting. It is Ext. Ka-3. He had clearly admitted that there is no standard fixed per acre for the cultivation of opium. He has also admitted that blue boons are too fond of opium plants. He has further admitted that he was posted in district Budaun for 5/6 years. It is further admitted to him that in Tehsil Bisoli visits of blue boons was very frequent and rampant during the year in question. Although he had denied that on this account he has measured land belonging to Raghubeer after issuance of his licence in the presence of Lambardar and an entry regarding this was made at page 26 of the book in Column No. 7. This entry is dated 16-1-1986. He has further admitted that entries made from 24th to 28th March are not made in one column. Stamp-pad used for obtaining signatures is one and the same. He has admitted that opium deposited by the appellant was suspected to be adulterated, but in his knowledge no enquiry was conducted by the department in this connection. He had no record in his custody to prove that any notice was given to him. He claimed that opium was deposited in his presence. He further stated that he had not seen the opium, but only weighed it. He further admitted that he cannot state, on the basis of record in his possession, that any enquiry was made from the appellant in connection with adulterated opium. His statement further goes on to state that no notice was given to the appellant by the department for this variation in the weighment of his opium. He had admitted that rule lays down that an enquiry should be made with regard to the variation in the weighment before prosecuting any cultivator.

11. P.W. 3 is Brij Lal, he is a retired Inspector of the department. He had made the check after it was first weighed by Lambardar. This weighment was made on 4-4-

1986, P.W. 2 had made the weighment on 24-4-1986. His statement shows that the opium after weighment made by the Lambardar was left with the cultivator and on 4-4-1986 he had summoned the same from the cultivator at the residence of Lambardar and weighed there. He also stated that he had made entries regarding weight and verifications in the register and had signed it. The entries regarding Raghubeer, according to him, are contained on page No. 7. He claimed that he had weighed himself on 4-4-1986 the opium brought by the cultivators. According to him the total produce of the appellant during the period for which he had the licence ought to have been 6 Kgs. He further admitted that change of weather and destruction of crop by animals affects the produce. He further stated that his Department had never tried to find out why the cultivation fell in the relevant year. He claimed that the entire record pertaining to this case was present in his custody at the time of his statement. After verification from the record he further stated that he did not find any entry regarding poor produce of opium during the relevant period. He further stated that he had no knowledge of any notice having been issued to Raghubeer for less production of opium. He had further stated that the record also does not suggest any such notice having been issued to him. He has further stated that he had no knowledge about the total produce obtained by the appellant from 15 Acre' of land. He claimed that the weighment was made by him in the presence of Lambardar and the cultivator. He had stated that he had also classified it as No. 1 in quality. When specifically put to test regarding his entry in the record he had to admit that there is only entry that opium is 2 kg. in weight and no entry about classification. He had identified his signatures. This entry admittedly had no date under his signatures, as required by Rule 15. He has further admitted that he maintains a personal daily diary. This diary was provided by the Department. In this diary he used to make entries with regard to the places he had visited on a particular date. Amongst the record that he had brought in Court this diary is not there, although he has submitted that diary at the time of retirement in the Department. He claimed that he had weighed the opium on the scale provided to him by Lambardar. It will be relevant to refer to the statement of Lambardar again in this context P.W. 1 Lambardar has very categorically admitted but he had not possessed any scale or weights. His statement further is that all entries were made by him either on visual estimation or on the estimation

disclosed or represented by cultivators. He has further stated that opium is an article which is lost by evaporation, although he had stated that the rate of evaporation is slow. However, it is not certain how much weight is lost. This loss in weight depends on the process of extraction and the conditions in which it had been kept by the cultivator apart from the period for which it had been kept by him. He had to admit after the above admission that he had weighed and found the opium exactly in accordance with the weight noted by Lambardar in his register. P.W. 1 Lambardar, according to rules, must have weighed day to day produce on the dates commencing from 24th March, 1986 to 28th March, 1986, as required by Rule 13 although he had not specifically stated that he has weighed himself on these dates. It is not unusual that in these 8-12 days opium extracted and weighed will certainly suffer drying and in such a situation it could not be exactly 2 Kgs., as found during check weighing by proper officer on 4-4-1986. It further goes to suggest that these officials had not weighed at all the opium and had verified entries made by Lambardar passively. There is no evidence when the cultivator deposited the opium after it was checked and whether he was given any date for this purpose. It was also not weighed at the place of deposit in the presence of cultivator and Lambardar.

12. The last witness P.W. 4 D.D. Kuril, is the person who had submitted charge-sheet in Court against the appellant. This witness had stated that on 24-4-1986 Raghubeer had produced his opium for weighment at the specified place and it was found to be 550 gms. Therefore, the variation of 1.450 gms. was noticed. He has admitted that he has not recorded any statement of any witness but had submitted charge-sheet on the basis of the entries found in the record of the Department. He has very clearly admitted that before sub-mission of the charge-sheet in Court he had not issued any notice with regard to this variation in accordance with Sub-rule (5) of Rule 13 to the appellant. He has further admitted that he cannot give any estimation regarding regular production of opium per year. The produce depends upon labour of the cultivator and freedom from natural calamities. He further admitted that menace of blue boon in the area was brought to his notice by the cultivators. It was also brought to his notice that these blue boons are very found of opium crop. He had further admitted that in the register, maintained by Lambardar, cultivator himself used to get the entry made with

regard to weight of their opiums, no scale for weighment was provided to Lambardar by the Department is clear admission of this witness. He, thus, corroborated statement of P.W. 1 Lambardar on this point. He has further admitted clearly that there is no such instruction to Lambardar that he should weigh opium himself. Although he had made an evasive reply to the question that Lambardar used to make entries in the register of the cultivators without weighing it but from the evidence of P.Ws. 1 and 4, it becomes very clear. 13. From a thorough examination of the evidence detailed above, it becomes absolutely clear that entries regarding weights made in the register, maintained by Lambardar, are not authentic. They are made on visual examination or on the representation of cultivators. So far as the appellant is concerned, P.W. 1 is categorical in his statement that neither he had any scale to weigh the opium brought by the cultivators nor the appellant had any scale in his possession. Therefore, without any hitch I come to the conclusion that the entries regarding the appellant in the register maintained by Lambardar were all estimative and cannot be relied upon. They were made on the basis of imagination. Except Lambardar, who is an interested witness belonging to the Department, not a single witness from amongst the cultivators were produced by the prosecution to substantiate the allegation that entries in the register of Lambardar were made after weighing. So far as P.W. 3 Brij Lal is concerned, his evidence also cannot be taken in corroboration of the statement of P.W. 1. It is admitted to P.W. 4 that no scales were provided to Lambardar. This witness has stated that he had weighed the opium brought by the cultivator on 4-4-1986 on the scale belonging to P.W. 1. This statement of his stand completely eliminated and falsified by the averments of P.W. 1 and P.W. 4. Evidence of any witness, who had interest in their case cannot be considered as sufficient to prove the charge against the appellant especially in the circumstances discussed above. Apart from this, all these witnesses have admitted unequivocally that no compliance of Sub-rule (5) of Rule 13 before launching the prosecution against the appellant was made by the Department. This is yet another reason why this appeal must succeed. As I have already held that the provisions of Sub-rule (5) of Rule 13 are mandatory in nature, the benefit on its violation has to go to the appellant. As already held, while interpreting Rules 13, 14 and 15 by me, that after the second weighment, i.e. the check weighment by a proper officer

authorised by the Narcotics Commissioner in this connection, it does not deem proper that opium will be left in the custody of the cultivator without giving him a date and also specifying place for its deposit. As provided by Rules 14 and 15, they will have to be brought either by the cultivator himself as the specified destination on a specified date for further activities, such as delivery and despatch after weight, examination and verification to the opium factory. No witness, especially P.W. 3, has not stated as word about it. This is also fatal for the prosecution. The rules for carry forward further indicates that prosecution is not a must in every case, especially where prosecution has initially came with a case of variation in weighed and subsequently took a case that the deposited opium was adulterated. In these circumstances it is not possible to delineate truth from the statement of prosecution witnesses. No enquiry apparently was undertaken against the appellant before filing charge-sheet in Court against him as required by law, as discussed earlier.

14. In the result, this appeal is allowed. The conviction of the appellant under Section 19 of the Narcotic Drugs and Psychotropic Substances Act and consequent sentence of 10 years as also fine of Rs. 1 lakh are hereby set aside. The appellant was granted bail by this Court at the time of admission of this appeal, but his fine was not stayed and he failed to pay the fine. He is still languishing in jail. He shall be released forthwith, if not otherwise wanted in any other case. It is a pity that the appellant has to suffer incarceration for nearly three years on account of a reckless prosecution. Narcotics officials are warned to be careful not to prosecute any person without compliance of rules.

15. Let a copy of this judgment be sent to the Secretary (Home), Government of India, for necessary action in the direction of preventing such prosecutions of innocent persons.