

**Virendra Seth Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Sep-25-2003

**Reported in :** 2004CriLJ1525

**Judge :** Umeshwar Pandey, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21 and 27

**Appeal No. :** Cri. A. No. 45 of 1998

**Appellant :** Virendra Seth

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

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** K.S. Rathor, ;S.R. Rathor, Advs. and ;Syed Rashid Jalil, Amicus Curae

**Disposition :** Appeal dismissed

**Judgement :**

**Umeshwar Pandey, J.**

1. The appellant was charged and tried for the offence punishable under Section 21 of the N.D.P.S. Act (in short 'the Act') before the Sessions Judge, Ghazipur. He

was convicted and sentenced vide impugned judgment dated 20-12-1997, to undergo rigorous imprisonment for a term of ten years and to pay a fine of Rs. One Lac, in default of the payment of which it is also directed that the appellant would undergo further rigorous imprisonment for a term of six months.

2. The short facts of the case are that on 18-1-1997, while the Sub Inspector of Police, Nag Narayan Singh (P.W. 1) of RS. Mardah, District Ghazipur was patrolling in his area along with police team consisting of constable Shri Niwas Dubey (P.W. 2), constable Rakesh Kumar (P.W. 3), and others, he found the accused sitting at the shop of Shankar 'Chae Wala'. He, after having seen the police party, tried to run away giving rise to suspicion in the mind of (P.W. 1). He was chased and apprehended. He when asked about the reason of his sudden attempt to flee away from the shop at the sight of police, he replied that he was having five small packs (Purias) of contraband Heroin and getting frightened with the presence of police he tried to run away. S.I. Nag Narayan Singh (P.W. 1), after having known that the appellant was in possession of the contraband drug, he asked the accused if he wanted his search to be taken in presence of some Gazetted Officer/Magistrate. The appellant did not respond positively and told that the search and seizure of the contraband article lying in his possession may be taken by the police themselves. On search being taken, five Purias of Heroin weighing about 1.25 Gms was recovered from the possession of the appellant. Virendra Seth. After legal formalities, the contraband was got sealed and its recovery memo was prepared on the spot. The accused along with the recovered article was brought to the Police Station and F.I.R. was lodged the same day (18-1-1997).

3. The Incharge of the Police Station, Shishir Trivedi (P.W. 4), investigated the case, sent the recovered article for chemical examination to the serologist and after completing the investigation submitted charge-sheet.

4. The appellant was charged for the offence punishable under Section 21 of the Act for illegal possession of the Heroin being 1.25 Gms to which he pleaded not guilty.

5. The prosecution examined as many as four witnesses, namely, S.I. Nag Narayan Singh, constable Shri Niwas Dubey, constable Rakesh Kumar and the Investigating Officer Trivedi (P.W. 1 to P.W. 4).

6. The accused-appellant, did not examine any witness in defence and in his statement under Section 313, Cr.P.C. he admitted the fact of the recovery of Heroin on the relevant date, time and place. He, however, disputed the weight of the recovered contraband heroin and stated that he was in possession of only 0.50 Gm of Heroin which he had kept for his personal consumption.

7. The learned Sessions Judge, upon hearing the learned counsel for the parties and after considering the entire material available on the record, found that the offence punishable under Section 21 of the Act was fully established against the appellant-accused beyond reasonable shadow of doubt and he accordingly passed the order of conviction and sentenced him as aforesaid.

8. Aggrieved with the aforesaid judgment and order of conviction and sentence passed by the learned trial Court, the present appeal has been preferred.

9. I have heard learned counsel for the parties at length. The counsel appearing for the appellant has contended that since the recovery of the alleged contraband is admitted to the accused and he has specifically stated under Section 313 of the Code of Criminal Procedure that he was in possession of only 0.50 Gm. of Heroin for his personal use, the conviction and punishment awarded under Section 21 of the Act was not warranted. To the maximum the conviction and sentence for the offence punishable under Section 27 of the Act should have alone been passed and awarded by the Court below. The learned counsel has placed reliance upon the case law of Gaunter Edwin Kircher v. State of Goa, Secretariat Panaji, Goa, 1993 JIC 571 (SC): (AIR 1993 SC 1456) : (1993 Cri LJ 1485).

10. The aforesaid provisions of Section 27 of the Act read as below ; at Page 1458, of AIR

'27. Punishment for illegal possession in small quantity for personal consumption of any Narcotic drug or Psychotropic Substance or consumption of such drug or

substance. -- Whoever, in contravention of any provision of this Act, or any rule or order made or permit issued thereunder, possesses in a small quantity, any narcotic drug or psychotropic substance, which is proved to have been intended for his personal consumption and not for sale or distribution, or consumes any narcotic drug or psychotropic substance, shall, notwithstanding anything contained in this Chapter, be punishable, -

(a) where the narcotic drug or psychotropic substance possessed or consumed is cocaine, morphine, diacetyl morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the Official Gazette, with imprisonment for a term which may extend to one year or with fine or with both; and

(b) where the narcotic drug or psychotropic substance possessed or consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months or with fine or with both.

Explanation.-- (1) for the purposes of this section 'small quantity' means such quantity as may be specified by the Central Government by Notification in the Official Gazette.

(2) Where a person is shown to have been in possession of a small quantity of a narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption of such person and not for sale or distribution, shall lie on such person.'

11. The appellant had been found in possession of five packs (Puria) of Heroin about the weight of which the arresting officer, Nag Narayan Singh (P. W. 1) has specifically stated that it was 1.25 gms. He has also stated before the trial Court that he had weighed the recovered article and, thus, only had recorded its weight in the recovery memo as such. Therefore, the statement of the accused that only 0.50 Gm of Heroin was recovered from him, appears to have been rightly rejected by the court below. Small quantity of the narcotic drug and psychotropic substance if found in illegal possession of a particular person for his personal consumption, then only the provision of Section 27 of the Act can be attracted for his challan,

trial and punishment. If the quantity of contraband found in possession of the accused, though, kept for personal use only, is not 'small', the provisions of Section 27 of the Act would not be attracted. Such illegal possession of the contraband would be covered only by Section 20 or 21 of the Act.

12. The 'small quantity' of Heroin as notified by the Central Government is 250 gms. The appellant-accused, when found in possession of such contraband Heroin weighing 1.25 Gms., obviously, this cannot be termed as possession of 'small quantity' of Heroin, even if it was kept by him for his personal consumption. Thus, the contention of the learned counsel for the appellant that the conviction of the accused should have been recorded and punishment should have been awarded only under Section 27 of the Act, does not stand supported from the evidence available on the record. The same, as such, is not acceptable. The facts of the aforesaid case of Gaunter Edwin Kircher (supra) do not permit the application of the principle laid down in it to the facts of the present case and the appellant cannot be helped out with the aid of that case.

13. The learned Sessions Judge after having considered the entire aspects of the matter including the above contention raised on behalf of the accused, appears to have rightly negated the same and the order of conviction passed under Section 21 of the Act against the appellant, thus, cannot be interfered with in the present appeal, which lacks merits.

14. In the result, the appeal is hereby dismissed and the judgment and order of conviction and sentence dated 20-12-1997 passed by the Court below are hereby confirmed. From the record it is reflected that the appellant-accused Virendra Seth is in the lockup since after his arrest in this case. In case, he has been released, the Sessions Judge shall ensure his arrest and send him to lockup under a conviction warrant to serve out the sentence awarded against him. If he is in the lockup, a new conviction warrant shall be forwarded by the trial Court to the Jail authorities for compliance. He shall also report compliance of this direction of the Court within a period of fifteen days from the date of receipt of a copy of this judgment.

15. Office is directed to immediately transmit a copy of this judgment to the Sessions Judge concerned for necessary action at his end.

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