

Nirmal Singh Vs. the State

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Court : Uttaranchal

Decided On : Apr-23-2008

Reported in : 2009CriLJ872

Judge : Dharam Veer, J.

Appellant : Nirmal Singh

Respondent : The State

Judgement :

ORDER

Dharam Veer, J.

1. This criminal revision, preferred by the revisionist under Section 397/401 of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 25-11-1987 passed by Special Judge, Anti-Corruption, U.P. (East) Dehradun in Criminal Appeal No. 128 of 1981, dismissing the appeal arising out of Criminal Case No. 201 of 1980, decided by Special Magistrate C.B.I./S.P.E., 1st Class. Dehradun on 11-12-1981 convicting the revisionist Nirmal Singh Under Section 14 of The Dangerous Drugs Act, 1930 (Act No. II of 1930)(hereinafter to be referred as the Act) and sentencing him to two years R.I. and fine of Rs. 5,000/- and in default of payment of fine, six months' further S.I. was awarded.

2. Briefly stated, facts of the case are that an information was conveyed to the CBI through National Crime Bureau, Netherlands who reported arrest of one Armand Bertrand Alphonse Van Ghyschen, a Belgium National in Netherlands while he was in possession of 7 envelopes containing three grams of contraband heroine each. Van Ghyschen disclosed that the envelopes containing the contraband had been mailed to him by revisionist/accused Nirmal Singh of 7 R.A. Lines, Meerut Cantt. A search warrant was obtained from the Court of Special Magistrate and the house of the revisionist/accused Nirmal Singh S/o Ajaib Singh R/o 7 R.A. Lines, Meerut Cantt. was searched in the presence of revisionist/accused Nirmal Singh and recovery witnesses Atibul Kureal and Raghubir Prasad by a team of Officers of CBI consisting of Dy. S.P. B.N. Mishra, Inspector N.P. Tiwari, Sub-Inspector Ram Chander Singh, ASI Janardan Singh, Head Constable O.P. Gulati, all of CBI. CIU (NC) New Delhi, Sri V.P. Saxena, S.I. of Lal Kurti Police Station, Meerut on 17-12-1978 in presence of two independent witnesses namely Atibul Kureal and Raghubir Prasad, both Sorters of R.M.S. Meerut Cantt. Railway Station. The raid yielded recovery of a polythene bag with morphine tablets weighing 580 gms. a plastic jar containing 300 grams of morphine powder and one Bhagona containing powder in the paste form weighing 115 gms. and also some apparatus for manufacturing the morphine and morphine tablets from one of the bedrooms of the above house which was found in occupation of revisionist/accused Nirmal Singh as the key of the lock of the room was recovered from his possession. The contraband morphine power, morphine tablets and apparatus were sealed on the spot over and above the signatures of the independent witnesses and that of CBI and Police Officers. Two facsimiles of the seal' were also prepared at the spot, which too was signed by two independent witnesses and CBI including police officers. A recovery memo was also prepared at the spot under the signatures of all concerned and the two independent witnesses, the recovery memo is Ex. Ka-2. The seal bearing the impression as 'BN' was handover to Atibal Kureal for safe custody after the proceedings of raid were over. It was specifically mentioned in the recovery memo prepared on the spot in presence of recovery witnesses that on their request, revisionist/accused Nirmal Singh very reluctantly and in nonplused condition opened the lock of the door of the above said room by taking out a key from the right pocket of his pant. Inside this room, revisionist/accused

Nirmal Singh took out another key from the right pocket of his pant and opened the lock of an old tin box which was lying behind the small steel almirah towards the western wall of the room. The lock of the box was found marked 'Everest 7 NOMBER, Aligarh' No. 745 and key marked '6'. On opening of the box in presence of the Independent witnesses and other members of the party, It was found to contain the following articles:

1. One polythene bag tied with a rubber band containing small morphine tablets.
2. One plastic container (Jar) containing some morphine powder.
3. One Bhagona containing some wet morphine, with a knife of steel.
4. One Plastic bag containing some tablets marked sulfuno, suspected to be morphine.
5. One wooden box containing steel weights of 100 gms, 50 gms, 20 gms (2 in number) 10 gms. (total five).
6. Another small wooden box containing weights of 100 gms, 50 gms, 20 gms, (2) 10 gms, and 2 gms. (six total).
7. One Khakhi handbag containing some lime powder (Chuna).
8. One bill of Hotel Himalayan View, Kanti Path, Kathmandu. dated 15-12-1976 in the name of Nirmal Singh for Rs. 528.00.

3. Item Nos. 1 to 4 were weighed at the spot and their weights were found as 580 gms., 300 gms. including the weight of Jar, 115 gms., excluding the weight of Bhagona and knife and 600 gms. respectively. The separate samples from item Nos. 1 and 2 were taken and were sealed in 4 (four) envelopes with the seal marked 'BN' over and above the signatures of above said two witnesses and CBI and Police Officers. Before sealing the samples in above said envelopes, they were put in four plastic bags separately. The remaining narcotics of Serial Nos. 1 and 2 were sealed with the seal marked 'BN' over and above the signatures of witnesses, CBI and Police Officers after wrapping them in white cotton cloth separately. Item No. 3 i.e. steel Bhagona and knife were sealed in above manner

after taking out wet morphine which was sealed in another envelope with the seal marked 'BN' over and above the signatures of witnesses, CBI and police officers. One weighing machine make Soehnle 2 Kg. which was also lying near the box was taken into possession. Item Nos. 5, 6 and 7 and the weighing machine were put in the aforesaid tin box and sealed with the above seal in above manner. Both the locks and both the keys were put in a marking cloth and sealed in aforesaid manner. One cardboard drum containing one small tin drum, one broken tube, four Philips Crompton Lamps, one ultraviolet tube and one glass flask, which was found lying in the above said room, was also taken into possession and sealed in the above manner after wrapping a white cotton cloth around. Item No. 4 i.e. one plastic bag containing some tablets marked Sulfuno was wrapped in white cotton cloth and was sealed with the seal 'BN' over and above the signatures of witnesses, Police and CBI Officers. Two facsimiles of the seal 'BN' were also prepared on two blank sheets of papers which were signed at the spot by above said witnesses, CBI and Police Officers. A facsimile of the seal was affixed on each page of the recovery memo, which was prepared at the spot duly signed by witnesses and officers of CBI and Police. The seal after use was handed over to witness P.W. 1 Atibul Kureal for safe custody. The proceedings of the raid were completed at about 5.00 p. m. after observing all the legal formalities.

4. The investigation of the case was entrusted to P.W. 7 Surendra Singh. The I.O. during the course of investigation, prepared the site plans of the place of occurrence i.e. Ex. Ka-11 and Ex. Ka-12. The I.O. also recorded the statements of the witnesses and after completing the investigation, he submitted the charge sheet i.e. Ex. Ka-13 in the Court of Special Magistrate, CBI/SPE, 1st Class, Dehradun on 29-6-1979.

5. Learned Special Magistrate for CBI/Addl. CJM, Dehradun vide his order dated 7-9-1979 framed the charge against the revisionist/accused Nirmal Singh Under Section 14 of the Act. The charge was read over and explained to the revisionist/accused who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution examined P.W. 1 Atibul Kureal and P.W. 2 Rameshwar Prasad, who were the Government servants and procured by CBI

raiding party to witness the search to be made In pursuance of search warrant; P.W. 3 B.N. Mishra, Dy. S.P., who was the leader of the said raiding party; P.W. 4 M.P. Saxena, a link witness, P.W. 5 M.L. Chamoli, Supply Inspector who was produced to prove the ration card at the address of the house in question was in the name of the father of the revisionist/accused; P.W. 6 Ram Chander Singh, Inspector CBI, who was the in-charge Maalkhana in whose Supurdgi the recovered articles were given and P.W. 7 Surendra Singh, Inspector/I.O. of the case, who after the investigation submitted the charge sheet against the revisionist/accused.

7. Thereafter, the statement of the revisionist/accused Nirmal Singh was recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to him in question form. He denied the allegations made against him but in defence, he stated that he was a contractor of C.J.H.S. and Atibul Qureal and other persons used to come to him to get the false bills sanctioned. He continued to refuse the same and on 22-10-1978, a complaint was given to CMO, Meerut and due to this reason, false evidence was given against him. In support of his evidence, he produced one witness S.I.U.P. Police V.P. Saxena.

8. After hearing learned Counsel for the parties and appreciating the entire material available on record, the learned Special Magistrate, CBI/SPE, 1st Class Dehradun vide his-judgment and order dated 11-12-1981 convicted the revisionist/accused Nirmal Singh Under Section 14 of the Act for two years R.I. with fine of Rs. 5000/- and in default of payment of fine, six months' further S.I. was awarded to him. Against the said judgment and order dated 11-12-1981, the revisionist/accused Nirmal Singh preferred an appeal. The appeal was decided by Special Judge Anti Corruption, U.P. (East) Dehradun by his order dated 20-8-1982, whereby the learned Special Judge allowed the appeal preferred by the revisionist/accused Nirmal Singh and set aside the conviction passed against the revisionist/accused and sent the matter back for retrial in accordance with law and in light of the observations made in the judgment. Being aggrieved by the said judgment and order dated 20-8-1982, the revisionist/accused preferred a Criminal Revision before the Allahabad High Court against the remand of the case. The said Criminal Revision was registered as Criminal Revision No. 1740/1982. The

said criminal revision was decided by Hon'ble High Court of Judicature at Allahabad on 22-8-1985, whereby the order dated 20-8-1982 passed by lower appellate Court was set aside and the appeal filed by the applicant/revisionist was directed to be decided on merits in accordance with law. After the remand of the case from the Hon'ble High Court of Judicature at Allahabad, two witnesses namely Atibul Kureal P.W. 1 and B.N. Mishra P.W. 3 were re-examined and one more witness V.S. Visaria, Chemical Examiner was also examined as Court Witness (C.W. 1). After appreciating all the evidence recorded by the appellate Court as per the directions of Hon'ble High Court of Judicature at Allahabad, Special Judge, Anti-Corruption, U.P. (East) Dehradun vide his judgment and order dated 25-11-1987 dismissed the appeal of the revisionist/accused Nirmal Singh and the order of conviction and sentence passed by the Court below (trial Court) was confirmed. Feeling aggrieved by the said judgment and order dated 25-11-1987 and judgment and order dated 11-12-1981 passed by Special Magistrate, CBI/SPE, 1st Class, Dehradun, the revisionist/accused Nirmal Singh has preferred the present revision.

9. I have heard Sri Navneet Kaushik, learned Counsel for the revisionist and Sri Arvind Vashisth learned standing counsel for CBI/opposite party and perused the entire material available on record.

10. The prosecution, in order to prove its case, examined P.W. 1 Atibul Qureal who stated that on 17-12-1978, CBI party came at the office of RMS, Meerut Cantt. On that day, his duty hours was from 7.30 a.m. to 3.30 P. M. and CBI party came at 11.25 a.m. Sri B.N. Mishra of CBI had asked from Head Sorter and asked them to provide two persons to them. Head Sorter had directed him and Raghuvir Prasad by a written order to go with CBI party. Then he and Raghubir Prasad went with CBI party, who informed that they have to go for verification. Thereafter, they went to P.S. Lalkurti by a car and took a S.I. namely Sri V.P. Saxena. At 12.45 p.m., they reached at 7 R.A. Lines, Meerut where they found revisionist/accused Nirmal Singh. Thereafter, B.N. Mishra shown his identity card to him and also shown warrant to him and asked the revisionist/accused Nirmal Singh to search them. After the search, the party asked the revisionist/accused to get his family members out in the verandah. After that the house of revisionist/accused was

searched. The room in the northern side of the house was closed. When B.N. Mishra asked the revisionist/accused Nirmal Singh to open the said room, then he got hesitated. There after, he opened the door and in the back of the Almirah in the room, a box was kept being locked. When the box was got opened by revisionist/accused Nirmal Singh, then in the box, 575 gms. of Morphine tablets; a plastic jar having 300 gms. of morphine powder; a Bhagona containing some wet morphine about 100-125 gms. and apart from this some tablets of Sulfuno; two weighing box with weights; one bill of a 'hotel of Nepal; one Khakhi handbag containing some lime powder (Chuna); two boxes of cardboard with pipette being kept with the help of almirah and flask etc. were found. Thereafter, B. N. Mishra prepared two facsimiles of morphine and also took two facsimiles of powder and thereafter specimens of seal were also prepared. No specimen from wet material was taken. All the material i.e. morphine tablets, powder and wet morphine were found to be 1 Kg. when weighed. The goods, after being kept in a plastic bag, were sealed in a cloth. The seal, by which the articles were closed, was given to him and specimen of seal was also prepared. His signatures on all the papers were taken. The box in which the goods were closed, was of tin. Receipt of seal was also taken from him i.e. Ex. Ka-1 and this seal was marked as 'BN' and he also proved the said seal i.e. Ex. I. The goods kept in the cardboard were also sealed after wrapping a cloth and were kept in the same cardboard. Fard Ex. Ka-2 was also prepared and he also proved the same and a copy thereof was also given to the revisionist/accused. All these proceedings were continued up to 5.00 P.M. Thereafter, they took revisionist/accused Nirmal with them to his medical store, however nothing was taken into possession from there. Thereafter, CBI persons took the revisionist/accused Nirmal Singh to police station and he went to his home. Fard for taking the search of revisionist/accused Nirmal Singh was also prepared and he also proved the same i.e. Ex Ka-3. The lock which was applied on the door and its key, after being sealed, was kept in a box and the box, after being locked, was sealed. The said box was marked as Ex. 2, however in the Court, he denied the seal which was applied on the box on the spot, but he identified the seal applied on the cloth and he also proved his signatures on it marked as 'A'. The seal of box along with cloth was opened, the sealed cloth is Ex. 3. The lime kept in a handbag which was kept in a box, i.e. Ex. 4. Two weight

boxes were marked as Ex. 5 and Ex. 6. Out of those two boxes, in one box five weights were kept and in another six weights were kept. The scales of weight is Ex. 7 which was found on the spot. Two specimen of tablets and two specimen of powder were also prepared on the spot and was sealed in envelopes on the spot, those envelopes are Ex. 8 to Ex. 11. He has proved the seal of Ex. 10 and Ex. 11, as the same were prepared on the spot, however on Ex. 8 and Ex. 9, some other seal was also found. He proved his signatures on Ex. 8 to Ex. 11. The wet material was also sealed on the spot i.e. Ex. 12 and he also proved the same. The Bhagona in which wet material was there, was also sealed, however the seal which was applied on the spot, was not found i.e. Ex. 13. The packet of morphine tablet is Ex. 14. The seal on tablets of Sulfino was marked as Ex. 15 and packet of powder is Ex. 16 and packet of lock and key is Ex. 17 and he also proved his signatures on them. Bill of hotel is Ex. Ka-4 and he also proved the same and its specimen of seal is Ex. Ka-5. Card Board Box is Ex. 18 and he also proved the same.

11. P.W. 2 is Raghuvir Prasad who has stated that on 17-12-1978, he was posted as Sorter and was on duty. His In-charge had ordered him to go with B.N. Mishra of CBI. Then he along Atibul Qurael went with him to Lalkurti Police Station. After taking V.P. Saxena of Lalkurti Police Station, they reached at 7 R. A. Lines, Meerut at 12.45 p.m. In the verandah of house, one Sikh person was having his food. When B.N. Mishra enquired his name then he disclosed his name as Nirmal Singh. B.N. Mishra shown search warrant to Nirmal Singh and asked him for search. Thereafter, the house was searched. A room was found closed and that was opened by the revisionist /accused. In that room, before the Almirah, a Box Ex. 2, which was locked, was found. The said lock was opened by revisionist/accused Nirmal Singh. In the box, some tablets were found in a plastic bag which CBI persons described as Morphine. In a plastic jar, morphine powder and in a packet, Sulfona tablets were found. In one bag, lime (Chuna) was found and two wooden weight boxes in which one small scale, a Bhagona and a knife were there and some wet material was also found. Some other relevant goods were found which too was taken into custody. Two samples each of morphine powder and morphine tablets, was sealed and Fard Ex. Ka-2 was prepared. The copy of the same was also given to the revisionist/accused. The personal search

of revisionist/accused was also conducted and a Fard was prepared i.e. Ex. Ka-3. The seal was thereafter given to Atibul Qureal. The goods are Ex. 4 to Ex. 18 and he also signed on the clothes. At 5.00 p. m. in the evening, they reached at the medical store of revisionist/accused Nirmal Singh, however no articles were taken into custody from the said medical store. Thereafter, he had gone and CBI persons took the revisionist/accused and recovered goods with them.

12. P.W. 3 is B.N. Mishra who has stated that since April, 1973 he is working as CBI, CIU, NC Division. In September, 1978 he received an information through Interpol that in Netherlands, a person namely Bertrand Alphonse was arrested on 7-8-1978 from whose possession seven envelopes, one envelope containing 3 gms. heroine and 130 gms. heroine was recovered. On the basis of that information, Nirmal Singh of 7 R. A. Lines, Meerut Cantt. was suspected and on that basis, a secret enquiry was conducted and it was found that there was a probability of having Heroine with the revisionist/ accused Nirmal Singh and further that he was also doing the same business from his shop at Sethi Market. Thereafter, the search warrant for searching the house and shop of the revisionist/accused Nirmal Singh was obtained from the Magistrate. The application which he gave for obtaining the warrant is Ex. Ka-6 and he also signed on it. After obtaining the warrant on 17-12-1978, as per the orders of S.P., CBI, New Delhi he along with Inspector N.P. Tewari, S.I. Ram Chandra, ASI Janardan Tripathi and H. C. Gulati reached Meerut at 10.00 a.m. after starting from Delhi at 8.00 A.M. by an official vehicle DHE 1178. From RMS, Meerut he took two witnesses namely Atibul Qurael and Raghuvir Prasad. The application for taking the witnesses gave by him is Ex. Ka-7 and he also signed on it. Thereafter, they took S.I.V.P. Saxena with them from Lalkurti Police Station as per the directions of S.O. and after that he Informed about the matter to the witnesses and officials. At 12.45 p.m., they reached at 7 R.A. Lines where they found Nirmal Singh at home. The search warrant was shown to him and he also shown his Identity Card to him. Thereafter, they shown their search to the revisionist/accused and no illegal material was found from their possession. He also made a request to the revisionist/accused Nirmal Singh to get the ladies of the house to sit outside and searched the house. The room in the northern side of the house was closed. Revisionist/accused Nirmal Singh then opened the door by a key which was kept

in right pocket of the pant and in the back of the Almirah in the room, a small tin box was kept. The said box was also opened by revisionist/accused Nirmal Singh from another key which was also kept in his right pocket of his pant and the following articles were found therein:

1. Some tablets weighing 580 gms. when weighed, being kept in a polythene bag
2. Powder weighing 300 gms., when weighed, being kept in a plastic jar
3. A Bhagona in which powder (in the paste form) weighing 115 gms. when weighed.

13. As per his experience, he found that the said tablets, powder and the paste were morphine. Thereafter, he prepared two separate facsimiles of the tablets being kept in polythene bag as well as of powder being kept in plastic jar and thereafter sealed them in four envelopes with the seal marked 'BN' over and above the signatures of witnesses. The remaining narcotics, after keeping them in separate clothes, was sealed with the seal marked 'BN'. The morphine which was in the Bhagona, after keeping them in separate envelope, was also sealed in the aforesaid manner. Bhagona and knife kept in it was sealed separately. The tablets from plastic bag which were kept in the tin box, when weighed, were found to be 600 gms. and the same were also sealed in the aforesaid manner. Besides these articles, some weights were found in two separate wooden boxes and the same were also sealed. In a Khaki bag, lime (Chuna) was found and the same was also taken into possession. The bag in which lime was kept and the boxes in which weights were found, they were sealed in a tin box. A bill of hotel of Kathmandu was also recovered from the box, i.e. Ex. Ka-4 and was also taken into possession. Besides this, weighing scale was also kept in the room and that was also taken into possession and in the same room, a Card Board Box (Drum), a small tin drum, four tubes (Lamp) and one electric tube was recovered and those articles were also sealed after wrapping a cloth around. Specimen of seal on two separate papers was prepared after getting the signatures of witnesses i.e. Ex. Ka-Pj and he also signed on it. Fard of recovery i.e. Ex. Ka-2 was also prepared and he also signed on it and specimen of seal was also prepared. A copy of the said Fard was given to the 'revisionist/accused and he also signed on it as a token

of receipt i.e. Ex. Ka-2A. After the proceedings were over, seal was given to Atibul Qurael and the receipt of the same is Ex. Ka-1. After completing all the proceedings at 5.00 p.m., the shop of revisionist/accused was searched, however nothing suspicious was recovered. Thereafter, he along with the revisionist/accused went for Delhi and admitted the goods in Delhi Maalkhana. A written report in this regard he gave to S.P. CBI i.e. Ex. Ka-8 and he also proved it. With regard to search, complete report Ex. Ka-9 was sent to the Court and he also signed on it. He also stated that he had separately sealed the lock and key of box as well as lock and key of the room. In the personal search of revisionist/accused, he prepared Fard Ex. Ka-3 and the box and other articles recovered from him were available in the Court.

14. P.W. 4 is M.P. Saxena who stated that since 1962, he was posted as Telephone Inspector in Meerut. He stated that wherever the telephones are kept, the record was being kept in his department. At 7 R. A. Lines, Meerut Cantt, a telephone was installed in the name of Nirmal Singh, the number there of is 73404 and the said telephone was installed since 23-4-1969. He also stated that record of overseas calls was also being kept in the department. In the department, a register of overseas trunk booking was being kept. He further stated that a register of Subscriber Record Case was also being maintained in the department. For the purpose of overseas Trunk Call, a separate ticket at the time of booking was also being prepared.

15. P.W. 5 is M.L. Chamoli who has stated that since 15-8-1980, he was posted as Inspector in Supply Office. In the Supply Office, record of ration cardholders is being kept. He also produced the record of R. A. Lines, Meerut Cantt. in the Court. Ration Card of 7 R.A. Lines, Meerut Cantt. was in the name of Ajab Singh. He proved the original inquiry letter which was signed by B. Singh. A true copy of this inquiry letter is on record on Material Ex. No. 19. He was also having the register of issuing the ration card in the Court and at Sl. No. 80 of the said register, ration card No. 63851 was issued in the name of Ajab Singh which was for 11 units.

16. P.W. 6 is Ram Chandra who has stated that from November, 1978 to December, 1979, he was posted as In-charge of Maalkhana of CBI. He also stated

that as an In-charge of Maalkhana of CBI, he used to keep the recovered articles in it and was also maintaining the concerned register. The case property of this case was received by him on 17-12-1978 from B.N. Mishra, Dy. S.P. The entry of receipt of the said goods was also made by him in the register and the recovered goods were kept in Maalkhana. He also brought the Maalkhana Register from 1976 to 1978 in the Court and at Sl. No. 34 of the said register dated 17-12-1978, entry of the goods of this case was made by him. He also proved the entry as well his signatures on it and that was marked as Material Ex. No. 20. On 22-12-1978, the recovered goods of this case i.e. Item Nos. 3, 4, 5, 7, 8, 9, 10 and 11 were given by him to Inspector S. Prasad. Out of the aforesaid items given to Inspector S. Prasad, except Item No. 11, he received back all the items in sealed condition. The entry of receiving the said items he himself made in the last column of register on the same day. The items which he received back was having the seal of CFSL and he also made the entry of receiving the same. He also stated that up till when he remained the Incharge of Maalkhana, the recovered goods were remained in the sealed condition in his custody.

17. P.W. 7 is Surendra Parsad, I.O. of the case who stated that investigation of this case was entrusted to him on 18-12-1978. FIR Ex. Ka-10 was in the signatures of R.N. Kaul, the then Dy. S.P. Headquarter. The endorsement of sending the FIR was under the signatures of R.N. Sinha, the then S.P. On Ex. Ka-8, the order of R.N. Sinha, the then S.P. is there and that was marked as Ex. Ka-8A. He had also seen S.P., R.N. Sinha, the then S.P. and R.N. Kaul, Dy. S.P. while reading and writing and he also proved their handwritings and signatures. During the investigation, he recorded the statements of the witnesses and prepared the site plans. Ex. Ka-11 is the site plan of the locality where the house of revisionist/accused is situated and Ex. Ka-12 is the site plan of the house of revisionist/accused. After completing the investigation, he submitted the charge sheet against the revisionist/accused i.e. Ex. Ka-13. During the investigation, on 22-12-1978, he personally took letter No. 7830/3121/78-CBI/CIU signed by the then S.P., R.N. Sinha to the office of Director CFSL/CBI and also bring with him seven sealed envelopes with specimen of seal and also memo thereof for investigation, that letter is Ex. Ka-14. On page 2 of this letter, entry of receipt of sealed parcels by Case Assistant and his signatures are there, i.e. Ex. Ka-14A.

The goods mentioned in Ex. Ka-14 he brought from Ram Chandra. In charge Maalkhana in sealed condition. Enquiry Report Ex. Ka-15 he received on 7-5-1979. With that report, he himself brought the remaining goods from CFSL and the remaining goods he handed over to Ram Chandra, In-charge Inspector Maalkhana.

18. Thereafter, the statement of the revisionist/accused Nirmal Singh was recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to him in question form. He denied the allegations made against him but in defence, he stated that he was a contractor of C.J.H.S. and Atibul Qureal and other persons used to come to him to get the false bills sanctioned. He continued to refuse the same and on 22-10-1978, a false complaint was given to CMO, Meerut and due to this reason, false evidence was given against him.

19. The revisionist/accused in support of his evidence, he produced one witness S.I. U.P. Police V.P. Saxena. This defence witness was procured by the raiding party from Police Station Lalkurti where he was posted and was also a witness of recovery in question. However, he is said to have supported the revisionist/accused against the alleged recovery. In cross-examination, he has stated that he was posted as S.I. in U.P. Police since 1961 and nowadays he was suspended since 11-9-1979. He also stated that a case of murder was also continuing against him in Meerut. He also stated in his cross-examination that CBI persons had not obtained his signatures on Ex. Ka-2 under any threat or force.

20. After the remand of the case from the Allahabad High Court, P.W. 1 Atibul Qurael and P.W. 3 B.N. Mishra were reexamined and one more witness V.S. Visaria, Senior Scientific Officer was also examined as C.W. 1.

21. P.W. 1 Atibul Qurael in his re-examination on seeing Ex. 14 i.e. Morphine Tablets, has stated that these are the same tablets which were recovered from the spot. The said tablets were sealed on the spot and he also signed on it and proved the same and behind his signatures, 17-12-1978 is written. After opening Ex. 15 i.e. contents of Sulfuno tablets, he also identified the said tablets which were recovered on the spot and on the tablets, Sulfuno is written. The said packet was also sealed on the spot and he also signed on it and below his signatures date 17-

12-1978 is written. On seeing Ex. 16 i.e. powder, he identified the same as powder. He also stated that the powder, which is in plastic jar, was sealed on the spot and he also signed on it and date was also mentioned. The aforesaid three items i.e. Ex. 14, Ex. 15 and Ex. 16 were recovered from a tin box and the said tin box was recovered from the house revisionist/accused Nirmal Singh. The key of the said box was also provided by revisionist/accused Nirmal Singh.

22. P.W. 3 B.N. Mishra in his re-examination has stated that the items, which were sealed in the box, the seal thereof was accurate. Ex. 14 on which the Court's seal was there, was also accurate and the same was opened in the Court. On seeing the tablets kept in Ex. 14, he identified the tablets which were recovered from a tin box Ex. 2 from revisionist/accused. On seeing Ex. 16, he also Identified the said powder which was recovered from the said tin box Ex. 2.

23. Court Witness (C.W. 1) V.S. Visaria has stated that since 1970, he is posted in CFSL as Senior Scientific Officer and in 1979, he was also posted as Senior Scientific Officer. On 22-12-1978, he received seven sealed parcels with specimen of seal with regard to the present case In CFSL, the detail whereof has been given in Ex. Ka-15. He scientifically examined those articles and submitted his report i.e. Ex. Ka-15 and he also proved the same. He also stated that in his report, besides other things, he found presence of morphine in Exs. A, B and C. Apart from this, in Exs. E, F, G-1, G-2 and G-4 he found presence of morphine. The box containing the recovered articles was opened in the Court after breaking open the seal and on seeing Exs. 8, 9 and 12, he identified the same samples which he had duly sealed after completing the investigation and those were marked as A, B & C. He also stated that he had not given any percentage of morphine in his report. However, he stated that after re-examination, he could explain the percentage thereof.

24. Sri Navneet Kaushik, learned Counsel for the revisionist argued that the said articles which were shown to be recovered from the possession of the revisionist /accused Nirmal Singh would not come under the definition of the opium derivatives as defined under Section 2(f) of the Act. He further submitted that as the recovered items would not fall within the definition of opium derivatives, so it

would also not fall within the definition of 'manufactured drug' as defined in Section 2(g) of the Act.

25. Before further discussions, it is pertinent to reproduce Sections 2(f), 2(g), 8 and 14 of the Act, which read as under:

2(f) 'opium derivative' means-

(i) Medicinal opium, that is. opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether in powder form or granulated or otherwise or mixed with neutral materials;

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking, and the dross or other residue remaining after opium is smoked.

(iii) Morphine, that is, the principal alkaloid of opium having the chemical formula $C_{17}H_{19}NO_3$, and its salts;

(iv) Diacetylmorphine, that is, the alkaloid, also known as diamorphine or heroin, having the chemical formula $C_{21}H_{23}NO_5$, and its salts; and

(v) All preparations, official and non-official containing more than 0.2 per cent of morphine, or containing any diacetylmorphine;

2(g) 'manufactured drug' includes-

(i) all coca derivatives, medicinal hemp and opium derivatives; and

(ii) any other narcotic substance which the (Central Government) may, by notification in the (Official Gazette) made in pursuance of a recommendation under Article 10 of Geneva Convention (or in pursuance of any international convention supplementing the Geneva Convention), declare to be a manufactured drug;

but does not include any preparation which the Central Government may, by notification in the Official Gazette made in pursuance of a finding under Article 8 of

the Geneva Convention, declare not to be a manufactured drug;

8. Control of State Government over internal traffic in manufactured drugs and coca leaf.- (1) No one shall-

(a) import or export inter-provincially, transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or

(b) manufacture medicinal opium or any preparation containing morphine, diacetylmorphine or cocaine,

save in accordance with Rules made under Sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The (State Government) may (***) make Rules permitting and regulating-

(a) the inter-State import and export into and from the territories under its administration, the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf; and

(b) the manufacture of medicinal opium, or of any preparation containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Such Rules may prescribe the form and conditions of licences for such import, export, transport, possession, sale and manufacture, the authorities by which such licences may be granted and the fees that may be charged therefore, and any other matters requisite to render effect the control of the (State Government) over such import, export, transport, possession, sale and manufacture.

(3) Save in so far as may be expressly provided in Rules made under Sub-section (2), nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government:

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the Rules made by the (State Government) under this section, is not

entitled to their possession.

14. Punishment for contravention of Section 8.- Whoever, in contravention of Section 8, or any Rule made under that section, or any condition of a licence issued thereunder,-

(a) imports or exports inter-provincially, transports, possesses or sells any manufactured drug or coca leaf, or

(b) manufactures medicinal opium or any preparations containing morphine diacetylmorphine or cocaine,

(shall be punishable with imprisonment which may extend to three years, with or without fine)

26. As from the clear reading of 2(f)(iii) of the Act, it is clear that morphine is the principal alkaloid of opium having the chemical formula $C_{17}H_{19}NO_3$ and its salts. The recovered items which were shown to be recovered from the possession of the revisionist/accused is proved by the report of C. W. 1, V.S. Visaria by his report i.e. Ex. Ka-15. In his report, he has stated that Exhibits A, B, C, E, F (Tin drum, a glass flask and pipette), G1, G2 and G4 gave positive tests for the presence of morphine. The said articles were recovered from the possession of the revisionist/accused. As such, the said articles recovered from the possession of the revisionist/accused falls within the definition of Section 2(f)(iii) of the Act. Therefore, the same comes within the definition of 'opium derivative'. Section 2(g) of the Act defines 'manufactured drug' which includes all coca derivatives, medicinal hemp and opium derivatives. From the possession of the revisionist/accused, the recovered articles are morphine tablets weighing 580 gms, a plastic jar containing 300 grams of morphine powder and one Bhagona containing powder in the paste form weighing 115 gms. These recovered items, recovered from the possession of the revisionist/accused come within the definition of 'opium derivative' and subsequently under the 'manufactured drug'. Under Section 8 of the Act, control of State Government over internal traffic in manufactured drugs and coca leaf is provided and punishment for contravention of aforesaid Section 8 of the Act is provided Under Section 14 of the Act. Thus, from

the above-said discussion, the argument advanced by learned Counsel for the revisionist has got no force and as such cannot be accepted.

27. Learned Counsel for the revisionist further argued that as the percentage of morphine sent for scientific examination is not mentioned in the expert report i.e. Ex. Ka-15, hence it will not come in the definition of 'opium derivatives'. This argument of learned Counsel for the revisionist has no force because as per the above-said discussion, the said articles would come in the definition of 'opium derivatives' as defined Under Section 2(f) of the Act and subsequently in the 'manufactured drug' as defined Under Section 2(g) of the Act.

28. It was further argued that the articles recovered from the possession of the revisionist/accused were tampered and as such the prosecution story is doubtful. The argument advanced by learned Counsel for the revisionist is not as per the abovesaid discussed evidence. In the evidence discussed above, P.W. 3, B.N. Mishra has clearly stated in his statement that when the house of the revisionist/accused Nirmal Singh was searched, he found the articles viz. tablets 580 gms., powder 300 gms. and a Bhagona in which powder (in the paste form) to be 115 gms. As per his experience, he found that the recovered tablets, powder and the paste to be morphine. Thereafter, he prepared two separate facsimiles of the tablets being kept in polythene bag as well as of powder being kept in plastic jar and thereafter sealed them in four envelopes with the seal marked 'BN' over and above the signatures of witnesses. The remaining narcotics, after keeping them in separate clothes, sealed the same with the seal marked 'BN'. The morphine which was in the Bhagona, after keeping them in separate envelope, was also sealed, in the aforesaid manner. The evidence of P.W. 3, B.N. Mishra is fully corroborated by the evidence of P.W. 1 Atibul Qurael and P.W. 2 Raghuvir Prasad as discussed above. Besides this, P.W. 6 Ram Chandra has also stated in his evidence that the case property of this case was received by him on 17-12-1978 from B.N. Mishra, Dy. S.P. The entry of receipt of the said goods was also made by him in the register and the recovered goods were kept in Maalkhana. On 22-12-1978, the recovered goods of this case i.e. Item Nos. 3, 4, 5, 7, 8, 9, 10 and 11 was given by him to Inspector S. Prasad. Out of the said items given to Inspector S. Prasad, except Item No. 11, he received back all the items in sealed

condition. The entry of receiving the said items he himself made in the last column of register on the same day. The items which he received back was having the seal of CFSL and he also made the entry of receiving the same. He also stated that up till when he remained the In-charge of Maalkhana, the recovered goods were remained in the sealed condition in his custody. As such, from the evidence discussed above, it is clear that the articles recovered from the possession of the revisionist/accused were sealed on the spot as per Rules and thereafter the revisionist/accused along with the recovered goods were taken to Delhi and the goods were kept intact in Maalkhana. Later on, it was sent to the chemical laboratory for chemical examination and the Senior Scientific Officer has also stated in his statement that he had tested the recovered articles which show that the items recovered were not tampered and were the same items which were sent to Chemical Analyst for examination. Hence, this argument of learned Counsel for the revisionist has no force and therefore, cannot be accepted in the eye of law.

29. Learned Counsel for the revisionist lastly argued that D.W. 1, V.P. Saxena who was said to be accompanying the raiding party, has not supported the prosecution case and, therefore, the prosecution story seems to be doubtful. This argument has also got no force. D.W. 1 V.P. Saxena has stated in his evidence that he was in police since 1961 and he was suspended since 11-9-1979 and case of murder was also continuing against him. Further, he stated that he had signed on the Fard of recovery Ex. Ka-2 without reading, however, in his cross-examination, he stated that he knew that signatures on the Fard are obtained after its reading and he also used to apply the same procedure in the past. Even he has also stated that CBI party had not obtained his signatures under any threat or pressure. After considering all the abovesaid facts and circumstances, this witness cannot be said to be a reliable witness and his statement is unreasonable and unbelievable and therefore, the same is not at all helpful to the revisionist.

30. For the reasons recorded above, the criminal revision is devoid of merits and is accordingly dismissed. Interim order dated 2-12-1987 is vacated. The revisionist NirmalSingh is on bail. Let him be taken into custody forthwith in order to serve out the sentence.

31. Let a copy of this order be sent back to the Trial Court concerned for compliance of the order forthwith.

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