

Narayan Bagh Vs. State

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Court : Orissa

Decided On : Dec-12-1994

Reported in : 1995(I)OLR443

Judge : A. Pasayat, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20

Appeal No. : Criminal Appeal No. 152 of 1994

Appellant : Narayan Bagh

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : M.K. Mohanty, Adv.

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. In this appeal, Narayan Bagh (hereinafter referred to as the 'accused') calls in question legality of judgment passed by learned Sessions Judge, Koraput, Jeypore, finding him guilty of an offence punishable under Section 20(b)(i) of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (in short, the 'Act'), and

sentencing turn to undergo rigorous imprisonment for one year and six months.

2. Prosecution case, in brief, runs as follows :

On 6.8.1993, at about 8 p. m. Patrolling Police Party of Jeypore Town Police Station found the accused standing near the Old North Check Gate. Jeypore holding a polythene bag. He was accused in Jeypore Town Police Station Case No. 149 of 1993, and was to be arrested in that case. Seeing him police official got down from the jeep and went to arrest him. But on seeing them he started running. He was chased and was caught with the polythene bag in his hand. On opening the bag, ganja was found inside. He was brought to the Town Police Station along with the polythene bag in his possession. On weighment the ganja was found to be 4 1/2 Kgs. Ganja along with the polythene bag was seized, sample was taken and the same was sent to the Chemical Examiner. On analysis it was found to be ganja. On completion of investigation, charge-sheet was submitted.

3. The accused pleaded innocence and false implication.

4. Placing reliance on the evidence of five witnesses examined to further the prosecution case the learned Sessions Judge convicted the accused, and sentenced him as aforesaid.

5. In support of the appeal Mr. M. K. Mohanty, learned counsel has urged that though the article was claimed to have been seized on 6-8-1993, the same was produced for the first time before the learned Subdivisional Judicial Magistrate, Jeypore (in short, 'SDJM') on. 11-8-1393. As explanation was offered that though the seized article was sent for production before the learned SDJM. he asked the same to be produced subsequently. This according to the learned counsel, shows that without proper seal and safe custody the article was kept at a place whereabouts of which has not been brought to the notice of the Court, and therefore, the prosecution case became vulnerable and the conviction and sentence cannot be maintained. The learned counsel for State on the other hand supported the judgment. According to him, the seizing officer has offered explanation which is plausible and has been rightly accepted by the learned Sessions Judge.

6. The stand of the prosecution is that the article was seized on 6-8-1993. It has been fairly accepted by the learned counsel for State that the accused was produced before the learned SDJM on 7.8.1993. Though the seizing officer makes a claim that the seized article was produced before the learned Magistrate and there was a direction for production of the same on a later date the order-sheet dated 7.8.1993 does not reflect it to be so. Several prayers of the Investigating Officer were considered that day, the forwarding report, and statement recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short, the 'Code') and the seizure list were perused. In the forwarding report dated 7-8-1993 there is no mention about the seized article being sent to the learned SDJM. In the application dated 11-8-1993, containing request to send the sample to the Regional Forensic Laboratory, also there is no mention that there was a direction on 7.8.1993 to produce the seized article later on. The evidence of PW. 4, the Sub-Inspector of Police, who had submitted the written report to the Inspector-in-charge of Jeypore Town Police Station is very significant. In para-2 he has stated that the sample could not be sealed on 7.8.1993 and it was sealed on 11.8.1993, and was sent to R.F.S.L., Berhampur.

7. In an almost similar case in *Laxmidhar Mohapatra v. State of Orissa ; 1994 (I) OLR 80*, it was observed that if a vital end decisive link is missing regarding safe custody of the seized article, it has to be held that the prosecution has failed to establish that the seized article was the very same article which was sent for chemical examination. In that view of the matter, the appellant is entitled to the benefit of doubt.

The appeal is allowed, and the conviction and sentence are accordingly set aside. The appellant be set at liberty forthwith, unless he is required to be in custody in connection with any other case.