

**Shri Narain Sharma Vs. the State**

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**Court :** Delhi

**Decided On :** Jan-05-1993

**Reported in :** 1993CriLJ1501; 1993(1)Crimes596; 49(1993)DLT565; 1993(26)DRJ25

**Judge :** R.L. Gupta, J.

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

**Appeal No. :** Criminal Appeal No. 57 of 1989

**Appellant :** Shri Narain Sharma

**Respondent :** The State

**Advocate for Def. :** O.P. Faizi, Adv.

**Advocate for Pet/Ap. :** S.B. Sinha, Adv

**Judgement :**

ORDER

1. The appellant has filed this appeal against the conviction and sentence under S. 20 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act for short) by Sh. O. P. Diwedi, Addl. Sessions Judge, Delhi. The sentence against him is RI for 10 years and fine of Rs. 1 lac or in default of payment of fine to undergo RI for two years.

2. The story of the prosecution in brief is that on 28-5-1987, ASI Shyam Singh was present in the office room of the SHO, Police Station, New Delhi Railway Station. The SHO, Inspector Jai Narain was also present there. ASI Shyam Singh received a secret information at about 6.45 p.m. that one person having charas in his possession will come by Vaishali Express and will go out through the railway phatak. A raiding party was organized. Public witness Sushil Kumar was also joined on the way. At about 7.30 p.m., the appellant is alleged to have entered the railway phatak from the side of the railway quarters, carrying a brief case in his hand. He was apprehended and told that he was suspected to be in possession of Charas and that he could be produced before a Gazetted Officer for search, if he so desired. The appellant, however, declined. Then ASI Shyam Singh also offered his own search which was also declined. On opening the brief case it was found to contain 6 packets of charas weighting 1 kg. each. On further opening of the packets, they were found to contain two smaller packets each containing charas. 12 different samples were prepared according to rules and taken into possession vide recovery memo. They were given Seriall numbers. From CFSL was filled up, site plan was prepared, statements of the witnesses were recorded and personal search memo of the appellant was also prepared. Case property was then deposited in the Malkhana. The samples were sent to CFSL and on receipt of the report of the Analyst giving positive test for charas challan was filed. Learned ASJ after recording the evidence of various prosecution witnesses recorded the conviction and sentence as stated above.

3. The case of the appellant in his statement under S. 313 of Code of Criminal Procedure was that the prosecution story was wrong and he was falsely implicated. In fact, he was coming from the railway station and while he was on the over-bridge, he dashed against some person who fell down. As a result of that, there was some altercation and the police took him in custody and planted this false case on him.

4. I have heard arguments advanced by learned counsel for the appellant as well as the State. Learned counsel for the appellant drew my attention to a discrepancy in the statements of PWs that according to PW 1 Inspector Jai Narain, in examination-in-chief he stated that the secret information was received by him that

one person having charas in his possession will go by Vaishali Express from New Delhi railway station. In cross-examination he deposed that he did not tell the IO that the secret information was to the effect that one person will come to the railway station by Vaishali Express and will go out of the station through a phatak of railway quarters, having charas in his possession. He was duly confronted with portion A to A of his statement PW 1/DA wherein it was so recorded. thereforee, the learned counsel for the appellant has urged that the witness has not even supported the case as set out by him in his statement under S. 161, Cr.P.C. and, thereforee, he was not worthy of reliance. He has also drawn my attention in this respect to the statement of P.W. 4 ASI Dharam Pal wherein he stated that the secret information was that one person with charas in his possession will come to plat-form Nos. 5 and 6 from Railway Quarters via phatak and will be boarding Vaishali Express. thereforee, this statement contradicted the statement of P.W. 1 because according to P.W. 1 the appellant was supposed to come by Vaishali express whereas according to P.W. 4, the appellant was to board Vaishali express. According to rukka Ex. PW 3/A the secret information was that one person will be coming with charas by Vaishali express. My attention has also been drawn to the recovery of a ticket from the appellant vide the seizure memo Ex. PW 1/D. According to this ticket, it was from Barauni to New Delhi. No doubt there is some little difference between the statements of the witnesses as against the rukka and in the FIR. Upon careful consideration of this alleged contradiction, I am of the view that it has no material effect in the case. The recovery from the appellant allegedly took place on 28-5-87 whereas the statements of the witnesses were recorded by the trial Judge in May, 1988 i.e. after the expiry of one year. Such minor contradictions are bound to occur even in the statements of most truthful witnesses as has often been observed. I, thereforee, do not attach much importance to this contradiction.

5. Learned counsel for the appellant then also drew my attention to the observations made by learned trial Judge while recording evidence that the polythene bag containing the brief case came out without disturbing the seals of the packet and, thereforee, the presumption was that the brief case was changed by the police. First of all, it is not possible to raise such an inference as suggested by learned counsel for the appellant. Secondly, I do not find if any benefit could

have been gained by the police in changing the brief case. It is a case of very heavy recovery. No enmity has been shown on record between the appellant and the police. It is one of the rarest case where the prosecution case is supported by even a public witness, namely, Sushil Kumar, P.W. 2. Even the defense of the appellant that some person had been injured by his colliding against him and so the police took him to the police station is not substantiated.

I am, therefore, of the view that there is no merit in this appeal and the same is hereby dismissed.

6. Appeal dismissed.

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