

Mela Singh Vs. State

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Court : Delhi

Decided On : Feb-14-1995

Reported in : 1995(79)ELT358(Del); 1995RLR197

Judge : M.S.A. Siddiqui, J.

Acts : [Central Excise Tariff Act, 1985](#)

Appeal No. : Criminal Appeal No. 94/92

Appellant : Mela Singh

Respondent : State

Judgement :

ORDER

1. The appellant Mela Singh was convicted by the trial Court under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short N.D.P.S. Act) and sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs. 1,00,000/- in default of payment of which to undergo simple imprisonment for one year for being in illegal and unauthorised possession of 5 Kgs. and 500 grams, poppy husk.

2. Briefly stated that prosecution case is that on 24-7-1990, Sub-Inspector Prakash Chand (P.W. 5) Along with A.S.I. Om Prakash was on petrol duty at departure hall of the Inter-State Bus Terminal Delhi. Following a tip off, a raiding party was

organized at about 5.15 p.m. and the appellant was apprehended at platform Nos. 8 & 9 and from his possession 5.500 Kgs. of poppy husk was seized vide seizure memo Ex PW 15/A. The samples were sent for the Chemical examination, after receiving his report the charge sheet was laid.

3. The appellant in his statement under Section 313 Cr. P.C. stated that he was falsely implicated. Learned trial court accepted the prosecution case and convicted the appellant.

4. In this appeal the main submission is that the report of the C.F.S.L. (Ex. PW 5/D) is not admissible in evidence under Section 293 Cr. P.C. as the same has not been made by an authority specified therein. Learned counsel for the appellant also submitted that there is no clinching evidence that the appellant was found in possession of the contraband.

5. The first point to be determined in the appeal is whether the substance seized and produced in this case was poppy husk. In order to prove the said fact, the prosecution has relied on the report of the C.F.S.L. (Ex. P.W. 5/D) which gave positive test for poppy husk. This report has been assailed by the appellant on the ground of its inadmissibility in evidence under Section 293 Cr. P.C. Admittedly, this report is not by a Director or Dy. Director or Asstt. Director of Forensic Science Laboratory as contemplated by Section 293 of the Code of Criminal Procedure. Perusal of the said report shows that the same has been made by Shri C. L. Bansal, Sr. Scientific Assistant, Central Forensic Laboratory, Central Bureau of Investigation. Section 293 Cr. P.C. reads as follows :-

'REPORTS OF CERTAIN GOVERNMENT SCIENTIFIC EXPERTS :

(i) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(ii) This Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of this report.

(iii) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court if such officer is conversant with the facts of the case and can satisfactorily depose in Court on this behalf.

(iv) This section applies to the following Government scientific experts, namely -

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkine Institute, Bombay;

(e) the Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.'

6. It has not been disputed before me that Sr. Scientific Assistant, Central Forensic Science Laboratory does not fall in categories of the experts mentioned in Section 293 Cr. P.C. Shri C. L. Bansal has not been examined in this case. Learned counsel for the appellant relying upon decisions rendered in *Heera Lal v. State* 52 (1993) DLT, *Islam v. The State (Delhi) Administration* 1994 (30) D. R. J. *Attar Singh v. State (Delhi) Administration* : 1994 III AD (Delhi) 625, contended that the said report not being under the hand of a Scientific expert mentioned in Sub-Section 4(c) of Section 293 Cr. P.C. cannot be used as evidence in trial without the same being examined in this case. It has been held in these judgments that the report of Shri C. L. Bansal, Sr. Scientific Assistant, Central Forensic Science Laboratory can't be used in evidence as he does not fall in the categories of the experts mentioned in Section 293 Cr. P.C. After these decisions, a contrary view was taken by a learned single Judge of this court in the decision rendered in *Shankaria @ Shanker v. The*

State : 56(1994)DLT662 and it was laid down that question of proof of a document is a question of procedure and may be waived. According to the learned Judge, when a relevant document is tendered and admitted in evidence without objection to its admissibility or modes of proof, the appellant cannot be allowed to challenge its admissibility in appeal. Their view is based upon the well established principle of law that the rules as regards the production of a document and strict proof thereof, as contained in the Evidence Act, can be dispensed with by consent of the parties and once a relevant document is admitted in evidence without any objection to its mode of proof, its admissibility can't be challenged in appeal.

7. In the instant case, the question is whether the rules of evidence as regards the production and strict proof of a document can be waived in a criminal case. Kenny answers this question in negative. He stated that :

'A marked distinction between the civil and the criminal views of the law of evidence is that its rules may in civil cases be waived, either by consent or by an order made on a summons for directions, but in criminal case the rules of evidence are matters public Jurisdiction, and cannot be dispensed with by consent of parties. For, here, others than they have an interest at stake. Not merely the single person accused, but also every other inhabitant of the realm, has an interest in seeing that the prisoner's liberty on life is not taken away except under the whole of the safeguard which the law has prescribed'

(Quoted from Keny's Outlines of Criminal Law, 1971 Edition at page 472)

8. It has been held in *Koli Trikam Jivraj & Another v. State of Gujarat* : AIR1969 Guj69 'that in a criminal case a lawyer appears to defend the accused and has no implied authority to make admissions against his client during the progress of litigation either for the purpose of dispensing with proof at the trial or incidentally as to any facts of the case. See Phipson's Manual of Evidence, 8th Edition at page 134. It is therefore, evident that the role that a defense lawyer plays in a criminal case is that of assisting the accused in defending the case. The lawyer has no implied authority to admit the guilt or facts incriminating the accused.'

9. I may add here that the question posed by me in this case was not raised and considered in Shankaria's case (supra) and the view taken by the learned Judge has been approved by a recent decision rendered by the Division Bench of this court in Amarjit Singh & Another v. State - CrI. Appeal No. 91/92 decided on 2-12-1994. In view of the dictum laid down by the said Division Bench, I have no option but to hold that the report (Ex. P.W. 5/D) of Shri Bansal was tendered and admitted in evidence without objection as to its admissibility or mode of proof, the appellant can't be allowed to challenge its admissibility in this appeal. Thus, the report (Ex. P.W. 5/D) clearly proves that the substances seized and produced in this case was poppy husk.

10. Considerable criticism has been advanced on behalf of the appellant to the acceptability of the prosecution evidence by the learned trial Judge. S. I. Prakash Chand (P.W. 5), materially corroborated by Inspector Chander Mohan (P.W. 2) and Kallu Khan (P.W. 3), testified that on 24-7-1990, the appellant was apprehended at the Inter State Bus Terminal, Delhi and an option was given to the appellant that his search could be effected before a Gazetted Officer or a Metropolitan Magistrate as required by the mandatory provisions of Section 50 of the Act. On this point, the testimony of S. I. Prakash Chand (P.W.5) also finds ample corroboration from the documents (Ex. P.W. 5/A), Ex P.W. 5/D and Ex. P.W. 2/A. It is also evident from the evidence of the said witnesses that S. I. Prakash Chand (P.W. 5) conducted search of the accused and seized 5.500 Kgs. of poppy husk from his possession vide seizure memo Ex. P.W. 5/A. Nothing has been elicited in the cross examination of the said witnesses to shake their credit. The learned trial Judge, who had occasion to watch the demeanour of the witnesses, believed them to be truthful and I am not inclined to differ with the learned trial Judge on this count. Consequently, the learned trial Judge has rightly held that on the day in question the contraband was seized from the conscious possession of the appellant in accordance with the procedure laid down in Section 50 of the Act.

11. No other point has been urged before me in this appeal. The result, therefore, is that the appeal must fail and is dismissed.

