

Pehlad @ Bhagat Vs. State

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Court : Delhi

Decided On : Sep-20-1999

Reported in : 1999VIAD(Delhi)460; 1999CriLJ4696; 82(1999)DLT191

Judge : K.S. Gupta, J.

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

Appeal No. : Crl. A. No. 33/96

Appellant : Pehlad @ Bhagat

Respondent : State

Advocate for Def. : Sh. Raman Sahney, Adv.

Advocate for Pet/Ap. : Sh. Rajat Aneja, amices Curai

Judgement :

ORDER

K.S. Gupta, J.

1. This appeal by Pehlad @ Bhagat accused/appellant is directed against the judgment dated 30th August, 1995 convicting him under Section 20 of Narcotic Drugs & [Psychotropic Substances Act, 1985](#) (for short the 'Act') and the order of even date sentencing him to undergo R. I. for 10 years and pay fine of Rs.

1,00,000/-, passed by an Additional Sessions Judge. In default of payment of fine, he was to further undergo R.I. for 1 year.

2. Case of the prosecution as born out from the charge sheet filed under Section 173 Cr.P.C. in brief, is that on 11th September, 1991 ASI Raj Pal, PW-8 Along with HC Nafe Singh, PW-5 Constables Rajeshwar Prasad and Ranjit Singh was present in connection with patrolling and prevention of crime near police booth main road, Pratap Nagar and at about 5.10 P.M., he met Bharat Bhushan Ghai, PW-4. Around 5.15 .PM., an informer met PW-8 and told him that a person of Sansi Community having charas would after sometime reach Sansi Basti, Andha Mughal vis Ram Bagh Road, Bagichi Pirji, Road No. 40, and if a raid is conducted, charas can be recovered from him. This information was reduced into writing by PW-8 and he also organized a raiding party consisting of the said police officials with him. On being apprised about the secret information PW-4 agreed to join the raiding party. 3-4 passers-by too were asked by PW-8 to join the raiding party but they declined. It is further alleged that around 5.30 P.M., nakabandi was made by taking positions behind the 'Guide Map Board' near Pratap Nagar Chowk, Andha Mughal and at about 5.45 P.M. the accused whom PW-8 knew from being B.C. of the area, was stopped at the pointing out of the informer on Road No. 40 near Pratap Nagar Chowk. Accused was holding a small bag of white colour in his right hand. PW-8 told the accused about the secret information and enquired from him that if he so desired , his search could be taken either before a Magistrate or G.O. Notice under Section 50 of the Act- Ex. PW-4/A was served on the accused and contents thereof were also read over to him, by PW-8., However, the accused declined to be searched either before a Magistrate or G.O. Thereafter, PW-8 sent the secret information which was reduced into writing - Ex. PW-4/D through HC Nafe Singh, PW-5 to SHO R.N. Ralhan, PW-7, Around 6.05 P.M., PW-7 Along with PW-5 reached the spot and PW-7 verified the facts. At about 6.10 P.M., ACP R.S. Dahiya, PW-6 too reached the spot. In the presence of members of raiding party, PWs. 7 & 8 the bag carried by the accused was checked and the same was found to contain substance of black and brown colour wrapped in momi paper which on smelling was suspected to be charas. On weighing, charas was found to be 1 Kg. out of which 100 gms. was separated as sample. Sample and the remaining charas together with the bag were converted into two parcels and

sealed with the seals of RPS of PW-8 and RN of PW-7. CFSL form was filled up. Both the parcels were seized vide memo Ex. PW-4/B. Parcels and CFSL form were taken into custody by PW-7. Rukka Ex. PW-2/A was sent by PW-8 to the police station through Constable Rajeshwar Prasad and on the basis thereof case under Section 20 of the Act was registered against the accused. Both the parcels and CFSL form were deposited by PW-7 in the malkhana and later on the sample parcel was sent to CFSL for hemical analysis. As per CFSL report Ex. PW-3/A, the sample gave positive test for charas.

3. In the statement under Section 313 Cr.P.C. plea taken by the accused is that he being BC was told not to enter the area. On 11th September, 1991 when he was going to the house to see his ailing mother, he was taken to the police station and implicated falsely in this case.

4. Constable Phul Kumar examined by the accused as DW-1 deposed that Bharat Bhushan Ghai s/o O.P. Ghai, r/o M-1 Pratap Nagar is shown to have been joined as a public witness in case FIR No. 19/91 under Section 20 NDPS Act, P.S. Pratap Nagar against Harvinder Singh @ Bittoo-accused.

5. Since the submission advanced on behalf of the appellant/accused which I will be referring hereinafter mainly centers around the testimony of Bharat Bhushan Ghai, PW-4, one of the witnesses of recovery from public, his deposition needs to be reproduced at length. He deposed that he is an SPO of the area in District North and on 11th September, 1991 around 5 P.M. when he was passing near the check post,. Pratap Nagar, ASI Raj Pal called and told him that he had information about charas with someone. ASI who was accompanied by 2-3 police officials, asked him to accompany. Informer of the police gave some indication when all of them reached the chowk in Pratap Nagar where map of direction was installed. Accused was apprehended. SHO and ACP who were called too reached there. Police officials had some talks with the accused but now he did not remember the nature of those talks. Some incriminating article of Dhoop Aggarbatti type which was charas, was recovered from the bag carried by the accused. Charas was weighed and it was probably about 1 Kg. Sample was taken out and the seals were affixed. Some papers were prepared and the two seals used were handed

over to him. Seals were probably of RN and RP. Ex. PW4/A to C bear his signature as a witness. Bag Ex. P-1 was probably of the same type which was with the accused. Rest of the charas Ex. P-2 and polythene bag Ex. P-3. were also probably the same which were recovered from the accused. When cross examined by the APP, he admitted that his statement was recorded by the police and in that statement he had stated that the secret information was reduced into writing. He further admitted that the charas was wrapped in a polythene bag inside the bag. He, however, expressed his inability in saying if the sample taken out was of 100 grams and letters of two seals were of RPS and RN (confronted with the statement Ex.PA where the letters of seals are given as RPS and RN). Form CFSL was filled and seals were affixed on it. He also admitted that the parcels and CFSL form were taken away by the SHO and the accused was told that in case he wanted his search could be taken before a GO or Magistrate and notice Ex. PW4/A was served on him in this regard. On being cross examined on behalf of the accused, the witness stated that I.O. knew that he was an SPO but he did not know if this fact was recorded in his statement. He did not know the accused earlier nor was he aware that his name was recorded as a BC in the police record. He denied the suggestion that the charas was not recovered from the accused or that he was not joined as a witness and being SPO he has deposed falsely. It is further in his cross examination that scales and weights were obtained from the police station and the writing work was done under the street light. He denied of having appeared as a witness in any other case.

6. Submission advanced by Sh. Rajat Aneja appearing for the appellant/accused was that Bharat Bhushan Ghai, PW-4 is not an independent witness and he was even disowned by the prosecution. In support of the contention my attention was drawn to the testimony of Constable Phul Kumar, DW-1, contradictions occurring in the statements of said PW-4 and ASI Rajpal, PW-8 and also the fact that PW-4 had to be cross examined by the APP in regard to various aspects connected with the alleged recovery of charas from the accused. I propose to deal with these aspects one by one.

7. DW-1 who had brought FIR No. 19/91 under Section 20 of the Act PS Pratap Nagar, as noticed earlier, deposed that in that FIR one Bharat Bhushan Ghai s/o

Sh. O.P. Ghai r/o M-1 Pratap Nagar is shown to have been joined as a public witness against accused Harvinder Singh @ Bittoo. Said FIR was registered prior to the registration of FIR 90/91 in this case. It may be noticed that PW-4 was not cross examined on behalf of the appellant in regard to said FIR No. 19/91 and one does not know if PW-4 was actually examined as a witness by the prosecution in the case arising out of the said FIR. That being the position the statement made by PW-4 towards the end of his cross examination that he never appeared as a witness in any other case cannot be said to be untrue as was urged on the strength of the statement of said DW-1.

8. Coming to the contradictions, it is in the cross examination of PW-8 that as he was new to the police station he did not know that Bharat Bhushan Ghai was an SPO, that PW-4 also did not tell him of his own that he was an SPO and this fact was told by him only after his statement had been recorded. He knew PW-4 as resident of the locality. He denied the suggestion that he knew that PW-4 was an SPO but he did not mention about it intentionally to make him appear as an independent witness. Needless to repeat that in his deposition of PW-4 that I.O. (PW-8) knew that he was an SPO but he did not know if this fact was recorded in his statement or not. It is true that there is inconsistency in the statements of both the said PWs whether PW-8 knew PW-4 not as an SPO but resident of the locality but, in my view, much significance cannot be attached to such an inconsistency.

9. As regards the argument about disowning of PW-4 by the prosecution by subjecting him to cross examination, it is pertinent to state that the statement of PW-4 was recorded after about more than 3 years of the occurrence in question and, therefore, it was likely that due to lapse of memory he may not have been able to recapitulate the events properly at that stage. Barring on two points if the sample of the charas taken out was of 100 grams. and the letters of the two seals were of RPS and RN, PW-4 had admitted the suggestions put to him by the APP on the aspects not covered in the examination in chief in regard to the reducing into writing of the secret information, recovered charas being wrapped in polythene bag giving of the option to the appellant before taking his search of being searched either before a Magistrate or GO and the handing over of the two parcels and

CFSL forms to the SHO. In my opinion, subjecting PW-4 to cross-examination by the APP thus does not in any way reflect on the veracity of the statement made by him in regard to recovery of 1 kg of charas from the appellant on 11th September, 1991.

10. Sh. Aneja further invited my attention to the contradictions appearing in the depositions of PW-4, HC Nafe Singh, PW-5, SHO R.N. Ralhan, PW-7 and ASI Raj Pal, PW-8 on the points whether the writing work was completed by PW-8 under the street light or in day light and the place from where Constable Ranjit Singh had brought the weighing scale and the weights to weigh the recovered charas. PWs-4 and 7 in their cross examinations stated that the writing work was done under the street light while it is in the crossexamination of PW-8 that there was day light at the time the proceedings were completed by him. Further, according to PW-4 scales and weights were brought by the said Constable from the police station while as per the deposition of PW-8 those were brought from someone near the Railway Station. As noticed earlier, statements of the said PWs were recorded after a gap of more than 3 years and by reason of lapse of memory minor contradictions of the type referred to above are bound to occur in their depositions.

11. It was lastly argued on behalf of the appellant that as constable Khem Chand who collected the sample parcel from MHCM for being delivered in the office of CFSL, was not examined by the prosecution the link evidence that the sample parcel was not tempered with while it remained with the said Constable is missing and benefit of that lapse must go to the appellant. Submission has no force. Order sheet dated 27th March, 1995 of the trial court notices that said Constable Khem Chand who was suffering from serious ailments, had been brought to the court and was present on the ground floor; that a copy of the affidavit Ex. PX sworn by him was given to the appellant's counsel who made the statement that he had no objection if the affidavit Ex. PX was read in evidence and that he did not want to cross examine him. Accordingly, affidavit Ex. PX was ordered to be read in evidence and the said Constable was discharged. It is averred in the said affidavit Ex. PX THAT ON 17TH September, 1991 while posted at PS Partap Nagar he had collected the sample parcel bearing the seal impressions of RPS and RN from Head Constable Dhiraj Singh Along with CFSL form also bearing the same seal

impressions vide RC No. 35/21 and deposited the same in the office of CFSL at C-90 Lodhi Estate, New Delhi. So long as sample parcel and CFSL form remained in his custody they were not tampered with. In the face of this affidavit and the statement made on behalf of the appellant on 27th March, 1995 it is not open to contend now that in the absence of deposition of the said Constable the link evidence is missing.

12. In addition to aforesaid Bharat Bhushan Ghai, PW-4, SI Nafe Singh , PW-5, ACP R.S. Dhiya, PW-6, SHO R.L. Rahlan, PW-7 and ASI Raj Pal, PW-8 are also the witnesses of recovery of 1 kg. of charas from the appellant and there seems to be no reason not to believe the depositions of PWs 5 to 8 as regards that recovery. Huge, recovery of 1kg. of charas rules out false implication of the appellant who indisputably is a BC of PS Pratap Nagar, in this case. Appellant was thus rightly convicted and sentenced under Section 20 of the Act in terms of the impugned judgment and the order and those do not call for any interference in appeal by this Court.

13. Consequently, the appeal is dismissed. Appellant who is lodged in Tihar Jail, be intimated about the dismissal of appeal by the Registry immediately.