

Nimai Sarkar Vs. State

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Court : Delhi

Decided On : Mar-06-2000

Reported in : 2000VAD(Delhi)364; 2000CriLJ3556; 86(2000)DLT448

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

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20, 50 and 57; [Evidence Act, 1872](#) - Sections 24, 25 and 26

Appeal No. : Crl. A. No. 222/98

Appellant : Nimai Sarkar

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Ms. Ritu Gauba, amices Curia

Judgement :
ORDER

M.S.A. Siddiqui, J.

1. This appeal is directed against the judgment and order of conviction dated 17.11.1997 passed by the Additional Sessions Judge, Delhi in Sessions Case No. 21/97 convicting the appellant under Section 20 of the Narcotic Psychotropic

Substances Act (for short the Act') and sentencing him to undergo rigorous imprisonment for five years and to pay a fine of Rs. 50,000/- or in default to suffer further rigorous imprisonment for one year.

2. Briefly stated the prosecution case is that on 31.12.1995, at about 10.15 p.m. the appellant, on suspicion was apprehended by the police at the railway platform of Old Delhi Railway Station. The appellant informed the police about presence of Ganja in the suitcase and the bedding which he was carrying. The appellant was given the option for being searched before a Gazetted Officer or a Magistrate. He declined the offer. Thereafter Sub Inspector S.S. Rana (P.W. 9) took search of the appellant's bedding and the suitcase and recovered 50 kgs. of Ganja vide seizure memo (Ex. P.W. 2/8). The appellant was charged with for the offence punishable under Section 20 of the Act and tried.

3. The appellant abjured his guilt and alleged that a false case has been foisted on him. On an analysis of the evidence on record, the learned Additional Sessions Judge accepted the prosecution case and convicted and sentence the appellant indicated above.

4. The question for consideration is as to whether on 31.12.1995 the contraband was recovered from appellant's possession in accordance with the provisions of the Act. The prosecution case regarding recovery of the contraband revolves around the testimony of R.S. Dahiya (P.W.2), Constable Aizaz Khan (P.W.3), Constable Kallu (P.W.5), Parbhash Chand Jain (P.W.7) and Sub Inspector S.S. Rana (P.W.9) . S.S.Rana (P.W.9) testified that on 31.12.1995, while he was on patrolling duty at the railway platform No. 4 & 6 of the old Delhi Railway Station he intercepted the appellant, who was carrying a bedding and a suitcase. The appellant informed him about the presence of Ganja in his aforesaid luggage. He was given the option (Ex. P.W. 2/A) of being searched before a Gazetted Officer or a Magistrate. He declined the offer. Thereafter, on search 40 kgs. of Ganja was recovered from the bedding and 10 kg. of Ganja was recovered from the suitcase vide seizure memo (Ex. P.W. 2/B). A sample of 5 gms. each was drawn from the seized Ganja and the samples and the remaining Ganja were converted into two separate parcels and they were duly sealed on the spot. The CFSL form was filled

in at the spot. On completion of the said formalities, a rukka (Ex.P.W.1/A) was prepared and it was sent to the Police Station on the basis of which the FIR Ex.P.W.1/B was registered. Prosecution witnesses Inspector R.S. Dahiya (P.W.2) Constable Aizaz Khan (P.W.3), Constable Kallu (P.W.5) and Parbhash Chand Jain (P.W.7) have supported the evidence of S.S. Rana (P.W.9).

5. Parbhash Chand Jain (P.W.7) is a panch witness of the seizure memo (Ex.P.W. 2/B). According to him, the appellant was intercepted by S.S. Rana (PW-9) at the railway platform and at that time he gave information about presence of Ganja in the luggage, which he was carrying. He has also stated that the appellant was given an option (Ex.P.W. 2/A) for being searched before a Gazetted Officer or A Magistrate but he declined the offer, and that thereafter, on search 40 kgs. of Ganja was recovered from his bedding and 10 kgs. of Ganja was recovered from the suitcase vide seizure memo (Ex.P.W. 2/B). It is worth mentioning that nothing has been elicited in his cross examination to show that this witness had any axe to grind against the appellant or was in anyway interested in the success of the prosecution case. No doubt, the appellant was in constructive custody of the police at the time of giving information about the contents of his luggage, but the information given by the appellant ultimately led to recovery of the contraband from his possession vide seizure memo (Ex.PW-2/B). The information given to the police by the appellant about presence of Ganja in his luggage cannot be treated as confession made before a police officer . At the most the information given by the appellant can be treated as in admission of a fact i.e. presence of Ganja in the luggage which he was carrying with him. In K. Padavachi Vs . State of Tamil Nadu. : 1972 CriLJ11 , it was held that :-

'an admission of a fact however incriminating, but not by itself establishing the guilt of the matter of such admission, would not amount to confession within the meaning of Section 24 to 26 of the Evidence Act.'

6. Thus the evidence of Parbhash Chand Jain (P.W.7) has lent material corroboration to the testimony of Inspector R.S. Dahiya (P.W.2), Constable Aizaz Khan (P.W.3), Constable Kallu (P.W.5) and Head Constable Gajinder Singh (P.W.8) and S.S. Rana (P.W.9).

7. Learned counsel for the appellant has attempted to jettison the prosecution case on the ground of non-compliance with Section 57 of the Act by the S.I. S.S. Rana (PW-9). Through SI S.S Rana (P.W.9) has stated in his evidence that he had sent the summary of the case to the ACP through the SHO but the charge-sheet is conspicuous by the absence of submission of a report as required by Section 57 of the Act. It has to be borne in mind that provision of Section 57 of the Act are not mandatory and non compliance thereof per se would not vitiate the trial. The appellant had effectively cross-examined the prosecution witnesses and there is nothing on record to show or suggest that at any point of time he was handicapped in cross examining the witnesses on account of non-compliance with the provision of Section 57 of the Act. In other words, there is nothing on record to show that pre judice had been caused to the appellant on account of non-compliance with the provision of Section 57 of the Act.

8. Learned counsel for the appellant has invited my attention to the report of the Chemical analyst (Ex.P.W.9/B) which mention about receipt of two samples of Ganja and one of the sample was of 630 gms in weight. S.S. Rana (P.W.9) deposed that two samples of 500 gms. each was drawn from the seized Ganja. He has nowhere stated that weight of any sample had exceeded 500 grams. Thus, there is discrepancy between the ocular evidence and the report of the Chemical examiner (Ex. P.W. 9/B) regarding weight of one of the samples drawn from the contraband Ganja but that by itself is not sufficient to demolish the entire prosecution case regarding recovery of Ganja from the appellant's possession. As noticed earlier, the appellant had himself admitted that it was Ganja. The said admission of the appellant completes the link between the contraband and the report of the Chemical examiner. In his examination under Section 313 Cr.P.C., the appellant has also admitted that at the relevant time, he was apprehended by S.I. S.S. Rana (PW-9) at the railway platform. Nothing has been elicited in the evidence of Inspector R.S. Dahiya (PW-2) and SI S.S. Rana (PW-9) that they had a motive to falsely implicate the appellant. The evidence of the said police officials finds ample corroboration from the evidence of the remaining witnesses and the documents prepared on the spot. The aforesaid witnesses have been believed by the learned Additional Sessions Judge and I am not inclined to take a different view. Consequently, I do not find any legal infirmity in the impugned judgment and

the order of conviction warranting interference of this Court.

9. For the foregoing reasons, the appeal is dismissed.

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