

Peter Robertson Cowan Vs. State

Peter Robertson Cowan Vs. State

SooperKanoon Citation : sooperkanoon.com/695321

Court : Delhi

Decided On : Feb-25-1987

Reported in : 31(1987)DLT305

Judge : Malik Sharief-Ud-Din, J.

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

Appeal No. : Criminal Appeal No. 113 of 1986

Appellant : Peter Robertson Cowan

Respondent : State

Advocate for Pet/Ap. : S.D. Sharma and; S.T. Singh, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) The appellant aggrieved by his conviction and sentence has preferred this appeal. He was convicted under section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter called Ndps Act) and on 24th May 1986 was sentenced to 10 years' rigorous imprisonment and to the fine of Rs. one lakh in default of payment of which he was required to undergo R 1. for two more years. This order was passed by Mr. P.L Singla. Additional Sessions Judge, Delhi.

(2) I may first notice the facts which are that the appellant was allegedly caught on 1st January, 1986 at about 9.45 Pm near Main Bazar Pahar Ganj (Baoli Chowk Paharganj), Delhi. He was found carrying a polythene bag in his hand and on search one kilogram of 'Charas' in the form of capsules and in stick form wrapped in a polythene paper was recovered. The bag was duly sealed and according to the prosecution 100 grams of Charas was taken as representative sample. The sample and the remaining seized Charas were sealed in two separate packets. Allegedly two seals were used to secure the sample and the remaining charas, one being of Public Witness 4 S.I. Banarsi Dass and the other being of Vijay Malik SHO. The seals bore the words 'B.D.S.' and 'V.M.' respectively. According to the prosecution story the Sho Vijay Malik had also reached the spot at the time the appellant was caught and it was in his presence that the seizure was made and the sample taken and secured and sealed.

(3) The prosecution in support of its case has examined Public Witness 3 Ranvir Singh, Asi, Public Witness 4 Banarsi Dass S.I. and Public Witness 6 Yad Ram Head Constable in respect of the arrest and recovery. Vijay Malik Sho was neither cited as a witness nor was he examined. The aforesaid set of witnesses have testified that this Charas was recovered from the person of the appellant and in respect of the fact as to why independent public witnesses were not associated, they claimed that despite their efforts they did not receive any co-operation. They however, admitted that Navrang Guest House in which the appellant was putting up and the other neighbouring Guest House were open at that time but they made no efforts to call any one from these Guest Houses at the time of recovery. This, as argued by Mr. Sharma, by itself renders the seizure doubtful. But in this case Mr. Sharma is facing a difficulty inasmuch as the seizure by the appellant is not denied. He has, however, a different Story to offer in respect of the circumstances leading to the seizure. He admits that the seizure was made from his room at Navrang Guest House but maintains that the packet was left in his room by one Mr. Bernard, a French national and that he was not aware as to what it contained. He further pleaded that he is not an addict. The admitted position, therefore, is that recovery has been made of a polythene bag which contained something from the person of the appellant.

(4) The main question that arises for consideration is as to what was recovered. The prosecution asserts that it was Charas. The accused maintains that he does not know what it was. The report of Cfsi marked Ex. Public Witness 4/B received from N.K. Parshad is that the sample sent to him for analysis gave positive test for charas. It cannot, therefore be denied that the sample which was sent to the Cfsi was of charas. That, however, does not solve the problem. The question, therefore, that requires consideration is whether the sample seized from the appellant was actually sent to Cfsi or not

(5) In this Connection I would like to refer to section 55 of the NDPS Act 1985 which is as under :

'POLICETO Take Charge Of Articles Seized And DELIVERED: An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.'

(6) The above provision would clearly go to show that all samples taken from the seized material under this Act have necessarily to be sealed with the seal of an officer-in-charge of a police station. This is a mandate of law and the words used are 'shall' leaving no discretion in the hands of the concerned. Considering the severe nature of punishment provided by the Act, every provision of this Act has to be strictly construed and any non-compliance will automatically render the prosecution a suspect.

(7) In this view of the matter a reference may be made to the testimony of Public Witness 3 Ranvir Singh, Public Witness 4 Banarsi Dass and Public Witness 6 Yad Ram, Head Constable. All of them have stated that at the time of recovery a representative sample of 100 grams was taken out of the seized material and sealed with the seal 'B.D.S.' of Banarsi Dass S.I. and 'V.M.' that of Vijay Malik, SHO. The remaining seized material was also sealed with the same seals. All of

them admit that after putting the seals on the samples Banarsi Dass handed over the seals to Ranvir Singn Asi while the Sho carried his seal with him. There can be no doubt, therefore, that the representative sample which ought to have gone to the CfsI for analysis should have been sealed with these two seals. The CfsI report in this regard is of no assistance and all that is stated in the report is that a sealed parcel was received with the seal intact as per official sample enclosed. The samples of the seal have not been appended with the report. Under these circumstances, the prosecution must feel bound by the testimony of its own witnesses, Public Witness 2 Constable Mababir Singh. Public Witness 2 has in most unambiguous terms deposed that on 3rd January 1986 he took the sealed parcel sealed with the seal of 'B.D.S.' from Malkhana police station Paharganj and handed it over to CfsI for analysis and that during this period there was no tampering of the seal. The testimony of this witness would clearly go to show that what went for analysis to the public analyst was not what was seized from the appellant. The sample seized from the appellant admittedly was bearing two seals 'B.D.S.' and 'V.M.'. The absence of the other seals namely, 'V.M.' of the Sho police station Paharganj is something significant and one cannot rule out the possibility of the sample having been tampered with. The least that can be said is that what was seized from the appellant was never sent for analysis and, therefore, it is impossible to say that what was seized from the appellant was Charas. In that view of the matter the appellant is entitled to all the benefits. For the observations made above, the appeal is allowed and the appellant is acquitted. The conviction and sentence of the appellant is set aside. He shall be released forthwith from custody unless required in some other case.