

Chandra Wati Vs. State

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Court : Delhi

Decided On : Feb-14-1991

Reported in : 44(1991)DLT31

Judge : V.B. Bansal, J.

Acts : [Punjab Excise Act, 1914](#) - Sections 61(1)

Appeal No. : Criminal Revision Appeal No. 16 of 1991

Appellant : Chandra Wati

Respondent : State

Advocate for Def. : Shri. S.K. Bhatia

Advocate for Pet/Ap. : B.G. Singh and; S.K. Bhatia, Advs

Judgement :

V.B. Bansal, J.

(1) In this criminal revision Smt. Chandra Wati has challenged her conviction under Section 61 of the Punjab Excise Act and the sentence of rigorous imprisonment for 18 months with fine of Rs. 1000.00 or in default to undergo further rigorous imprisonment for six months.

(2) Vide judgment dated 9th- May, 1958, she was convicted under Section 61(l)(a) of Punjab Excise Act and was awarded the aforesaid sentences vide order dated 15th May, 1985, by the Metropolitan Magistrate. She challenged her conviction and order of sentence by way of filing an appeal which was ultimately dismissed by an Addl. Sessions Judge Delhi on 8th December, 1990. Still being aggrieved from the findings recorded by the two Courts below, she has now filed this revision petition.

(3) This case relates to an incident of 10th August, 1977. The allegations of the prosecution in brief had been that on that day S.I. Gian Singh while accompanied by other officials organized a raiding party on getting a secret information in which besides the police officials, one Parshotam Lal, witness from the public was joined and the petitioner was apprehended having charas which on weighing was found to be 10 kg. and 600 gms. 100 gms. was separated as sample and thereafter the two parcels were separately sealed with the seal of G.S. and were taken into possession after preparing a seizure memo. It is also the case of the prosecution that CFL-form was filled up and seal after use was handed over to the public witness namely Parshotam Lal. The case property as per the prosecution story was deposited with the Mohrar Malkhana and the sample on analysis was found to be Charas. It is in these circumstances that the petitioner is stated to have committed an offence under Section 61-1-14 of the Punjab Excise Act and so she was challaned.

(4) In support of its case, prosecution examined 7 witnesses. The plea taken by the accused was of denial and one defense witness was also examined. The trial resulted in the conviction as aforesaid and the appeal preferred by the petitioner was also dismissed as referred to earlier.

(5) I have heard Bawa Gurcharan Singh, learned counsel for the petitioner and Shri S.K. Bhatia, learned counsel for the respondent. I have also perused the records.

(6) Learned counsel for the petitioner has submitted /that the appellate Court, in fact, has not examined the submissions and there is hardly any discussion of the facts while dismissing the appeal. A perusal of the judgment of the appellate Court

shows that paras 16, 17 and 18 of the judgment refers to the different submissions made by counsel for the parties. The only material discussion contained in para-19 is as under :-

'I have gone through the evidence of the prosecution witnesses and have come to the conclusion that there is no infirmity in the statement of the prosecution witnesses and the prosecution has established its case beyond any doubt against the appellant. I have also considered the request of the defense counsel for taking lenient view of this case. Since huge quantity of charas has been recovered from the possession of the appellant no view can be taken against her. The appeal is therefore, dismissed. The appellant be taken into custody.'

It is, thus, apparent that there is no detailed discussion of the pleas which is a requisite condition for a reasonably good judgment expected from Additional Sessions Judge.

(7) Learned counsel for the petitioner has restricted his submissions to one argument namely there being no satisfactory evidence on record to prove that the recovery alleged to have been made by the police from the petitioner was not tempered with and in fact the alleged recovery was of charas.

(8) According to the prosecution story sub Inspector Gian Singh, Investigating Officer had separated 100 gms. of charas from 10 kg. and 600 gms charas recovered from the petitioner and these were sealed with the seal of G.S. and the seal after use was handed over to Parshotam Lal. It is the admitted case of the parties that aforesaid Parshotam Lal has not been produced in Court though the case of the respondent has been that he could not be produced on account of being not traceable. The case of the . prosecution has been that the CFSL-form was 'also filled at the spot and the case property was deposited with the Mohrar Malkhana. Head Constable Inderjit Singh PW1 was, working as Mohrar Malkhana at the relevant time, who has claimed with regard to the deposit of the two parcels sealed with the seal of G.S. with him by Sub Inspector Gian Singh and that the sample parcel was handed over by him to Constable Mohinder Singh on 23rd August, 1977 for being deposited in the CfsL Laboratory and that no one tempered with the sealed parcels during the period they remained in his custody. It has,

however, been noticed that Inspector Gian Singh in his statement as PW-7 is silent and has not stated about his having taken the sealed parcels to Mohrar Malkhana or that it was not tampered with by any one. The submission of the learned counsel for the petitioner, that the possibility of Inspector Gian Singh having tampered with the sealed parcels before depositing them with Mohrar Malkhana in the absence of statement to the contrary by him, cannot be ruled out. This submission cannot be said to be without substance in the absence of statement to the contrary which was required to be made by the Investigating Officer while appearing as a witness. There is no evidence on record as to when the seal was taken back by PW7 from Parshotam Lal and so the same having been returned to the Investigating Officer the same time cannot be ruled out.

(9) According to the prosecution story the sample was sent to the Cfsi on 23rd August, 1977 through constable Mohinder Singh. No doubt there is a controversy with regard to the date on which the sample was sent inasmuch as according to Head constable Inderjit Singh it was sent on 23rd August, 1977 and to the same effect is the report Ex. PW7/C received from the CFSL. Constable Mohinder Singh PW3, however, claimed about his having taken the sealed parcel on 30th May, 1978 and depositing it on the same day. However, when recalled on 3rd August, 1984 he claimed about having taken the sealed parcel on 23rd August, 1977. During cross-examination he was unable to explain as to how he remembered this date except that he was told about it. It appears that Constable Mohinder Singh has given the date 30th wrongly instead of 23rd August. However, even if this discrepancy is ignored, the short question for consideration is whether the prosecution has been able to prove on record that nobody tampered with the sealed parcel before it was analysed in the CFSL. It is pertinent to note that none of the witnesses examined by the prosecution has made any statement with regard to the deposit of the CFSL-form with Mohrar Malkhana or about the sending of the same to the CFSL. There is a reference in the report Ex. PW7/C of the Cfsi that the sample received was having sealed intact impressions as per the specimen enclosed. However, there is no mention in the report as to what was the seal impression on the sample and the specimen. The file does not throw any light as to who has delivered the CFSL-form at the Cfsi Laboratory in the absence of any statement in this regard by Head Constable Inderjit Singh Pwi, Constable

Mohinder Singh PW3 and even Inspector Gian Singh, PW7. It is, thus, clear that the prosecution has not been able to bring on record the link evidence to show that the sample of the recovery. alleged to have been made by Inspector Gian Singh from the petitioner was analysed in the CfsI without it being tempered with by any one. On this short ground, in my view, the petitioner is entitled to acquittal.

(10) As a result the revision petition is allowed. The judgments and orders' of the Courts below are set aside. Giving benefit of doubt to her the petitioner is hereby acquitted. She shall be released forthwith, if not required in any other case.

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