

Balwinder Singh Vs. State

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Court : Delhi

Decided On : Jul-28-2000

Reported in : 2001CriLJ1515; 2001(73)ECC682

Judge : Dalveer Bhandari, J.

Appeal No. : Crl. A. No. 580 of 1999

Appellant : Balwinder Singh

Respondent : State

Advocate for Def. : Mr. Pawan Bahl, Adv.

Advocate for Pet/Ap. : Mr. C.M. Mathur,; Mr. Naveen Gaur and; Mr. R.K. Mittal

Judgement :

ORDER

Dalveer Bhandari, J.

1. This appeal is directed against the judgment and the order of sentence passed by the learned ASJ dated 15.9.1999 and 21.9.1999 respectively in the Sessions Case No. 26/98. Brief facts which are necessary to dispose of this petition are recapitulated as under:

2. According to the prosecution on 15.4.1998 at A. B. Gate in the departure hall, Palam Airport the appellant was intercepted by ASI Dinesh Prashad (who was on routine frisking duty), when the appellant was about to board Sahara Airlines flight for Patna.

3. On search, five polythene packets containing opium were recovered from the right sock worn by the appellant. The total weight of the optimum was 175 gms. The samples were taken out from each polythene packet. From packets Nos.1, 2 and 3, 2 gms. each was drawn as samples whereas from packets Nos. 4 & 5, samples of 5 gms. were drawn. The balance opium and sample parcels were first duly sealed in separate polythene packets and thereafter in two respective big polythene packets and were sealed with the seals carrying initials of 'SRT' and 'JPA'.

4. The CFSL form which was filled in at the spot was handed over to the acting SHO, PW-3 Inspector Jagpal Kaur, along with sample packets and the balance counter band opium was alleged to have been deposited in the malkhana with the Moharar Head Constable Malkhana (in short MHCM) and entries to this effect were recorded in Register No. 19 which is Ex.PW-7/A. The seals after use were handed over to PW-2 ASI Dinesh Parshad.

5. The further case of the prosecution is that on 27.4.1998 PW-8 SI Sewa Ram carried the samples and the CFSL form from the malkhana in an intact condition and deposited the same at the CFSL, Chandigarh. The CFSL report is Ex. PW-8/A.

6. The appellant was charged under Section 18 of the NDPS Act for possessioning 175 gms. of opium in contravention of the provisions of NDPS Act. The appellant pleaded not guilty to the charge leveled against him and claimed trial. The prosecution has examined 8 witnesses in support of its case.

7. The learned Sessions Judge observed that PW-1, Head Constable Omvir Singh, PW-2, SI Dinesh Parshad, PW-3, Inspector Jagpal Kaur, PW-4, ACP Hardeep Singh, PW-5, Inspector V.S.Ahluwalia have fully corroborated the version of the Investigating Officer SI Sewa Ram PW-8. Head Constable Satbir PW-7 was

working as Moharar Head Constable Malkhana (MHCM) and he made entries about the deposit of the case property, sample parcels and the CFSL form vide entries Ex.PW-7/A in Register No.19. Investigating Officer SI Sewa Ram PW-8 had deposed that he took the sample packets with the seals intact along with the CFSL form vide Road Certificate No.59/21 for depositing in the CFSL, Chandigarh. He further stated that he collected the CFSL report which tested the sample packets positive for opium and the report is Ex.PW-8/C.

8. The learned ASJ on the basis of the documents and evidence arrived at a conclusion that the appellant has committed an offence under Section 18 of the NDPS Act and sentenced the appellant to undergo 10 years RI and to pay a fine of Rs.1 lakh and in default of payment of fine to further under- go 6 months RI.

9. The learned counsel for the appellant aggrieved by the order of the learned ASJ filed an appeal before this Court which was admitted on 2.11.1999. The learned counsel appearing for the appellant has challenged the judgment of the learned ASJ primarily on the ground that the CFSL form was not deposited with the Moharar Malkhana along with the case property. There is no entry in the MHCM register indicating that the CFSL form in fact was deposited. The learned counsel has drawn my attention to Form No.19 of the register maintained by Moharar Malkhana.

10. The learned counsel for the appellant assailed the judgment on the ground that the seals affixed on the case property were tempered with. He submitted that according to the prosecution the case property was admittedly sealed with the seals of 'SRT' and 'JPA' deposited by PW-3 with MHCM PW- 7 along with the CFSL form. He has drawn my attention to the report which has been received from the CFSL dated 12.8.1998 in which it is mentioned that one sealed parcel with five seals (two of SRJ and three of JPA) were received. According to the learned counsel for the appellant when five samples were sent with the seals of 'SRT' and 'JPA' then how did the CFSL receive the parcels with the seals of 'SRJ' and 'JPA'? According to him the samples which were sent to the CFSL and the samples received by the CSFL are different. That clearly goes to show that the parcel samples have been tempered with.

11. The learned counsel appearing for the appellant also submitted that out of the five samples sent to the CFSL 3 samples weighed 2gms. each and 2 samples weighed five gms. each whereas according to the report of the CFSL the weight of samples 1,2,3,4 & 5 along with their polythene packets as received were 3.26 gms., 2.58 gms., 9.5 gms., 8.62 gms. and 6.29 gms. respectively. The learned counsel for the appellant submitted that the samples' parcels sent to the CFSL were not those which were drawn at the spot. In view of these facts and circumstances the appellant cannot be lawfully convicted.

12. The learned counsel for the appellant has placed reliance on Tilak Raj v. The State 1998(4) CCrJ 160; Pradeep Kumar v. State, 1990 C.C. Cas 69 in support of his case.

13. Mr. Pawan Bahl, learned counsel for the state, tried to defend the prosecution version and submitted that the CFSL form was in fact deposited with the MHCM. He submitted that the case property along with the CFSL form was submitted by PW-3 Inspector Jagdeep Kaur. He further submitted that the case property was sealed with the seals 'SRT' and 'JPA' but what has been mentioned in the CFSL report is 'SRJ' and 'JPA'. According to him, this looks like a typographical error. However, Mr. Bahl could not offer any Explanation with regard to substantial discrepancy in the weight of the sample parcels which were sent and received from the CFSL.

14. I have heard learned counsel for the parties at length and perused the judgment and other relevant documents on record.

15. The Register No.19 of MHCM does not contain any entry indicating that the CFSL form was deposited with the MHCM along with the case property. The case of the prosecution is that the seals on the samples sent to the laboratory carried seals of 'SRT' and 'JPA' but when received by the laboratory they found the seals bearing initials 'SRJ' and 'JPA'. According to the submission of the Public Prosecutor the discrepancy was on account of typographical error. This submission cannot be accepted by any rational Explanation in view of the wide discrepancy in the weight of sample parcels sent and received from the laboratory.

16. On consideration of the totality of the facts and circumstances of this case, there is a serious question mark on the credibility and trust worthiness of the entire prosecution version. There is lurking doubt whether the samples which have been sent to the CFSL were infact those which were recovered from the appellant? The possibility of tempering with the samples in the facts and circumstances of the case cannot be ruled out. Consequently, the benefit of doubt has to be given to the accused according to the basic principles of the criminal jurisprudence.

17. Resultantly, the appeal is allowed and the judgment of the learned ASJ is accordingly set aside. The appellant shall be released forthwith if not required in any other case. This appeal is accordingly disposed of.

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