

Ravi Kumar Vs. State

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Court : Delhi

Decided On : Sep-05-2000

Reported in : 2000(56)DRJ231; 2000(72)ECC255

Judge : R.S. Sodhi, J.

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

Appeal No. : Crl. Appeal No. 28/1995

Appellant : Ravi Kumar

Respondent : State

Advocate for Def. : Ms. Santosh Kohli, Adv.

Advocate for Pet/Ap. : Mr. Roopesh Sharma,;amices Curia

Judgement :

ORDER

R.S. Sodhi, J.

1. This criminal appeal is directed against the judgment and order dated 17.1.1995 of the Addl. Sessions Judge in Sessions Case No.221/1994 arising out of the FIR No.53/92. Police Station Civil Lines under Section 20 of the NDPS Act whereby the learned Additional Sessions Judge held the appellant guilty of the offence

under Section 20 of the NDPS Act and therefore, by order dated 18.1.1995 sentenced him to 10 years RI with fine of Rs. one lac and in default of payment of fine, to undergo further rigorous imprisonment for one year. It is the case of the prosecution that the accused, Ravi Kumar, on 12.2.1992 at about 3 PM at T point Yamuna Marg, Alipur Road, Civil Lines, was apprehended by SI Rajinder Singh, who was present at the Lt. Governor house Court Lane on official duty when Excise staff met him by chance and meanwhile he received secret information that a Nepali boy would come from Budh Vihar and would go to Kashmere Gate along with charas. Information was reduced by him in writing and the SHO and ACP Civil Lines were informed. A raiding party was organized along with Excise Staff under the supervision of SHO Civil Lines and a public witness Krishan Mohan was also joined in the raiding party. The accused was apprehended on the point- ing out of the informer and was found in possession of 1.800 Kgs. of Charas. Accordingly; charge under Section 20 of the NDPS Act was framed against the accused to which the appellant pleaded not guilty. The prosecu- corporation in order to prove their case examined eight witnesses. Learned Addi- tional Sessions Judge, on appreciation of the evide.nce, came to the conclu- sion that the prosecution had proved its case and, therefore, held the appellant guilty under Section 20 of the NDPS Act. The learned amices curiae has taken me through the record of the case and has pointed out that there is nothing on record to show that the CFSL form, which was filled in at the time of recovery of the so called contraband substance from the accused was ever sent to the laboratory along with the sample. He further points out that even the road certificate, which would indicate the articles that were removed from the malkhana and sent to the laboratory is not on the file nor has it been proved. Learned counsel for the State does not differ on these two points. Taking the case of the prosecution at the highest that certain substance was recovered from the accused, the absence of evidence that CFSL form had been sent along with the sample to the laboratory would destroy the identity of the sample sought to be tested. Further since the road certificate has not been brought on record, this would affect the veracity of the prosecution that the CFSL form was sent further that the substance, which was recovered from the accused, sent to the CFSL laboratory and tested positive. In the absence of this vital evidence, it would be difficult to hold the appellant guilty of any offence under

Section 20 of the NDPS Act. The benefit of the weakness in the prosecution's case must go to the accused. I, therefore, in the facts and circumstances of this case, hold that in the absence of evidence to show that the substance recovered from the accused was charas, the prosecution has failed in proving its case.

2. In this view of the matter, the judgment under challenge is set aside and the appellant, who is in jail is directed to be set at liberty if not wanted in any other case.

3. The appellant be informed through the Superintendent, Central Jail, Tihar.

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