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Chameli Devi Vs. State

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Court : Delhi

Decided On : Apr-19-1993

Reported in : 1993(3)Crimes418; 50(1993)DLT439

Judge : R.L. Gupta, J.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 20

Appeal No. : Criminal Appeal No. 70 of 1991

Appellant : Chameli Devi

Respondent : State

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

Judgement :

R.L. Gupta, J.

(1) This appeal is directed against the judgment order on sentence of the learned Additional Sessions Judge, New Delhi by which he convicted the appellant under Sections 20(ii) and 21 Narcotic Drugs and Psychotropic Substances Act, 1985 (tor short Ndps Act) for being found in possession of 480 grams of charas and 6 grams of heroin and sentenced her to undergo Rigorous imprisonment for ten years on each count and also to pay a fine of Rs. 1 lac and in default of payment of fine to suffer further before six months. The substantive sentences of imprisonment were

made to run concurrently.

(2) The case of the prosecution as per the rukka Ex. PW4/A is that on 20-7-87 at about 4.15 p.m Si Shanker Singh of Ps Vasant Vihar Along with constable Attar Singh was present on patrol duty in the area of VasantVihar. While he was near Munirka Marg, another police party comprising of few more constables met them. In the meanwhile he received secret information that one Mst. Chameli resident of a Jhuggi of KusumpurPahari, New Delhi who was carrying on the illegal trade in smack andcharas, would be coming from the side of eastern road through the park of Munirka Marg and that she had charas in her possession. Thus he constituted a raiding party comprising of himself and the police officials and one public witness Sunil Sethi. Lady Head Constable Keshwani was also joined in the raiding party who had reached the spot on receiving information.They picketed a Nakabandi near the T point of Munirka Marg. At about 5.30 p.m., the appellant who was known earlier to Si Shanker Singh reached there. She was seen carrying a white coloured cloth bag in her right hand. The Si told her about the secret information and gave her an option that she could be searched before a Gazetted Officer if she so desired.She declined the offer. He also offered search of the members of the raiding party by the appellant which was also declined. He then checked the bag carried by the appellant which was found to contain a slab of charas wrapped in a polythene bag. Then lady Hc Keshwani on direction of the SI searched the person of the appellant. From right pocket of her Kurta 38purias of heroin wrapped in a newspaper and covered in polythene paper were recovered. Weighing scales were procured. Sample of 100 grams was separated from the charas. Contents of all the Purias collectively weighed6 grams out of which 2 grams was separated as sample. The sample parcels and the remaining articles were then separately sealed with the seal impression Ssr of the SI. In the meanwhile the Sho, Inspector A.P. Rai also reached the spot. Si Shanker Siagh narrated the facts to him and produced the accused and the case property before him. He affixed his seal impression APR upon all the parcels. Site plan was prepared. Rukka was sent to the police station. Statements of the witnesses were recorded. Si Shanker Singh handed over his seal to the public witness Sunil. Cfsl Form was also prepared at the spot. The sample parcels were later on sent to and on receipt of a report the challan was filed and the appellant convicted and sentenced as stated above.

(3) I have heard arguments advanced by learned Counsel for theparties. Learned Counsel for the appellant raised various contentions which are as follows. (1) The public witness in this case has not supported the case of the prosecution (2) Cfsl Form which was alleged to have been prepared at the spot was neither deposited in the Malkhana nor there is any evidence to indicate that it was taken to Cfsl by the constable when he went there along with the sample parcels. (3) The option of search allegedly given by the police to the appellant was a partial option inasmuch as she was only asked whether she desires to be searched by a gazetted officer.She was not given any option to be searched by a Magistrate in the alternative as mentioned in Section 50 of the Ndps Act. (4) The search in this case yielding the recovery of charas was taken by Si Shanker Singh against the mandate of Section 50(4) of the Act according to which a female should be searched by a female only and (5) The Sho did not hand over his seal after its use to any witness and thus the sample could be tampered with at any time.

(4) On behalf of the State all the aforesaid arguments were refuted.It may be noted that Sunil Sethi, public witness, who appeared as PW-5deposed that he neither knew the appellant nor anything was recovered in his presence from her. He was asked by the Sho to sign some blank papers in Ps Vasant Vihar which he did sign. He was acting as a special police officer in those days. He admitted his signatures on the various documents of the case but he said that he did not know their contents because the contents were not written in his presence. He was declared hostile He maintained his stand of having not witnessed the occurrence even in crossexamination by the A PP. There was, however, no question put to him about the fact that he was not a special police officer and he was deposing falsely in this respect. On the other hand Si Shanker Singh who appeared as PW-8 was cross-examined in this respect. He said that he was not aware if Sunil Sethi was a special police officer or that he had a shop of electronic goods near the Police Station itself since about one year before the alleged recovery of the case property. Prima facie it is not possible to believe that SI Shanker Singh who had remained posted in that area for quite a longtime would not know Sethi at all or that he was not a special police officer.Thus it casts an initial suspicion on the veracity of the prosecution case when it is not supported by a public witness who was a special police officer in those days. In such a situation the prosecution case

has to be Scrutiny Edmore carefully. Cfsl Form was allegedly prepared at the spot. PW-3Narain Singh, Head Constable was the Moharrar Malkhana at the relevanttime. He does not say a single word whether the Cfsl Form was also deposited along with the case property. Similarly Si Shanker Singh does not say a word in this respect. PW-6 Constable Harinder Singh received the sample parcels from the Moharrar Malkhana vide certificate No. 97/21 and deposited the same in the CFSL. Initially he said in the examination-in-chief that the parcels were sealed with the seal impression Ssr only. He had to be declared hostile. Even in cross-examination by the App, he again said that as far as he remembered there was only one seal impression of Ssr on the parcels and could not say whether there were two seal impressions of SSR and Apr on those parcels. A copy of the entries in the Malkhana register Ex. PW3/A was also produced on record. It also does not indicate if Cfsl Form was deposited along with the case property. It may be noted that the preparation of Cfsl form with the seal impressions at the spot or in the police station before the Sho and its deposit in the Malkhana provides a very valuable safeguard for an accused person. The punishment provided for violation of the provisions of this Act is visited by very severesentence. The minimum sentence prescribed is 10 years Ri and a fine ofRs. 1 lac. In such a situation, it is the incumbent duty of the investigating agency to meticulously follow the safeguards provided in the Act. If strict compliance is not insisted, it is likely to play havoc with the presumption of innocence of an accused person. It is so especially in the present case when the constable who took the sample parcels to Cfsl is not even certain whether those parcels bore one seal impression or both. In the case of Safiullah v. Slate (Delhi Administration) 1993 1 Cri, : l (1993) Ccr 161this Court held that in a case where the Cfsl Form is neither filled nor deposited with the Moharrar Malkhana, the independent witness resiles and the seal is not handed over to an independent witness, possibility of the tampering of the seal and the contents of parcels could not be ruled out and thus the link evidence necessary to establish the guilt of the accused remained missing. To the same effect are other authorities of this Court as reported in Lachho Devi v. State, 1990(2) C.C. 395 and Anoop Joshi v.State, 1992 (2) C.C. 314 : 11 (1992) Ccr 1566.

(5) Learned Counsel for the appellant also seems to be right regarding the partial option given to the appellant in the matter of search. she was only asked whether

she desired to be searched by a Gazetted Officer.She was not informed that in the alternative she could also be taken to a Magistrate for search. This is a clear violation of Section 50 of the NDPS Act which requires that an accused person should be given the option of being searched by a Gazetted Officer or a Magistrate.

(6) However, there is no merit in the submission of learned Counsel for the appellant that the search in this case was not taken in accordance with law. The bag was held by the appellant in her hand only from which charas was allegedly recovered by Si Shanker Singh. The person of the appellant was allegedly searched by lady Hc Keshwani. I do not find any violation of procedure in this respect as enjoined by Section 50(4) of the NDPS Act.

(7) To maintain the sanctity of the sample taking process, it is desirable if seal after use is handed over by police official to an independent witness or at least some other police official in the raiding party when no public witness is joined on account of non-availability. The Sho in this case did not hand over his seal to anybody. The handing over of the seal by SI Shanker Singh to Sunil Sethi is also doubtful because he does not support the case of the prosecution at all.

(8) There is no satisfactory reply to the aforesaid submissions of the learned Counsel for the appellant on behalf of the State. thereforee, I am of the view that the appellant is entitled to benefit of doubt. She is accordingly acquitted. Her personal bond and bail bond will stand cancelled.She be set at liberty if not wanted in any other cases or proceedings.

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