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**Mohd. Javed Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/699699

**Court** : Delhi

**Decided On :** Jan-20-2000

**Reported in** : 2000CriLJ1821; 2000(56)DRJ156; 2000(68)ECC561

**Judge** : M.S.A. Siddiqui, J.

**Acts** : Narcotic Drugs and Psychotropic Substance Act, 1985 - Sections 18

**Appeal No.** : Crl. A. No. 82/96

**Appellant** : Mohd. Javed

**Respondent** : State

**Advocate for Def.** : Ms. Neelam Grover, Adv.

**Advocate for Pet/Ap.** : Ms. Ritu Gauba, Adv

**Judgement** :

**M.S.A. Siddiqui, J.**

1. This appeal is directed against the judgment and the order of conviction dated 5.12.1995 passed by the Additional Sessions Judge, Delhi in Sessions Case No. 33/95 convicting the appellant under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentencing him to undergo rigorous imprisonment for 12 years and to pay a fine of Rs. 1,50,000/- or

in default to suffer further rigorous imprisonment for 2 years.

2. Briefly stated the prosecution case is that on 20.1.1995 at about 3 P.M. while the SI Dalbir Singh (P.W. 7) was on petrol duty he received a secret information that two persons having poppy straw powder would be coming to Delhi via Old Yamuna Bridge. On this, information a raiding party was organized and a 'nakabandi' was conducted near the Flood Control Tower. At about 3.30 A.M. the appellant and his associate Kala son of Karam Chand Bhagat were spotted near the said tower. The appellant was apprehended on the spot. He was given the option of being searched before a Gazetted Officer or a Magistrate but he declined the offer. Thereafter the gunny bag, which the appellant was carrying, was searched and it was found to contain 5 plastic packets of poppy straw powder. Five samples of 10 gms. each were drawn up and the samples and the seized contraband were converted into separate parcels and the same were sealed on the spot. The appellant was charged with an offence punishable under Section 18 of the Act and tried.

3. The appellant abjured his guilt. The learned Additional Sessions Judge on an assessment of the evidence adduced by the prosecution accepted the prosecution case and convicted and sentenced the appellant as indicated above.

4. The evidence regarding the recovery of the alleged contraband revolves around the testimony of Head Constable Suresh Chand, (P.W. 5), ASI Babu Ram (P.W. 6) and ASI Dalbir Singh (P.W. 7). It has come in the evidence of ASI Dalbir Singh that on 20.1.1995 at about 3 P.M. he received a secret information about transport of the contraband and the same was reduced into, writing. Surprisingly no writing has been produced or proved before the trial court to substantiate the said assertion of SI Dalbir Singh (P.W.7). It has also come in the evidence of ASI Dalbir Singh that at about 3.30 P.M. the appellant was apprehended on the spot. He was given the option (Ex. P.W. 4/A) of being searched before a Gazetted Officer or a Magistrate but he declined the offer. Thereafter the appellant's gunny bag was searched and it was found to contain five packets of poppy straw powder weighing 10 kgs. approximately. A sample of 10 gms. each was drawn up from the said packets and the samples as well as the seized contrabands were converted into

separate parcels and sealed on the spot. CFSL Form was filled in on the spot and the sampled contraband along with the CFSL form were handed over to SHO Data Ram P.W. 5, who deposited them in the police malkhana. Head Constable Suresh Chander (P.W. 4) and ASI Babu Ram (P.W.6) also swear to the same effect.

5. It may be remarked that there are certain staggering circumstances which have shaken the foundation of the prosecution to an irreparable extent. The evidence of SI Dalbir Singh (P.W. 7) reveals that the Seizure Memo (Ex. P.W. 4/B) and the appellant's personal search Memo (Ex. P.W.4/D) and the rukka (Ex. P.W. 2/A) were prepared on the spot. The rukka Ex. P.W.2/A shows that the recovery of the contraband was made at 3.30 p.m. and the rukka was sent to the Police Station on the basis of which the FIR (Ex. P.W.2/B) was registered at the Police Station. The FIR (Ex. P.W. 2/B) reveals that it was registered at 6.42 p.m. Surprisingly, the Seizure Memo (Ex.P.W.4/B) and the appellant's personal search Memo (Ex. P.W.4/D) bear the number of the FIR (Ex. P.W. 2/B). Number of the FIR (Ex. P.W. 2/B) on the top of the aforesaid documents is in the same ink and in the same handwriting, which clearly indicates that these documents were prepared at one and the same time. If the FIR (Ex. PW. 2/B) was registered after the alleged recovery had taken place, then these documents could not have recited the number of the said FIR. The prosecution has not offered any Explanationn as to how the number of the FIR Ex. PW. 2/B had appeared on the top of these documents, which were allegedly prepared on the spot. This circumstances gives rise to two inferences that either the FIR (Ex. P.W. 2/A) was registered prior to the alleged recovery or that the number of the FIR was inserted on these documents after its registration. In both the situations it seriously reflects upon the main version of the prosecution regarding the alleged recovery of the contraband from the appellant's possession. That apart no public witness was associated with the raiding party. Head Constable Suresh Chander (P.W. 4), ASI Babu Ram (PW. 6) and SI Dalbir Singh P.W. 7 have repeated a parrot like story that 3 to 4 passers by were requested to join the raiding party but none joined and went away. It appears that no serious effort was made by the SI Dalbir Singh (P.W. 7) to associate any independent witness with the raiding party. The road leading to Yamuna bridge is a busy road and the alleged recovery must have been witnessed by many passers by. Strangely enough, the police could not find any independent witness to attest

the search and seizure.

6. It is also worth mentioning that as per evidence of SI Dalbir Singh, personal search of the appellant was taken after service of the notice under Section 50 of the Act. Had it been a fact that the gunny bag containing the contraband was recovered from the possession of the accused, SI Dalbir Singh (P.W. 7) would not have failed to mention it in the search memo (Ex. P.W. 4/D). The search memo (Ex. P.W. 4/D) is conspicuous by the absence of recovery of any gunny bag containing the contraband from the appellant's possession. The omission of the said material fact in the search memo (Ex. PW. 4/D) has raised considerable doubt on the Seizure Memo (Ex. P.W. 4/B) regarding the alleged recovery of the contraband from the appellant's possession. Thus the network constituted by the aforesaid circumstances leaves a gap of varied dimensions through which the appellant can get out with equal facility. Consequently, the appellant's conviction and sentence under Section 18 of the Act cannot be sustained in law.

7. In the result the appeal is allowed and the appellant's conviction and sentence under Section 18 of the Act is set aside. The appellant is in custody. He be set at liberty forthwith, if not wanted in any other case. Fine, if paid, shall be refunded to the appellant.

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