

**Mool Chand Vs. State**

**Mool Chand Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/699902](http://sooperkanoon.com/699902)

**Court :** Delhi

**Decided On :** Feb-08-1993

**Reported in :** 1993(3)Crimes224; 49(1993)DLT649

**Judge :** R.L.Gupta, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 18

**Appeal No. :** Criminal Appeal No. 82 of 1991

**Appellant :** Mool Chand

**Respondent :** State

**Advocate for Pet/Ap. :** R.K. Taneja,; P.S. Sharma and; Vikas Sharma, Advs

**Judgement :**

**R.L. Gupta, J.**

(1) Appellant has filed this appeal against his conviction and sentence dated 30.5.91 by the learned Asj, Delhi under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short NDPSAct) for being found in possession of 4 kg. of opium. He was sentenced to undergo RI for ten years and also to pay a fine of Rs. one lac failing which he was to suffer Si for 2-1/2 years.

(2) The story of the Prosecution is that on 11.1.1988 Asi OmParkash was on patrol duty along with certain police officials. On receiving certain secret information he organized a raiding party comprising of police officials and one public witness Rashid. A Nakabandi was picketed at the intersection of Shanker Gali and Bazar Sita Ram. At about 10.00 a.m. the appellant was apprehended. He was given an option that he could be produced before a Gazetted Officer or a Magistrate for search if he so desired. He, however, declined. He was found to be carrying one brandy colored bag on his shoulder. On search it was found to contain opium wrapped in a polythene bag. Sho Ram Kumar Sharma was informed about this fact and he also arrived on the spot. The recovered opium weighed 4 Kg. A representative sample of 20 grams was separated. The sample and the remaining opium were separately packed and sealed with the seal impression of 'RKS' belonging to the Sho and 'OP' belonging to the 10 Om Parkash. The Form C.F.S.L. was also filled up and affixed with the seal impressions of both these seals. The Sho retained his own seal while the 10 entrusted his seal to the public witness Rashid. The case property was seized by recovery memo Ex. PW1/A. The sample was sent to C.F.S.L. and report Ex. Pa was received from C.F.S.L. which gave positive test for opium. After completion of investigation the challan was filed.

(3) I have heard arguments advanced by learned Counsel for the parties. The main contention on behalf of the appellant is that in this case Form C.F.S.L. although allegedly filled up at the spot was neither deposited in the Malkhana nor it was sent to C.F.S.L. along with the sample opium and thus the very recovery of the opium becomes doubtful. In support of his contention learned Counsel for the appellant has drawn my attention to some Authorities of this Court. The first case is that of Lachho Devi v. State 1990 (2) C, C 395. That was a case of the alleged recovery of 2 packets containing charas and each weighing 500 grams. It was found in that case that there was no reliable evidence on record to show that the C.F.S.L. Form was also deposited with Moharrar Malkhana and that the same remained in his custody till it was allegedly sent with the sample to C.F.S.L. There was also no mention in the Malkhana register about the deposit of C.F.S.L. Form with Moharrar Malkhana. The appellant was given benefit of doubt and acquitted. The second case is that of Anoop Joshi v. State, 1992 (2) C.C 314. It was a case of

recovery of 400 grams of smack. It was found in that case by this Court that the prosecution had not cared to prove as to where the C.F.S.L. Form was kept before it was handed over to the Constable who took the sample parcel to the C.F.S.L. The Investigating Officer did not depose that the C.E.S.L. Form was deposited along with the case property with the Moharrar Malkhana and was even silent as to where it had been kept. Even the Moharrar Malkhana who was also a member of the raiding party, while appearing as a witness, did not say that C.F.S.L. Form was deposited along with the case property and there was no reference to the C.F.S.L. Form in the entry of the Malkhana register. That was the deficiency in the prosecution evidence besides other circumstances. The appellant was acquitted by giving benefit of doubt. In the case of Safiutlah v. State (Delhi Administration), 1993 (1) Cri 204, 2 Kgs. of chars was allegedly recovered from the accused. The independent witness joined by the raiding party had turned hostile. It was also found that the C.F.S.L. Form was neither filled up nor deposited with the Moharrar Malkhana. On account of these circumstances the appellant was given the benefit of doubt. In the case before this Court PW-1, Inspector Ram Kumar Sharma who was S.H.O. Police Station Chandni Mahal at the relevant time deposed that form C.F.S.L. was filled up and the case property was deposited by him with the Moharrar Malkhana. PW-2 Moharrar Malkhana Head Constable Bhim Singh also deposed in examination-in-chief that the case property was deposited in the Malkhana by the S.H.O. However, in cross-examination he admitted that in the Malkhana register the depositor's name was shown as Asi Om Parkash. therefore, the documentary evidence completely contradicts the oral testimony of PW-1 Ram Kumar Sharma, S.H.O. as well as that of Bhim Singh, Head Constable himself. PW-7 Asi Om Parkash, 10 does not say a word in his examination-in-chief as to whether he himself deposited the case property with the Moharrar Malkhana or the S.H.O. Both he and the S.H.O. do say that the form C.F.S.L. was filled up at the spot. But as already pointed out there is no evidence if C.F.S.L. Form was deposited with the Moharrar Malkhana. PW-3 Constable Onkar Singh had taken the sample parcel from the Moharrar Malkhana and deposited the same with the C.F.S.L. He also does not say a word about C.F.S.L. form meaning thereby that neither the C.F.S.L. form was handed over to him nor the same was deposited by him with the C.F.S.L. Ex. Pa is the report of the C.F.S.L. This report also does not

mention if in the laboratory along with sample parcel form C.F.S.L. was also received. Thus taking the entire evidence into consideration, I find that the prosecution evidence is lacking on the point if form C.F.S.L. was either deposited in the Malkhana or it was even sent to C.F.S.L. along with the sample parcel. It is also a case wherein the only public witness joined by the police not only turned hostile but even went to the extent of admitting that he had appeared as a prosecution witness in 5 or 6 cases pertaining to this very Police Station. He also goes to the extent of saying that on 11.1.1988 at about 9-30 or 10-00 A.M. he was present in P.P. Turkman gate and made to sign certain documents which were neither read over nor explained to him. He also denied having made any statement to the police.

(4) As against this learned Counsel for the State contended that the non-deposit of C F.S L. Form in Malkhana was a mere irregularity and not illegality and so it did not have any serious impact on the prosecution evidence. He further drew my attention to the case of Om Parkash @ Omi @ Fauzi v. State, 1991 (2) C.C. 222. It was ruled in this authority by this Court that minor contradictions in the statements of witnesses or even non-joining of the public witness which was duly explained by the prosecution by giving satisfactory Explanationn should not prove fatal to the prosecution case. Learned Counsel particularly drew my attention to the following observations made in this case based on the authority of Aher Raja Khima v.

'THE presumption that a person acts honestly applies so much in favor of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefore. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of the policeadministration.'

(5) There is no reason to differ with the observations made in the aforesaid Supreme Court rulling. However, it is not so much of distrust or suspicion on account of which I am concerned in the present case. In the present case I am concerned with the deficiency of a material link evidence which causes dent in the prosecution case and persuades me to give benefit of doubt to the appellant. There is no doubt that the police officers are also entitled to be given the same

weight regarding their evidence which is normally given to any other witness. But in the present case the evidence of the prosecution is lacking to the effect that C.F.S.L. Form was neither deposited in the Malkhana Along with the case property nor sent to C.F.S.L. with the sample parcel. The very name given to this Form as C.F.S.L. Form suggests the object of its preparation at the time of seizure of a contraband article and separation of its representative sample. The specimen seal impressions used at that time are affixed on it, so that it can be deposited with case property in the Malkhana and forwarded to C.F.S.L. along with the sample parcel so that seal impressions affixed on the sample parcel are duly compared with the seal impressions on the C.F.S.L. Form. The idea behind taking such precautions is to complete a material link in the prosecution evidence by eliminating the possibility of the sample being tampered with. The sentence provided under this Act is very severe. It cannot be less than 10 years R.I. and a fine of Rupees one lac. If the sentence is so severe, the Courts will naturally insist for the standard of proof also beyond the shadow of all reasonable doubt against an accused. Suspicion, however strong, cannot take the place of positive proof. therefore, in the present case, when the prosecution evidence is silent upon the deposit of C.F.S.L. Form in the Malkhana and its being sent to C.F.S.L. along with the sample, it is not possible to understand how in the report Ex.-PA, the C.F.S.L. has certified that the seal impressions Rks and OP were identical to the official specimen enclosed. This further indicates the mechanical manner in which the blanks have been filled up in the cyclostyled performa of the report Ex. PA. therefore, the argument of the learned Standing Counsel that non-deposit of C.F.S.L. Form in Malkhana or its being sent to C.F.S.L. was a mere irregularity, cannot be accepted. It provides a material link in the prosecution evidence and its absence will entitle the appellant to a benefit of doubt.

(6) In view of above discussion, the appeal is allowed and the appellant is acquitted. He will be set at liberty if not wanted in any other case or proceedings.