

Heera Lal Vs. State

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Court : Delhi

Decided On : Oct-08-1993

Reported in : 1994(3)Crimes10; 52(1993)DLT231

Judge : A.D. Singh, J.

Acts : Narcotic Drugs & [Psychotropic Substances Act, 1985](#) - Sections 20; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 293

Appeal No. : Criminal Appeal No. 55 of 1990

Appellant : Heera Lal

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi,; Raman Sawhney and; N.K. Handa, Advs

Judgement :

Anil Dev Singh, J.

(1) This is an appeal directed against the judgment and order of learned Additional Sessions Judge dated 6/03/1990, whereby the appellant was convicted under Section 20 of the NDPS Act and sentenced to undergo imprisonment for a period of 10 years and to pay a fine of Rs. 1 lakh.

(2) The prosecution case is that PW-9S.1. Inder Singh, on August 1, received a secret information that two persons present near Sujan Singh Park were having charas in their possession. Upon receipt of the information, a raiding party was constituted under the supervision of SHO Tughlaq Road. Besides the Sho, the raiding party consisted of S.I. RamKumar PW-5, S.I. Inder Singh PW-9 and Constable Sat Dev PW-4. ACP Ajay Kumar PW-6 was also informed, who is alleged to have reached the spot. Along with the raiding party, a public witness PW-3 Shanker Lal, a scooter driver was also associated.

(3) Around 4 p.m. of the same day viz. 1/08/1988 the appellant was apprehended at Maharishi Raman Marg near Sujan Singh Park and from his possession 4 kg. of charas was recovered 100 gms. of charas was separated from the seized case property as sample. The remaining quantity of charas and the sample were placed in two different parcels and were sealed with the seal of I.S. and S.L.D., belonging to Si Inder Singh and SHO S.L. Dua respectively. The seals after use were given to Shanker Lal, PW-3. After the receipt of the Cfsi report, charge sheet was filed against appellant in the Court of Shri S.L. Khanna Additional Sessions Judge, who after framing the charge and recording the evidence led in the case passed the impugned judgment.

(4) Learned Counsel for the appellant submits that the appellant was falsely implicated and was actually arrested 'on 31/07/1988 from his village. He submits that Sho and Acp were not present at the spot when the recovery was effected as the memos alleged to have been prepared at the spot do not bear their signatures. He further urges that the public witness has not supported the case of the prosecution as according to him no recovery was made in his presence. Learned Counsel also submits that earlier to the present case, the appellant was falsely implicated in 14 cases and in all those cases he has been acquitted. It is the submission of the learned Counsel that the appellant was implicated in these cases because of a dispute which the latter had with one Giani Ram, a relation of Inspector Mahinder Singh. Learned Counsel also points out that the Vigilance Department had instituted an enquiry in regard to the institution of the false cases against the appellant and according to him, the Vigilance Department returned a finding against the said police officer. Learned Counsel states that the Cfsi form

was not deposited in the Malkhana nor the same was sent to the CFSL. He contends that there are material contradictions in the statements of the prosecution witnesses and no credence can be placed on their testimony. Finally he submits that the so called report of (he CFSL Ex. PW-9/D is not admissible in evidence under Section 293 of the Code of Criminal Procedure as the same has not been made by an authority specified therein.

(5) On the other hand, learned Counsel for the respondent submits that the judgment of the learned Additional Sessions Judge does not suffer from any infirmity whatsoever. He contends that there are no material contradictions between the statements of the prosecution witnesses. He also submits that the evidence adduced by the prosecution shows that there was no tampering with the case property and the sample and the report of the CFSL gave positive test for charas.

(6) I have considered the respective submissions of the learned Counsel for the parties and find that this appeal can be disposed of on a short point. Perusal of the report Ex. PiV-9/D shows that the same has been made by Mr. C.L. Bansal, Sr. Scientific Assistant, Central Forensic Science Laboratory, Central Bureau of Investigation. This report is not by a Director or Deputy Director or Assistant Director of Forensic Science Laboratory or a State Forensic Science Laboratory as contemplated by Section 293 of the Code of Criminal Procedure. thereforee, the said statement not being under the hand of a scientific expert mentioned in Sub-section 4(e) of Section 293 Cr. P, can not be used as evidence in trial without the same being proved. Mr. C.L. Bansal has not been examined in the case. thereforee, it is not established on record that the substance which was recovered from the possession of the appellant was charas. Since the proof of basic fact is lacking, the appellant can not be convicted under Section 20 of the NDPS Act. Faced with this situation, learned Counsel for the respondent submits that the matter should be remanded back to the learned Addl. Sessions Judge for recording the statement of Mr. C.L. Bansal. I am afraid this submission cannot be accepted as the appellant has already remained in custody for a period of five years. Accordingly, the appeal is accepted the judgment and order of learned Addl. Sessions Judge dated 6/03/1960 is set aside and the appellant is acquitted of the

charge under Section 20 of the NDPS Act.

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