

Gopal Vs. State

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Court : Delhi

Decided On : Apr-11-1991

Reported in : 44(1991)DLT415

Judge : S.C. Jain, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21

Appeal No. : Criminal Appeal No. 31 of 1990

Appellant : Gopal

Respondent : State

Advocate for Pet/Ap. : R.N. Kapur, Adv

Judgement :

S.C. Jain, J.

(1) Facts giving rise to this appeal are that on 23.3.1989, a secret information was received by Si Randhir Singh of P.S. Town Hall that Siri Gopal and others were indulging in drug trafficking in house No. 1183/85, Chatta Madan Gopal. On this information Si Randhir Singh along with constable Prem Singh joined Ahmad Ali of village Khajuria and reached the spot at 3.25 p.m. The appellant was found standing in the chowk and on seeing the police party he made an unsuccessful attempt to escape but he was caught. On search of the accused a small

newspaper packet was recovered from the right pocket of his pant. The packet was found to contain heroin. The Sho of the area also reached there. A sample of 1/4 gram was taken and the sample and the remaining heroin was sealed on the spot and the sample was later on sent to the Cfsi and as per report the same was found to be heroin and on that basis the appellant was challaned for an offence punishable under Section 21 of the Ndps Act.

(2) During trial the prosecution examined Shri H.L. Maniktalla-SHO, Randhir Singh S.I. and Constable Prem Singh and other formal witnesses. The trial Court believed the testimony of the witnesses and convicted the accused under Section 21 of the Ndps Act and Sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1 lakh and in default of payment of fine to further undergo rigorous imprisonment for two years.

(3) Aggrieved, the appellant Siri Gopal has filed this appeal. The appellant is not represented by any one and he himself argued this appeal. After hearing the appellant in person and Shri R.N. Kapoor, learned App for the State, I am of the view that the appellant deserves acquittal inasmuch as the provisions of Sections 42, 52 and 55 of the Ndps Act have been ignored in this case. The provisions of Sections 41, 42, 43, 50, 51 and 55 are mandatory and contravention thereof vitiates the investigation and trial. These provisions of the Ndps Act being mandatory have to be strictly construed, especially in view of the minimum sentence of.....imprisonment and fine prescribed under the Act leaving no discretion to the Court to impose a lesser punishment of imprisonment and fine irrespective of the quantum of recovery. In this case, there is no evidence to show the compliance of the said provisions of the Act. Section 42(2) of the Act provides that if information is received from any person in respect of offence punishable under Chapter Iv of the said Act, the officer who receives the information must take it down in writing and he shall forthwith send a copy thereof to his immediate official superior. Admittedly, no such writing was effected, nor the same was sent to his immediate superior officer. Section 43 of the Act provides that any officer of the Department mentioned in Section 42 would have power to arrest and search and seize in any public place and that Section 52 prescribes a procedure after the arrest and Section 55 casts a duty on the officer-in-charge of the police station to

take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and such an officer has the right to affix his own seal on the sample and the article seized. The provisions of Section 52 makes it obligatory on the arresting officer to immediately produce before the officer-in-charge of the police station the person arrested as well as the articles seized. Section 55 provides thereafter that the officer-in-charge of the police station to take charge and keep it in safe custody pending the order of the Magistrate in the case within the local area of the police station and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose to affix his seal to such articles or to take samples and shall seal it with the seal of the officer-in-charge of the police station. A bare reading of Section 55 makes it clear that it is the designated superior officer who is to take charge of the articles seized, keep them in safe custody and may allow any person who accompanies such seized articles to the police station, to affix his seal on the articles or samples thereof, but there necessarily has to be the seal of the officer-in-charge of the police station on such parcels.

(4) In this case, there is no evidence on record to show and prove that Sho deposited the sealed parcel in the Malkhana. Rather, it is on record that Randhir Singh, Si bad deposited the parcel in the Malkhana. The Court over looked the fact that Randhir Singh after receiving the information by Dd 9A, Ex PW5/A reached the spot along with constable Prem Singh and joined Ahmed Ali a public witness. There was no information with H.L. Maniktalla, Sho that Siri Gopal has been caught and two grams heroin has been recovered. In these circumstances, it is beyond logic to believe as to how Sho Maniktalla reached the spot and put his seal on the case property. There is no evidence that H.L. Maniktalla was informed by anyone about the said recovery. This leads to the conclusion that the recovered heroin was not sealed at the spot by H.L. Maniktalla. The statutory provisions of the Act have been obviously violated by the police. This fact throws the whole case into doubt. Besides this, there is a major contradiction in the statement of witnesses examined by the prosecution-regarding taking out of the sample and its weighment. 10 Randhir Singh has stated that the sample was taken out with the help of scales, whereas H L Maniktalla stated that the sample was taken by the

process of dividing the recovered heroin. This is a major contradiction in the statement of these two witnesses and on this ground alone the case of the prosecution fails. This contradiction goes to the root of the matter and the appellant is entitled to take benefit out of it. When there is no compliance of the mandatory provisions under the Ndps Act it must be held that evidence of the police officer who failed to comply with the mandatory provisions cannot be relied upon implicitly to base the conviction. The presence of the alleged public witness Ahmed Ali is doubtful. He is not a resident of the locate but is residing in Khazuria village, which is at a long distance from the place of occurrence. The secret information was that the appellant was indulging in drug trafficking, at house No. 1183/85, Chatta Madan Gopal, whereas the apprehension has been shown from Chowk Chatta Madan Gopal which is in thickly populated area and so many persons were available, but no person from the locality was in the raiding party.

(5) The trial Court has overlooked this glaring defect in the prosecution case while convicting the appellant of the said offence. In this view of the matter I accept this appeal and set aside the conviction and the sentence imposed by the trial Court and acquit the appellant of the charge. Appeal accepted.

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