

Ravinder Kapoor Ravi Vs. State

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Court : Delhi

Decided On : Apr-25-1991

Reported in : 1991(3)Crimes741; 44(1991)DLT492; 1991(21)DRJ82

Judge : V.B. Bansal, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 50

Appeal No. : Criminal Appeal No. 73 of 1990

Appellant : Ravinder Kapoor Ravi

Respondent : State

Advocate for Def. : Shri. S.K. Bhatia

Advocate for Pet/Ap. : R.D. Mehra and; S.K. Bhatia, Advs

Judgement :

V.B. Bansal, J.

(1) - Ravindra Kapoor @ Ravi s/o Shri Sadhu Ram was tried for the offence under Sec. 21 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short the Act) by an Additional Sessions Judge, New Delhi. The allegations against him had been that on 29th September 1986 at 7.00 P.M. at parking place near Kapur Di Hatti and in the area of P.S. Connaught Place was found in possession of 350

grams of Heroin. He was convicted for the said offence and sentenced to R.1. for 10 years with a fine of Rs. 1 lac or in default to undergo R.1. for two years by an Additional Sessions Judge, New Delhi vide judgment and order dated 19th April, 1990.

(2) Peeling aggrieved from his conviction and sentence Ravinder Kapoor has filled this appeal.

(3) Briefly stated the facts leading to the filing of this appeal are that on 23-9-1986 S I. Lakshmi Chand (Public Witness 2), S.I. Surinder Singh PW4 Si Om Prakash (Public Witness 8), Asi Jagpal Singh, Constable Harbir Singh (Public Witness 7) and other official of the crime branch were present Narula Restaurant. Connaught Place in connection with the detection and prevention of crime regarding Narcotic Drugs. Inspector Shamsheer Singh was heading the party. At about 6.33 P.M. a secret information was received by S.I. Lakshmi Chand when Shri Om Parkash was also present with him that two persons would be coming to the parking area from the side of the Odeon Cinema having heroin with them to be supplied to some other persons. Accordingly a raiding party was organized by S.I. Lakshmi Chand under the supervision of Inspector Shamsheer Singh in which all the police officials were joined. Aa attempt was made by S.I. Lakshmi Chand to include persons from the public and with this intention a request was made to 8 to 10 passers by who declined to join the raiding party. Accordingly a nakabandi was held in the parking area in front of Kapur Di Hatti and at 7.00 P.M. two persons came who were apprehended at the pointing out of the informer. These persons on enquires gave their names as Ravinder Kapoor and Shani Kumar @ Sikander.

(4) S.I. Om Parkash took proceedings for search of Ravinder Kapoor while S.I. Lakshmi Chand took proceedings for the search of Shani Kumar. The appellant was informed about the information available with the police officer and was told that if he desired his search could be conducted in the presence of a magistrate or a gazetted officer. Ravinder Kapoor, however, declined this offer.

(5) S.I. Om Prakash found a bag in the hand of Ravinder Kapoor which on, checking wa found having heroin. The same on weighing was found to be 350 gms. Five gram was separated as a sample and thereafter the sample and the

remaining. Heroin were converted into separate parcels sealed with the seal of 'OP' which was handed over to S.I. Lakshmi Chand. These parcels were taken into possession by S.I. Om Prakash after preparing a seizure memo. Cfsi form was also filed up.

(6) Rukkam Ext. PW8/A was prepared by S.I. Om Prakash which he gave to H.C. Harbir Singh (Public Witness 7) to whom the sealed parcels were also handed over so that he may produce the case property before the Sho and get the case registered. The case property was produced before Sho who fixed bids seal 'PNA' on the sealed parcels and deposited them with Moharrar Malkhana, H.C. Imadul Islam (Public Witness 9). Fair 793/86 was recorded and the investigation was entrusted to S.I, Om Prakash.

(7) The Investigating Officer recorded the statements of the witnesses and arrested the accused. On 30 9.86 sample parcel was to Cfsi through Constable Ranjit Singh (Public Witness 5) wherefrom report was received showing that the sample gave positive test for heroin. Investigation revealed the commission of offence under Sec. 27 of the Act by the accused and so he was challaned.

(8) The plea taken up by the accused in his statement under Sec 313 Cr P.C. was of denial of the alleged recovery It has inter alia, been pleaded by him that he was dealing with in the business of man power and used to send the people outside the country for jobs and had paid a sum of Rs. 70,000.00 in advance to Ram Sarup and Rajinder Singh and for sending his five clients to Jordan, no doubt were sent but were deported to India after 84 their stay in that country for 10 days. It was also clear that those two persons were on friendly terms with S. L. Surender Singh and that he has also been implicated at the instance of the said persons by Surinder Singh. He examined three witnesses in defense. The trial resulted in the conviction and sentence as referred to above.

(9) I have heard Shri R. D. Mehra, learned counsel for the appellant and Shri S.K. Bhatia, learned counsel for the respondent. I have also gone through the records of the case.

(10) Learned counsel has submitted on behalf of the appellant that according to the prosecution story secret information was received by the police officers on the basis of which raid was conducted but no attempt at all was made to join independent witnesses. He has also submitted that there is non-compliance of the mandatory provisions contained in the Act inasmuch as the appellant was not informed about his right of being searched in the presence of a magistrate or a gazetted officer. He has further submitted that the case ..property was not produced before the SHO and that the entries made in the malkhana register have been tampered with. He has further submitted that there has been discrepancy in the statements of the witnesses about the affixing of the seal by the SHO and the custody of the CFSL. He has also submitted that the presence of Inspector Shamsher Singh at the time of the raid is doubtful since he has not signed any document prepared at the spot and there is no other material which could prove his presence. A prayer has, thus, been made for acquittal of the appellant. These submissions have been controverted by learned counsel for the respondent.

(11) The case of the prosecution has been that all the police officers were present near Narula Restaurant and the secret information was received by -S I. Lakshmi Chand at 6:35 P.M. This fact has been so stated by S I. Lakshmi Chand (Public Witness 2) , S I. Surinder Singh (Public Witness), H C. Harbir Singh (FW7) and S.I. Om Prakash (Public Witness 8). It has also been claimed by the prosecution that a document was prepared by S.I. Om Prakash about the receipt the secret information which was handed over to Inspector Shamsher Singh. It has further been the case of the prosecution that after the arrest of the appellant and another person arrest memo was prepared by Inspector Shamsher Singh in which all the details were mentioned. Document Ext. PW4/A was written by S.I. Om Prakash which he gave to the Inspector Shamsher Singh and similar has been the statement of S.I. Om Prakash. Ext. Pb is the copy of the report of Inspector Shamsher Singh about the recovery effected from the appellant and Shani Kumar. PW8 S.I. Om Prakash has admitted during cross-Examination that the contents Ext P8 was never written in the roznama kept at the Crime Branch of P. S. Connaught Place According to him this document was neither on the judicial file or in the police file to the time of the cross-examination of S. I. Lakshmi Chand (Public Witness 2) and S.I. Saurinder Singh (Public Witness 4). He has also

admitted that there is no reference about this report of Inspector Shamsheer Singh in the challan or in the list of documents filed with the challan or in the list of documents filed with the challan in court. It is thus, not clear as to how and where from this document was produced and why it was not kept in the relevant police file.

(12) The question for consideration is as to whether Inspector Shamsheer Singh was present with raiding party or not. According to the testimony Surinder Singh (Public Witness 4) and S. I. Om Prakash (Public Witness 8) the 85 Written Evt. PW4/A was made by S.I. Om Prakash at the spot about the receipt of the secret information and it was handed over by him to Inspector Shamsheer Singh at the spot. According to the prosecution story the information was about the availability of heroin with persons who would be coming near the Kapur, Hatti. In these circumstances, I am clearly of the view that the provisions of S. 42 would not have been attracted and it may not have been necessary for the investigating Officer to record the secret information and to lend the same to the superior officer. However, since it has been recorded the question for consideration is how this assertion is proved from the evidence on record. Admittedly, none of the documents was signed by Inspector Shamsheer Singh and even his statement was not recorded by the investigating Officer at any time. A reading of this document Ext. PW4/A indicates that it was written by S.I. Om Prakash at 6.35 P.M. the time at which the secret information is claimed to have been received. There is a mention in this document that this writing is being sent to Inspector Crime. I have not been able to appreciate how this writing supports the case of the prosecution about the presence of Inspector Shamsheer Singh at the spot. Rather it is to the contrary. And Inspector Shamsheer Singh been present with the members of the raiding party the document would have been handed over him then and there and it would not have been written that the document is being sent to Inspector Crime. Rather the writing would have been that the information in writing has been handed over to Inspector Crime.

(13) There is another aspect of the matter to be considered. According to the eye Witnesses of this occurrence a secret information was received near Narula Restaurant at 6-35 P.M. and thereafter raiding party was organized. Ext. P.B is the

arrest report claimed to have been prepared by Inspector Shamsheer Singh on 23rd September, 1986 itself which was sent to ACP and DCP. A reading of this report shows that information was already available with the Crime Branch that certain persons were transacting heroin in the restaurant in Connaught Place area and that this information was developed and a trap was laid near a restaurant in Connaught Place when two persons were apprehended and 350 grams of smack was recovered from Ravinder Kapoor and 150 grams of smack from another person. It is, thus, clear that this report Exr. Pb of Inspector Shamsheer Singh contradicts the claim of the other witnesses about the receipt of secret information at 6.35 P.M. for the first time near a Narula Restaurant.

(14) Learned counsel for the appellant has submitted that there has been a violation of mandatory provisions contained in Sec. 50 of the Act by the Investigating Officer inasmuch as the Appellant was not given opportunity of getting himself searched before a magistrate or a gazetted officer and that it was a recovered from the appellant and it has been planted upon him. subsequently.

(15) Learned counsel for the respondent has submitted that this is an argument not based on the record and in fact there are clear depositions by the witnesses indicating that such an offer was made to the appellant who declined to avail of the same. It has been, thus, been submitted that the appellant could not be forced to get himself searched in the presence of such an officer and no fault can be found with the Investigating Officer in this regard. 86

(16) I have given my due consideration to his submission in the light of the evidence on record.

(17) S.I. Lakshmi Chand (Public Witness 2) has stated that the accused was told that if as wanted he could be searched in the presence of a Magistrate or a Gazetted Officer to which he replied 'AB Pakre Hi Gaya to Kaya Fayda'. He has claimed having made such a statement to the Investigating Officer. He was, however/confronted with his statement Ext. PW2/DA where it has not been so recorded. Similar has been the claim of S.I. Surinder Singh (Public Witness 4) and he also claimed that he made such a statement under Sec 161 Cr. P.C to the Investigating Officer. He also confronted with his statement Ext. PW4/DA where it

has been so recorded. H.C Harbir Singh (Public Witness 7) stated that after he was apprehended Ravinder Kapoor was informed about the information available with the police that he was having heroin with him and that he was to be searched. He has also claimed that thereafter the appellant was searched and recovery effected. He has, thus, not stated anything about the giving of the offer to him for being searched before a Magistrate or a gazetted Officer. S.I. Om Prakash (Public Witness 8) is the 10. and he has also made an amplified statement that after the appellant was apprehended he told him that he could be searched in the presence of a Magistrate or a Gazetted Officer, if he so desired and the reply of the appellant was that 'Jab Pakra Hi Gaya Hain to Iski Koi Jarurat Nahin'. He has claimed about the writing of the facts in the rukka in the chronological order in which the precautions were taken by him. According to him the things done by him first were mentioned first in the rukka and thereafter the facts were recorded as per the steps taken by him in the chronological order. Ex. PW8/A is the rukka written by S.I. Om Prakash which he sent to the police Station for the registration of the case. A perusal of this document shows that there is a mention about the offer to Ravinder Kapoor that he could be searched in the presence of a Magistrate or a Gazetted Officer only after the recovery effected was taken into possession vide seizure memo A man may say but the documents do not. It is clear from the statements of the witnesses when read with their statements recorded under Sec. 161 Cr.P.C. and the rukka Ex. PW8/A that the claim of the prosecution about giving of such an offer of being searched in the presence of a Magistrate or a Gazetted Officer is not proved.

(18) The next question for consideration is as to whether SHO P.S Connaught Place had affixed his seal on the parcels and whether the sample parcel was tampered with by any one before its contents were examined in the CFSL. According to the case of the prosecution S.I. Om Prakash sent a rukka, two sealed parcels and CfsL forms to Police Station from the spot through H.C. Harbir Singh who got the seal of the SHO affixed on the sealed parcels which were then deposited in the Malkhana. It is also the case of the prosecution that Moharrar Head Constable Imadul Islam (Public Witness 9) sent the sample sealed parcel to CfsL through constable Ranjit Singh (Public Witness 5) on 30.5. 1986 and N K. Parshad (Public Witness 6) after examination of the sample gave report Ex

PW2/DB and that the sample gave positive test for Heroin. In this way. plea of learned in counsel for the respondent stated that the contents of the Heroin recovered from the petitioner on analysis have been confirmed to be of Heroin.

(19) Learned counsel for the appellant has, however, submitted that the evidence produced by the prosecution makes it abundantly clear that there has been tampered with the exhibits and also relevant entries in the Malkhana register. He has also submitted that there is no convincing evidence about the deposit of the CfsI form and that the possibility of the sample being tampered with cannot be ruled out.

(20) S.I. Om Parkash (Public Witness 8) has claimed that the two sealed parcels, rukka and CfsI forms were sent by him to P.S. through Head Constable Harbir Singh. He has now stated that the CfsI form was returned to him by H.C. Harbir Singh on his return to the spot from Police Station. He has, thus, not supported the claim of H, Harbir Singh (Public Witness 7) who has stated that after getting the Fir registered in the Police Station he came back to the spot and handed over the copy of the Fir and CpsI form to the Investigating Officer.

(21) The case of the prosecution has been that the Sho had affixed his seal of 'PNA.' on the two sealed parcels and thereafter the sealed parcels and thereafter the sealed were deposited with Moharrar Malkhana who was called by the Sho in his office. It has been so stated by PW3 Inspector P.N. Arora. During cross-examination this witness has admitted that entry No. 2014 dated 23.9.1986 in the register Malkhana was in respect of this case and that against column No. 3 'name of the depositor and date of the deposit entry is Asi Om Prakash of Crime Branch and 23.9.1986'. This entry, thus contradicts the claim of the prosecution that the case property was deposited by Inspector P.N. Arora with Moharrar Malkhana though even PW9) Imadul Islam had claimed that this property was deposited with him by the SHO. It has also not been pertinent to note that there has been over writing in the relevant entry in the malkhana register which was observed by the learned trial court regarding which a note has been given during the recording of the statement of PW 3 inspector P.N. Arora Constable Ranjit Singh (PW 5) has claimed that on 30.5.1986 Asi Om Prakash gave CfsI form to him

and in the seal of 'OP' and 'PNA' and that Moharrar Malkhana gave to him one parcel sealed with the seal of 'PNA' and 'OP' which he delivered at CfsI without being tampered with by anyone. Neither H.C. Imadul Islam Moharrar Malkhana (Public Witness 9) nor S.I. Om Parkash (Public Witness 8) has claimed about the giving of the CfsI form to constable Ranjit Singh. It is, thus, a mystery on the file as to who was having the custody of the CfsI form and where from it was sent to the CFSI. According to H.C. Imadul Islam (Public Witness 9) an entry was made in the Malkhana register about sending of the sealed parcel to CfsI and that road certificate No. 139/21 was also issued. PW6N.K. Parshad examined the sample sealed parcel in the CfsI and has claimed that the seals of 'PNA' and 'OP' were intact on the sealed parcel. According to him CfsI forms Ext. Public Witness 6/A and Ext. Public Witness 6/B road certificate were also produced along with the sealed parcel. A perusal of the road certificate Ext. Pw 6/B indicates that the sample parcel was sealed with the seal of 'OP' only and there is no mention of the seal 'PNA'. H.C. Imadul Islam (Public Witness 9) Moharrar Malkhana has nowhere stated that the sample parcel was not tampered with by anyone during the period it remained in his custody. The prosecution has, thus, not been able to explain the discrepancies about the absence of any mention of the seal of Sho in the Malkhana register and the road certificate. It is also clear from the evidence on record that the prosecution has not been able to prove positive evidence as to whose custody CfsI form remained and that it was not tampered with by anyone. Thus, the only irresistible conclusion from this evidence could be that the possibility of the sample sealed parcel having been tampered with cannot be ruled out.

(22) Considering all the facts and circumstances and the above discussion, I am clearly of the view that the prosecution has not been able to bring home the guilt against the appellant beyond reasonable doubt on account of which he is liable to acquittal.

(23) As a result the appeal is accepted. Conviction and sentence of the appellant are set aside. Giving him the benefit of doubt Ravinder Kapoor appellant is hereby acquitted. He shall be released forthwith, if not required in any other case.