

Jagdish Prashad Vs. State

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Court : Delhi

Decided On : May-04-1994

Reported in : 1994IIIAD(Delhi)113; 54(1994)DLT424

Judge : Jaspal Singh, J.

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

Appeal No. : Crl. Appeal No. 118 of 1991

Appellant : Jagdish Prashad

Respondent : State

Advocate for Def. : Raman Sahni, Adv.

Advocate for Pet/Ap. : R.P. Luthra, amices Curia

Disposition : Appeal allowed

Judgement :

Mr. Jaspal Singh, J.

1. There is no need to loose much breath on this case. First, a brief resume' of the facts and then on to the crucial points.

2. The prosecution alleges that on February 17, 1989 the appellant was found to be in possession of 1 Kg. & 900 grams of Charas. He was put up on trial and the learned Additional Sessions Judge finding him guilty returned a judgment of conviction and an order of sentence. Aggrieved by the said judgment and order he preferred an appeal from Jail and since he was not represented by a Counsel the Court appointed Mr. R.P. Luthra as an amicus Curiae. Mercifully he has been brief but incisive.

3. The first contention of Mr. Luthra is that neither the C.F.S.L. Form was deposited in the Malkhana nor is there any evidence as to where it was kept and that the prosecution has also not proved that it was taken to the Central Forensic Science Laboratory by the Police Officer who had taken the sample parcel to the said Laboratory. He submits that this being the position the benefit of doubt must go to the appellant.

4. Undoubtedly, Head Constable Yad Ram, Moharrar, Malkhana who has entered the witness box as (PW-7) has nowhere stated that the C.F.S.L. Form was also deposited in the Malkhana or that he had ever handed over the same to the A.S.I. Balbir Singh (PW-8) who had taken the sample parcel to the Central Forensic Science Laboratory. Even A.S.I. Balbir Singh is silent about it. My attention has been drawn to two judgments of this Court namely, Chameli Devi v. State, 1993 JCC 293 and Mool Chand v. State, 1993 (2) DL 14. Both the judgments do go to show that if the C.F.S.L. Form is neither deposited in the Malkhana nor sent to the C.F.S.L. along with the sample it would entitle the accused to benefit of doubt and acquittal. In Mool Chand's case the learned judge has placed reliance on Lachho Devi v. State, 1990 (2) CCC 395 and Anoop Joshi v. State, 1992 (2) CCC 314.

5. It has next been contended that the offer given to the appellant with regard to his search was partial. He has drawn my attention to the evidence on the record which does go to show that the only offer made to the appellant before his search was that he, if he so wished, could be produced before a Gazetted Officer for his search. There was no offer to get him searched in the presence of a Magistrate. Two judgments of this Court would go to show that this partial offer is a clear violation of Section 50 of the Narcotic Drugs and Psychotropic Substances Act.

Reference in this connection may be made to Chameli Devi v. State (supra) and Satish alias Bombaiya v. State 1991 JCC 617. Both these judgments lay down that a mere offer to get the person searched in the presence of a Gazetted Officer is a partial offer limiting the choice and that it is incumbent upon the officer concerned to offer alternative choice also and that such a partial offer would invite an order of acquittal.

In view of what has been noticed by me above and following the precedents of this Court as noticed above, I do agree with Mr.Luthra that it is a case where the appeal deserves to be allowed. The appeal, consequently, is allowed and the appellant is acquitted of the charge. Copy of the judgment may be sent to the Superintendent Jail, Delhi for information.

A word before I conclude. The Court is indebted to Mr. Luthra for the labour put in by him.

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