

Mehandi Hassan Vs. State

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Court : Delhi

Decided On : Sep-01-1996

Reported in : 1996IVAD(Delhi)315; 63(1996)DLT963; 1996(39)DRJ537

Judge : S.K. Mahajan, J.

Acts : Narcotic Drugs and Psychotropic Substances Act - Sections 50

Appeal No. : Criminal Appeal No. 159 of 1995

Appellant : Mehandi Hassan

Respondent : State

Advocate for Pet/Ap. : Mukesh Kalia and; P.K. Behl, Advs

Judgement :

S.K. Mahajan, J.

(1) By judgment dated 31st July, 1995 the appellant was convicted of the offence punishable under Section 21/61/85 of Narcotic Drugs and Psychotropic Substances Act (in short referred to as 'NDPS Act') on account of his being in possession of 500 gins. of smack and was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000.00 or in default of payment of fine to undergo further rigorous imprisonment for another one year. Being aggrieved by the judgment of the Additional Sessions Judge, the

appellant has preferred this appeal. The facts which are relevant for purposes of deciding this appeal and which resulted in the conviction of the appellant may be briefly stated as under : -

(2) That on receipt of a secret information that two persons engaged in sale of smack will pass through Ajmal Khan Road, New Rohtak Road crossing, New Delhi, a raiding party was organized which reached the spot at about 6.15 p.m.; 3/4 passersby were requested to join the raiding party, however, except one Raj Kumar no other person agreed to join the same; on pointing out of the informer at about 6.45 p.m. the appellant and one Munna were apprehended; notices under Section 50 Ndps were given to the accused and they were told that the police had a secret information about their being in possession of smack and if they wanted they could be produced before a gazetted officer or a magistrate, however, they declined to be searched before a magistrate or a gazetted officer. A wireless message was sent to Assistant Commissioner of Police, Mr.D.S.Sanga who arrived at the spot at about 7.10 p.m. On search of the appellant one polythene packet containing smack which on weighment was found to be 500 gms., was recovered from the appellant. 10 gms. of smack was taken out as a sample and the sample and the remaining smack after being putting in different pulandas were sealed with the seals of Ss and SCB; form CfsI was filled on which seals of Ss and Scb were affixed. While the Sho kept his Scb seal with him, the 1.O. handed over his seal to the independent witness Raj Kumar. Rukka along with the case property was sent to the Police Station Desh Bandlui Gupta Road for registration of Fir and the appellant was arrested. After completing necessary investigation, the challan was filed in Court. Learned Additional Sessions Judge after the completion of trial held the appellant guilty of the charges under Sections 21/61/85 Ndps Act and sentenced him to undergo rigorous imprisonment for a period of ten years and also pay fine of Rs.1,00,000.00 and in default to undergo further rigorous imprisonment for another one year.

(3) The judgment of the Additional Sessions Judge has been assailed by the appellant mainly on the ground that the link from the time of filling up of the CfsI form till the time the samples reached the laboratory, was missing and as such the possibility of tampering with the samples could not be ruled out which, according

to the appellant, itself was a ground for his acquittal. It is also averred that the sample remained in possession of the police from 16th August, 1992 till 27th August, 1992 and the seal which is alleged to have been given to independent witness Raj Kumar was admittedly given back to the Sho and, therefore, there was every possibility of the sample having been tampered with and the benefit of doubt, according to the appellant, therefore, should go to him and he should be acquitted. It is also alleged that there was non-compliance of the provisions of Section 50 of Ndps Act which are mandatory in nature and non-compliance of the said provisions is fatal to the case of the prosecution.

(4) MR.SUBHASH Chand Batra was the Sho at Ps Desh Bandhu Gupta Road at the relevant time and he stated that after the search had been made and recovery effected, 10 gms. of smack was taken as sample and the sample and remaining smack was then sealed with the seals of Ss and SCB. He further stated that while Investigating Officer gave his seal of Ss to the independent witness Raj Kumar, he kept his own seal with him. Form Cfsi was filled at the spot with seal impressions. He further stated that he took into possession the case property, form Cfsi and the seizure memo and deposited the same with Moharrir, Malkhana. In his cross-examination, no question has been put to him about his having not deposited the sample along with the Cfsi form and the seizure memo to the Moharrir, Malkhana. Constable Vijay Pal has appeared as PW-5 and stated that. on 27th August, 1992 he received one sample along with form Cfsi from Moharrir, Malkhana vide Rc No.74/21 and deposited the same with the Cfsi and that the same was not tampered With during the time it remained in his custody. In his cross-examination he has stated that in his statement under Section 161 he had not stated to the police that the sample was sealed with the seals of Ss and SCB. Constable Lal Singh has appeared as PW-5 and he has placed on record the copy of the entry of the register, Malkhana wherein the entry of the receipt of sample was mentioned.

(5) Though the Sho has stated that the sample along with the Cfsi form was deposited with Moharrir, Malkhana by the Sho and Constable Vijay Pal has stated that the sample along with the seals was delivered to him for depositing it with the Cfsi, however, in the absence of any statement by Moharrir, Malkhana about the Cfsi form having been deposited with him and delivering it to Constable Vijay Pal,

what credence can be given to these statements, is the question which arise for consideration. Moreover, whether the seal which was given to the independent witness continued to remain with him is also in doubt. PW-4, Raj Kumar who was the independent witness has turned hostile and has stated that both the seals after use were handed over to him and the same were returned at the police station. There is, therefore, a discrepancy between the statements of the Sho and that of Raj Kumar in so far as the same pertains to the seals. While the Sho has stated that he had kept his seal with him and the other seal remained with the witness, this witness stated that both the seals remained with him and the same were returned at the police station. Moharrir, Malkhana has also not stated anywhere that during the time the sample remained with him, it was not tampered with. In fact, Moharrir except proving on record the entry of register, Malkhana, has not stated anything else. In the register/Malkhana, the seizure memo has been reproduced and it is not separately mentioned that CfsI form. was deposited with the Moharrir and was given along with sample to the Constable for taking it to CFSL. In the' absence of such an entry, the Moharrir ought to have at lease stated that the CfsI form was deposited with him along with sample and was handed over to Constable Vijay Pal along with sample for taking it to CfsI In my view, the fact that the Moharrir, Malkhana has not stated that the CfsI form was handed over to Constable Vijay Pal coupled with the fact that the seals remained at the police station, the possibility of the sample being tampered with cannot altogether be ruled out. Number of judgments have been cited at the bar by Mr.Kalia in support of his contention that when the vital link between the filling up of the CfsI form till the time it reached the laboratory for analysis is missing, the possibility of the sample having been tampered with cannot be ruled out. Importance of CfsI form to prove that the sample remained intact and not tampered with has been repeatedly recognised by this Court as well as by the Supreme Court in number of cases. It will be futile to reproduce all those decisions. It was for the prosecution to prove that the sample was not tampered with during the time it remained with the police and the CfsI form is a vital piece of evidence to prove the same.

(6) In view of the above discussion, the prosecution has filed to discharge the onus and this itself in my view is sufficient to set aside the conviction of the appellant. In these circumstances, in my view, the benefit of doubt must go to the accused.

(7) N view of the above, I accept this appeal and giving the benefit of doubt to the appellant, acquit him of the offences of which he has been charged. I, therefore, direct that unless required in any other case, the appellant be released forthwith.

(8) Appeal stands disposed of.

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