

Sagir Ahmed Vs. State

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Court : Delhi

Decided On : Nov-11-1996

Reported in : 1997IAD(Delhi)1122; 1997(43)DRJ794

Judge : Jaspal Singh, J.

Acts : [Constitution of India](#) - Article 21; [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 20

Appeal No. : Criminal Appeal No. 84 of 1993

Appellant : Sagir Ahmed

Respondent : State

Advocate for Pet/Ap. : H.J.S. Ahluwalia, Adv

Judgement :

Jaspal Singh, J.

(1) The appellant has been convicted and sentenced under Section 20 of the Narcotics Drugs and Psychotropic Substances Act. He has preferred this appeal from jail and is not represented by a counsel.

(2) I would have in the first flush appointed a counsel at State expense to represent him but since, after having gone through the record, I do feel that the

appellant needs to be given benefit of doubt, the desire to save him from further agony has led me to straightaway pass this judgment.

(3) The case of the prosecution is that on 8th of January, 1991 Sub Inspector Rajeshwar Kumar received secret information and on its basis formed a raiding party which led to the apprehension of the appellant and the alleged recovery of 1,800 kgs. of Charas out of which allegedly 100 grams of charas was taken out as sample. The sample so taken and the remaining charas were put into two separate parcels and were sealed not only with the seal of the Investigating Officer but also allegedly with the seal of the Station House Officer. Ultimately, as per the prosecution, those parcels along with the C.F.S.L. form were deposited by the Station House Officer with the Moharar Malkhana. Later the sample parcel was sent to the C.F.S.L. which found the contents to be charas. What further needs to be noticed is that allegedly a witness from the public was also joined in the raiding party.

(4) Why do I feel that the appellant needs to be given benefit of doubts? The reasons are as follows.

(5) Though the Station House Officer, Inspector O.P.Sharma (Public Witness . 4) has stated that the sealed parcels along with the C.F.S.L. form had been deposited with the Moharar Malkhana and though it is borne out from his statement that the parcels before having been so deposited, had remained in his custody for sufficiently long period, he has not where assured us that during the period he was in custody of those parcels he had not tampered with the same. I feel this assurance was needed. Not only this the entry in the Register of the Manohar Malkhana Head Constable Sat Pal (Public Witness 2) goes to show the no C.F.S.L. form was deposited with him

(6) Though in the witness Bose Head Constables Sat Pal has stated that the C.F.S.L. form was deposited with him he is belied by the entries made in the Register, copy of which is Exbt.PW2/A. It further appears from the said entries (Ext.PW 2/A) that the C.F.S.L. form was not handed over to the constable who had taken the sample parcel to the C.F.S.L. I feel that this in itself is enough to entitle the appellant to benefit of doubt. Reference, in this connection may be made to

Chameli Devi v. State 1993 Jcc 293, Mool Chand v. state 1993 (2) Del L 14, Lachho Devi v. State 1990 (2) Cc Case 395 and Anup Joshi v. State 1990 (2) Cc Case 314.

(7) Yet another reason which has prompted me to give the appellant benefit of doubt is that the only witness from the public was not produced. Last but not the least, I do feel that the appellant was prejudiced in the conduct of trial. He has submitted before me that even during the trial, he was not represented by a counsel and that in any case the learned Additional Sessions Judge hurried through the trial without giving sufficient opportunity to the counsel appointed as amicus curiae to seek instructions and to prepare defense. I do feel that the grievance is not unjustified. It appears from the record that one Ms. Bobby Lal was appointed as amicus curiae to represent the present appellant during the trial. On 17th of January, 1992 she was not present till 12.40 p.m. The learned Additional Sessions Judge discharged her and appointed another counsel as amicus curiae and soon thereafter proceeded to examine witnesses for the prosecution. The newly appointed counsel at state expense consequently, cannot be said to have been provided sufficient time to effectively represent the petitioner or to be properly briefed. The appellant has informed me that the counsel so appointed did not even have the brief file, the same being with the earlier lawyer. It must have been so, and the result is borne out from cryptic ineffective, and non-incisive cross-examination of the witnesses of the prosecution. I do feel that sufficient time ought to have been granted to the counsel to seek instructions, go through the file, and prepare defense. Appointment of a counsel at state expense to represent an unrepresented accused is not a mere dressing on the salad. It is a right enshrined in Article 21 of the Constitution. On 17th of January, 1992 this salutary requirement was reduced to pulp.

(8) For the reasons recorded above, I am, as already noticed above, inclined to give the appellant the benefit of doubt. The result is that the appeal is accepted. The conviction and sentence stand set aside. The appellant consequently, be released if not wanted in any other case.