

Bhagwan Singh Vs. State

Bhagwan Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/705022

Court : Delhi

Decided On : Jul-24-1997

Reported in : 1997VAD(Delhi)193

Judge : Jaspal Singh, J.

Acts : Narcotic Drugs & Psychotropic Siubstances Act, 1985 - Sections 21

Appeal No. : Criminal Appeal No. 192 of 1992

Appellant : Bhagwan Singh

Respondent : State

Advocate for Pet/Ap. : R.P. Luthra, Adv

Judgement :

Jaspal Singh, J.

(1) It is the same stereo-typed story again. The Police Officer receives secret information, forms a raiding party, lays a picket, nabs the accused, recovers smack, takes out the sample, prepares separate parcels, applies the seals and writes down the necessary memos. Only the characters have changed. The accused this time is Bhagwan Singh. The alleged recovery is 900 grams of Charas. For a change a person from the public was also joined in the raiding party but later given up allegedly on the ground of having been won over.

(2) The learned Additional Sessions Judge has held the accused guilty under Section 21 of the Narcotic Drugs and Psychotropic Substances Act. As for me I find myself unconvinced. The reasons are as under:

(3) The Investigating Officer, Sub-Inspector Prithi Singh, tells us that the C.F.S.L. Form was filled in and that the case property was got deposited with the Moharir Malkhana by Constable Mohan Singh (Public Witness -6). However, he nowhere says that the C.F.S.L. Form was also handed over to the said Constable for getting the same deposited and/or that he had himself or through someone else got it deposited with the Moharir Malkhana. Even the extract of the Register of the Moharir Malkhana (Ex. Public Witness 2/A) nowhere speaks of deposit of the said Form either through Constable Mohan Singh or through anyone else. There is also no entry in the said Register that when the sample parcel was sent to the C.F.S.L. the Form too was sent. Even Constable Balwan Singh (Public Witness -1) who deposited the sample parcel with the C.F.S.L. says nothing about the C.F.S.L. Form. He neither says that the said Form was handed over to him nor that it was delivered by him at the C.F.S.L. Absence of evidence with regard to the C.F.S.L. Form benefits the accused. I say so on the basis of the judgments reported as *Chameli Devi v. State*, 1993 Jcc 293-, *Anup Joshi v. State*, 1992 (2) C.C. Cas 314 and *Abdul Gaffar v. The State*, 1996 Jcc 497; (1996) Ccr 478.

(4) Yet another reason which prompts me to lean in favor of the accused is the fact that the entries in the Register of the Moharir Malkhana nowhere show that the case property was deposited by Constable Mohan Singh. His name figures nowhere. Is it not sufficient to raise our eyebrows and doubt the veracity of prosecution version? But then, I am still not done with Constable Mohan Singh. Let us take it that it was he who had taken the case property from the place of recovery to the Police Station. Was it not incumbent upon him to assure the Court that so long as those parcels remained in his custody they were not tampered with in any manner No such assurance has come from him though, I feel, it was all the more necessary because, on account of non-examination of the public witness to whom reportedly the seals had been handed over after use, has not entered the witness box to assure us that he had remained in possession of the same till at least the case property was got deposited. This assumes further significance

because in the C.F.S.L. Report the typed description of the seals is 'DS & PSL' and with regard to letter 'L' of 'PSL' there is an overwriting with pen making it read 'K'. Who made this change? And, was it authorised? We are not told.

(5) Even the so-called compliance of Section 57 needs a comment. Though the information does appear to have been reduced into writing (Ex. PW5/D) we just do not know who was the officer to whom it was addressed and whether it was sent to the addressee at all. It is addressed to some 'Shrimanji' whose identity remains shrouded in mystery. But then was it really sent to that person? There is no evidence. Even in the statement under Section 313 of the Code of Criminal Procedure there is no suggestion that the information was actually dispatched and rightly so because there is no evidence to that effect. Can it be said under the circumstances, that Section 57 was actually complied with?

(6) The learned Additional Sessions Judge has laid much emphasis on the fact that the police officials have spoken of the recovery and that non-examination of the alleged witness from the public cannot, in the circumstances of the case, be considered to be fatal. He, however, regrettably glosses over what was so obvious. And, I do not think, considering the cumulative effect of what has been noticed above, that the prosecution can be said to have proved its case beyond doubt. The appeal is consequently accepted and as a result the appellant stands acquitted of the charge. Fine, if deposited, be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com