

Sham Lal Vs. State

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Court : Delhi

Decided On : Jul-29-1997

Reported in : 1997(4)Crimes328; 68(1997)DLT348; 1997(42)DRJ658

Judge : Jaspal Singh, J.

Acts : Narcotic Drugs & [Psychotropic Substances Act, 1985](#) - Sections 20

Appeal No. : Criminal Appeal No. 53 of 1989

Appellant : Sham Lal

Respondent : State

Advocate for Pet/Ap. : R.P. Luthra and; Seema Gulati, Advs

Judgement :

Jaspal Singh, J.

(1) The appellant stands convicted and sentenced under Section 20 of the Narcotic Drugs and Psychotropic Substances Act. I am inclined to accept the appeal on the following three grounds.

(2) Through the Station House Officer and so also the Investigating Officer state that after the recovery of Charas from the possession of the appellant the C.F.S.L. Form was filled in, it is clearly borne out from the statement of the Moharir

Malkhana and so also from the entries made by him in the Malkhana Register (Ex.PW 23/A) that no C.F.S.L. Form was actually deposited with him and that even when sample was sent to the C.F.S.L. that Form was not handed over to the Constable carrying the sample parcel. The position thus boils down to this that though C.F.S.L. Form may be taken to have been filled in, it can neither be taken to have been deposited with Moharir Malkhana nor can it be taken to have been sent to the Central Forensic Science Laboratory. In *Chameli Devi v. State*, 1993 Jcc 293 and *Mool Chand v. State*, 1993 (2) D L 14 ;(1993) Ccr 964, it was held by this Court 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 parcel containing the sample it would be sufficient to give the accused the benefit of doubt. In *Mool Chand's* case, referred to above, the learned Single Judge had placed reliance on two other judgments, namely *Lachho Devi v. State*, 1990 (2) C.C. Cas 395 and *Anup Joshi v. State*, 1990 (2) C.C. Cas 314.

(3) The second ground which has persuaded upon me to acquit the accused is the fact that though it is claimed that the Station House Officer was leading the raiding party and was present at the time of the alleged recovery, he did not put his own seal on the parcel prepared after the recovery. The only seal which was put on the parcel was that of the Investigating Officer. This lapse makes the prosecution version look fishy.

(4) The third ground is the joining of Amrit Lal in the raiding party. It is claimed that he joined the raiding party and witnessed the recovery. In his cross-examination he has deposed that he had not appeared as a prosecution witness in any other case. The learned Counsel for the appellant has drawn my attention to *Prakash Singh v. State*, CrI. A. 107/92 decided by this Court on 9th May, 1994 which shows that this very Investigating Officer had joined Amrit Lal as a public witness in the case of *Parkash Singh* also. The alleged recovery in *Prakash Singh's* case was prior to the alleged recovery in the present case. I may hasten to add that it was not disputed by the learned Counsel for the State that Amrit Lal who appeared as a prosecution witness in this case was none other but the same person who had appeared as a prosecution witness in *Prakash Singh's* case. It is unfortunate that the same team led by the same Investigating Officer had joined Amrit Lal in a case

under the Narcotic Drugs and Psychotropic Substances Act earlier too, and yet this fact was not admitted. This makes me raise grave suspicion against the prosecution version more so because in Prakash Singh's case it was not found that Amrit Lal was a stock witness of the police.

(5) Last but not the least, there is nothing on the record to show the compliance of Section 57 of the Act. The Investigating Officer was required, within forty-eight hours of the arrest and seizure, to make a full report of it. There is nothing on the record to prove that the required information was sent in terms of the said section.

(6) Keeping in view what has been noticed by me above I am not inclined to place reliance on the prosecution version. I, therefore, accept the appeal and set aside the order of conviction and sentence by giving the appellant the benefit of doubt. Let him be set free forthwith if he is not required in any other case. Fine, if deposited be refunded.

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