

Kamrul Haq Vs. State

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Court : Delhi

Decided On : Feb-18-2011

Judge : Sanjiv Khanna, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Section 20 (b) (ii) (C); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 428

Appeal No. : CRL. A. 941/2004

Appellant : Kamrul Haq

Respondent : State

Advocate for Def. : Mr. Pawan Sharma, Adv.

Advocate for Pet/Ap. : Ms. Rakhi Dubey; Mr. Rajmangal Kumar, Adv.

Judgement :

ORDER

1. The appellant-Kamrul Haq by the impugned judgment dated 10th September, 2004 has been convicted under Section 20 (b) (ii) (C) of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short, the Act) and by order dated 16th September, 2004 has been sentenced to rigorous imprisonment for ten years and fine of Rs.1,00,000/-. In default of payment of fine, the appellant has been directed to undergo simple imprisonment for one year. Benefit of Section 428 of the Code of Criminal Procedure, 1973 however has been granted to the appellant.

2. This appeal was adjourned repeatedly to await the decision of the Division Bench on the question, whether the percentage of THC in the seized material, i.e. Charas, was relevant or not. The Division Bench in *Dilip v. State* 2010 (4) JCC 169 (Narcotic) has held that in the case of Charas percentage of THC is not relevant for deciding whether the quantity seized is commercial quantity or not. The appellant during pendency of the appeal was released on bail vide order dated 22nd January, 2010.

3. The facts as noticed in the impugned judgment are that on 3rd January, 2010, a search party had apprehended the appellant at Shyam Giri Mandir at about 1 pm on pointing out by the informer with a bag containing Charas. It is alleged that 6 kgs. of Charas, which is a contra band, was in possession of the appellant and was seized.

4. As far as search, seizure and the arrest of the appellant are concerned, the prosecution has led evidence in form of statements of PW- 2, ACP Parvez Ahmed, PW-3, Inspector R.K. Singh, PW-9, HC Virender Kumar and PW-11, SI Arun Kumar Choudhary. The said witnesses have proved the case of the prosecution with regard to the search, seizure and arrest of the appellant. They have stated that in a bag carried by the appellant, Charas weighing about 6 kgs. was seized and out of the said Charas one sample weighing 500 gms. was separated. The seized article as well as the sample was sealed with the seal of AKC and GCD. Learned counsel for the appellant initially had urged that there is discrepancy in the statement of PW-9, HC Virender Kumar and PW-11, SI Arun Kumar Choudhary in respect of how the alleged Charas was weighed. It was pointed out that PW-9, HC Virender Kumar had stated that the alleged Charas was weighed with the help of an Electronic Scale, whereas the PW-11, SI Arun Kumar Choudhary had stated that the weighing scale which was issued was mechanical. This discrepancy according to me is not material and the counsel for the appellant did not seriously press the said point.

5. The real issue and question raised by the appellant is with regard to the production of the sample and the case property i.e. substance recovered from the appellant in the Court. PW-2, ACP Parvez Ahmed in his examination in chief, has

stated that the Charas was weighed and found to be weighing 6 kgs. The sample as well as the Charas were both sealed with the seals of AKC and GCD. CFSL form was filled up. He has stated that he had signed the recovery memo and could recognize the case property if shown to him. Thereafter, the case property as well as the sample was shown to PW-2, ACP Parvez Ahmed. He has stated as follows:-

"At this stage, one sealed parcel with the seal of AKC and GCD is opened and found charas. The same is Ex.P1, green polythene is Ex.P2.

At this stage, another sealed parcel sealed with the seal of AKC and GCD is opened and found remanat of Charas, same is Ex.P3."

6. What is apparent from the statement of PW-2, ACP Parvez Ahmed is that the case property was produced and had the seal of AKC and GCD. The same was opened and marked Ex.PW1. The polythene bag was given mark Ex.PW2. Thereafter, another parcel i.e. the sample was opened. The sample also had the seal of AKC and GCD. Thus, the sample as well as the case property both had seals of AKC and GCD.

7. There is merit in the contention of the learned counsel for the appellant that this was not possible as the case of the prosecution is that the sample along with CFSL form were sent to the CFSL Laboratory at Police Complex, Malviya Nagar, New Delhi. The CFSL Laboratory has submitted their report Ex.PW-6/H. As per the said report, after examination, remnants of the sample, were sealed with the seal of KMFSL, DELHI. The relevant portion of the CFSL report Ex.PW-6/H reads:-

"Note: After examination, remnants of the exhibit were sealed with the seal of KMFSL, DELHI."

8. The said CFSL report is signed by Mr. Kamlesh Miglani, Senior Scientific Officer, who has appeared as PW-10. Thus, it is clear from the statement of PW-2, ACP Parvez Ahmed, PW-10 Kamlesh Miglani as well as the CFSL report Ex.PW-6/H that the sample which was produced in the Court was not the same sample

which was sent to the CFSL Laboratory and which after examination/tests was returned back. The sample after testing was sealed with the seal of KMFSL, DELHI, whereas the sample which was produced in the Court had the seal of AKC and GCD i.e., the original seals which were put at the time of seizure. Mr. Pawan Sharma, learned Standing Counsel for the State could not controvert and meet the allegation with regard to the discrepancy in the seals. He, however, submitted that this appears to be a typographical error or mistake. The said contention of the learned Standing Counsel cannot be accepted as PW-2, ACP Parvez Ahmed has made a clear and categorical statement in this regard. It is difficult to accept that the statement of PW- 2, ACP Parvez Ahmed was incorrectly recorded. As noticed above, he has specifically stated that the two separate seals i.e. AKC and GCD were present on the sample which was produced in the Court and was marked Ex.PW3. If there was error or mistake, other witness could have corrected or clarified the position. This has not happened.

9. It has been rightly emphasized and highlighted that the CFSL form is required to be deposited in the Malkhana and has to be thereafter sent along with the sample to the Laboratory. At each and every stage it should be ensured that there is no tampering of the seal of the sample sent for testing. In the present case there is a doubt about the sample which was sent to the CFSL Laboratory of which report is available and the sample which was produced before the Court. It is obvious that the sample which was tested was not produced before the Court, as the sample produced in the Court does not bear the seal which was put by the Laboratory. How and why the sample with seal of AKC and GCD was produced in the court remains a mystery and unanswered. This creates a grave doubt about the sample which was sent for test to CFSL and the sample of which the report ExPw-6/H is available. In these circumstances, I feel that the appellant is entitled to benefit of doubt. Accordingly the appeal is allowed and the appellant is acquitted. Bail bond is discharged.