

Soma Vs. State

Soma Vs. State

SooperKanoon Citation : sooperkanoon.com/958123

Court : Delhi

Decided On : Feb-05-2013

Judge : Indermeet Kaur

Appellant : Soma

Respondent : State

Judgement :

R-12 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Judgment:05.02.2013 CrI. A.133/2000 SOMA Through: Appellant Ms. Charu Verma, Adv Versus STATE Through: Respondent Mr. Manoj Ohri, APP. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(oral) 1 This appeal has impugned the judgment dated 19.01.2000 of the learned Additional Sessions Judge wherein the appellant Soma had been convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) for having found to be in possession of 20 grams of smack and has been sentenced to undergo rigorous imprisonment for ten years and fine of Rs. One lac and in default of payment of fine, to further undergo simple imprisonment for two years. Benefit of Section 428 Cr.PC had been granted. 2 Record shows that on 30.04.2001, her sentence was suspended and she was admitted to bail. It was noted that there appeared to be some discrepancy in the marking of the sample; as per the investigating office, the sample seized was powder but when the property was produced in the Court, it was allegedly not so; it had also been noted that the convict had undergone imprisonment for three years and four months at

the time when her sentence was suspended. 3 Learned amicus curiae has argued one single point; submission being that the notice under Section 50 of the NDPS Act is sacrosanct and must be adhered to on all counts; submission being that this is a salutary provision which has to be complied with; it being mandatory if there is any doubt cast upon the version of the prosecution, the entire trial would stand vitiated. 4 Attention has been drawn to the notice which has been proved as Ex. PW-3/C. The said notice reads as under: Usmat Soma w/o Darshan, r/o 7083, Gali No. 9, Mata Rameshwari Nehru Nagar, Prasad Nagar, Delhi You are hereby informed that we have information that you are in possession of Smack and you shall be search for the same. If you desire so, a Gazetted officer or Magistrate shall be arranged to conduct the search. one copy received Saahab Singh, SI RTI of Smt. Sona W/o Darshan P.S.Narcotics Branch Kamla Market, Delhi 19.12.97 I do not want that my search to be conducted in the presence of Gazette Officer or Magistrate; you can take my search yourself. RTI of Smt. Sona W/o Darshan Witnesses:

1. H.C. Nar Singh 116/E, P.S.Narcotics Branch, Kamla Market, Delhi 2. L/Ct. Rajesh Bala 150/Crimes P.S.Narcotics Branch, Kamla Market, Delhi Saahab Singh, SI RTI of Smt. Sona W/o Darshan P.S.Narcotics Branch Kamla Market, Delhi 19.2.97 5 Submission being that the appellant is admittedly an illiterate lady and this is evident from the fact that she was not in a position to sign the notice and she had only thumb marked it; the mandate of the right of the accused to have her personal search conducted either by a Gazetted officer or a Magistrate has not been explained to her. To support her submission reliance has been placed upon 2011 (7) SCALE 42 State of Delhi Vs. Ram Avtar @ Rama. Submission being that on identical facts, the Apex Court had upheld the findings returned by this Court that such a notice does not fulfill the mandate of Section 50 of the NDPS Act. 6 Learned APP has countered this argument; it is submitted that this notice has stood proved in the version of PW-3 HC Narsingh and has been corroborated by the version of PW-8 SI Sahib Singh. Submission being that the right of the availability of a Gazetted officer or a Magistrate in the alternative had been duly explained to the appellant and the notice does not suffer from any infirmity. 7 A perusal of Ex. PW-3/C shows that what has been informed to the accused is an option to have her search conducted either in the presence of a Gazetted Officer

or a Magistrate. The word duly used in Section 50 of the Act connotes exact and definite compliance. This option which had been given to the appellant was only an information that if she so desired, her search could be arranged before a Gazetted Officer or a Magistrate; such an intimation cannot be treated as a communication given to the appellant informing of her right under the law i.e. her right to be searched before the said authorities. It was an obligation upon the searching officer to inform the appellant about this legal right. Such an information should be unambiguous and definite informing the suspect of her statutory safeguards. 8 In similar circumstance, in judgment of Ram Avtar (supra) where also a notice containing the same words had been served upon the appellant, the Apex Court upheld the finding returned by the High Court that such an option given to the suspect was not an exact and definite compliance of Section 50 and as the mandate of Section 50 not having been complied with, the recovery itself became illegal; the conviction and sentence were liable to be set aside. 9 The language of this provision of statute is plain and simple. The legislative intent is that compliance with these provisions is imperative. In the present case, Ex. PW-3/C not complying with the mandate and requirement of Section 50 and especially so in a case when the appellant is an illiterate lady which fact had been confirmed that she had only thumb marked on the notice and the investigating agency having not explained this sacrosanct legal right to her, the conviction cannot be maintained. The appellant is accordingly entitled to an acquittal. She is acquitted. 10 This Court appreciates the assistance rendered by Ms. Charu Verma, learned amicus curiae who had been appointed by this Court to render assistance in the matter. 11 Appeal is allowed in the above terms. FEBRUARY 05 2013 A CrI. Appeal No. 133/2000

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