

(1993) 02 DEL CK 0058

Delhi High Court

Case No: Criminal Appeal No. 152 of 1990

Bal Kishan @ Babu Alam

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Feb. 12, 1993

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21

Citation: (1993) 49 DLT 673 : (1993) 2 RCR(Criminal) 113

Hon'ble Judges: R.L. Gupta, J

Bench: Single Bench

Advocate: K.K. Sud, Meenakshi Jain and R.D. Jolly, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This appeal has been filed by the appellant against his conviction and sentence u/s 21 of the Narcotic Drugs and Psychotropic Substance Act (hereinafter referred to as the NDPS Act) for being found in possession of 20 grams of heroin. He was sentenced to undergo Ri for 10 years and fine of Rs. one lac or in default of payment of fine to suffer Si for one year.

(2) The brief facts leading to the prosecution of the appellant are that on 10.6.1987. S.I. Mahavir Singh along with Constable Rishi Pal of Police Station Paharganj were patrolling the area in their police station. When they reached Manji Chock via Vasant Road, two more constables, namely, Jagbir and Ram Pal joined them. While they were near Train Tickets Examiners rest house at 4.15. p.m a secret information was received by the S.I that a known bad character of the area, namely, Babu Alam would come there between 4.30 and 5 p.m. and deliver some smack to Prem Chadha Compounder of Railway Hospital. This information was record and a raiding party was organized comprising of the police officials alone accompanying him because five/six passersby requested to join the raiding party declined. Thereafter, they held a Nakabandi on the back side of Railway Hospital in a Power house

sub-station. At about 4.40 p.m. the appellant already known to the S.I. came there from back gate of the Railway Hospital. The raiding party emerged in its verandah from hiding. On seeing them the appellant started running towards the side of wall of Karnail Stadium. He was over-powered. He was informed that there was some secret information against him and S.I. told him that if he desired he could be searched before an Acp or other gazetted officer. The appellant declined the offer. The S.I. then offered his own search which was also declined. Sho Paharganj came to the spot at about 4-50 PM. The S.I. informed him of the incident. The Sho also made an offer whether appellant would like to be searched in the presence of a gazetted officer or Acp, Paharganj. It was also declined by the appellant. Then personal search of the appellant was conducted by S.I. Mahavir Singh which yielded recovery of a Puria of wax paper of white colour from the right pocket of the pant worn by the appellant. It was found to be a white powder of heroin weighing 20- grams. One gram of heroin was separated as sample. The sample and remaining heroin were separately put into two parcels duly sealed with the seal of MSL belonging to S.I. Mahavir Singh. The Sho also affixed his seal with seal impression VM. Form CFSL was also filled up and the seal after use was banded over to Constable Jagbir Singh. The S.I. also put his seal impression on both the PURIAS as well as Form CFSL. Both the sealed parcels were taken by the SHO for being deposited in safe custody. Rukka Ex. PW6/B was sent from the spot for registration of the case whereupon a formal Fir, carbon copy of which is Ex. PW1/A was recorded at the police station by the duty officer PW-1. The sample was sent to CFSL, Form where the report Ex. PW6/D was received indicating that the sample gave positive test for heroin.

(3) I have heard arguments advanced by learned Counsel for the parties. PW-2 Jagir Singh was a member of the raiding party who deposed that after recovery of the smack weighing about 20 grams, one gram was separated as sample. Both the sample and the remaining smack were converted into two separate parcels and sealed with the seal impression MSL belonging to the 10 and Vm belonging to the SHO. The seal of the 10 was given to him while the Sho retained his own seal. Form CFSL was also prepared at the spot and both sample seal impressions were affixed on that. Similarly PW-3 Constable Rishipal deposed about the preparation of the CFSL form and affixing of seal impressions thereon. PW-6 is the Investigation Officer and he also made a similar statement. However, PW-4 SI Sardar Singh who was posted as Moharrar Malkhana stated that the two packets containing the case property and the sample duly sealed with the seal impressions MSL and Vm were deposited with him by the SHO. He does not state if form CFSL was also deposited along with the case property. Similarly PW-3 Constable Rishipal Singh who stated that he had carried the sealed sample packet of this case from Moharrar Malkhana does not state if, CFSL form handed over to him by the Moharrar Malkhana. On the other hand he says that CFSL form was given to him by the 10. It is clear from the above evidence that the 10 did not deposit the CFSL form with the Moharrar Malkhana. Rather he handed over the same to Constable Rishipal Singh at the time

he took- the sample parcel to CFSL. 10 on the other hand does not depose that he gave CFSL form to Constable Rishi Pal Singh. It has been laid down in a number of authorities by this Court that when it is not shown by the prosecution that CFSL form was not deposited in the Malkhana, the possibility of the sample parcel being tampered with cannot be ruled out. Learned Counsel for the appellant has drawn my attention to some Authorities of this Court. These are Lachho Devi v. State, 1990(2) C.C. 395, Anoop Joshi v .State , CC.Cases314 and Safiullah v State (Delhi Administration), 1993(1) Cri 204. In all these cases the accused was given benefit of doubt on account of the fact that CFSL form was neither deposited with the case property in the Malkhana nor taken to CFSL Along with the sample parcel. Following these authorities" I also acquitted Moolchand in Cr.A. 82/91 on 8.2.93 only. In the present case the situation is rather worse. The occurrence in this case is of 10.6.87 while the sample parcel was taken to CFSL on 16.6.1987. The 10, S.I. Mahavir Singh does not say that he handed over the CFSL form to Constable Rishipal Singh. Therefore, it is not known in what manner Constable Rishipal Singh came to possess the CFSL form.

(4) Since the appeal can be disposed off on this ground alone, the other contentions raised by learned Counsel for the appellant need not be gone into.

(5) The result, Therefore, is that this appeal is allowed. The appellant is given benefit of doubt and acquitted. He will be set at liberty if not wanted in any other case or proceedings.