

(1999) 10 PAT CK 0082

Patna High Court

Case No: Criminal Application No. 122 of 1991

Kalika Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Oct. 5, 1999

Acts Referred:

- Customs Act, 1962 - Section 107
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 23

Citation: (2000) 1 BLJR 266

Hon'ble Judges: Narendra Narayan Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Narendra Narayan Singh, J.

This Criminal Appeal No. 122 of 1991 is directed against the judgment of conviction and order of sentence passed on 27-2-1991 in Sessions Trial No. 621 of 1989 by which 2nd Addl. Sessions Judge, Muzaffarpur convicted the appellant Kalika Prasad u/s 23 of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred as the Act) and sentenced him to undergo rigorous imprisonment for ten years and also to pay a fine of one lakh and in default to pay fine, to undergo further R.I. for six months.

2. Prosecution case in brief is that on 26-10-88 on getting secret information, Customs staff of Muzaffarpur intercepted this appellant at Bairia Bus Stand and on search of his person, 350 grms. of brown sugar (Heroin) valued at Rs. 7,50,000 was recorded from his "Langotia". Further, the case of prosecution was that the statement of this appellant was recorded u/s 107 of the Customs Act before two independent witnesses and the accused was also interrogated by the Assistant Collector of Customs (P), Muzaffarpur and Complaint Case No. 31 /89 was filed in the Court of Chief Judicial Magistrate, Muzaffarpur and after commitment of the case,

the appellant was put on trial and was convicted aforesaid.

3. The defence of the appellant was that he was falsely implicated in this case.

4. Prosecution examined altogether five witnesses in support of its case out of whom P.W. 4 Indradeo, a constable of Directorate of Revenue Intelligence, Muzaffarpur and P.W. 5 Yatindra Bhushan Prasad, an officer of the Customs Department who was then posted at Muzaffarpur were tendered for cross-examination. P.W. 1 is Raghubansh Bhushan Singh, Inspector, in the Preventive Unit of Muzaffarpur Division and P.W. 3 is another Customs Inspector, Radhika Raman Das. P.W. 2 is Sudhir Kumar, a student who is seizure-list witness. The learned Trial Court has discussed the evidence of P.W. 1 in paragraph-5 of its judgment in which he stated that on getting confidential information, he along with Yatindra Bhushan Prasad P.W. 5, R.R. Das P.W. 3 and a constable Indradeo P.W. 4 visited Bairia Bus Stand, Muzaffarpur where he met this appellant, who, on interrogation, disclosed his name as Kalika Prasad @ Ram Prasad. P.W. 1 further stated that presence of two independent witnesses Bidyanand Singh and Sudhir Kumar (P.W. 2) in whose presence three pockets concealed beneath his "Langotia" were recovered which were seized by him and a seizure list as was prepared (Exhibit-I). P.W. 2 Sudhir Kumar had supported the evidence of P.W. 1 and stated that three pockets were recovered which were concealed in the "langota" of this appellant and seizure List was prepared. P.W. 1 stated that took the three packets recovered from the possession of this appellant marked as Exhibit-I and the said "Langota" in which those three pockets were concealed was marked as Exhibit-II. The trial Court had also discussed the chemical report of Forensic Science Laboratory marked as Exhibit-5 in which it was reported that after, examination of the seized articles, it was found to be "Heroin" which is "Diacetyl Derivative of Morphine". Heroin is a contraband narcotic and is highly addictive intoxicant. Heroin is a contraband narcotic and is highly addictive intoxicant.

5. The trial Court discussed the evidence of P.W. 2 in paragraph-6 that of P.W. 3 in paragraph-7 of its judgment and held that this appellant was guilty of offence punishable u/s 23 of the N.D.P.S. Act. In paragraph-10 of its judgment, the trial Court also discussed the possibility of implication as alleged and rightly held that it was not a case of false implication. Learned Counsel for the appellant contended that this appellant is in custody since 26-10-88 and that at the time of judgment, the appellant was aged about 71 years. Learned Addl. P.P. submitted that this appellant, being a resident of Barabanki, had no business to be here and there is no possibility of his false implication.

6. In the facts and circumstances of the case, discussed above, I do not find any merit in this appeal. Accordingly, this appeal is dismissed.