

(2008) 08 DEL CK 0164**Delhi High Court****Case No:** Criminal Appeal No. 2 of 1994

Mr. Paramjit Singh @ Pammi

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 1, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21, 22, 42, 43, 50

Citation: (2008) 154 DLT 524**Hon'ble Judges:** Manmohan, J**Bench:** Single Bench**Advocate:** Lokesh Kumar, for the Appellant; Manoj Ohri, APP, for the Respondent**Final Decision:** Dismissed**Judgement**

Manmohan, J.

The present appeal has been filed seeking to set aside the judgment and order dated 19th October, 1993 passed by learned Additional Sessions Judge, Delhi Mr. Kuldeep Singh arising out of FIR No. 42/1988 registered with PS Hauz Quazi, Delhi.

2. Relevant facts of this case are that on 21st February, 1988 at about 2 pm when SHO Mr. Ram Singh Chauhan PW-3 along with ASI Ajit Singh, Investigating Officer PW-8 were on patrolling duty, they received secret information that a sardar carrying smack wearing a black coloured turban and coca cola coloured jersey, would come from Jama Masjid♦s side and proceed towards Farash Khana.

3. At about 2.20 pm a raiding party was formed and a nakabandi of the area was carried out. The prosecution♦s version is that a number of passersby were asked to join the raiding party as independent witnesses, but as the shops in the area were closed on account of holiday only Mr. Gopal Singh PW-4, a TSR Driver agreed to join the raiding party.

4. At about 2.45 PM the Appellant/Accused was seen walking on the Chawri Bazar road with a blue coloured raxene bag in his right hand. On being identified by the informer, the Appellant/Accused was apprehended and he was given an option to be searched before a Gazetted Officer or a Magistrate in accordance with Section 50 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the NDPS Act). However, as the Appellant/Accused did not give any response to the search option, SHO Mr. Ram Singh Chauhan requested ACP Baljit Singh PW-6 to reach the spot. At about 3.15 pm the ACP reached the spot and once again gave an option to the Appellant/Accused to be searched in the presence of a Magistrate, but as the Appellant/Accused refused the said option, the ACP who is a Gazetted Officer, recorded this refusal. A certificate to that effect issued by ACP Baljit Singh is marked Ex. PW-3/A.

5. Thereafter the bag of the Appellant/Accused was searched and it was found to contain four packets of heroin, weighing one kilo gram each. After drawing samples of five grams from each of the packets, the remaining smack/heroin along with each of the four sample packets were sealed with the seals of ASP and RS of ASI Ajit Singh and SHO Ram Singh respectively. While the seal ASP was handed over to Ct. Jai Singh PW-5, the Second seal of RS remained with SHO Ram Singh himself.

6. Admittedly, a CFSL form was immediately filled at the time of search. Even Rukka which is exhibited as Mark A and which is the basis on which the First Information Report No. 42/1988 was registered, mentions that a CFSL form was filled. The Appellant/Accused was arrested under Sections 22, 61 and 85 of the NDPS Act and according to the prosecution, the case property namely sealed samples, sealed packets of heroin and accompanying documents were deposited in Malkhana on 21st February, 1988 at 5.45 PM. However, Register No. 19 was only signed by the Investigating Officer and not by the SHO.

7. On 22nd February, 1988 the Appellant/Accused was produced before a Magistrate and was remanded to custody. On 23rd February, 1988 the four seized samples were deposited for analysis and verification with the office of CFSL by HC Jai Singh.

8. On 18th March, 1988 the CFSL in its report stated that the four samples had tested positive for heroin. After receiving the said report the police filed a challan against the Appellant/Accused.

9. During the trial, the prosecution examined eight witnesses namely Duty Officer SI Dharam Singh PW-1, Malkhana Moharrar Ct. Jaswant Singh PW-2, SHO Inspector Ram Singh Chauhan PW-3, Mr. Gopal Singh PW-4, Ct. Jai Singh PW-5, ACP Baljit Singh PW-6, Ct. Suraj Pal PW-7 and IO ASI Ajit Singh PW-8. The Appellant/Accused did not lead any evidence but in his statement u/s 313 Cr. P.C. claimed that he had been falsely implicated.

10. On 19th October, 1993 the trial court convicted the Appellant/Accused under Sections 21, 61 and 85 of the NDPS Act and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of rupees two lakhs, in default whereof undergo rigorous imprisonment for three years.

11. Mr. Lokesh Kumar, learned Counsel for Appellant/Accused challenges the impugned judgment firstly on the ground that PW-4 Mr. Gopal Singh was not an independent witness. Learned Counsel contends that the fact that the Investigating Officer went to Dehradun to bring the independent witness for deposition before the trial court as well as the contradiction in the evidence of the Investigating Officer and the independent witness as to how he was asked to join the raiding party clearly shows that PW-4 was a person known to the police officer and not an independent witness. In this context, Mr. Lokesh Kumar relied upon the cross examination of Mr. Gopal Singh PW-4.

12. However, on a reading of entire evidence on record this Court is of the view that PW-4 was an independent witness who had been selected to join the raiding party at the nakabandi site. The Investigating Officer Mr. Ajit Singh PW-8 in his evidence has specifically deposed that on 21st February, 1988 the shops were closed on account of a holiday. He has further stated that five or six persons at the site were asked to join the raiding party but only PW-4 had agreed. PW-8 has even mentioned the name of some of the persons who had refused to join the raiding party as an independent witness. This deposition has been corroborated not only by Mr. Gopal Singh PW-4 but also by the SHO Mr. Ram Singh Chauhan PW-3. This Court is also of the view that even if the Investigating Officer had gone to Dehradun to bring Mr. Gopal Singh to depose before the Court, it would not prove that PW-4 was a planted witness of the Investigating Officer. In fact the Apex Court in [P.P. Beeran Vs. State of Kerala](#), has held that there is no mandatory requirement of having public witnesses in an NDPS case. The Supreme Court has further held that if the evidence of the Police Officer inspires confidence, then even if it is not corroborated by any other source, it can nonetheless be made sole basis for conviction.

13. Mr. Lokesh Kumar next argued that the police version of search and seizure on 21st February, 1988 was contrary to human conduct inasmuch as it is impossible that after apprehending the Appellant/Accused at 2.45 pm the police did not search his bag till the ACP reached the spot. This contention of the Appellant/Accused also does not impress this Court as firstly the time gap between the apprehension of the Appellant/Accused and the search of the bag in ACP's presence is only about half-an-hour and secondly from the evidence on record it is apparent that immediate search was not carried out as the raiding party wanted to ensure that the rights of the Appellant/Accused u/s 50 of the NDPS Act are not violated. In fact the course adopted by the Police of conducting a search in presence of the ACP needs to be commended.

14. Mr. Lokesh Kumar further submitted that there was non-compliance of Section 55 of the NDPS Act inasmuch as the case property was deposited by ASI Ajit Singh on 21st February, 1988 and not by the SHO Ram Singh Chauhan as mandated by the said provision. In this context, Mr. Lokesh Kumar referred to and relied upon the extract of Register No. 19.

15. This Court is of the opinion that this submission is contrary to facts inasmuch as firstly the Inspector Ram Singh Chauhan PW-3 in his evidence-in-chief and cross examination has emphasized that in his presence the case property had been deposited in the Malkhana. Even HC Jaswant Singh PW-2 who was the then Malkhana Moharrar of Police Station Hauz Quazi has specifically deposed that on 21st February, 1988 the SHO Mr. Ram Singh Chauhan accompanied with the IO ASI Ajit Singh had come to Malkha at 5.45 pm and deposited the case property. In fact, there is no statutory requirement that both the SHO and IO must sign the Register 19. The Apex Court in Ouseph v. State of Kerala reported in (2004) 10 SCC 647 as well as in Babubhai Odhavji Patel, Vs. State of Gujarat, has held that provisions of Section 55 are not mandatory but only directory. In any event, this Court is of the view that just because the name of SHO is not mentioned in column No. 3 of Register 19 does not mean that he was not present at the time the case property was deposited in Malkhana, specially when there is oral testimony to this effect.

16. Mr. Lokesh Kumar next submitted that in the present case there was non-compliance of Section 42 of the NDPS Act. According to Mr. Kumar even though the Investigating Officer had received prior secret information that the Appellant/Accused would be carrying smack, yet he had neither reduced the said information in writing nor sent the same to his immediate superior. This submission of Counsel for Appellant/Accused is untenable in law as in the present case the search was carried out in a public place. The Apex Court in State of Haryana Vs. Jarnail Singh and Others, has held, ◊ The requirement of the proviso to Section 42 was also not required to be complied with since the recovery was made at a public place and was, therefore, governed by Section 43 of the Act which did not lay down any such requirement.◊ Consequently the provisions of Section 42 of the NDPS Act would not apply to the present case.

17. Mr. Lokesh Kumar lastly submitted that vital link evidence was missing as the prosecution failed to prove that CFSL form was deposited along with the case property at Malkhana and further that the said form was sent along with the samples to CFSL. Mr. Kumar also pointed out that seals of ◊APS◊ and ◊RS◊ remained in possession of the raiding party and were neither handed over to the independent witness nor deposited in the Malkhana. Learned Counsel for the Appellant/Accused referred to the evidence of HC Jaswant Singh Malkhana Moharrar PW-2 as well as deposition of Ct. Jai Singh PW-5 to show that while ◊RS◊ seal remained with the SHO, the ◊APS◊ seal was handed over by the Investigating Officer to Ct. Jai Singh PW-5 who in turn had delivered/deposited the samples with

CFSL for examination. The endeavour of learned Counsel for Appellant/Accused was to show that in such circumstances tampering of seized products could not be ruled out and therefore the Appellant/Accused was entitled to benefit of doubt. In this connection, learned Counsel for Accused/Appellant referred to and relied upon following judgments:

- a) Safiullah v. State (Delhi Admn) reported in I (1993) CCR 161;
- b) Mool Chand Vs. State,
- c) Pradeep Kumar v. State reported in 1990 C.C.C. 69;
- d) Shankaria @ Shankar v. The State (Delhi Admn.) reported in 1994 (4) Del Law 225;
- e) Ramdayal Bishnol Vs. State,
- f) Karam Chand v. The State reported in 2006 I AD (Delhi) 1; and
- g) Lachho Devi v. State reported in 1990 (2) C.C.C. 395

18. Learned Counsel for State, Mr. Manoj Ohri has painstakingly taken this Court through the evidence of SHO Mr. Ram Singh Chauhan PW-3, Ct. Jai Singh PW-5, Investigating Officer PW-8 to contend that a CFSL form was contemporaneously filled up at the time of search and seizure and further the said form had been deposited with the Malkhana Moharrar. According to Mr. Ohri, Register 19 is a mere repetition of the recovery memo and non mention of CFSL form in the said Register is irrelevant.

19. Mr. Ohri relied heavily on the report of CFSL wherein under the heading ◊Description of Articles and Conditions of Samples◊ the CFSL has remarked, ◊received four sealed parcels with seal intact ◊ASP◊ and ◊RS◊ as per official specimen enclosed◊. Mr. Ohri submitted that as long as the CFSL endorsement says that seal on the sample parcel tallied with specimen seals, it would mean that the seals on the parcels tallied with the seals on the CFSL form. Mr. Ohri also referred to the trial court observation, while recording the evidence of Inspector Ram Singh Chauhan, PW-3, that a sealed packet duly sealed was opened and it was found to contain smack.

20. Mr. Ohri further contended that even though the Investigating Officer had given his seal to constable Jai Singh, PW-5 who had carried the samples from Malkhana to CFSL, but the other seal, namely, ◊RS◊ had always remained with the SHO. He contended that as both the seals never remained in possession of a single Police official, there was no possibility of tampering with the samples. Mr. Ohri also submitted that there was no legal obligation on the Police to hand over its seals to an independent witness or to discard old seals. He further referred to the facts of the case to submit that events had moved at such a fast pace that the Police did not have any opportunity, even if they wanted, to tamper with the sample sent to CFSL for testing. Lastly, Mr. Ohri submitted that as there was no suggestion during

cross-examination that the Police officials were hostile to the Accused, this Court should not examine the issue of tampering of seals. In this context, Mr. Ohri relied upon the following judgments:

(a) Rameh Kumar Rajput @ Khan v. State, NCT of Delhi bearing Criminal Appeal No. 755/2004.

(b) Rameshwar Vs. State,

(c) Shamim v. State of Delhi, being Criminal Appeal No. 161/2000.

(d) Siddiqua v. Narcotic control Bureau reported in 1 (2007) DLT (Crl.) 481.

21. This Court is of the view that a mere omission on the part of a witness to state that along with the sample parcels, he took the CFSL form is not fatal. This is more so, when there is oral evidence not only by the Investigating Officer and SHO but also by the carrier of the samples that a CFSL form was filled up at the stage of seizure and the said form had been deposited with the Malkhana Moharrar. Even the CFSL by way of a written certificate had confirmed that the seals on the sample parcel tallied with the specimen seal. It is pertinent to mention that there is no cross-examination of the SHO and Constable Jai Singh, the carrier of the samples, on the deposit and carrying of CFSL form.

22. Moreover, keeping in view the facts that firstly there is no allegation of animosity, secondly there is no delay in sending the samples to CFSL and thirdly the Appellant/Accused has been found in possession of a very large quantity of heroin, this Court is of the view that the Appellant/Accused is not entitled to any benefit of doubt.

23. As far as non-deposit of seals is concerned, this Court is of the view that as held in Siddiqua (supra), there is no provision in the NDPS Act which makes it mandatory either to hand over the seals to any independent witness or to discard the old seals. The object is to ensure that seals of samples are intact and they tally with the seals placed at the time of search. In the present case, the CFSL report proves beyond doubt that the seals were intact and had not been tampered with. This Court is also of the view that the Appellant/Accused cannot urge that the seals had been tampered with as in the cross-examination of the prosecution witness it has not even been so remotely suggested.

24. There is no discrepancy or any other fact on record which throws any doubt on the Prosecution's case. In fact the prosecution has been able to prove its case beyond doubt.

25. Before concluding, this Court would like to place on record its appreciation of the manner in which both the learned Counsel had argued the matter with precision and clarity.

26. In the result, the present appeal being devoid of merit is dismissed and the bail bonds of Appellant stand cancelled.