
(1993) 04 BOM CK 0025

In the Bombay High Court

Case No : Criminal Appeal No. 286 of 1991

Babita alias Tai Mohan Shardul

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-04-1993

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8

Citation : (1994) CriLJ 792

Hon'ble Judges : Manoj Kumar Mukherjee, J; M.G. Chaudhari, J

Bench : Division Bench

Advocate : A.P. Munderggi and Mrs. Achala Saxena, for the Appellant; R.Y. Mirza, Asst. Public Prosecutor, for the Respondent

Judgement

M.K. Mukherjee, C.J.—In this appeal an order of conviction and sentence recorded against the appellant u/s 8(c) read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("Act" for short) by the learned Additional Sessions Judge, Greater Bombay, is under challenge.

2. The case of the prosecution, so far as it is relevant for disposal of the instant appeal, is as under :

(a) In the morning of April 5, 1990, V. S. Salaskar (P.W. 7), a Police Sub-Inspector attached to Narcotic Cell of C.B., C.I.D. left for C.S.T. Road, Kurla to work out an information along with a police party which included Head Constable K. N. Panchmukh (P.W. 1), and a lady constable, two panch witnesses, namely, T. T. Jadhav (P.W. 2) and Mrs. P. R. Rajbhat (P.W. 3) and the informer. Reaching a place near a "Buddha Mandir" on that road, they found a man collecting money from the persons who were coming to him and handing over something to them. They further found him handing over the money to the appellant who was keeping the same in a plastic bag which was with her. Suspecting that some business in brown sugar was going on they apprehended both the appellant and the man. After interrogating them, they searched the bag of the appellant. Besides a sum of Rs. 20,078/-, a plastic packet containing 50 gms. brown sugar

was found therein. A plastic vial containing brown sugar and other articles were found in possession of the man. Out of the 50 gms. brown sugar seized from the appellant, two samples of 5 gms. each were taken and they were separately packed, sealed and labelled with the signatures of the panch-witnesses. The balance brown sugar was also packed, sealed and labelled in the same manner. Similar exercise was done in respect of the brown sugar and other articles recovered from the other accused. The appellant and the other accused were then arrested and taken to the police station where a case was registered against them.

(b) In course of the investigation, samples of the seized brown sugar were sent to the Forensic Science Laboratory for analysis. As the analysis report showed that the samples contained heroin, a charge-sheet was submitted against the appellant and the other accused (since acquitted).

3. The appellant pleaded not guilty to the charge levelled against her and contended that no heroin was recovered from her possession. It was further contended on her behalf that no search and seizure in the manner alleged by the prosecution was conducted at the place and time mentioned above.

4. In support of its case, the prosecution examined 7 witnesses but no one was examined on behalf of the appellant. In detailing the manner in which the search was conducted and heroin was recovered from the appellant, it was stated by P.W. 2 one of the two panch-witnesses, that appellant No. 1 was apprehended with a yellow bag in her hand. In the said bag there were a large number of currency notes and a plastic packet containing powder which gave a peculiar odour. Some powder by way of sample was taken from the packet and when treated by putting some drops of chemical on it by the police officers, it turned to chocolate colour. The packet was then weighed and found to contain 50 gms. of powder. Two samples of 5 gms. were then taken from the said packet and put into two packets which were sealed and labelled separately. The balance of 40 gms. was kept in a third packet and sealed and labelled separately. Thereafter, his signature and that of the other lady panch-witness were taken on each of the packets.

5. When the sealed packets were opened in Court along with their wrappers P.W. 2 identified them and they were marked Exhibit 9 (collectively). He also proved his signatures on the labels. In cross-examination when Exhibit 9 with the seals were shown to him, he admitted that all the five seals were put on the said wrapper, after the plastic packet containing powder was put inside, at the same time on the spot. When his signatures along with that of lady panch witness were shown, he further stated that the signatures by the police officers on those papers were also made in his presence at the spot. He asserted that the Marathi writing on the label having marked "A" (the packet containing balance 40 gms.) and having panchas signatures were also written at the spot.

6. Evidence of this witness therefore, clearly shows that whatever was written on

the labels of the packets, which were placed within the wrappers, was written at the spot, namely, where the appellant was apprehended, and the brown sugar was recovered and seized. Surprisingly, however, we find that on all those labels, the Crime Register number of the case registered over the seizure as also the Muddemal number under which the seized goods was registered in the Muddemal Register of the Police Station Malkhana have been written in Marathi. Having regard to the fact that when the police party went to work out the information they could not have known that they would be successful therein and, for that matter, commission of an offence under the Act would be detected, the find of the crime register number and muddemal register number is rather suspicious.

7. To explain this glaring circumstances, which makes the story of seizure wholly unreliable, P.W. 7 wanted us to believe that the crime register number was obtained telephonically before they proceeded for the raid. If the above explanation of P.W. 7 is taken to its logical conclusion it would mean that even if no recovery was made, the police station would have to record a blank entry against the serial number in question in the crime register. The other fallacy in the explanation is that if some one intended to register a cognizable case in the interregnum between the time of furnishing of the telephonic information and the successful conduct of the raid, the sequence of running numbers would not be maintainable in the crime register, a situation which cannot be envisaged.

8. We hasten to add that even if this explanation was considered as a plausible one there is no explanation whatsoever as to how the Muddemal number also finds its place on the labels of the samples seized, for, admittedly, Muddemal numbers are given only after seized articles are produced in the Malkhana and relevant entry is made in the Muddemal Register.

9. While on this point it is also interesting to note that P.W. 7 gave an altogether different version as regards the writing of the crime register number and Muddemal number on the labels. According to him, except the crime register number and the Muddemal number, other details on the labels were written at the time of seizure of the contraband articles. This explanation again is totally baseless as, according to the prosecution itself, the wrappers and the packets therein were being opened for the first time in Court since the seizure. There was no occasion, therefore, for the crime register number and Muddemal number finding place on the labels except on the spot where the seizure was effected.

10. In the context of the above discussion the contention of the appellant that the articles were not seized in the manner alleged by the prosecution cannot be said to be an unreasonable one.

11. On the conclusion as above, we allow this appeal, set aside the order of conviction and sentence passed against the appellant and acquit her. Let her be released forthwith, unless wanted in any other case.

12. Appeal allowed.