

(2009) 02 DEL CK 0210

In the Delhi High Court

Case No : Criminal M.C. 1731 of 2007 and Criminal M. 6050 of 2007

Customs

APPELLANT

Vs

Ahmad Urukapa

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0210

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Satish Aggarwala, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—This revision petition arises from the judgment dated 08.05.2006 passed by Special Judge, NDPS directing the prosecution to bring the case property along with the weighing machine for sending the sample for re-test. The Customs has come up in revision against the said order.

2. The Counsel for the accused/respondent had relied upon the judgment rendered by this Court in Nihal Khan v. State 2007(1) JCC Narcotics 37 while seeking re-test of the sample before the learned trial court. The said judgment, however, only holds that there is no bar for the accused to move for retesting, but at the same time, it does not mean that every application moved by the accused must automatically result in the Court allowing the same. In the instant case, however, there appears to be justification for passing the order for retesting in view of the fact that according to the Customs, a sample of 2 grams was drawn whereas as per the CRCL report, the sample was found to be 0.52 grams only, i.e., 25% only. Then again, the recovered substance was referred to as light brown coloured powder whereas on opening it was found to be solid black coloured substance.

3. The Learned Counsel for Customs has relied upon DRI v. Vinod Kumar 2004 (3) JCC 1710, but as noticed by the learned Additional Sessions Judge the said

judgment had been referred to in the judgment of Nihal Khan by this Court.

4. Keeping in view the totality of the facts and circumstances of the case, I do not find any infirmity in the impugned order. The petition is accordingly dismissed.