
(2013) 04 DEL CK 0181

In the Delhi High Court

Case No : Criminal M.C. No. 4158 of 2012

DRI

APPELLANT

Vs

Emmanuel Chilkezie

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 2 JCC 69

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Satish Aggarwala and Mr. Sushil Kaushik, for the Appellant; Manih Kumar Khanna, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Impugned order of 26th September, 2012 directs fresh samples to be drawn from remaining contraband substance for re-testing on CRCL as the CRCL form discloses the gross weight of the sample as 9 gms whereas according to prosecution, the sample is 5 gms. Learned counsel for petitioner urges that in view of Apex Court's decision in Thana Singh Vs. Central Bureau of Narcotics, there has to be cogent reasons for ordering re-testing by the concerned courts and the application for re-testing has to be made within 15 days of the receipt of the test report. Learned counsel for respondent points out that the impugned order has been passed prior to the decision of the Apex Court in Thana Singh (supra) and so, the bar of fifteen days cannot be applied retrospectively. It is true that in view of the Apex Court's decision in Thana Singh (supra) the decisions of this Court in Nihal Khan Vs. The State (Govt of Nct of Delhi), ; Anil Kumar Vs. Narcotics Control Bureau, and Mathar Khan v. DRI, Criminal Revision Petition No. 45/2012 decided on 28.03.2012 no longer hold good. The ratio of recent Apex Court's decision is that cogent reasons have to be forthcoming to allow re-testing.

2. At the hearing, learned counsel for respondent has drawn the attention of this Court to paragraph No. 12 of the impugned order, which reads as under:-

However, as far as the above difference between the weight of the sample taken at the spot and that received in the CRCL is concerned, it is observed that the gross weight of the sample, i.e. weight of the sample heroin with polythene pouch; is mentioned therein as 9 gms. Since, admittedly the sample taken at the spot was of 5 gms and it was kept only in one small polythene pouch, which was further sealed in paper envelope, the above difference in the weight of the sample appears to be very huge as a sample of 5 gms could only have been taken by the Seizing Officer on a digital weighing scale and not on any manual weighing scale. Even if the weight of the empty polythene is included in the above gross weight of the sample given to be 9 gms in the above report in Section II of the test memo Ex. PW6/B, the above difference in the weight still remains large and material as PW6 has also stated in his cross examination that the weight of the empty polythene pouch may only be 1 or 2 gms, though subsequently, he has also tried to explain the above difference in weight by saying that the weight of the empty polythene pouch of this case may be above 1 or 2 gms, due to the big size of the polythene. However, his above explanation may not be acceptable as in that eventuality, PW6 or the other experts assisting him in the testing process should also have mentioned the net weight of the sample as the above difference was not marginal and the Ex. PW6/B is almost double of the weight of the sample taken at the spot.

3. Upon hearing both the sides and on perusal of impugned order and the material on record, while applying the ratio of Apex Court's decision in Thana Singh (supra), I find that reasons as disclosed in paragraph No. 12 of the impugned order, noted hereinabove, are cogent ones and justified the retesting of the contraband substance. In view of aforesaid, I find no perversity in the impugned order and as such, this petition is dismissed while not commenting on the merits of this case lest it may prejudice either side at trial.