

(1997) 10 DEL CK 0045

In the Delhi High Court

Case No : Criminal Appeal No. 275 of 1996 and Criminal Miscellaneous Appeal No. 5502 of 1997

Satinder Singh

APPELLANT

Vs

The State (National Capital Territory of Delhi)

RESPONDENT

Date of Decision : 27-10-1997

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 42(2)

Citation : (1997) 6 AD 576 : (1997) 69 DLT 577 : (1997) 43 DRJ 492

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : D.C.Mathur, Akshay Bipin, R.M. John and P.K. Behl, for the Appellant;

Judgement

J.K. Mehra, J.

(1) The case of the prosecution is that the appellant was apprehended with the contraband, i.e., 2 kgs. of heroin near Delhi Public Library and that he was given the option of being searched in the presence of Gazetted Officer/Magistrate, which he declined. The notice u/s 50, being Exhibit Public Witness 1/A was read over to me, containing the endorsement, "Main Apni Talashi Kisi G.O. Ya Magistrate Ke Samne Nahin Dena Chahta". Thus it is argued by the prosecution that Section 50 stands fully complied with. Mr. Mathur, however, has disputed this and has stated that not only Section 50 notice was prepared later on in the police station, but the entire seizure etc. was effected inside the police station and not on the spot where the appellant was apprehended. Mr. Mathur states that the story of the defense is that the entire quantity of the contraband was planted and that mandatory conditions of Section 50 have not been complied with. Mr. Mathur has drawn my attention to the original Exhibit Public Witness 1/A and has pointed out that this document was written subsequently for the simple reason that it bears on top the Fir number, which is in the same ink and is in running hand. He points out that in the seizure memo, which was admittedly prepared at

the police station, the number of the Fir was left blank and was filled up later, as is evident from the dash under that number, which indicated that line was drawn to leave space blank for filling up the Fir number later. No such thing happened in the case of Section 50 notice. Counsel for the State has argued that this notice was proved by the police witness and he has not been cross-examined on this aspect by defense. As against this, there is the testimony of the only independent witness, who has categorically stated that everything was carried out inside the police station and not on the spot and that the appellant was taken to the police station with the alleged Thaila on his shoulder to the office of ACP. It is further pointed out as to how could the number of the Fir be given on top in the same ink and the handwriting when the Fir had not so far been registered even. The appellant has relied upon the ratio of the case of Pawan Kumar Vs. Delhi Administration, 1987 Ccc 585.

(2) I have been taken through the discrepancies in the story of the prosecution. According to one witness, Cfsi form was deposited by Inspector Gurcharan Dass, Sho whereas column No.(B) of Register 19, Exhibit Public Witness 6/13 shows the name of depositor as Si Ramesh Kumar and not Inspector, Gurcharan Dass. Another thing, which has to be noticed is that in Malkhana Register, Exhibit Public Witness 6/A, signatures of the person receiving the case property for carrying it to Cfsi are also not shown there. Yet another discrepancy which cannot be considered insignificant is that the road receipt, Exhibit Public Witness 3/DA makes no mention of Cfsi form. Therefore, it cannot be said whether Cfsi form was sent Along with the case property. For this reason also, I tend to agree with the learned counsel for the petitioner that the prosecution cannot be taken to have proved that Cfsi form was actually deposited with the Moharrer Malkhana in the first place or that it was actually sent thereafter to CFSL. In the absence of documentary evidence. I am not inclined to place any reliance on the oral testimony of the police witness without cogent Explanation for absence of entries in the documentary evidence of this nature. The existence of documents, i.e., the registers -- Malkhana is already proved. Oral testimony which is contrary to the documentary evidence i.e., the register Malkhana and the road certificate, cannot be preferred unless evidence is led proving reasons for omission in the documents. No grounds for alleged omissions have been pointed out from the evidence. For that reason, I have to presume that what is not mentioned in the register of Malkhana was not there. A reference be made to the case of Phool Kumar Vs. State, 1977 Jcc 476.

(3) It is also the case of the prosecution that they had received secret information about the appellant carrying heroin. There is no evidence forthcoming on record about the compliance with Section 42(2) of Ndps Act, which is also mandatory. It is nowhere recorded that the secret information was reduced into writing. That amounts to violation of the provisions of Section 42(2) Ndps Act, which have been held to be mandatory in nature. A reference be made to the cases of Shiv Rawat Vs. State, reported as 1996 4 Ad 71 Del; Pradeep Kumar Vs. State, reported as 1997 Jcc 476 and the decisions of Hon''ble

Supreme Court referred to hereinafter.

(4) The discrepancies in the case of prosecution do not end here. The violation of Section 52(1) of Ndps Act is also alleged without there being any rebuttal. It is pointed out that no arrest memo was prepared nor was the appellant informed of the grounds of arrest.

(5) Another admitted discrepancy is non compliance with the provisions of Section 57 which is also held by Hon''ble Supreme Court to be mandatory. A reference be made to the cases of State of Punjab Vs. Balbir Singh, reported as 1994 Jcc 303 and Mahender Kumar Vs. State, Panaji Goa, reported as 1995 CrL.L.J. 2074, which have been followed by me in the cases of Richard Thomas Wrigley Vs. Customs & Another (CrL.A. No. 149/96) decided on 20.03.1997 and Mrs. Carmel Sanchez Gracia Vs. Customs, New Delhi (CrL.A. No. 51/95) decided on 21.04.1997 wherein it has been held that the provisions of Section 57 Ndps Act are mandatory and non-compliance thereof would vitiate the trial. In the light of all aforesaid discrepancies in the prosecution case, it cannot be said by any stretch of imagination that the prosecution has discharged its onus of proving the guilt of the appellant beyond reasonable doubt.

(6) In the light of the above discussion, I am not convinced that the prosecution has proved the guilt of the appellant beyond reasonable doubt apart from vitiating the trial for want of compliance with the mandatory requirements of law. I, Therefore, accept the appeal, grant benefit of doubt to the appellant and acquit him. The appellant should be released forthwith unless required in any other case. No order as to costs.