

(1997) 08 DEL CK 0010

In the Delhi High Court

Case No : Criminal Appeal No. 173 of 1994

Talvinder Singh and Others

APPELLANT

Vs

State (Delhi Admn.)

RESPONDENT

Date of Decision : 22-08-1997

Acts Referred:

Citation : (1998) 44 DRJ 175 : (1998) 118 PLR 49

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Mr. Sanjeev Kumar, for the Appellant; Mr. M.S. Butalia, for the Respondent

Judgement

Anil Dev Singh, J.—This is an appeal against the order dated June 6, 1994 passed by the learned Additional Sessions Judge whereby the appellants were convicted u/s 20 of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- each, and in default of payment of fine to undergo further rigorous imprisonment for a period of one year. The facts leading to the appeal are as under :

2. On 25th September, 1989 a secret information was received by Inspector Ram Kishan that a truck bearing No. DIG 9362 was carrying contraband. Pursuant to the information, on the night intervening 25th and 26th September 1989 a raiding party was organized and the truck bearing No.DIG 9362 was intercepted at G.T. Road Shahdara Check Post. At that time appellants No.1 to 4 and Narender Singh Narang were found to be in the truck. According to the prosecution, appellant No.1 was the driver of the truck, appellant No.3 was a helper, appellant No.4 was the cleaner of the truck and Narender Singh, was the brother of deceased owner of the truck, namely, Uttam Singh. Search of the vehicle resulted in recovery of 40 boxes containing 1200 kgs. of charas. In order to bring home the offence to the accused persons, the prosecution examined sixteen witnesses including a public witness Shiv Raj Singh, PW-2. The trial court convicted the appellants u/s 20 of the N.D.P.S. Act but acquitted Narender Singh

Narang inter-alia on the ground that the public witness PW-2 did not find him to be sitting in the truck at the time of its interception by the raiding party.

3. Attacking the order of the trial Court, learned counsel for the appellants made the following submissions:

1. Secret information received by Inspector Ram Kishan leading to the interception of the truck in which 40 boxes of charas were alleged to have been concealed, was not reduced into writing and sent to the superior officer, thus violating section 42 of the Act.

2. CFSL forms were not deposited by the SHO with the Moharrar Malkhana while handing over the case property and sample packages of contraband.

3. The prosecution has failed to adduce any cogent evidence to show that notice u/s 50 was given to the appellants before search of the truck. Non-compliance with the mandatory provisions of section 50 vitiates the trial.

4. CFSL report was not signed by the Director, Deputy Director or the Assistant Director, Forensic Science Laboratory as contemplated by Section 293 Cr.P.C.. This being the position, the same could not be used in evidence without the same being formally proved by the person signing the report.

5. The contraband belong to Narender Narang who was the actual owner of the truck and the appellants have been falsely implicated in the case.

4. I have considered the submissions of learned counsel for the appellants. From a perusal of the evidence it is clear that the secret information received by Inspector Ram Kishan was not reduced into writing and sent to the immediate superior officer. This fact has not been disputed by the learned counsel for the respondent. In State of Punjab Vs. Balbir Singh, , the Supreme Court has held that u/s 42(1) of the Act the empowered officer, if has a prior information given by any person relating to the commission of an offence, punishable under Chapter IV, that should necessarily be taken down in writing and should forthwith send a copy of the same to the superior officer. It has been further held that the provisions of section 42 of the N.D.P.S. Act are mandatory in nature and any contravention of the same would affect the prosecution case and vitiate the trial.

5. Apart from the above said flaw, there is another defect in the prosecution case. From the perusal of the statement of the S.H.O., Police Station Seemapuri (PW-5) it cannot be said with any amount of certainty that CFSL form was actually deposited by him with Moharrar Malkhana though in his testimony before the trial Court he claimed to have done so. But at the same time he admitted that in his statement u/s 161 Cr.P.C. this fact was not recorded. Similarly Constable Virender Kumar (PW-6) had stated before the trial court that he had handed over the CFSL form to the Forensic Laboratory. This fact is not recorded in his statement u/s 161 Cr.P.C. In view of these contradictions, for which no Explanation was rendered by them, it is not proved beyond reasonable doubt that the CFSL form was deposited with the Moharrar Malkhana by the SHO or the

same was delivered by Constable Virender Kumar to the Forensic Laboratory. The punishment provided for an offence u/s 21 of the NDPS Act is very stringent. This being so, the provisions of sections 42, 50, 55 and 57 of the NDPS Act have to be strictly complied with in order to safeguard the interest of an accused. Non-compliance of these provisions including section 42 of the NDPS Act goes to the root of the case and vitiates the trial. If any authority is needed for the above proposition, a reference can be made to (1) Habib Vs. State, 1996 (2) Crim 452 Datu Ram Vs. State, 1996 JCC 293.

6. Learned counsel for the appellants points out certain other defects in the prosecution story, but it is not necessary to discuss the same as I find that the trial stands vitiated because of the aforementioned flaws in the prosecution story. Accordingly, the order dated June 6, 1994 of the trial court is set aside and the appellants are acquitted of the charge u/s 20 of the N.D.P.S. Act. Appellant No.2 Tanwant Singh, I am told, is on bail. The bail bond of this appellant will stand discharged. The appellants, except appellant No.2, will be released forthwith if they are not required in connection with some other case.