Delhi High Court Matloob vs State (Delhi Administration) on 23 April, 1997 Equivalent citations: 1997 IVAD Delhi 178, 1997 (2) ALT Cri 19, 1997 (3) Crimes 98, 67 (1997) DLT 372 Author: J Mehra Bench: J Mehra JUDGMENT J.K. Mehra, J. (1) This appeal was accepted by me on the day the arguments were concluded and the appellant was acquitted on April 23, 1997 by a short judgment stating therein that the detailed reasons will be given latter. The said detailed reasons are furnished in this judgment: The appellant Matloob was arrested by Police Station, Jama Masjid, Delhi in case Fir No. 191/92 under Section 20 of the Narcotic Durgs and Psychotropic Substances Act, 1985 (in brief, the Ndps Act), on the allegations that on September 7,1992 at about 7.10 p.m. at Service Road, Gate Mazar Shiekh Kalim Ullah, within the jurisdiction of P.S. Jama Masjid, he was found in possession of 3. 750 kgs. of Charas without any licence. After completion of investigation and receipt of the Cfsl report the appellant was sent up for trial, charged under Section 20 of the Ndps Art, tried and convicted of sentence, also dated May 2, 1995 to undergo rigorous imprisonment for 12 years and to pay fine of Rs. 1.5 lakhs, in default of payment of fine, the appellant was further sentenced to undergo rigorous imprisonment for a period of two years. The conviction and sentence had both been recorded by Mr. B.L. Garg. Additional Sessions Judge, Delhi. (2) The appellant preferred this appeal from jail Since he was- undefended in the appeal, the Court appointed Mr. P.R. Thakur, Advocate as the amices Curiae. (3) I have heard Mr. P-R. Thakur, Advocate for the appellant and Ms. Neelam Grover, Advocate for the State. Learned Counsel for the appellant raised many pleas,made many submissions both on law and fact soot of what the most important two are as under : (4) Firstly, the appellant remained unrepresented and undefended by any Advocate during the trial until Public Witness PWs 1 to 4 had been examined and discharged on May 24,1993. Thereafter on the appellant's representation to the effect that he was too poor to engage a Counsel, he was provided the services of one Mr. D.P. Chopra, Advocate as the amices Curiae on November 18,1993. On that very day, the Trial Court proceeded to examine Public Witness PWs 5 and 6 and after their examination, the said witnesses were discharged. Fw 6 Chander Bhan, Head Constable was a witness to the recovery and as such, a very material witness. The said amices Curiae was not afforded an opportunity to acquaint himself with the nuts and bolts of the case before the two significant witnesses Public Witness PWs 5 and 6 could be examined. Counsel for the appellant, Mr. P.R. Thakur contended that in a serious case as the one under Ndps Act where the Legislature has prescribed a minimum imprisonment of 10 years and fine of Rs. I lakh on conviction, it was incumbent on the learned Trial Court in terms of Section 304 of Code of Criminal Procedure to have assigned a defense Counsel to the appellant at the expense of the State. Mr. Thakur referred to the judgment in Surinder Kumar v. The State, reported as 1996 (1) Cc Cases 221 (HC) wherein Delhi High Court (Jaspal Singh,J.) held after referring to the judgments of the Supreme Court in Hussain Ara Khatoon v. State of Bihar, and Khatri v. State of Bihar, reported as 1981 Cr.L J. 470, that conviction recorded without provision of free legal service was vitiated. Mr. Thakur also referred to the judgment of the Supreme

Court in Sukh Das v. Union Territory of Arunachal Pradesh, reported as 1986 Cr.L.J. 1084 where it was re-emphasised by the Supreme Court that the entitlement to free legal aid was not dependent on the accused making an application to that effect and that the Court was obliged to inform the accused of his right to obtain free legal aid. (5) Counsel for the State contended that the Trial Court did appoint the amices Curiae for the appellant on November 18, 1993 and it could not be said that the appellant had been deprived of his constitutional right to have free legal aid. She further contended that only formal witnesses Public Witness PWs 1 to 4 had earlier been examined prior to the appointment of the amices Curiae by the Trial Court. In any case, she contended, the amices Curiae after his appointment could make a request for resummoning of any witness earlier examined. (6) Mr. Thakur referred to the judgment of the Supreme Court in the case of Ranchod Mathur Was awa v State of Gujarat reported as 1974 Crl. L.J 799 wherein Krishna Iyer, J. observed as under : "THE Sessions Judges do not view with sufficient seriousness the need to appoint State Counsel for undefended accused in grave cases. Indigence should never be a ground for denying fair trial or equal justice."

The Honble Supreme Court further held : "SUFFICIENT time and complete papers should also be made available so that the Advocate chosen may serve the cause of justice with all the ability at his command."

(7) In the above circumstances, I find that the way the charge has been framed and Public Witness PWs 1 to 4 had been examined and even the way Public Witness PWs 5 and 6 were examined and discharged before the amices Curiae appointed could fully acquaint himself with the case, cannot earn any appreciation for the learned Trial Court and it appears that the matter was not given any serious and earnest thought as regards appointing the amices Curiae by the Trial Court. In my opinion, the entire trial stands vitiated on this lapse alone.

(8) Coming to the next contention of Counsel for the appellant, which deals with the evidence and appreciation thereof, it is pointed out that Cfsl form had been filled at the spot by the Investigating Officer Si Rameshwar Dutt and he handed over the case property alongwith Cfsl form to the Sho Ved Pal Rathi Public Witness Pw 10 who in turn deposited the case property and Cfsl form on September 7, 1992 with the Moharar Malkhana and there was the corresponding entry in the Register No. 19, proved during the trial as Exhibit Public Witness Public Witness 4/A. The said extract further recorded that on October 5, 1992, the sealed sample parcel alongwith Cfsl form had been sent to Cfsl, Chandigarh through Constable Sham Lal. It is further recorded in the said document that on October 25, 1992, the sealed parcel with the seal of Cfsl, Chandigarh had been deposited with the Moharar Malkhana by Constable Narain Singh. In the light of this document, it was contended by Mr. Thakur that the Cfsl form after it was deposited with the Moharar Malkhana by the Sho, could be handed over

to Constable Sham Lal only by the Moharar Malkhana having the custody of the same. The evidence of Public Witness Public Witness 2 Constable Sham Lal was referred to who stated that he had collected one sealed parcel from Moharar Malkhana, P.S. Jama Masjid on October 5,1992 and deposited the same in the office of Cfsl, Chandigarh on the same day. He categorically stated that he did not take anything else with this parcel. He, however, added that the Cfsl form had been given to him by Si Rameshwar Dutt It was contended by Mr. Thakur that Si Rameshwar Dutt, as per the testimony of Public Witness Public Witness 2 constable Sham Lal, had the custody of the Cfsl form and it was he who had handed over the Cfsl form to the Constable and not the Moharar Malkhana with whom the Sho had allegedly deposited the Cfsl form. In this context, Mr. Thakur, learned amices Curiae referred to the statement of Public Witness Public Witness 9 Rameshwar Dutt (1.0.) who admitted in his cross-examination that the public witness Bhoodev to whom the seal had been handed over after use at the spot, had returned the seal to him after about one week. "The sample parcel had been sent to the Cfsl on October 5, 1992, i.e., after about 3 weeks of the return of the seal to the 1.0. by the public witness. It was contended that Public Witness Public Witness 2 Constable Sham Lal had been examined by the prosecution as its witness, and he had not been declared hostile or cross-examined by the prosecution and, therefore, the prosecution could not back out from the said statement of its witness. From the evidence on record, it is clearly proved that not only the Cfsl form remained with the 1.0., but the seal also remained with him which had been returned to him by the public witness after about one week of the occurrence. There was thus ample opportunity and possibility to tamper with the seals on the sample packet sent to the CFSL. The Division Bench of Delhi High Court in the judgment given in Amarjit Singh & Anr. v. State (Delhi Admit.) reported as 1995 Jcc 91, observed in paragraph 9 as under:"THE Investigating Officer does not say that the said seal had not been taken back by him before the samples were sent to the office of the CFSL."

(9) In the instant case, there is clear evidence that seal had been taken back before the sample had been sent to the officer of CFSL.

(10) Mr. Thakur next contended that Cfsl form was not returned by the Cfsl alongwith Cfsl report with the remnants of the sample after analysis. He referred to the judgment dated August 5, 1996 of Delhi High Court (S.K. Mahajan, J.) in Criminal Appeal No. 18/93 (Mohan Kamath v. State) where it was observed that non-production of Cfsl form creates a doubt. In the instant case, Cfsl form has not been produced and one is left wondering as to what happened to the Cfsl form and where it disappeared.

(11) My attention was drawn to Delhi High Court Rules and Orders Part-111 Chapter 18-B, which inter-alia, provides that articles for the opinion of the Chemical examination should be forwarded without the least possible

delay. In considering all this, delay if any, can be explained by the prosecution. Samples to Cfsl in this case were despatched about one month after the substance was seized and no explanation for so much time taken in despatching the samples is forthcoming on record. Thus the prescribed promptitude appears to be lacking in this case.

(12) Mr. Thakur also urged several other points which, it will to be necessary for me to go into for the purposes of the present case except one, i.e., the charge in the present case had been framed by the Trial Court on a cyclostyled sheet where only the blanks have been filled in. This to say the least is absolutely undesirable. Such an approach effects the sacrosanctity of the charge in the cases of such serious offences. Apart from that, it may also be noted that in the present case, conviction and sentence was on the same day and according to Mr. Thakur, in matters where the minimum punishment was prescribed, such pronouncement of the judgment in the sentence on the same day stood vitiated. He has relied upon Section 235(2) of the Code of Criminal Procedure and the construction placed thereon by the Supreme Court in the case of Allauddtin Mian v. State of Bihar, reported as Air 1989 Sc 145.

(13) For all these reasons, this appeal is allowed and the appellant is acquitted. As already ordered, the appellant should be released forthwith, if not required in any other case.