

Delhi High Court *Giri Raj vs State* on 10 December, 1999 Equivalent citations: 2000 IAD Delhi 893, 83 (2000) DLT 201, 2000 (52) DRJ 534 Author: M Siddiqui Bench: M Siddiqui ORDER M.S.A. Siddiqui, J. 1. This appeal is directed against the judgment and order of sentence dated 13.1.1993 passed by the Additional Sessions Judge, Delhi in Sessions Case No. 594/91 convicting the appellant under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') and sentencing him to undergo rigorous imprisonment for ten years and to pay a fine of rupees one lac or in default to suffer further rigorous imprisonment for six months. 2. Briefly stated, the prosecution case is that on 6.10.1990, a police party led by Sub-Inspector Babu Lal. (PW-7), upon information received, apprehended the appellant near the DDA Flats in Paschim Vihar. He was given the option of being searched before a Gazetted Officer or a Magistrate. The appellant declined the offer. He was then searched by Sub-Inspector Babu Lal (PW-7) in the presence of Inspector Ramesh Kapoor (PW-4), ACP Ajay Kumar (PW-5) and Kishan Lal (PW-6), as a result whereof five and a half grams of smack was recovered from his possession vide seizure memo Ex. PW- 4/A. The appellant was charged with an offence punishable under Section 21 of the Act and tried. 3. The learned Additional Sessions Judge, on an assessment of evidence adduced by the prosecution, accepted the prosecution case and convicted and sentenced the appellant as indicated above. 4. The evidence of the prosecution pertaining to the recovery of the contraband revolves around the testimony of Inspector Ramesh Kapoor (PW-4), ACP Ajay Kumar (PW-5), Kishan Lal (PW-6) and Sub-Inspector Babu Lal (PW-7). It has come in the evidence of SI Babu Lal (PW-7) that on 6.10.1990 at about 5 P.M., he received a secret information and organized a raiding party consisting of himself and the prosecution witnesses, namely, Inspector Ramesh Kapoor (PW-4) and the Kishan Lal (PW-6). At about 5.30 P.M., he apprehended the appellant near the DDA Flats Green Apartments. In the meanwhile, ACP Ajay Kumar (PW-5), on receipt of the information also came on the spot. The appellant was given the option of being searched before a Gazetted Officer or a Magistrate. but he declined the offer. However, ACP Ajay Kumar (PW-5), directed him to take personal search of the appellant and pursuant to this direction, he took search of the appellant and recovered five and a half grams of smack from the right hand side pocket of the Kurta worn by the appellant vide seizure memo Ex. (PW-4/A). It has also come in the evidence of Sub-Inspector Babu Lal (PW-7) that after seizure of the contraband, a representative sample of one gram of smack was drawn from the smack seized from the appellant and the sample as well as the remaining smack were converted into separate parcels and they were sealed on the spot. The CFSL from was also filled in on the spot and the case property along with the CFSL from was handed over to the SHO, Ramesh Kumar, (PW-4) for being deposited in the Police Mal Khana. Sub-Inspector Babu Lal (PW-7) further testified that he prepared the rukka (Ex. PW-7/A) on the spot and sent it to the police station on the basis of which the FIR (Ex. PW-2/A) was registered at the police station. Prosecution witnesses Inspector Ramesh Kapoor (PW-4), ACP Ajay Kumar (PW-5) and Kishan Lal (PW-6) have supported the testimony of Sub-Inspector Babu Lal (PW-7). 5. It

needs to be highlighted that the rukka (Ex. PW-7/A) recites that the alleged contraband was seized at 6.10 P.M. and the rukka was despatched from the spot at 7.30 P.M. The FIR (Ex. PW-2/A) shows that the same was registered at the police station at 7.40 P.M. Surprisingly, the appellant's personal search memo (Ex. PW-4/B) and the seizure memo (Ex. PW-4/A) bear the number of the FIR (Ex. PW-2/A). The number of the FIR (Ex. PW-2/A) given on the top of the aforesaid documents is in the same ink and in the same handwriting, which clearly indicates that these documents were prepared at the same time. The prosecution has not offered any explanation whatsoever as to under what circumstances number of the FIR (Ex. PW-2/A) had appeared on the top of the said documents, which were allegedly prepared on the spot before its registration. This gives rise to two inferences that either the FIR (Ex. PW-2/A) was recorded prior to the alleged recovery of the contraband or number of the said FIR was inserted in these documents after its registration. In both the situations, it seriously reflects upon the veracity of the prosecution version and creates a good deal of doubt about recovery of the contraband in the manner alleged by the prosecution. That being so, the benefit arising out of such a situation must necessarily go to the appellant. 6. There is yet another staggering circumstance against the prosecution which has shaken the foundation of the prosecution case to an irreparable extent. It has come in the evidence of Sub-Inspector Babu Lal (PW-7) that after compliance with the provisions of Section 50 of the Act, he had taken personal search of the appellant and recovered the contraband from his possession vide seizure memo (Ex. PW-4/A). The personal search memo of the appellant (Ex. PW-4/B) was prepared by Sub-Inspector Babu Lal (PW-7) on the spot. Strangely enough, the search memo (Ex. PW-4/B) recites that nothing was recovered from the appellant's possession. On the contrary, the seizure memo (Ex. PW-4/A) shows that the contraband smack was recovered from the personal search of the appellant. It is difficult to reconcile these two documents which were allegedly prepared on the spot. It cannot be doubted that the personal search of the appellant was taken in accordance with the mandate of Section 50 of the Act and search memo (Ex. PW-4/B) was prepared under the Act. In view of the personal search memo of the appellant (Ex. PW-4/B), it is difficult to rely on the seizure memo (Ex. PW-4/A) to show that the contraband was recovered from the appellant's possession. Thus, the network constituted by the aforesaid circumstances leaves a gap of varied dimensions through which the appellant can get out with equal facility. 7. The learned counsel for the appellant contended that there is no evidence to show that the CFSL from which was alleged to have been filled in at the spot on which the specimen of the two seals were affixed had been deposited in the Mal Khana and had at any time been taken by Constable Hari Singh (PW-3), who took the sample to the office of CFSL for examination. Inspector Ramesh Kapoor (PW-4) testified that he had deposited the sealed contraband along with the CFSL form in the Police Mal Khana. Head Constable Zile Singh (PW-1) also swears to the same effect, but the entries in the Mal Khana Register (Ex. PW-1/A) does not support the testimony of the said police witnesses. There is no mention in the Mal Khana Register (Ex. PW-1/A) that either the CFSL Form

had been deposited or the same has been sent to the CFSL, Chandigarh along with the sampled contraband. Even the report of the Chemical Examiner (Ex. PW-7/C) is also conspicuous by the absence of receipt of any CFSL form along with the sealed packets. It was incumbent upon the prosecution to prove that not only the seized contraband was duly sealed and duly deposited in the Police Mal Khana untempered but it was also necessary to prove that the sampled contraband which had been sealed on the spot remained intact till it reached the office of the CFSL. Further it was necessary to prove that the CFSL form containing the specimen seals which was duly filled in at the spot at the time of taking of the sample also remained intact till it reached the office of the CFSL. In the instant case there is not an iota of evidence to show as to where CFSL form containing the specimen seals had remained till the sampled contraband was examined by the Chemical Examiner. Thus, the vital link between the contraband seized and the report of the Chemical Examiner (Ex. PW-7/C) was missing in the case. There is absolutely no link between the seizure with all the safeguards against tempering of the contraband articles till the sample was sent for Chemical analysis. Needless to add that the provisions of the Act are so stringent that it cast a duty on the prosecution to rule out any possibility of tampering with the sample and false implication of the accused. It must be borne in mind that severer the punishment, the greater care has to be taken to see all the safeguards provided in a Statute are scrupulously followed. The Additional Sessions Judge did not take notice of the aforesaid infirmities in the prosecution case and unjustifiably accepted the prosecution evidence. Consequently, the impugned order and sentence cannot be sustained in law. 8. In the result, the appeal is allowed and the impugned order of conviction and sentence is set aside and the appellant is acquitted of the offence punishable under Section 21 of the Act. The appellant is in custody. She shall be set at liberty immediately if not wanted in any other case. Fine, if paid, shall be refunded to the appellant.