

Delhi High Court Kailash @ Kuddu vs State Of Delhi on 6 February, 2000
 Equivalent citations: 2000 CriLJ 2134, 85 (2000) DLT 193, 2000 (54) DRJ 746, 2000 (71) ECC 63 Author: M Siddiqui Bench: M Siddiqui JUDGMENT M.S.A. Siddiqui, J. 1. This appeal is directed against the judgment and order dated 27.10.1998 passed by the Additional Sessions Judge, Delhi in Sessions Case No. 582/96 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 two years. 2. Briefly stated, the prosecution case is that on 8.9.1996 at about 5.55 p.m., a police party led by Sub-Inspector Devinder Singh (PW 8), upon information received, apprehended the appellant near Trilok Puri Church. The appellant was given the option (Ex. PW 4/A) of being searched before a Gazetted Officer or a Magistrate. He declined the offer and produced eighty grams of smack which was seized vide seizure memo Ex. PW 1/A. The appellant was charged with an offence punishable under Section 21 of the Act and tried! 3. The appellant abjured his guilt. Learned Additional Sessions Judge, on an assessment of evidence of the prosecution witnesses, namely, Head Constable Onkar Singh (PW 2), ASI Jawaliar Singh (PW 3), Constable Revinder Kumar (PW 4), Inspector Shish Ram (PW 5), Constable Satpal Singh (PW 6), Sub-Inspector Devinder Singh (PW 8) and Constable Satish Kumar (PW 9), accepted the prosecution case and convicted and sentenced the appellant as indicated above. 4. The prosecution examined Nek Pal Singh (PW 1), Head Constable Onkar Singh (PW 2), ASI Jawahar Singh (PW 3), Constable Ravinder Kumar (PW 4), Inspector Shish Ram (PW 5), Constable Satpal Singh (PW 6) and Sub-Inspector Devinder Singh (PW 8) to prove that the raiding party was organized; that the appellant was apprehended near Trilok Puri Church and further he was found in possession of the contraband which was seized vide seizure memo Ex. PW1 /A. Nek Pal (PW 1), is the only independent Panch witness and he has not supported the prosecution case. He has been declared hostile by the prosecution. Nothing has been elicited in his cross-examination to show or suggest that either he was hostile towards the prosecution or intimately connected with the welfare of the appellant. However, the remaining witnesses testified that the contraband was seized from the appellant and the sample of five grams of smack was drawn, that the sample as well as the remaining smack was converted into separate parcels and were duly sealed on the spot. It has come in the evidence of Sub-Inspector Devinder Singh (PW 8) that CFSL form was also filled-in on the spot and sealed parcels alongwith the CFSL form were delivered to the SHO Shish Ram (PW 5) for being deposited in the Police Malkhana. SHO Shish Ram (PW 5) testified that he had deposited the case property and the CFSL form in the Police Malkhana. Head Constable Daya Ram (PW 7) deposed that on 8.9.1996, Inspector Shish Ram PW 5 had deposited two sealed parcels alongwith the seals and one CFSL form containing the sealed impression. He further deposed that on 22.9.1996, he had sent the sealed property alongwith CFSL form to CFSL, Chandigarh vide entry (Ex. PW 7/A) in the Malkhana Register. 5. Inspector Devinder Singh (PW 8) testified that after completing the formalities

relating to the alleged recovery of Smack, he prepared the Rukka (Ex. PW 8/ B) on the spot and sent it to the police station on the basis of which the FIR (Ex. PW 8/C) was registered at the police station. The Rukka (Ex. PW 8/B) reveals that the contraband was seized at 5.55 p.m. and the Rukka was sent to the police station at 7.15 p.m. From the statements of the aforesaid prosecution witnesses it can safely be inferred that the personal search memo of the appellant (Ex. PW 1/B) and the seizure memo (Ex. PW 1/A) were prepared on the spot. Surprisingly the aforesaid documents bear the number of the FIR (Ex. PW 8/C). The number of the FIR (Ex. PW 8/C) 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 as to how number of the FIR (Ex. PW 8/C) had appeared on these documents, which were prepared on the spot before registration of the FIR at the Police Station Trilok Puri. This gives rise to two inferences that either the FIR (Ex. PW 8/C) was registered prior to the alleged recovery of the contraband or that number of the said FIR was inserted in these documents after its registration. In both the situations, the aforesaid circumstance seriously reflect upon the veracity of the prosecution story narrated by the aforesaid prosecution witnesses regarding recovery of the contraband from the appellant's possession. 6. Learned Counsel for the appellant has also contended that possibility of the sample being tampered with in the present case cannot be completely over-looked inasmuch as the link evidence which could complete the chain that the sample was duly sealed on the spot and the same had reached the Malkhana of the Police Station Trilok Puri and also reached the office of the Chemical Examiner unhampered. Head Constable Dev Raj (PW 7) has proved the Malkhana entry (Ex. PW 7/A). The said entry contains a detailed narration as to how the raiding party was organized, how the appellant was apprehended on the spot and further how the contraband was seized from his possession. But the said entry is conspicuous by the absence of any deposit of the sealed sample alongwith the CFSL form being made by the SHO Shish Ram (PW 5). It is also significant to mention that there is nothing in the said Register to indicate that the sampled contraband alongwith the CFSL form was despatched to the CFSL, Chandigarh. In other words, there is no mention in the Register (Ex. PW 7/A) that the CFSL form has been deposited or the same had been sent to the CFSL, Chandigarh alongwith the sampled contraband. It was incumbent upon the prosecution to prove that not only the contraband articles were duly sealed and deposited in the Police Malkhana unhampered. but it was also necessary to prove that the sampled contraband which had been duly sealed remained intact and unhampered. till it reached the office of the CFSL for Chemical examination. As noticed earlier, the entry (Ex. PW 7/A) does not prove that the CFSL form which was allegedly filled-in at the time of taking of the sample was deposited in the Malkhana and it was sent in the same condition to the office of the CFSL, Chandigarh. Thus, in the present case, the benefit arising out of the circumstances mentioned above, must necessarily go to the appellant. 7. Learned Counsel for the appellant further contended that the Investigating Officer has also violated provisions of Section 57 of the Act

inasmuch as no report was sent to the superior Officers regarding the alleged recovery of the contraband. Constable Mohar Pal (PW 11) deposed that on 10.9.1996 one report under 57 of the Act was received from the Station House Officer, Trilok Puri and the same was despatched to the office of the DCP. In his cross-examination, he has admitted that the said document was a copy of DD entry. The said admission belies his earlier statement regarding receipt and despatch of the report under Section 57 of the Act to the office of the DCP. Moreover, Head Constable Sharwan Kumar (PW 10) has unequivocally stated in his evidence-in-chief that no report under Section 57 of the Act pertaining to the FIR (Ex. PW 8/C) was received in the office. Thus the aforesaid statement of Head Constable Sharwan Kumar (PW 10) clearly supports the contention of the learned Counsel for the appellant regarding the alleged violation of Section 57 of the Act. This circumstance read alongwith the circumstances mentioned above, creates a good deal of doubt about the recovery of the contraband from appellant's possession in the manner alleged by the prosecution. Thus, the network constituted by the circumstances mentioned above leaves a gap of varied dimensions through which the appellant can get out with equal facility. 8. For the foregoing reasons, I am of the opinion, that the appellant's conviction and sentence under Section 21 of the Act cannot be sustained in law. Consequently, the appeal is allowed and the appellant's conviction and sentence under Section 21 of the Act is set aside. The appellant is in custody. He be set at liberty immediately if not wanted in any case. Fine, if paid, shall be refunded to the appellant.