

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. APPEAL No. 864/2004

% Decided on: 15th December, 2009

Sanjeevan Ram Appellant
Through: Ms. Rakhi Dubey, Adv.

Versus

State Respondent
Through: Mr. O.P. Saxena, APP.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. PATHAK, J.(ORAL)

1. Appellant along with co-accused Nagina was convicted under Sections 20/61/85 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short hereinafter referred to as the 'Act') by Special Judge (NDPS), Delhi on 10th September, 2004. Vide order dated 18th September, 2004 appellant was sentenced to face rigorous imprisonment for a period of ten years along with fine of Rs. 1 lakh and in default of payment of fine, to further undergo rigours imprisonment for six months since he was found in possession of commercial quantity of ganja weighing 33 kg. So far appellant's co-accused is

concerned, he was sentenced to face rigorous imprisonment for a period of five years since quantity of ganja recovered from him was 17 kg which was not a commercial quantity.

2. Co-accused Nagina filed an appeal being Crl. A. No. 863/2001 against his conviction and sentence which was dismissed on 12th December, 2006. This Court found conviction of the co-accused on the same set of evidence as proper.

3. Briefly stated, facts are that on 7th May, 2003 ASI Vijay Singh received a secret information that the appellant, resident of house No. 164, Kakrola Housing Society, Uttam Nagar, Delhi had brought ganja from Bihar along with his associate Nagina and that both of them were present in the house. This information was passed on to Inspector Hoshiyar Singh and was recorded as D.D. No. 10. Raiding party was organized comprising of Inspector Hoshiyar Singh, ASI Vijay Singh, HC Subhash, HC Omvir, Constables Kabod Singh, Shamsheer and Ranvir. Thereafter, raiding party reached at Kakrola more at about 1:45 pm when appellant along with co-accused was seen coming. They were intercepted, on the pointing of secret informer. Appellant was carrying a suit case in his right hand and a traveller bag on his shoulder while co-accused was carrying a suit case in his hand.

4. Notice under Section 50 of the Act was served on them whereby they were asked if they wished to be searched in the presence of the gazetted officer or a Magistrate. Appellant and his co-accused desired their search to be concluded before a gazetted officer. Accordingly, ACP Satinder Nath was informed on phone who reached at the spot at about 2:15 pm. Search of appellant and co-accused was taken but no contraband was recovered on their personal search. However, on search of their baggages, ganja was recovered. Samples were taken and sealed in six separate pulandas with the seal of V.S. Remaining quantity of ganja was also sealed separately with the seal of V.S. Thereafter, sealed pullandas were sent to police station along with rukka. Pullandas were handed over to SHO Surinder, who deposited the same in Malkhana on the same day. Later on samples were sent to C.F.S.L. on 21st June, 2003 and its report was obtained which confirmed that the recovered material was in fact ganja. Statement of witnesses were recorded.

5. After completion of investigation charge sheet was filed in the court of learned Special Judge. Charges against the accused persons were framed separately under Section 20 of the Act on 3rd September, 2003.

6. Prosecution examined thirteen witnesses. Thereafter

statements under Section 313 Cr.P.C. of the appellant and his co-accused were recorded on 24th August, 2004 in which they claimed themselves to be innocent. It was stated that they had been falsely implicated.

7. Learned counsel for the appellant has vehemently contended that samples were tampered with. No evidence was led to show that CFSL Form was filled up when samples were drawn and sealed; CFSL Form was not deposited in the Malkhana. No evidence was either led to show that CFSL Form and the seal was sent to CFSL along with samples. CFSL report remained unproved as the chemical examiner who had conducted the analysis, was not produced in the witness box. According to the learned counsel, since CFSL Form was neither filled nor deposited in the Malkhana nor was sent to CFSL, benefit has to go to the accused. This lacuna further creates serious doubt about the genuinity of the samples. There is every possibility of samples being tampered with more so, when case property was sent to CFSL after about one and a half monthS. Learned counsel has placed reliance on **Radha Kishan vs. State** reported in **87 (2000) Delhi Law Times 106**, **Phool Kumar vs. The State (Delhi Administration)** reported in **1997 JCC 490**, **Lalman vs. State** reported in **75 (1998) Delhi Law Times 224** and unreported judgment

dated 6th May, 2008 passed by this Court in ***Crl. A. No. 921/2005*** titled ***Balban Singh vs. The State (Govt. of NCT of Delhi)***.

8. I find that the arguments regarding tampering of the sealed parcels were advanced in the appeal preferred by co-accused Nagina but were not found convincing and thus negated. This Court held as under:-

“I find no force in these arguments. I have perused the CFSL report Mark-A. It clearly reads at serial number 9, that the condition of sealed parcels were found intact and tallied with the specimen seals. It is not the case property but the sample which is more significant. The seal of the case property may get disturbed while these are brought to the Court or kept in the malkhana. Seals also get disturbed due to wear and tear of the time. The CFSL report shows that the exhibits 1-6 produced before it were identified as ganja after analysis by chemical, Thin Layer Chromatographic and Gas Chromatographic methods. In case the appellant has got some doubt about the case property which was exhibited before the trial court, he should have made request to the Court that the case property should be re-examined before the CFSL analyst. Consequently, this ground, too, does not enure in favour of the appellant.”

9. I find no reason to take a different view than what had been taken by the Bench of coordinate jurisdiction of this Court in the same facts, evidence and circumstances. As a matter of propriety also no different view can be taken on the same set of evidence. The role of appellant is akin to the co-accused

Nagina. Both the appellant and co-accused were found coming together when the raiding party intercepted them. Ganja was seized at the same time. Samples were drawn and sealed at the spot. Case property was also sealed at the spot. In view of this, once the testimony of witnesses had been found to be trustworthy and reliable by the bench of coordinate jurisdiction of this Court, there is no reason to take a different view in this appeal, arising out of the same incident and on the same set of evidence.

10. Besides this, I find that HC Virender Singh posted as Malkhana Mohrar was examined as PW13. Constable Kripal, who had taken the samples to CFSL, was examined as PW7. PW2 ASI Vijay Singh had sealed the samples. Samples along with case property were then given to PW12 Inspector Surinder Singh. No suggestion was given to these witnesses in their cross examination that samples were tampered with or that CFSL Form was not filled, deposited in Malkhana and sent to CFSL. In the CFSL report it has been categorically mentioned that seal was tallied before samples were opened. There is no reason to ignore this evidence and to cast a suspicion that the said samples were tempered with.

11. So far as argument of learned counsel for the appellant that the prosecution case must fail since chemical examiner

was not examined, I find no force therein. As per Section 293 Cr.P.C. report of Govt. Scientific Expert, who had conducted the analysis and made a report, can be used in evidence in a trial. In terms of Section 293 (4) Director, Deputy Director or Assistant Director of Central Forensic Science Laboratory or a State Forensic Science Laboratory is a "Government Scientific Expert" within the meaning of sub Section 1.

12. In ***Rajesh Kumar and Anr. Vs. State Govt. of NCT of Delhi*** reported in ***JT 2008(3)SC 330*** Supreme Court held as under :-

"A bare reading of Sub-sections (1) and (2) of Section 293 shows that it is not obligatory that an expert who furnished his opinion on the scientific issue of the chemical examination of substance, should be necessity made to depose in proceedings before Court. This aspect has been highlighted by this Court in *Ukha Kolhe v. The State of Maharashtra* MANU/SC/0059/1963: 1963CriLJ418 and *Bhupinder Singh v. State of Punjab* MANU/SC/0049/1988: 1988 Cri LJ1097. Therefore, there is no substance in the revision petition so far as the conviction is concerned."

13. In ***N.Muralidharan Nair vs. State of Delhi*** reported in ***Manu/DE/0692/2009***, this court held that the report of scientific experts mentioned in sub-section 4 of Section 293 Cr.P.C. is admissible without examining the expert as witness. Therefore, examination of expert as a witness was not required

for making the report admissible in evidence.

14. Perusal of CFSL report shows that it had been given by the Director, CFSL. Accordingly, this report can be used as evidence in the trial even in absence of maker of the document entering in the witness box.

15. In the light of the above discussion, I do not find any reason to interfere with the order of conviction and sentence passed by the learned Special Judge.

16. Dismissed.

A.K. PATHAK, J.

December 15, 2009

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