

## Valsala vs State Of Kerala on 21 April, 1993

**Equivalent citations:** AIR1994SC117, 1994CRILJ1, 1993(2)CRIMES267(SC), JT 1993 (4) SC 549, 1993 (2) KLT 550 (SC), 1993 (2) SCALE 575, 1993SUPP(3)SCC665, AIR 1994 SUPREME COURT 117, 1993 AIR SCW 3750, 1993 CRIAPPR(SC) 169, 1993 ALLAPPCAS (CRI) 315, 1993 (3) SCC(SUPP) 665, 1993 (1) UJ (SC) 733, 1994 (2) FAC 204, 1993 SCC(CRI) 1082, 1994 CALCRILR 4, 1993 (4) JT 549, (1994) SC CR R 77, 1993 CHANDLR(CIV&CRI) 690, (1993) 1 CHANDCRIC 180, (1993) 2 ALLCRILR 23, (1993) 2 CRIMES 267, (1993) 2 CURCRIR 167, (1993) 2 CURLJ(CCR) 391, (1993) 2 EFR 141, (1993) 2 KER LT 550, (1993) 2 SCJ 244, (1993) 3 RECCRIR 281, (1993) 6 OCR 457, (1993) ALLCRIC 603, (1993) CRILT 475, (1993) MAD LJ(CRI) 726, (1994) 1 EASTCRIC 111, (1994) 2 BLJ 34, (1994) 2 FAC 204

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**Bench:** N.P. Singh

ORDER

K. Jayachandra Reddy, J.

1. The appellant, a lady by name Smt. Valsala was convicted by the learned Sessions Judge, Thiruvananthapuram under Section 21 of the Narcotic Drugs and Psychotropic Substance Act, 1985 ('NDPS Act' for short) and sentenced to 10 years R.I. and to pay a fine of Rs.one lakh, in default of payment of which to further undergo R.I. for one year. The appeal preferred by her was dismissed by the High Court.

2. On 3.10.1987 in the evening at about 5.45 P.M. P.W.6 Police Sub Inspector, Officer-in-charge of Police Station Thiruvananthapuram saw the appellant sitting under a tree near Sabudra Hotel on the eastern side of the Beach. She was having a packet by her side. The police party became suspicious and they examined the packet and found it to be a powder. Suspecting it to be Brown Sugar, they seized the same and also a balance and weights. P.W.6 got it weighed by a goldsmith and it weighed about 31 grams and 100 milligrams. The mahazar Ex.P.2 was prepared in the presence of P.Ws 1 and 3 and F.I.R. was lodged and subsequently a chargesheet was laid. The article seized was sent to the Chemical Examiner, who examined the same and found it to be Brown Sugar. Accordingly a report was given. The accused denied the offence.

3. One of the main contentions before both the courts below was that there was inordinate delay in sending the seized article to the Magistrate and that there is no evidence worth mentioning whether the article seized was sealed and if so when. Therefore, according to the learned Counsel for the appellant, it is highly doubtful whether the very article seized was sent to the Chemical Examiner.

4. We have seen the report of the Chemical Examiner and there no doubt it is mentioned that one sealed parcel was received containing a powder and it was analysed to be Brown Sugar. But from the records it is clear and it is also noted by both the courts below that the seized article was produced in the court only on 14.1.88 i.e. after a period of more than three months and there is no evidence whatsoever at all to show with whom the seized article was lying and even assuming that it was in the custody of P.W.6, the Officer-in-charge of the Police Station who seized it, there is again nothing to show whether it was sealed and kept there. The learned Counsel for the State no doubt argued that the provisions of Section 55 of the Act are not mandatory but only directory. We need not go into this legal question in this case. Suffice it to say that the article seized appears to have been not kept in proper custody and proper form so that the court can be sure that what was seized only was sent to the Chemical Examiner. There is a big gap and an important missing link. In the mahazar Ex.P.2 which is immediately said to have been prepared, there is nothing mentioned as to under whose custody it was kept after seizure. Unfortunately for the prosecution even P.W.6 does not say that he continued to keep it in his custody under seal till it was produced in the court on 14.1.88. The evidence given by P.W.6 Police Sub-Inspector, who seized the article is absolutely silent as to what he did with the seized article till it was produced in the court. As a matter of fact he did not produce it in the court. P.W.3, A.S.I. is supposed to have produced the same in the court. But P.W.3 does not say anything about this. It is only P.W.7. the Circle Inspector who comes into the picture at a later date, who admitted in the cross-examination that the seized article was sent by P.W.3 (A.S.I.) to the court and P.W.7 in his cross-examination further admitted that he did not even see if the recovered material object was sealed but still he claims that he made the necessary application for sending the material object for chemical examination and it is only through P.W.7 that the Chemical Examiner's Report is marked. P.W.7 further admitted that he did not even know when it reached the court We are constrained to say that the investigation in this case has been perfunctory and on important aspects the evidence of the concerned officers is highly discrepant and unconvincing and does not throw much light. Therefore the evidence adduced is wholly insufficient to conclude that what was seized from the appellant alone was sent to the Chemical Examiner. Though this is purely a question of fact but this is an important link. Both the courts below have not examined this aspect in a proper perspective. No doubt the trafficking in narcotic drugs is a menace to the society but in the absence of satisfactory proof, the courts can not convict.

5. In the result the judgment of the learned Sessions Judge as affirmed by the High Court is set aside and the convictions and sentences passed against the appellant are also set aside. If the appellant is in jail, she shall be set at liberty forthwith. The appeal is accordingly allowed.