

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 785 OF 2002@@
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STATE BY C.B.I. ... Appellant (s)

Versus

DILBAGH ... Respondent (s)

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This appeal is filed against the judgment of the Delhi High Court dated 9th March, 2001. Briefly stated the facts are as follows:-

On 21st May, 1993 secret information was received in the office of S.P./CBI/SIU, XI, New Delhi that the respondent in connivance with others was indulging in the activity of supplying and selling huge quantity of Charas to a number of persons in the Najafgarh area and in Haryana also. The information was that he was likely to supply a huge quantity to an unknown party on 22nd May, 1993 at 3 p.m. near Dhansa Bus Stand, Najafgarh, New Delhi. This information was registered in the office of CBI and the case was entrusted to Deputy Superintendent of Police, Mehar Singh.

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On 22nd May, 1993 the secret informer again contacted the Deputy Superintendent of Police and confirmed the information. Accordingly, Deputy Superintendent of Police, Mehar Singh discussed the matter with the S.P. and a raiding party was organised under the supervision of Mehar Singh which consisted of the following persons :

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- Mr. Dilbagh Singh,
- Mr. Phool Kumar,
- Mr. Jagdish Chand,
- Mr. Jaibir Singh,
- Mr. Rajinder Saxena and
- Mr. Ajay Singh

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The raiding party reached the spot at about 2 p.m. After parking the vehicle at a safe place, a nakabandi was@@
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organised. At 2.45 p.m. the respondent arrived carrying a white cloth bag in his hands. The secret informer pointed

of the accused is to be searched. It is held that if the substance is recovered from the bag of the accused, it cannot be said that it is recovered from his person. Similar view has also been taken by this Court in the case of Kanhaiya Lal vs State of M.P. reported in 2000 (10) SCC@
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380. As in the present case, the charas was recovered from the bag and not from the person of the respondent, Section 50 would not be applicable at all. The High Court was, thus, wrong in acquitting the accused on this ground.

Even presuming Section 50 of the N.D.P.S Act was applicable, in our view, the requirements of Section 50 of the N.D.P.S. Act had been fully complied with. Both PW1 (who was an independent witness) as well as PW3 have deposed that they had informed the accused that if he so desired, he could be examined in the presence of a Gazetted Officer or in the presence of a Magistrate. It has been held by a Constitution Bench of this Court in the case of State of Punjab vs. Baldev Singh reported in 1999 (6) SCC@
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172 that such information need not be in writing. It has been held that orally conveying such information is sufficient. It has also been held in the case of Krishan@
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Mohar Singh Dugal vs State of Goa reported in 1999 (8) SCC@
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552 as well as in the case of Sajan Abraham vs.State of@@
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Kerala reported in 2001 (6) SCC 692 that what is required@@
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is substantial compliance and thus informing the accused that if he wants the search to be carried out in the presence of Magistrate or a Gazetted Officer is sufficient compliance of Section 50 of the N.D.P.S. Act. We find from the impugned judgment that apart from stating that the mandate of Section 50 of the N.D.P.S. Act had not been carried out in letter and spirit, the High Court has not stated as to how this mandate had not been carried out. Therefore, the view of the High Court that Section 50 of the N.D.P.S. Act had not been complied with cannot be sustained.

The other ground on which the High Court has acquitted the respondent is that there was a difference in weight. In such cases what has to be ensured is that what has been recovered is what has to be sent for chemical analyser. In case there is any doubt that what was received by the chemical analyser is not the same, then the benefit of that doubt could be given to the accused. But in cases where it is proved that what was sent to the chemical analyser is the same as what was recovered minor differences in weight would not vitiate the trial.

It must be noted that the weight of the samples was "about 50 grams". "About 50 grams" necessarily means not
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exactly "50 grams". The weight could be a little less or more. The deposition of PW-3 shows that the samples were sealed with CBI seal bearing impression "JS/4". PW3 has further deposed that samples, on being sealed, were sent to Malkhana. PW5, i.e. ASI Ram Kumar, deposed that he was

incharge of the Malkhana. He deposed that he had received the samples in a sealed condition and they remained with him in the sealed condition. He has deposed that one of the samples was given by him to ASI B.K.Sharma to be taken to the chemical analyser alongwith a forwarding letter. ASI B.K.Sharma was examined as PW4. He deposed that he received the sample in a sealed condition and that he delivered the sample to the chemical analyser. He deposed that the while sample was in his possession it was not tampered with. The chemical analyser was examined as PW2. He deposed that he received the sample with the seal intact alongwith the forwarding letter. The forwarding letter had been marked as PW3/F. The forwarding letter does not contain any weight. It is only when the chemical analyser weighs the sample that the exact weight is found to be 55.5 grams. At this stage it must be noted that not a single question is put to any of the above witnesses, in cross-examination, that the seal had been tampered with. All that is asked to PW4 is that the CFSL form in ...8..

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triplicate was not prepared or sent to the chemical analyser. Merely because no such form was prepared or sent, does not in any way reflect on the fact that the sample which was extracted, was the sample which reached the chemical analyser with the seal intact. In this case prosecution has been careful enough to prove that the same sample was sent to the chemical analyser with the seal intact. It is thus established by evidence that the sample which was extracted was what was sent to the chemical analyser. We are thus unable to uphold the reasoning of the High Court.

Mr. Sheikh Israr Ahmad, learned counsel for respondent relied upon the case of Valsala vs. State of Kerala (1993 Supp (3) SCC 665. In that case there was no evidence that what was seized had been sealed. There was no evidence what was sealed had been properly stored. Some substance was sent to the chemical analyser three months after the seizure. There was no proof that what was seized was what was sent. On those facts this Court held that there was doubt whether what was received by the chemical analyser was what had actually been seized. Thus on facts the accused had been acquitted. This case has no relevance. In the present case, it has been proved by evidence that what was seized was properly sealed and ...9..

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stored and that the same was sent to the chemical analyser in a sealed condition. Reliance was also placed on the case of Jasbir Singh vs. State of Punjab (JT 1998 (2) SC 292). In this case also there was lack of evidence. It was not proved that seized article was sealed and/or the same had been sent. Thus the benefit of doubt was given to the accused. Such cases can be of no assistance to the respondent.

It was next urged that in view of difference in weight, this Court should give benefit of doubt to the respondent. It was urged that difference in weight supports the respondent that he has been falsely implicated in this case. In view of the evidence, including the evidence of the independent witnesses it is not possible to accept this submission. In our view, the defence taken

appears to be highly improbable.

Under the circumstances, we set aside the impugned judgment, restore the conviction as imposed by the trial Court. The appeal is accordingly allowed.

The respondent is on bail. His bail bonds shall stand cancelled. He be taken into custody forthwith.

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.....J.
(S.N. Variava)

.....J.
(D.M.Dharmadhikari)

New Delhi,
January 16, 2003

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ITEM No.101 Court No. 8 SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 785 of 2002@@
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State By C.B.I. Appellant (s)

VERSUS

Dilbagh Respondent (s)
(With appln. for bail)

Date : 16/01/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s) Mr. P.P.Malhotra, Sr.Adv.
 Mr. Shailender Sharma, Adv.
 Mr. S.N.Terdol, Adv.
 Mr. T.V.Ratnam, Adv.
 Mr. P.Parmeswaran, Adv.

For Respondent (s) Mr. Sheikh Israr Ahmed, Adv.
 Mr. Aditya Kumar Choudhary, Adv.
 Mr. Ugra Shankar Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

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Mr. P.P.Malhotra, learned senior counsel appearing on behalf of appellant-State commenced his arguments at 10.30 a.m. and concluded at 11.50 a.m. Thereafter, Mr. Sheikh

Israr Ahmed, learned counsel appearing on behalf of respondent started his arguments and concluded at 12.20 p.m.

The appeal is allowed in terms of the signed order.

The respondent is on bail. His bail bonds shall stand cancelled. He be taken into custody forthwith.

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Anita

(Jasbir Singh)
Court Master

(Signed order is placed on the file.)