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RAM KUMAR

v.

CENTRAL BUREAU OF NARCOTICS
(Criminal Appeal No. 800 of 2008)

B

MAY 5, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Narcotics Drugs and Psychotropic Substances Act, 1985:

C

ss. 8, 21, 42, 50 & 67 – PWs 4 and 2, Superintendent and Inspector in the Narcotics Department, while making casual inspection of a bus, recovered ‘brown sugar’ from exclusive possession of two passengers including Appellant – Conviction by both Trial Court and High Court – Challenge to – On ground that there was violation of ss.42 and 50 and further that there was discrepancy in evidence of PWs 2 and 4 about the manner of seizure of the alleged contraband article – Held: The present case is a case of chance recovery of contraband article in a public place effected during routine checking – s.42 has no application herein – Also, Appellant when examined under s.67 admitted conscious possession of the contraband article – There was no retraction to this voluntary confession – Alleged discrepancies in testimony of PWs 2 and 4 were minor which did not affect credibility of evidence of these witnesses – The samples were duly sealed and sent for examination and on receipt of the report it was concluded that the articles were ‘brown sugar’ – Conviction of Appellant sustained.

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According to the prosecution, PWs 4 and 2, respectively posted as Superintendent and Inspector in the Narcotics Department, while making casual inspection of a bus, recovered ‘brown sugar’ from the exclusive possession of two passengers including Appellant.

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The Special Judge (Narcotics Drugs and

Psychotropic Substances Act, 1985) convicted both the accused under ss.8 and 21 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and sentenced them each to RI for 10 years. In appeal, High Court confirmed the conviction and sentence. A

The conviction of Appellant is challenged before this Court on the ground that there was violation of the provisions of ss. 42 and 50 of the Act and further that there was discrepancy in the evidence of PWs 2 and 4 about the manner of seizure of the alleged contraband articles. B

Dismissing the appeal, the Court C

HELD: 1. The present case is a case of chance recovery and s.42 of the Narcotics Drugs and Psychotropic Substances Act, 1985 has no application. The evidence of witnesses clearly established that it was a case of chance recovery in a public place effected during routine checking. The contraband articles were recovered from the exclusive possession of Appellant and the co-accused. [Para 6] [707-E; 708-A, B] D

2. Apart from that, the Appellant was examined under s.67 of the Act in which he admitted the conscious possession of the contraband articles. There was no retraction to this voluntary confession. So far as the alleged discrepancies in the testimony of PWs 2 and 4 are concerned, there are minor variations which do not in any way affect the credibility of evidence of these witnesses. The evidence clearly shows that prosecution has established the separation of samples, deposit of samples in the Malkhana, receipt of samples at the research laboratory and the examination by the experts. It is the evidence of PW-2 that during search of accused persons brown sugar was found inside the shoes. On being examined by UNO Kit it was identified as brown sugar. The samples which were duly sealed were sent to factory for examination and on receipt of the report it was E F G H

A concluded that the articles were brown sugar. [Para 7]
[708-B, C, D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal
Appeal No. 800 of 2008.

B From the Order dated 11.3.2005 of the High Court of
Madhya Pradesh, Indore Bench at Indore in Criminal Appeal
No. 1159/1999

Dr. Sushil Balwada (A.C.) for the Appellant.

C Sanjeev Bhardwaj Kiran Bhardwaj and B.V. Balaram Das
for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

D 2. Challenge in this appeal is to the judgment of a learned
Single Judge of the Madhya Pradesh High Court, Indore Bench
upholding the conviction recorded by a learned Special Judge
(NDPS Act), Indore in Special Case No.10/98 convicting the
E appellant alongwith another accused Aziz Khan for offence
punishable under Sections 8 and 21 of the Narcotics Drugs and
Psychotropic Substances Act, 1985 (in short 'Act') and
sentencing each to RI for 10 years and to pay a fine of
Rs.1,00,000/- with default stipulation.

3. Background facts in a nutshell are as under:

F On 5.19.1997 Superintendent of the Narcotics
Department, Shri A.B. Acharya (PW-4) and Inspector Devilal
Prajapati (PW-2) proceeded to Mhow Naka. At 8.00 p.m. they
checked a bus bearing registration No.MP-09/S-1841, which
G was going from Indore to Bombay. They informed the driver and
conductor of the bus that in regard to the checking of contraband
article, they want to check the bus. On inspection they found two
persons sitting on seat Nos. 1 and 2. According to the case of
the prosecution, the appellant and the co-accused on seeing
H them became perplexed. After giving notice under Section 50
of the Act they were searched. It is the case of the prosecution

that 800 gms. of brown sugar was seized from co-accused Aziz which was kept inside the shoes and 710 gms. of brown sugar was seized from the appellant. After following the requisite formalities, four samples were taken out and they were sent to Chemical Examiner. On receiving the report of the Chemical Examiner, presence of brown sugar was confirmed and a charge sheet was submitted in the Special Court. A
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The Special Judge, after bare perusal of the charge sheet framed charges for offences punishable under Sections 8/21 of the Act. The accused persons pleaded innocence. The Trial Court believed the prosecution version and recorded conviction and imposed sentences. In appeal, High Court confirmed the conviction and sentence. C

4. The basic stand of the appellant in the appeal was that there was violation of the provisions of Sections 42 and 50 of the Act. It is submitted that there was also discrepancy in the evidence of the two witnesses about the manner of seizure of the alleged contraband articles. D

5. Learned counsel for the respondent on the other hand supported the judgment of the trial Court and the High Court. E

6. It is to be noted that this is a case of a chance recovery and Section 42 has no application. It is the case of the prosecution as stated by Shri A.B. Acharya (PW-4) and Devilal Prajapati (PW-2) who were posted as Superintendent and Inspector of Narcotics Department at the relevant point of time that on 5.9.1997 they wanted to make casual inspection. The driver and the conductor were duly informed. On inspection two persons sitting on the seats Nos. 1 and 2 were found suspicious and on being asked they disclosed their names as Aziz Khan and Ram Kumar respectively. Thereafter, they were given both options to be searched in terms of Section 50 of the Act and they consented for their search to be done before P.W.4. Panchanama was prepared. During search 710 gms. of brown sugar was recovered from the appellant which was kept inside the shoes and 800 gms. of brown sugar was recovered from F
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- A Aziz Khan. On verification and analysis it was found that the seized substance was brown sugar. Statement of both the accused was recorded. The evidence of witnesses clearly established that it was a case of chance recovery in a public place effected during routine checking. The contraband articles were recovered from the exclusive possession of the appellant and the co-accused.

7. Apart from that, the appellant was examined under Section 67 of the Act in which he admitted the conscious possession of the contraband articles. There was no retraction to this voluntary confession. So far as the alleged discrepancies in the testimony of PWs 2 and 4 are concerned, we find that there are minor variations which do not in any way affect the credibility of evidence of these witnesses. The evidence clearly shows that prosecution has established the separation of samples, deposit of samples in the Malkhana, receipt of samples at the research laboratory and the examination by the experts. It is the evidence of Prajapati (PW-2) that during search of accused persons brown sugar was found inside the shoes. On being examined by UNO Kit it was identified as brown sugar. The samples which were duly sealed were sent to Neemuch factory for examination and on receipt of the report it was concluded that the articles were brown sugar.

8. Above being the position, there is no merit in this appeal which is accordingly dismissed.

F B.B.B.

Appeal dismissed