

SUPREME COURT OF INDIA

P.P. Fathima

Vs.

State of Kerala

(N. S. Hegde and B.P. Singh JJ.)

04.11.2003

JUDGMENT

Santosh Hegde, J.

1. The appellant was convicted for an offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act as it stood then (the Act) by the Special Judge (NDPS Cases), Vadakara, and was sentenced to undergo RI for 10 years, and a fine of Rs. 1 lac was imposed; in default the appellant was directed to undergo further sentence of simple imprisonment for 3 months. Appellant's appeal to the High Court of Kerala at Ernakulam as against the judgment of said Special Court came to be dismissed by the impugned judgment of the High Court. Hence, the appellant is in appeal against the said judgment.

2. Brief facts necessary for the disposal of this appeal are that on 3.8.1999 PW-1 Sub-Inspector of Police of Police Station Nadakkavu received information that a middle-aged lady was selling brown sugar in Santhinagar Colony, Kannur behind the canteen of the Industrial Estate. On receipt of said information PW-1 sent a report to his superior officers and proceeded to the place mentioned in the information along with a lady constable. They found the appellant at the place as mentioned in the information. Then on the suspicion that the appellant was carrying contraband goods, PW-1 expressed his desire to search the appellant. He informed her of her right under section 50 of the Act to be searched by a Gazetted Officer or a Magistrate which right the appellant allegedly waived. On such waiver, the lady constable PW-2 accompanying the search squad, searched the appellant and found in a purse carried by the appellant 750 mgs. of brown sugar packed in 4 packets. The said contraband was then weighed, sample taken and sealed in the presence of Panch witnesses. On an analysis of the sample sent to the chemical examiner it was found that the contraband contained impure heroin which was known in the market as brown sugar. After completion of the investigation, a chargesheet was laid for offence punishable under Section 21 of the Act as stated above. The Trial court as well as the High Court have found the appellant guilty.

3. In this appeal, Mrs. Santosh Singh, learned counsel appearing as an amicus curiae, contended that as the law stood on the date of the seizure, sale of brown sugar was not an offence because such an offence was confined to manufacture and preparation only. For the

said purpose she relied upon the definition found in Section 2(11) of the Act and also submitted that the Schedule at that time did not include brown sugar as one of the contraband articles. She also alternatively contended that since the quantity of brown sugar allegedly, seized from the appellant was only 750 mgs, the same cannot be treated as a quantity kept for commercial use and could only be for personal consumption. She further contended that there is a discrepancy in the evidence of PWs. 1 and 2 in regard to the seizure of the contraband as also in regard to the factum of the contraband being sealed at the time of seizure. She further contended that independent witnesses have not supported the prosecution case.

4. Mr. John Mathew, learned counsel appearing for the respondent-State submitted that Section 2(xvi)(b) and 2(xi) shows that the seized brown sugar contraband even under the Act then applicable being an opium derivative is treated as a contraband article if possessed for sale. He also pointed out from the definition that the possession of said contraband was an offence even under Section 21 of the Act. Learned counsel rebutting the argument of learned counsel for the appellant submitted that the contradictions pointed out by the learned counsel in regard to the evidence of PWs. 1 and 2 are of such minor nature that it would not in any manner affect the credibility of the seizure of the contraband from the appellant. So far as the quantum of contraband seized from the appellant is concerned, under the law then applicable, even 750 mgs. of brown sugar being a prohibited drug possession thereof attracted punishment imposed under Section 21 of the Act as it stood then. Learned counsel further submitted that in view of the fact that both the courts below have chosen to place reliance on the evidence of PWs. 1 and 2, the fact that independent eye-witnesses to the seizure did not support the prosecution case would not in any manner make the prosecution case any less acceptable.

5. Having heard arguments of learned counsel and having perused, the records, we are in agreement with the arguments advanced by learned counsel for the respondent-State. In our opinion there is no substance in the legal argument of learned counsel that Section 21 is not attracted to the facts of the case or that the seized goods are not contraband drugs as contended by learned counsel. A perusal of the definition section clearly shows that brown sugar contains heroin which is a prohibited drug, possession of which is punishable under Section 21 of the Act. The argument that the quantity of brown sugar possessed by the appellant did not amount to an offence, is based on a notification issued on 19.10.2001 which made a distinction between small quantity and commercial quantity in its Schedule. That notification will also not apply to the facts of the case because that notification came much later than the date of offence which was on 3.8.1999 nearly 2 years before the issuance of that notification. At the relevant point of time this distinction between small quantity and commercial quantity not being there, the benefit of a subsequent notification would not be available to the appellant because she was convicted by the Special Judge of the offence as constituted before the notification in question came into force.

6. Even the so-called contradictions in the evidence of PWs. 1 and 2 in our opinion are not at all material as to make the prosecution case unacceptable. As a matter of fact there are no contradictions at all in the evidence of PWs.1 and 2. PW-1 had stated in his evidence that the

Mahazar in question was written by a Police Constable while PW-2 stated that the Mahazar of the seizure was prepared by PW-1 himself. We find no contradiction in these two statements because the Constable in question obviously prepared the Mahazar on the dictation of PW-1 which PW-2 interpreted to mean that the Mahazar was prepared by PW-1. Preparation of Mahazar and writing down of the contents of the Mahazar are two different things therefore, there will be no contradiction in terms when PW-1 says that the Mahazar was written by the Constable and PW-2 says Mahazar was prepared by PW-1. Assuming that there is any such contradiction we are of the opinion that this is not a material contradiction affecting the merits of the case. Learned counsel for the appellant then contended that from the evidence on record it is seen that while only one handbag was seized at the time of seizure when the appellant was arrested, from the record it is seen that one more purse was deposited with me jailor at the time appellant was sent into custody. From the seizure Mahazar we see that a purse was seized from the appellant which contained 750 mgs. of brown sugar. This part of the seizure has been accepted by both the courts below but from the record it is seen that at the time when the appellant was sent into custody she had also handed-over a purse to the jail authorities. From this learned counsel for the appellant wants to contend that the seizure in question cannot be accepted. We are not inclined to accept this argument addressed on behalf of the appellant also. It is the prosecution case that at the time of the seizure the appellant was carrying one handbag and that handbag contained the quantity of brown sugar seized. It is true at that point of time on search nothing more was found hence, that handbag as well as the contraband were seized by the I.O. Therefore so far as the seizure of the contraband is concerned, the same stands proved and the factum of the appellant handing over one more handbag to the jailor even if it is true will not in any way affect the genuineness of the seizure. The contraband which was found in the purse carried by the appellant was properly sealed and sent to the chemical examiner who found the same to be a derivative of heroin locally known as brown sugar which is one of the prohibited drugs under the Act therefore the prosecution having established the fact that the appellant on the said date was found in possession of the said contraband, the factum that there was another bag with the appellant at the time when she went into custody, would not in any manner affect the seizure made by the investigating agency, therefore, said argument advanced on behalf of appellant is also liable to be rejected. The next contention of learned counsel for the appellant that the seized goods were not properly sealed has only to be mentioned to be rejected because from the record it is clear that the contraband was put in a plastic bag and was sealed and thereafter a label containing the signatures of the appellant, the Panch witnesses and the I.O. was put on the same. The chemical examiner in his report has clearly stated that he received the sample of the contraband in the same sealed condition, therefore, this argument also has no merit.

7. Learned counsel then contended that in view of the fact that the Panch witness to the seizure has not supported the prosecution case, the seizure cannot be accepted. We have repeatedly held that the mere fact that a Panch witness does not support the prosecution case by itself would not make the prosecution case any less acceptable if otherwise the court is satisfied from the material on record and from the evidence of the seizing authority that such seizure was genuinely made. In the instant case also we are satisfied that from the evidence

of PWs. 1 and 2 the seizure has been proved by the prosecution. Therefore, this argument also fails.

8. For the reasons stated above, this appeal fails and the same is dismissed.