

**IN THE COURT OF
ASJ/SPECIAL JUDGE(NDPS)
AT NORTH WEST, ROHINI COURTS, DELHI
(Presided Over by Sh. Vikram)**

SC 422-2021
STATE Vs. RAVINDER@KALU@BHOLU
FIR No. 416 /2021
(RAJ PARK)

30.07.2024

Present: Sh. K.D. Pachauri, Ld. Addl. PP for the State.
Accused Ravinder @ Kalu absent.
Accused Kusum in person.
Sh. Ashish Dahiya, ld. LADC for accused Ravinder
@ Kalu.
Sh. Sunil Mehta, ld. Counsel for accused Kusum.

Matter is listed for arguments on charge.

ORDER ON CHARGE

1. Charge is conceded on behalf of accused Ravinder @ Kalu. However, charge has been contested by accused Kusum on the ground that the alleged search in this case is conducted by a Constable who is not an authorized person under Section 42 NDPS Act. Therefore, the alleged recovery of contraband from accused Kusum cannot be read to frame charge. It is further stated that so far as conspiracy is concerned, there is nothing except oral confession of accused persons. Therefore, charge for conspiracy under Section 29 NDPS Act is also not made out against accused Kusum.

2. Ld. Counsel for accused Kusum has also placed reliance on following judgments:

(a) Smt. Najamunisha & Anr Vs. The State of Gujrat, Crl. Appeal No. 2319-2320 of 2009;

(b) Heena Khatun Vs. State of NCT of Delhi, Bail Application 626/2023;

(c) Roy V.D. Vs. State of Kerala Crl. Appeal No. 967 of 2000.

3. On the other hand it is submitted by ld. Addl. PP for State that in this case although the search was conducted by constable but the search was conducted in presence of authorized officer i.e. SI Kulbir and in presence of ACP. Therefore, the recovery is not vitiated.

4. I have perused the file.

5. As per charge sheet, accused Kusum was allegedly apprehended on the identification of her house by co-accused Ravinder @ Kallu. Co-accused Ravinder @ Kallu identified the house which was locked from inside and therefore, a trap was laid to apprehend the accused Kusum. Police wanted to apprehend Kusum by a decoy customer but no public person agreed to join the investigation. Therefore, Ct. Sonu was made decoy customer and it is in the charge sheet that Ct. Sonu and police officials reached at the house i.e. E-4/13, Sultanpuri which was covered with iron drill from all sides. There was one button on door and Ct. Sonu after pushing the button talked with a person inside the house and asked for 06 grams Heroin/smack on

which the gate was electrically opened. Thereafter, Ct. Sonu entered into the premises and went to 1st floor which was closed. The person inside that house somehow realized that the police has arrived. Therefore, she got shuddered and asked Ct. Sonu that police has arrived and surrounded the house and asked him to run away but she did not open the house after which Ct. Sonu called raiding party and when tried to open the door of 1st floor it was found locked from inside. Thereafter, the door was opened after cutting the same and no body was found at the 1st floor. The 2nd floor was also closed. Therefore, the members were introduced by the police officials and asked them to open the door. After some time the door was opened and there were family members present in the house who told that Kusum is peddler of Smack/Heroin but she was not there. The police tried to find out Kusum on 3rd floor but she was not found on the 3rd floor and when they searched top floor they met two children and one lady who also stated that Kusum is not here. There they found that there was a stair to climb at the roof of the house and police was told that Kusum had went to the roof of the house and from that house jumped on another house after which police searched house no. E-4/12 and found Kusum on the 3rd floor of that house. She was sitting at the 3rd floor of the house and was having injury on both of her legs and was not able to stand. She was having a pouch in her hand. Co-accused Ravinder @ Kallu identified her as the lady from whom he had purchased Heroin. After that accused was served with notice under Section 50 NDPS Act and then personally searched by alleged lady Ct. Renu.

6. The objection of Id. Counsel for accused Kusum is that seizure memo shows that accused was not only personally searched by lady Constable, even the pouch/bag was searched by lady constable. Therefore, this recovery cannot be read against her because this recovery is vitiated.

7. Relevant portion of seizure memo of Herion is reproduced herein”

“.....iske baad Kusum ko search party of maujud lady Ct. Renu, no. 2283/OD ki talashi lene k bare me kha gya lekin Kusum ne lady constable ki talashi lene se mna kar diya. Iske baad W/Ct. Renu, no. 2283/OD ne Kusum uprokt ki maan maryada ka dhyan rakhte hue Kusum of parde me rakhte hue usko whi par stith kamre me le kar gayi jahn par uski sharirik talashi amal me layi gyi jiske baad uski sharirik talashi se koi aapttijanak vastu bramad nhi hui thi. Iske baad W/Ct. Renu 2283/OD ne Kusum uprokt ke hath me maujood safed rang ke gathri ki talashi lena aarambh kiya jo gathri ke talashi par ek transparent polythene me bhure rang ka padarth mila tha wa iske alawa gathri me do packets transparent polythene (khali) the, ek kenchi ek electric weighing machine colour silver wa ek gulabi rang ka purse jis par shri Shaym jewelers wa anya jankari likhi thi wa us purse me ginne par cash Rs. 26,200/- (Rs. 500x40 notes, Rs. 200 x25 notes, Rs. 100X12 notes) mile. Iske baad bramda panni me bhure rang ke padarth of field testing kit ki madad se check kiya usme maujood bhure rang ka padarth Heroin paya gya. Jiske baad barmda panni ka bhure rang ke padarth ke sath wajan kiya to kul 6.53 gram paya gya.....”

8. The statement of lady Ct. Renu recorded under Section shows that after nothing was found from the personal search of accused Kusum she searched the white colour bag/gathri in

presence of other staff.

9. The contention of Id. Counsel for accused is that since all this search proceeding, not only of personal search but the search of bag also, was conducted by lady Constable, this recovery is vitiated. Therefore, no charge can be framed.

10. On the other hand submission on behalf of State is that the search proceedings/recovery is not vitiated because it was done in presence of the other police staff who was authorized to conduct the search and seizure and infact the seizure of the case property is done by the IO who was an authorized person.

11. In the case in hand, it is not only the recovery which is a material piece of evidence against the accused but also the conduct that on arrival of decoy customer Ct. Sonu the accused initially called Ct Sonu to first floor and then asked him to leave, sensing the presence of police and then fled from the house and found in another building.

12. All these facts are relevant material under Section 8 (now Section 6 BSA, 2023). Therefore, even if there is irregularity in search proceeding of the packet in the hands of accused, done by W/Ct. Renu, it is not something which is going to vitiate the charge of conspiracy as well as possession of the contraband/heroin. The judgment relied by Id. Counsel for accused are not squarely applicable in this case as the facts of this case are entirely different from the facts in *Roy V.D. (Supra)*.

Hence, charge under Section 21 (b) is made out against accused Kusum also.

13. Since accused Ravinder is not present today, the matter is adjourned.

14. List for framing of charge on 12.08.2024.

**VIKRAM
ASJ-II/SPECIAL JUDGE NDPS/
NORTH-WEST/ROHINI COURTS/
DELHI/30.07.2024**