

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Cr1. Appeal No.819-820/02

Dilip Kumar & Anr.

Appellant (s)

VERSUS

State of Rajasthan
(With office report)

Respondent(s)

Date : 19/02/2003 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s) Mr. Garvesh Kabra,Adv.(AC)
Ms. Deepti R. Mehrotra,Adv..
Mr. Ravi P. Mehrotra,Adv.

For respondlent(s) Ms. Sandhya Goswami,Adv.

UPON hearing counsel the Court made the following
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Mr. Garvesh Kabra, learned counsel started his
arguments at 10.55 a.m. and concluded at 11.20 a.m.

The appeals are disposed of in terms of the signed
order.

The fee of the learned counsel who appeared as amicus
curiae is fixed at Rs.750/-.

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(Ganga Thakur)
P.S.to Registrar

(Prem Prakash)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.819-820 OF 2002@@
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Dilip Kumar & Anr.

..... Appellants

-Versus-

State of Rajasthan

..... Respondents

O R D E R@@  
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The two appellants in these criminal appeals were found guilty of offence punishable under Section 8 read with 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act) by Special Judge, Jhalawar and were sentenced to undergo rigorous imprisonment for 10 years with a fine of rupees of one lakh, in default thereof to further undergo one year's rigorous imprisonment.

The appeals against the said judgment and conviction to the High Court of Judicature of Rajasthan, Jaipur having failed, the appellants have preferred these criminal appeals.

The prosecution alleges that appellant Dilip Kumar was found carrying 8 grams of heroin and appellant Munna Khan was found carrying 12 grams of heroin, on 13th  
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September,1998 when they were intercepted and searched at about 1.30 p.m. at Bus Station, Bhadka. On their being told about their right to be searched by a Gazetted Officer or a Magistrate, it is stated that they consented for being searched by the SHO, PW 7 Tejraj Singh which is evidenced by exhibits P2 and P3 which is the written consent given by them permitting PW 7 to search them. The substance in question seized was sealed and was sent to the Forensic Science Laboratory which was found to be prohibited substance (heroin) and on trial the Special Judge accepted the prosecution case which is confirmed by the High Court.

Mr. Garvesh Kabra, learned counsel appearing for the appellants contended before us that the courts below erred in accepting the prosecution case that there has been compliance of the mandatory provisions of Section 50 of the Act. He contended that panch witness to the search have not supported the prosecution case. He also contended that the so-called prohibited substance seized from the possession of the appellants were not properly sealed and preserved as required under Sections 52 and 55  
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of the Act. Learned counsel in support of his contention has relied upon the judgment of this Court in K. Mohanan@@  
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Vs. State of Kerala reported in 2000(10)SCC 222.@@

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We have heard learned counsel for the parties and perused the material on record. The High Court after considering the material on record came to the conclusion that PW 7 had made known to the appellants of their right under Section 50 of the Act of being searched by Gazetted officer or Magistrate and having declined the said right in law they had offered themselves to be searched by PW 7 himself and in support of which they had signed the letters exhibit P2 and P3 and relying upon the same the courts below came to the conclusion that search in question was in conformity with the requirement of law under Section 50 of the Act. We have perused the evidence on record and also the statement signed by the appellants, exhibit P2 and P3.

We are satisfied that the courts below while coming to the conclusion that there has been a total compliance of Section 50 of the Act, have rightly done so because of the fact that the appellants have consciously ...4/-

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discarded their right of being searched by a Gazetted Officer or a Magistrate inspite of being told about their right under Section 50 of the Act. The contention of the learned counsel for the appellants that in the absence of independent witnesses supporting the prosecution case there cannot be a conviction based on the evidence of the officers of the investigating agency is also not well founded. It is an accepted principle that if the court can accept the evidence of the investigating agency without requiring any corroboration then the mere fact that the independent panchna have turned hostile would not, in any manner, make the evidence of the police witnesses any less acceptable.

The judgment relied upon by the learned counsel for the appellants in the case of K. Mohanan does not help the appellants on the facts of this case.

The next argument of the learned counsel for the appellants that there has been no compliance under Section 52A of the Act is also to be rejected because on the evidence available on record the courts below have rightly come to the conclusion that the seized heroin was properly sealed and packed and sent to the Forensic ...5/-

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Science Laboratory and a slight variation in weight in the seized sample sent to the laboratory will not, in any manner, create any doubt as to the genuineness of the sample. This finding is also accepted by us.

Learned counsel then contended that the sentence imposed on the appellants is wholly disproportionate to the quantum of heroin seized from the appellants. We are in agreement with this argument of the learned counsel. We notice that from the first appellant Dilip Kumar only 8 grams of heroin was seized while from the second appellant Munna Khan the seized heroin was weighting 12 grams which is slightly more than small quantity contemplated under the Act. Taking into consideration the possibility of this quantity of heroin being kept by the appellants for their self consumption, we think the

sentence of 10 years R.I. awarded to the appellants should be reduced to 3 years R.I. and the fine of Rs. 1 lakh should be reduced to Rs.10,000/-. This, in our opinion, would meet the ends of justice.

For the reasons stated above, while confirming the judgment and conviction of the courts below, we modify the sentence awarded to the appellants and award ...6/-

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R.I. for a period of 3 years and a fine of Rs.10,000/- payable by each of appellants and in default of payment of fine the appellants shall undergo a further sentence of 3 months R.I. If the appellants served any part of the sentence awarded by us, they shall be entitled for remission on this count.

With this modification these appeals are disposed of.

We place on record our appreciation for the services rendered by Mr. Garvesh Kabra, learned counsel whom we have appointed as amicus curiae in the place of originally appointed counsel.

The fee of the said learned counsel who appeared as amicus curiae is fixed at Rs.750/-.

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.....J.  
(N. Santosh Hegde)

New Delhi,  
February 19, 2003.

.....J.  
(B.P. Singh)