

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

CRIMINAL APPEAL NO(s). 608-611 OF 2002

DIRECTOR OF REVENUE INTELLIGENCE & ANR.

Appellant (s)

VERSUS

SHAHIDKHAN & ORS.

Respondent(s)

(With office report)

Date: 03/05/2011 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s)

Mr. P.P.Malhotra,ASG.
Ms. Ranjana Narayan,Adv.
Mr. Naresh Kaushik,Adv.
Mr. B. Krishna Prasad,Adv.

Mr. Shishir Pinaki,Adv.
Mr. D. Mahesh Babu ,Adv.
Mr. Ramesh Allanki,Adv.
Ms. Savita Dhanda,Adv.

For Respondent(s)

Ms. Shikha Tyagi,Adv.
Mr. D.Suryanarayan,Adv.

Mr. Abhishek Atrey,Adv.

M/S.Equity Lex Associates ,Adv.

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

The appeals are dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 608-611

OF 2002

DIRECTOR OF REVENUE INTELLIGENCE
& ANR.

.. APPELLANT(S)

vs.

SHAHIDKHAN & ORS.

.. RESPONDENT(S)

O R D E R

1. Director of the Revenue Intelligence is before us, aggrieved by the acquittal of the respondents for the various charges leveled against them under the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the NDPS Act').

2. Based on intelligence output the officers of the Directorate of Revenue Intelligence, on 3rd of January, 1995 searched four premises viz.,

- "1. Plot No. 20, B.N. Reddy Colony, Road No. 14, Jubilee Hills, Hyderabad:
2. Plot No. 102, Road No. 5, Jubilee Hills, Hyderabad;
3. Plot No. 25, Old Bowenpally, Opp. Military Diary Farm, Secunderabad and
4. H.No. 9-4-84/106 (front portion) Vinayaka Nilayam Kakatiya Nagar Colony Hyderabad"

-2-

During the search of Plot No. 20 referred to above, 36 carpet rolls were found and when one of the carpet rolls was opened it came to the light that it was cut open at various places to make cavities and polythene packets containing mathequalone tablets were kept concealed in that. According to the prosecution as the place was not suitable for carrying out further investigation all the 36 carpets and other items found in the search were shifted to the Office of the Collector of Customs for detailed examination. On the examination of these carpets, 34 carpets were found containing mathequalone tablets in polythene packets concealed in the cavities made in the carpets. Accordingly the mathequalone tablets weighing 163.470 Kgs., valued at Rs. 16 crores were seized. In the search conducted at Plot No. 102 aforesaid in presence of Vishnu Kumar Moorjani, incriminating documents including

the photograph of Lalith Kumar Moorjani, the 4th Respondent along with one Indian Passport in the name of Mr. Ravikant Suryakant on which the photograph of the 3rd Respondent namely Mr. Shamraj Moorjani was affixed were found. During the search of Plot No. 25 aforesaid the officers of the Directorate of Intelligence found five wooden packages wrapped with gunny cloth and dry grass and on examination grey tablets with the mark "M" on one side and certain mark on the other side were found. The tablets were kept in the

-3-

polythene packets and further the packets were put together in the plastic sack and thereafter wrapped in the wooden box covered by gunny cloth and dry grass. In the presence of the accused Shamraj Moorjani the test was conducted which showed positive results of mathequalone. The total weight of the tablets found in the five boxes was 186.75 Kgs. which were seized. The intelligence input also led to the search of Ground Floor of House No. 9-4-84/106. During the search accused Shahid Khan was found present where incriminating documents including all the property documents of accused Shamraj Moorjani were found. Further, currency notes of different denominations of various countries including India, Australia, United Arab Emirates and Tanzania were found. In addition to the aforesaid, one polythene packet with grey colour powder weighing about 15 gms. was also found which on testing was found to contain mathequalone and was seized.

3. According to the prosecution, during the course of investigation it was found that the accused persons along with known and unknown persons entered into a criminal conspiracy for exporting psychotropic substance from India to Nairobi. It alleged that the 1st Respondent made arrangements for procuring the mathequalone tablets through

-4-

accused Md. Sharief (since absconding) for the purpose of illegal export from India whereas the 2nd, 3rd and 4th respondents received mathequalone and arranged for concealment of the mathequalone tablets inside the carpet rolls. It has been further alleged that the 2nd respondent with the help of the 5th respondent made arrangements for the transport of the mathequalone tablets to Cochin for further export to Nairobi. The prosecution has further alleged that the 3rd and 4th respondents along with 6th respondent made arrangement for testing the mathequalone seized. Accordingly the prosecution led complaint for prosecution of the respondents for offence under Section 8 read with Section 22, 23, 25 and 29 of the NDPS Act.

4. The trial Court on appraisal of evidence came to the conclusion that the tablets seized from the accused were psychotropic substances and the provisions of Section 42 of the Act have been complied with and accordingly held all the accused guilty of the charges levelled against them.

5. The accused aggrieved by their conviction preferred separate appeals which have been disposed of by the High Court by its common judgment dated the 26th April, 2001. The High Court had acquitted all the accused person of all the charges on various grounds including the ground that the prosecution has failed to prove the compliance of Section 42(2) of the Act. The observations of the High Court in this regard read as follows:

-5-

"When there is a mandatory provision of informing the superiors regarding the information received by PW.1, it was necessary for him to pass on such information in writing to his superior. Though it was submitted by the learned Special Public Prosecutor that the information was collected by PW.1 through the intelligence, it means that a person may be from his department, had given information regarding the illegal activities done by the appellants, he ought to have given the information to his superior, failing which it is deemed to have caused prejudice to the accused as laid down by the Apex Court."

6. Mr. P.P. Malhotra, the learned Additional Solicitor General of India, appearing on behalf of the appellants attempted to assail the judgment of acquittal on various grounds but as the appeal is fit to be dismissed on the ground of non-compliance of Section 42(2) of the Act we do not consider it expedient either to incorporate or answer those submission.

7. Search in the present case was conducted by the PW.1 -K.C.Shekhar, Assistant Director and in the cross-examination he stated that "he does not remember whether he had conveyed the information in writing or not". He has

-6-

further admitted that he did not inform the fact in writing to any person. Thus, from the evidence of PW.1, it is evident that the information recorded was not forwarded.

In view of the Constitution Bench Judgment of this Court in the case of Kamal Singh vs. State of Haryana (2009) 8 SCC 539 total non-compliance of provisions of Section 42(2) of the Act vitiates the conviction. In the said case it has been held as follows:

35:(d) While total non-compliance with requirements of sub-section (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be auspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the

information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

(8) On fact we have found that there is total non-compliance of Section 42(2) of the Act and in that view of the matter we are of the opinion that the High Court was right in setting aside the order of the conviction of the respondents and acquitting them of all the charges. We make it clear that we have not expressed any opinion in regard to the other conclusions arrived at by the High Court and have maintained the order of acquittal only on the ground of non-compliance of Section 42(2) of the Act.

(9) We do not find any merit in these appeals and are accordingly dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

New Delhi,
May 3, 2011.