

STATE OF ORISSA

v.

KANDURI SAHOO

DECEMBER 4, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Narcotic Drugs and Psychotropic Substances Act, 1985:*

*S.20(b)(i)—Accused found in possession of contraband articles—Sample sent for chemical examination after four days of alleged recovery—During this period articles alleged to be kept in Excise Malkhana—Report of chemical examiner being positive—Conviction by trial court—Acquittal by High Court on the ground that there was no explanation about custody of articles from the date of alleged recovery to the date of sending the samples for chemical examination—Held, merely because the articles were kept in Excise Malkhana for four days that would not make the prosecution versions suspect—Though there was no specific order of SDJM for custody of the articles when accused was produced in court, it was clearly stated in the forwarding report that the seized articles and the sample thereof were produced in court along with the accused—The evidence of the witness was categorical to the effect that the articles were kept in excise Malkhana from where they were brought and sent for chemical examination—Judgment of High Court is set aside and that of trial court restored.*

*Valasla v. State of Kerala, AIR (1994) SC 117, distinguished.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 804 of 1997.

From the Judgment and Order dated 19.9.96 of the Orissa High Court in CrI. A. No. 11 of 1996.

Radha Shyam Jena for the Appellant.

The Order of the Court was delivered:

The State of Orissa questions correctness of judgment of a learned Single Judge of the Orissa High Court by which the respondent was acquitted of the charges under Section 20 (b) (i) of the Narcotic Drugs &

A Psychotropic Substances Act, 1985 (for short 'the Act'). Though the trial court found the respondent-accused guilty of offences, the High Court held that the accusation was not established and, therefore, directed acquittal.

The factual position is as under :

B On 13.5.1994 at about 7.00 A.M. the Excise Sub-Inspector, Mobile Squad No. 1, Cuttack (PW-1) while patrolling with his Assistant Sub-Inspector and constables at Gandhi Palli in Cuttack City noticed the accused with a full gunny bag. Being suspicious that the accused was carrying contraband articles, he searched the accused in presence of witnesses. He found that the gunny bag contained cannabis (ganja) weighing about 12 kg. 50 grams were taken as sample and was sent for chemical examination. The chemical examination report indicated that the sample was cannabis (ganja). On completion of investigation, the accused was sent up for trial which ended in conviction and sentence of 5 years R.I. and fine of Rs. 5000 with default condition of further imprisonment for six months. The accused denied the charges. In order to bring home the accusations, the prosecution examined three witnesses; PW-1, the Excise Sub-Inspector, Mobile Squad No. 1, Cuttack, P.W. 2 was a witness to the seizure and P.W.3 the ASI who accompanied PW-1 on patrol duty.

E PW-2 pleaded ignorance about the contents of the seizure memo though he admitted his signature. Considering the evidence on record, the trial court held the accused guilty and sentence was imposed.

In appeal the only question which was urged was that there was no explanation about the custody of the articles for a period of four days. With reference to the period of delay, it was submitted that though the seizure was allegedly made on 13.5.1994, the sample was sent to the State Drug Testing Research Laboratory, Bhubaneswar on 17.5.1994 which, according to the accused, was sufficient to discard the accusation. Stand of the State before the High Court was that the articles were kept in the safe custody and were deposited in the Excise Malkhana at Cuttack pursuant to an order of the S.D.J.M., Cuttack before whom the accused was produced at the first instance.

The High Court found that there was no specific order of the S.D.J.M. Cuttack that the articles were to be kept in the Excise Malkhana. That being so, the High Court held that the prosecution version was not acceptable.

Reliance was placed in *Valasla v. State of Kerala*, AIR (1994) SC 117 to support the conclusion. Accordingly the High Court directed acquittal of the accused. A

In support of the appeal, Mr. Radha Shyam Jena, learned counsel submitted that the decision in *Valasla's* case (supra) is clearly distinguishable on facts. In the said case the delay was not held to be fatal. What weighed with this case was absence of material regarding safe custody. Merely because that the articles were kept in the Excise Malkhana for four days would not make the prosecution version suspect. B

There is no appearance on behalf of the respondent in spite of service. C

We find that though there was no specific order of the SDJM, Cuttack for custody of the articles when the accused was produced in the Court on 13.5.1994, it was clearly stated in the forwarding report that the seized articles and the sample thereof (MOS. I & II) were produced in the Court alongwith the accused. The evidence of PW-1 was categorical to the effect that the articles were kept in the Excise, Malkhana from where they were brought and sent for chemical examination. This relevant aspect, appears to have been missed by the High Court. In *Valasla's* case (supra) it was not laid down that whenever there is delay in sending the samples, the prosecution version would become vulnerable. What was emphasised related to proper and safe custody of the seized articles. In the background of that particular case, when delay of three months was there and there was no clear evidence as to with whom the articles were lying, the decision was rendered. No evidence was led to show that the contraband articles were in proper custody and in proper form. But the factual situation is different here. That being so the High Court's Judgment does not stand scrutiny and is set aside. The conviction as done by the trial court was proper. We direct restoration of the conviction as directed by the trial court along with the sentence imposed. D E F

The accused shall surrender to custody, if he has not served full sentence as imposed by the trial court, to serve remainder of sentence. G

The appeal is allowed.

R.P.

Appeal allowed.