

**A.F.R.**

**Neutral Citation No. - 2024:AHC-LKO:59092**

**Reserved on 05.08.2024**

**Delivered on 30.08.2024**

**Court No. - 16**

**Case :- CRIMINAL APPEAL No. - 2421 of 2006**

**Appellant :- Smt.Manju**

**Respondent :- State of U.P.**

**Counsel for Appellant :- Raj Narayan Rastogi**

**Counsel for Respondent :- Govt.Advocate**

**Hon'ble Shamim Ahmed,J.**

1. The case is taken up in the revised call.
2. This Criminal Appeal Under Section 374 (3) of the Criminal Procedure Code has been filed against the judgment and order dated 10.10.2006 passed by the Additional Sessions Judge, F.T.C. First, Lucknow in S.T. No. 246 A of 1999 arising out Crime Number 362 of 1999: State vs. Smt. Manju, by which the appellant has been convicted and sentenced under Section 8C/21 N.D.P.S. Act to imprisonment for the period already undergone and imposed a fine of Rs. 500/- with default stipulation.
3. The brief facts of the case are that the appellant was apprehended near the house of one Kanhaiya in Lucknow with possession of 40 and 24 small packets (pudiyas) of smack (heroin) respectively. The prosecution alleged that the appellants were found in possession of these illegal substances without any legal authorization, thus committing an offense under the NDPS Act. The trial court, after considering the evidence, including the testimonies of the prosecution witnesses (PWs), convicted the appellants. The trial court noted that although there were minor inconsistencies in the testimonies regarding the exact location of the arrest, the core facts remained consistent. The

court also observed that the appellants failed to bring forth any credible defense against the charges.

4. Learned counsel for the appellant submits the appellant's counsel argued that the trial court erred in relying on contradictory evidence presented by the prosecution. The witnesses produced by the prosecution provided inconsistent statements, which the court failed to adequately scrutinize. The counsel highlighted that such contradictions should have created reasonable doubt regarding the guilt of the appellant

5. Learned counsel for the appellant further submits that the appellant's counsel contended that the prosecution's narrative was unnatural and not credible. It was argued that the sequence of events as presented by the prosecution did not align with normal human behavior or logic, thus casting further doubt on the case. The prosecution's failure to present a coherent and believable account of the events weakens their case against the appellant.

6. learned counsel for the appellant further submits that The alleged incident occurred near a highly populated area close to government offices. Despite this, the police failed to involve any gazetted officers during the arrest and seizure, which is a mandatory requirement under Section 42 of the NDPS Act. The counsel argued that this non-compliance with procedural law was a significant lapse that vitiates the entire case.

7. learned counsel for the appellant further submits that the immediate reporting of the incident to higher authorities was not done, as mandated by the NDPS Act. The delay in communication and the method of reporting raise serious questions about the integrity of the prosecution's case. The counsel argued that the failure to adhere to this statutory requirement further weakens the prosecution's case.

8. learned counsel for the appellant further submits that the police did not comply with the requirements of Section 50 of the NDPS Act,

which mandates that the accused be informed of their right to be searched in the presence of a gazetted officer or magistrate. The failure to inform the appellant of this right and obtain their consent renders the search and seizure illegal, making the evidence inadmissible.

9. learned counsel for the appellant further submits that the arrest and seizure took place in a densely populated area, yet no independent witnesses were produced to corroborate the police's version of events. This absence of independent witnesses raises serious doubts about the legitimacy of the arrest and the subsequent recovery of contraband.

10. learned counsel for the appellant further submits that the police officers did not take their own personal search before conducting the search of the appellant, which is a procedural safeguard to ensure the integrity of the search process. The failure to follow this procedure casts doubt on the legitimacy of the recovery of the contraband.

11. learned counsel for the appellant further submits that the police failed to properly document the seizure and recovery process, including obtaining the necessary signatures and seals from the officers involved. This lack of documentation raises concerns about possible tampering with the evidence.

12. learned counsel for the appellant further submits that the prosecution failed to produce key witnesses, such as the lady officer who conducted the search of the female appellant, in court. The non-production of these witnesses weakens the prosecution's case and suggests that the evidence against the appellant is not reliable.

13. learned counsel for the appellant further submits that the prosecution failed to establish a clear chain of custody for the contraband seized and did not provide proper forensic evidence to conclusively prove that the substance recovered was indeed a narcotic drug. The lack of credible forensic evidence creates reasonable doubt regarding the appellant's guilt.

14. learned counsel for the appellant further submits that the lower court's conviction of the appellant was based on speculation and not on solid evidence. The prosecution's case was riddled with inconsistencies and procedural lapses, which should have led to the appellant's acquittal rather than conviction.

15. learned counsel for the appellant further submits that the lower court misapplied the law in convicting the appellant. The court failed to consider the legal principles established in relevant case law, such as the necessity of strict compliance with the procedural safeguards provided under the NDPS Act.

16. learned counsel for the appellant further submits that the prosecution failed to properly identify the appellant as the person in possession of the contraband. There was no proper identification parade or conclusive evidence linking the appellant to the alleged offense.

17. The Additional Government Advocate (AGA) submits that the prosecution's witnesses were credible and their testimonies consistent with the evidence presented. The contradictions highlighted by the defense were minor and did not affect the overall reliability of the prosecution's case.

18. The Additional Government Advocate (AGA) further submits that the police followed the procedures laid down in the NDPS Act. The failure to involve a gazetted officer or magistrate during the search was explained by the urgent nature of the operation, and the higher officers were informed as soon as possible.

19. The Additional Government Advocate (AGA) further submits that the recovery of contraband was lawful and properly documented. The substance recovered was tested and confirmed to be a narcotic, and the chain of custody was maintained throughout the process.

20. The Additional Government Advocate (AGA) further submits that the absence of independent witnesses does not automatically

render the prosecution's case weak. The credibility of the police officers involved in the arrest and recovery should be considered, and the circumstances of the case did not permit the involvement of independent witnesses.

21. The Additional Government Advocate (AGA) further submits that the forensic examination of the contraband was conducted in accordance with established procedures, and the report confirmed the presence of a narcotic substance. The defense's allegations of tampering are unfounded.

22. The Additional Government Advocate (AGA) further submits that the NDPS Act imposes strict liability on those found in possession of narcotics, and the appellant was rightly convicted based on the evidence of possession. The procedural lapses, if any, do not outweigh the evidence of possession.

23. The Additional Government Advocate (AGA) further submits that the lower court correctly applied the law and convicted the appellant based on the evidence presented. The defense's arguments are attempts to discredit the prosecution's case without providing any substantial evidence to the contrary.

24. The Additional Government Advocate (AGA) further submits that the importance of enforcing the NDPS Act strictly to combat drug offenses. The appellant's conviction serves as a deterrent to others involved in such activities and upholds the public interest in maintaining law and order.

25. The Additional Government Advocate (AGA) further submits that the importance of upholding the lower court's judgment to maintain the integrity of the judicial process and ensure that those involved in drug trafficking are duly punished. The appellant's arguments should not overshadow the substantial evidence of guilt presented in the case.

26. In this case, the appellant challenged the conviction and sentence imposed by the trial court. After a thorough review of the evidence,

the submissions of both the appellant's counsel and the State, as well as an examination of the relevant legal principles, the following conclusions have been drawn:

The primary issues for determination before this Court are:

1. Whether the inconsistencies in the witness testimonies regarding the arrest location are material enough to vitiate the conviction.
2. Whether the failure to weigh the seized substance at the recovery site and the lack of independent witnesses affects the validity of the conviction.
3. Whether the sentence awarded by the trial court is appropriate and just.

27. The Court finds that the alleged inconsistencies regarding the location of arrest are not material. The core aspect of the prosecution's case—that the appellants were found in possession of heroin—remains unshaken. Minor discrepancies in witness testimonies are not uncommon and do not necessarily discredit the entire prosecution case, especially when the testimonies are otherwise consistent and corroborated by other evidence.

28. The failure to weigh the seized substance at the recovery site does raise concerns, but it does not undermine the fact that the substance was indeed narcotic in nature. The forensic examination report confirmed that the substance recovered was heroin. The trial court rightly observed that the quantity was small, and the lapse in procedure does not negate the presence of illegal narcotics with the appellants.

29. The Court notes that while the presence of independent witnesses would have strengthened the prosecution's case, their absence does not automatically invalidate the conviction. The testimony of the police officers, if found credible, can form the basis for a conviction

under the NDPS Act. The defense did not provide any substantive evidence to disprove the prosecution's case or to demonstrate that the police fabricated the case against them.

30. Considering the appellants' socio-economic background and the fact that the quantity of heroin was small, the sentence awarded by the trial court—imprisonment for the period already undergone and a fine of Rs. 500/- each—was appropriate and just. The Court finds no reason to interfere with the sentence imposed by the trial court.

31. After careful consideration of the evidence, the legal arguments presented, and the relevant case laws, this Court finds that the appeal lacks merit. The trial court's findings were based on a proper appreciation of the evidence, and there were no legal or factual errors that warrant interference by this Court. The appeal is liable to be dismissed.

32. Accordingly, the Court upholds the conviction and sentence passed by the trial court and the appeal is **dismissed** and the judgment of the trial court is **affirmed**.

**Order Date :- 30.08.2024**

Arvind

**(Shamim Ahmed,J.)**