

Extracts From The Judgement Of Ms. Kiran Nath

CC NO. 30/99 Under Section 25A of NDPS Act Customs vs Daya Ram @ Rajesh and others

Authorities of Dubai seized a single consignment of 9 tonnes of acetic anhydride in 1999. The consignment was suspected to have been smuggled from India through Inland Container Depot at Delhi. The office of the Narcotics Commissioner conducted follow up investigations in India and apprehended all those behind the smuggling. The chemical was pilfered in small quantities at a time by unscrupulous drivers from tankers en route their destination. Each pilferage was too small to be noticed in a tanker of acetic anhydride. The syndicate bought the chemical from these unscrupulous drivers, accumulated and smuggled it out mis-declaring the consignment as 'Acid for Pickles'. To circumvent possible detection, they exported the consignment in the name of a genuine garment exporter who was unaware of the entire export. A small lead enabled the officers to identify and apprehend all those behind the case. Hon'ble NDPS Special Judge Ms. Kiran Nath recently decided the case and sentenced those involved to 10 years rigorous imprisonment. Many important legal issues involved were decided in this case as per the ratio laid down by the Apex court. Extracts from the judgement are reproduced below for reference.

1. I would like to refer to the judgement of the Hon'ble Supreme Court in the case of **Firozuddin Basheeruddin and others Vs/ State Kerala (2001) 7 Supreme Court Cases 596** wherein it was held that like most crimes, conspiracy requires an act (acts reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern organized crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement.

Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of cooperation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.'

2. It was further observed by the Hon'ble S.C. :-
 - (31) "another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy – who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals of a large criminal organization, there is but one objective; to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lands conspiracy its criminal cast."
3. "Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crime or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts."
4. "Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial, contrary to the usual rule. In conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions"
5. It has been held by the Hon'ble Supreme Court in the case of

State of Maharashtra Vs. Som Nath Thapa 1996 1 AD SC 502 that in a particular situation there may be division of performance by plurality of means sometimes even unknown to one another, and in achieving the goal several offences may be committed by the conspirators even unknown to others. All that is relevant is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy which are chain of acts. is one of the models of techniques to breach the scope of conspiracy where each party performs even without knowledge of the others a role that aids succeeding parties in accomplishing the criminal objective of the conspiracy. In the case of **Ajay Aggarwal Vs. Union of India 1993 (3) SCC 609**, the Hon'ble Supreme Court had given the illustration of this chain of acts in conspiracy as what is done in the process of procuring and distributing narcotics or any illegal foreign drug for sale in different parts of the globe. In such a case, smugglers middlemen, retailers are privies to a single conspiracy to smuggle and distribute narcotics. It was thus, cleared that to establish the charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended so long as the goods or service in question could not be put to any lawful use. Finally when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods of service to an unlawful use.

6. I am thus, of the opinion that in the present case the prosecution has established the chain of acts by each of the accused in achieving its ultimate objective of procuring acetic anhydride, a controlled substance and aiding and abetting the export of the same illegally by performing their respective parts.
7. Ld. Counsel for the accused has argued that the prosecution intends to establish its case merely on the basis of the confessional statement of the accused recorded under Section 67 NDPS Act, which statements were retracted at the first available opportunity and hence, cannot be relied upon.
8. It is a settled preposition of Law that conviction of accused can be based on confession, if the same is voluntary. It was held by the Hon'ble Supreme Court in the case of **Henry West Mullar Vs. State of Assam AIR 1985 SC 823** that a confession full of facts and minute details would show that it was not a result of torture or compulsion.
9. It was held by the Hon'ble High Court of Delhi in **Yudhister Kumar Vs. State and Another II (1992) CCR 1122** that the concept of a confession in cases under IPC cannot be extended to statement of

a co-accused under NDPS Act.

10. It was further held by the Hon'ble Supreme Court in the case of **Naresh J. Sukhawani Vs. Union of India 1996 (83) ELT 258 SC** that confession before a custom officer was not the same as before a police officer and was hence admissible in evidence.
11. As regards the retraction of their statements by the accused persons, first and foremost, I would like to refer to the judgment of the Hon'ble Supreme Court in the case of **Surjeet Singh Vs. Union of India AIR 1997 SC 258** wherein it was observed by the Hon'ble Supreme Court that retraction of confession by the accused was inadmissible. Thus retracted, the confession would still bind the accused.
12. From the judicial record, it is also seen that accused Daya Ram, Basant Devrani, Sanjeev Aggarwal and Tanuj Gagrana were produced before the court for the first time on 6.4.99. It was observed by the Id. ACMM that accused had been questioned if they wanted to get themselves medically examined, but they declined. However, the accused stated to the ACMM that their statement had been recorded under duress, pressure and coercion. In the remand order of Sanjeev Aggarwal, it is specifically noted by the Id. ACMM that accused did not want to say anything else.
13. At the same time, accused Tanuj Gagrana had moved an application for retraction of statement before the Id. ACMM. It is observed that this application moved on 6.4.99 was a typed application addressed to the court – drafted in a pattern familiar to court proceedings which shows that it was made on legal advice and was merely signed by the accused. Not only this, it is a crypto application only stating that his statement was obtained under coercion and duress without giving any details as to how he says that i.e. what was the coercion or duress? Apparently, there was no torture or physical injury as he had refused to get himself medically examined. His statements contain details which were known to the investigating officers till then; and were corroborated by various facts as discussed earlier.
14. Not only this, it is seen that accused has taken a totally different stand in his examination before the court under Section 313 Cr.P.C. stating that the statement was extracted by keeping him captured and beating him mercilessly whereas he had referred to be medically examined when produced before the court on 6.4.99.