



FACULTY OF JURIDICAL SCIENCES

**MOOT COURT EXERCISE AND
INTERNSHIP
(CLINICAL)**

Course : BBALLB , 3rd Semester

Subject code : BBL903

Faculty Name : Ms Taruna Reni Singh

Moot Court Exercise and Internship

Objective: The objective of having moot courts is to give the students practical training on how the proceedings of the court take place.

The Paper will have following components

- Moot Court: Every student may be required to do at least one moot court in a year. The moot court work will be on assigned problem.
- Observance of Trial in one case, either Civil or Criminal.
 - Students may be required to attend one trial in the course of the last year of LL.B. studies. They will maintain a record and enter the various steps observed during their attendance on different days in the court assignment.
- Interviewing techniques and Pre-trial preparations and Internship diary.
 - Each student will observe one interviewing session of clients at the Lawyer's Office/Legal Aid Office and record the proceedings in a diary. Each student will further observe the preparation of documents and court papers by the Advocate and the procedure for the filing of the suit/petition.
- The fourth component of this paper will be Viva Voce examination on all the above three aspects.
- Student will be required to undertake legal awareness programme in association with N.S.S. and other authorities as directed by the Faculty.

LECTURE 12

CONSTITUTION OF INDIA

Article 20. Protection in respect of conviction for offences (1) No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence.....

Relevant Extract for purposes of Exercise

DELHI REPORTED JUDGMENTS

2000 (54) DRJ

2000 (54) DRJ

HIGH COURT OF DELHI CrI. A.No. 87/99

Emma Charlotte Eve Appellant

Versus

Narcotic Control Bureau Respondent

M.S.A.

Siddiqui, J

Decided on

April 5, 2000

Narcotic Drugs and Psychotropic Substances Act 1985

Section 21 & 23 -Application of obligations under UN Convention against Illicit Traffic Narcotic Drugs & Psychotropic Substances, 1998 – The accord does not become a law in force in India without legislative action.

Section 21 & 23 – Dispatch of the parcel containing contraband by post- Similarity of handwriting on the parcel and the admitted handwriting of accused not proved by handwriting expert Possibility of tempering with sealed sample not ruled out Conviction, set aside.

Emma Charles Eve v. Narcotic Control Bureau

Mr. AmanHingorani, Adv. For the

Appellant Mr. Satish Aggarwala,

Adv. For the Respondent

M.S.A. Siddique, J.

This appeal is directed against the judgment and the order of conviction dated 11.12.1998 passed by the Additional Sessions Judge in Sessions Case No. 74/96 convicting the Appellant under Sections 21/23 of the Narcotic Drugs and Psychotropic Substances Act (for short the Act) and sentencing her to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/- or in default to suffer further rigorous imprisonment for a period of six months. Briefly stated the prosecution case is that on 3.4.1996, two postal parcels bearing Nos. R-250012 and R-250013 arrived at Frankfurt Airport, Germany, with flight No. AV018 from Bogota, Columbia destined for further transport to India. At Frankfurt Airport, both the parcels were intercepted by the Custom Officer Mr Rabolt, who had handed over them to the Chief Inspector Customs Mr Prior. Both the parcels, when opened in the presence of the Custom Officer, Mr Hilder Brand, tested

positive for cocaine. Consequently, a criminal case was registered vide Reference No. 89Js 141520/96 and both the parcels containing contraband were seized and confiscated by the Custom authorities, Government of Germany. After obtaining sanction from the Chief Public Prosecutor, Government of Germany, Dr Leistner, the Narcotics Control Bureau, Govt. of India (for short "the NCB") was requested for a controlled delivery. By the order dated 4.4.1996 (Ex. PW-16/A), the Government of India empowered the NCB to undertake controlled delivery of the said consignment. On 9.4.1996, the aforesaid parcels were handed over to the Captain of the Lufthansa Airlines Mr Manfred Montjoge for their delivery to Mr Berned Engel, German Drug Liaison Officer posted in India. On 10.4.1996, the said consignment arrived at I.G.I. Airport, New Delhi by the morning flight. Mr Montjoge delivered the parcels to Mr Berned Engel, who in turn handed over them to Mr Shailendra Sharma (PW-12) at the airport. The parcel No. 251002 destined for Goa had been handed over to the officers of the NCB, Bombay Zonal Unit and the parcel No. 251003 destined for Delhi remained in the custody of Shri Shailendra Sharma. The further case of the prosecution is that Deputy Chief Post Master, Mr R P Sharma was contacted by the Zonal Director NCB, Mr Mukesh Khullar and a plan was chalked out to nab the claimant of the parcel bearing No. 251003. According to the plan, the intimation slip (Ex. PW-1/D) was prepared and kept in the post restante counter under surveillance of the Officers of the NCB.

On 19.4.1996, at about 10 am, the Appellant came to the post restante counter. She picked up the intimation slip (Ex. PW-1/D) and requested Postal Assistant Mr Vasudev (PW-7) to deliver the said parcel to her. The intimation slip (Ex. PW-1/D) was in the name of 'Elizabeth Evans' and the appellant's passport was issued in the name of Emma Charlotte Eve. The appellant, therefore, addressed an application (Ex. PW-1/F) to the Chief Post Master, GPO explaining the discrepancy in her name and that of on the parcel. Being satisfied with the explanation offered by the appellant Deputy Chief Post Master Mr R P Sharma (PW-14) allowed the Appellant to take delivery of the parcel in question. Thereafter, the parcel, which was in the custody of Mr. Shailender Sharma (PW-12) was delivered to the Appellant by Mr. Vasudev (PW-7) in the presence of Smt Suman Kumari Yadav (PW-11), who had disguised herself as the Postal Assistant.

The appellant, after taking delivery of the parcel, proceeded to the Shiva Guest House on a three wheeler driven by Rakesh Sharma (PW-10). The officers of the NCB followed the Appellant from the post office to her guest house and accosted her to her room. On being asked by the officers of the NCB, the Appellant handed over the said parcel to them, which was found to contain 122 grams of cocaine. The said parcel was seized vide seizure memo (Ex. PW-1/H). Two representative samples of 5 gms each were drawn and kept in two separate polythene bags. The samples as well as the remaining cocaine were converted into separate parcels and they were duly sealed on the spot. The sampled powder along with the test memo (Ex.PW-9/B) was sent to the Chemical Examiner, which on examination, was found to contain cocaine vide report dated 28.5.1996. The Appellant was charged with the offences punishable under Sections 21/23 of the Act and tried.

The Appellant abjured her guilt and alleged that false case has been foisted on her. According to the appellant, on 19.4.1996, she had gone to the post office to enquire about the parcel which she was expecting from her father

- (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”

In section 76(2) of the Act, substitution of the following clause has been proposed: -

- ‘(ca) the manner in which “controlled delivery” under Section SOA is to be undertaken.”

However, there is no provision in the Act relating to the concept of the “controlled delivery”. The learned Additional Sessions Judge rejected the applicant’s contention that controlled delivery operation is not permitted in India and in the absence of there being any specific provision in the Act for dealing with an operation relating to controlled delivery, the provisions of the United Nations Convention of 1988 relating to the concept of controlled delivery cannot be made applicable. Learned Additional Sessions Judge was of the opinion that since the Govt. of India has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, the provisions of the Convention are binding on India and controlled delivery is permissible in this country. I am unable to subscribe to the view taken by learned Additional Sessions Judge. Section 3 (37) of the General Clauses Act defines an “offence” to mean an act of omission made punishable by any law for the time being in force. Punishment is the mode by which the State enforces its laws forbidding the doing of something, or omission to do something. Punishment is always co related to the law of the State forbidding the doing or omission to do something. Unless such a law exists, there is no question of any act or omission being made punishable (Jwala Ram vs State of Pepsu, AIR 1962 SC 1246).

Thus, the question which arises for consideration is whether the obligations of the Government of India under the accord and obligations attached to the UN Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

1988 has the force or authority of law? Article 245(1) read with the entry 14 in List-1 of Schedule-7 of the Constitution and Article 253 empower the Parliament to make laws for implementing treaties and agreements entered into by the Government of India with foreign countries. The provisions in Part IV of the Constitution contain the directive principles of State Policy. The Provision in Article 51, occurring in that part, provides, inter alia, that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. The provision in Article 37 occurring in the same part, though it declares that the directive principles in part-IV are fundamental in the governance of the country and it shall be the duty of the State to apply those principles in making the laws, states that the provisions in that part shall not be enforceable by any court. From this it follows that in the absence of any law, court cannot also enforce obedience of the Govt. of India to its treaty, agreement or convention with foreign countries or the United Nations.

From U K and was wrongly handed over a parcel, which was addressed to one Elizabeth Evans and she, therefore, refused to take delivery and immediately returned it back to the postal officer. Thereafter, she came to Paharganj and when she was about to enter the restaurant, three men grabbed her and forcibly took her to the guest house where she was staying and there she was subjected to a humiliating search, during the course of which, officials of the Narcotic Control Bureau wrongfully forced a parcel upon her. She has not examined any witness in support of her defense. The learned Additional Sessions Judge, on an assessment of evidence adduced by the prosecution, accepted the prosecution case and convicted and sentenced the Appellant as indicated above.

At the outset, I must make it clear that the present case pertains to the controlled delivery. As per prosecution case, two postal parcels bearing Nos. R-250012 and 250013 arrived at the Frankfurt Airport, Germany with flight No. AVO18 from Bogota, Columbia, destined for further transport to India. On suspicion, both the parcels containing cocaine were intercepted at the airport by the customs officer Mr. Rabolt, who handed over them to the Chief Inspector Customs Mr Prior. Consequently, a criminal case in respect of the said parcels was registered at Frankfurt (Germany) and the said parcels were seized and confiscated by the Customs Authorities. After obtaining the requisite sanction from the Chief Public Prosecutor, Govt. of Germany, Dr Leistner, the NCB was requested to undertake a controlled delivery. By the order dated 4.4.1996. (Ex.PW- 16/A), the Govt. of India empowered the NCB to undertake the 'controlled delivery' and pursuant thereto, the said parcels were dispatched from Germany and received on 10.4.1996 at the I.G.I. Airport by Mr Shailendra Sharma (PW- 12).

It may be mentioned here that drug trafficking, trading and its use which is a global phenomenon and has acquired the dimensions of an epidemic, is detrimental to the future of a country. Therefore, the Act was enacted with a view to combat the evil of drug trafficking and to suppress the abuse of dangerous drugs and psychotropic substances in the manner envisaged by the International Convention of Psychotropic substances, 1971. The United Nations Conventions against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances was held in 1988 in Vienna, Austria to

tackle the menace of drug trafficking throughout the comity of Nations. The Government of India has ratified this convention. Therefore, the Act was amended in 1989, inter alia to provide for tracing, seizing and forfeiture of illegally acquired property. The experience gained over the years revealed that the provisions of the Act have certain inadequacies due to which the implementation of the provisions has been tardy. Certain other inadequacies in the various provisions of the Act have been noticed by the Government. The need to remove those inadequacies and rationalisation of the sentence structure was, therefore, felt. Certain obligations, especially in respect of the concept of “controlled delivery” arising from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, to which the Govt. of India acceded, also required to be addressed by incorporating suitable amendments in the Act. With a view to achieve the said object, the Bill No.XIV of 1998 further to amend the Act was introduced in the Parliament. Learned counsel for the Appellant submitted that since the Parliament was dissolved in 1999, the said Bill could not be passed by the Parliament. Sections 2 (viib), 8-A, 50-A, 54 and Section 76(CA) of the ‘said Bill’ are relevant for purposes of the present case.

Section 2 (viib) defined “controlled delivery” as under: -“(viib) “controlled delivery” means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substance, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision with a view to identifying the persons involved in the commission of an offence under this Act.”

Section 8-A has been proposed to prohibit certain activities relating to property derived from offence. The Section reads as under: -

“8A. No person shall –

- (a) convert or transfer any property knowing that such property is derived from on offence committed under this Act or under any other corresponding law of any country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences or
- (b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country or
- (c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act or under any other corresponding law of any other country.”

After Section 50 of the Act, a new Section 50-A has been proposed to confer power on the Director General of Narcotics Control Bureau or any other person authorised by him in this behalf to undertake controlled delivery of any consignment to any destination in India or a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed. For Section 54 of the Act, substitution of the following

Section has been proposed:

“54. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of, -

- (a) any narcotic drug or psychotropic substance or controlled substance;
- (b) any opium poppy, cannabis plant or coca plant growing on any land which has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

In Encyclopedia Britannica (Vol.12) at pages 424 and 425, under the heading Relationship with the Internal Law of States, it is stated thus:

“Relationship with the Internal Law of States: –

To understand international law it is necessary to appreciate its close relationship to the internal law of States, or as lawyers say, the municipal law of States, for its increasingly penetrating that sphere. Even the traditional international law, at a time when it was supposed to be a law only between States, had many rules which required the cooperation of municipal courts for their realization: for example, the very ancient rules where by foreign sovereigns and their diplomatic representatives enjoy certain immunities from the municipal jurisdiction. But a very large part of modern international law is directly concerned with the activities of individuals which come before municipal courts. So that it is in municipal courts that a large and increasing part of international law is enforced.

One school of thought accepts that international law may be per se a part of the law of the land and that the municipal court therefore, in the appropriate case, applies international law directly. Another insists that a municipal court can only apply and enforce its own municipal law, and that the international law rule is binding only on the State itself, which must be legislation, transform the precept into one of municipal law. The two approaches can on occasions lead to different results, e.g., in a case involving a treaty which the government has omitted to transform into a municipal statute. But the second, or dualist, theory can hardly be applied in any case in those many countries (e.g., the Republic of Ireland, France and the German Federal Republic) where it is by the constitution provided that international law is part of the law of the land.

There are broadly, two different methods by which precepts of international law are applied in the domestic Courts of a State. By the first method it is accepted that international law is per se a part of the law of the land and that the domestic court, therefore, in an appropriate case, applied international law directly. According to the second method a domestic court can only apply and enforce its own internal law, and the international law rule is binding only on the State itself, which must be legislation transform the precept into one of domestic law. The first method is employed in those countries (e.g. the Republic of Ireland, France and German Federal Republic) where it is by the

constitution provided that international law is part of the law of the land. The position before English Courts is something of a compromise between the two methods. There can be no doubt that they regard customary international law as part of the law of the land, for they take 'judicial notice' of it; that is to say they assume that the court knows the law and does not require it to be proved by calling expert evidence, as in cases involving foreign and external systems of law. The courts regard any relevant rule of customary international law as being incorporated into the domestic law."

In the case of *Xavier v Canara Bank Ltd* (1969 Ker LT 921), it was held that the remedy for breaches of International law in general is not to be found in the law courts of the State because of International law *per se* or *proprio vigore* has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken.

In *Jolly George Varghese v. Bank of Cochin* (AIR 1980 SC 410), while dealing with the effect of international law and the enforceability of such law at the instance of individuals within this country, the Supreme Court having quoted with approval the above observations of the Kerala High Court in *Xavier v Canara Bank Ltd* (1969 Ker LT 927), has enunciated the law on the point thus:

"The positive commitment of the States parties ignites legislative action at home but does not automatically make the covenant an enforceable part of the *corpus juris* of India."

As noticed earlier, the bill No. XV of 1998 further to amend the Act has not been passed by the Parliament. In the absence of there being any specific provisions in the Act for dealing with an operation relating to controlled delivery, the provisions of 1998 UN Conventions relating to the concept of controlled delivery cannot have the force of law.

In the instant case, there is not an iota of legal evidence on record to show that on 28th March 1996, the parcel in question was posted by the appellant. Admittedly, the addressee of the parcel in question was one Elizabeth Evans and on 3.4.1996, the parcel in question was intercepted at the Frankfurt Airport, Germany. It is also undisputed that a criminal case was registered at Frankfurt, Germany in respect of the parcel in question and the same was seized and confiscated by the Customs Authorities, Government of Germany. As per prosecution case, on 9.4.1996, the parcel in question was dispatched to India by the German Authorities. That being so, the parcel in question is the property of the criminal case registered at the Frankfurt (Germany) and it was sent to India with a view to identifying the person involved in the commission of the offence. It follows that the contraband in question was sent to India at the instance of the Govt. of Germany and not at the instance of the appellant. Reference may, in this context be made to the decision of the Punjab Chief Court in *Boston v. Emperor*, 1911 CrJLJ (Vol.12) 116.

In that case, the accused tendered a parcel of opium at the Post Office for dispatch to Burma but the parcel was opened by the Postmaster at the place of

dispatch on account of information received and sent on to Burma by the Postal authorities marked “doubtful” with a view to the identification of the consignee. It was held:-

“that the accused did not commit the offence of exporting opium under Section 9(e) of the Opium Act, as the parcel was seized by the authorities before dispatch and it ceased to be in the Post Office on accused’s account before it left India for Burma.”

Thus, in the instant case, it cannot be held that the Appellant had imported or attempted to import the contraband into India. Consequently, the charge under Section 23 of the Act leveled against the Appellant must fall to the