



**FACULTY OF JURIDICAL SCIENCES**

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

**Course : BBALLB , 3<sup>rd</sup> 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 how the proceedings of the court takes 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 8

**Extract of the Judgment of the Special  
Judge, Delhi IN THE COURT OF THE  
SPECIAL JUDGE, DELHI  
Sessions Case No. abc/2000**

In the matter  
of:

**Narcotics Control Bureau**

**...COM**

**PLAINANT Versus**

**Elizabeth Brown**

**...ACCUSED**

**JUDGMENT**

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4. The learned Counsel for the Accused then submitted that the very prosecution of the Accused under the N.D.P.S. Act 1985 is legally misconceived as the Act does not even contemplate controlled delivery offences nor does it empower the Government of India to undertake controlled delivery operations.
5. According to the learned Counsel, the concept of controlled delivery crystallized in the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances held in 1988 in Vienna, Austria. "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of a state with the knowledge and under the supervision of the competent authority with a view to identifying the persons involved in the commission of the offence of drug trafficking and trading. The Government of India has ratified this Convention. However, according to the learned Counsel for the Accused, this Convention does not automatically form part of Indian domestic law but has to be transformed into domestic law by Parliamentary legislation before it can be enforced. The learned Counsel has referred to the provisions of Bill No. XIV of 1998 which seeks to amend the N.D.P.S. Act 1985 so as to incorporate provisions relating to controlled delivery. My attention is drawn to the proposed amendments in Section 2 (viib), 8-A , 50 A, 54 and 76 (ca) of the said Bill. It is the argument of the accused that the very fact that the N.D.P.S. Act 1985 is sought to be amended to incorporate controlled delivery offences and to empower the Central Government to undertake controlled delivery operations, implies that the existing

N.D.P.S. Act 1985 does not contemplate controlled delivery offences nor does it confer power upon the Government of India to undertake controlled delivery operations. Hence, according to the learned Counsel, even assuming the Accused did what the prosecution says she did, that act is yet to become an offence. Unless there is an existing law to penalise the commission or omission of an act, there is no question of that act being made punishable. In fact, Article 20 of the Constitution mandates that 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.

6. The learned Counsel for the Accused further submitted that in any case, the cocaine was admittedly seized and confiscated at Frankfurt and the offence came to an end there. The cocaine did not leave Germany at the instance of the Accused but at the instance of the German and Indian Governments, and was brought to India by the German airline, Lufthansa, and was in the possession of the Lufthansa pilot Captain Peter, and the NCB

officer, Mr. Premchand. In such circumstances, the question of the Accused importing cocaine into India does not arise. Nor can the Accused be said to be in possession in India of cocaine which stands confiscated in Germany and is the subject matter of the offence there. The learned Counsel has referred to the decision in *Bostan v Emperor*, 1911 CrL.

L.J. 116 in support of his contention.

7. I find no merit in the submissions of the Accused. A bare perusal of Section 21 of the

N.D.P.S. Act indicates that it penalises the possession of cocaine in contravention of the Act. The Accused is found to have been in possession of the cocaine. Sections 35 and 54 raise presumptions against the Accused as to the culpable mental state of the accused and the commission of the offence from the possession of the illicit articles. The Accused has failed to rebut these presumptions. It is indeed an audacious argument to suggest that it is the Government, and not the Accused, which sought to import the cocaine into India. In any case, Section 28 of the Act provides that attempt to commit an offence punishable under Sections 21 and 23 attract the same punishment as the commission of the offence. The Accused at least attempted to import cocaine into India.

8. The learned Counsel has relied on Bill No. XIV of 1998. It is well settled that a Bill is not a permissible aid to construe a clear statutory provision. In the instant case, the language of Sections 21 and 23 of the existing N.D.P.S. Act 1985 is unambiguous and clear, and warrants no limitation being read into them in order to exclude controlled delivery offences from the purview of these Sections. It is significant that the Preamble to the Act declares that the Act implements the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances, and Section 2 (ix) of the Act defines "International Convention" to include "any other international convention or protocol or other instrument amending an international convention, relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by India after the commencement of this Act". Admittedly, India has ratified

the aforesaid 1988 UN Convention which provided for “controlled delivery”. It is, therefore, not correct to contend that the existing N.D.P.S. Act 1985 does not contemplate controlled delivery offences or does not empower the Central Government to undertake controlled delivery operations. The existing Act is very much a law in force, and therefore, the question of there being a violation of Article 20 of the Constitution does not arise. The proposed Bill, if and when it becomes law, would at best be clarificatory in nature to expressly provide in the N.D.P.S. Act 1985 the powers that already exist.

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1. I, therefore, find the Accused guilty of the offences under Section 21 and 23 of the N.D.P.S. Act 1985 having illegally imported into India and being in illegal possession in India of 125 gms of cocaine.

Put up on 28 March 2001 for hearing on the sentence.