



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 9

Criminal Appeal No. def/2001

In the matter of:

Narcotics Control Bureau

...COMP

LAINANT Verus

Elizabeth Brown

...ACCUSED

JUDGMENT

...

3. The learned Sessions Judge did not accept the contention of the Appellant that the very prosecution of the Appellant under the N.D.P.S. Act 1985, as it then stood (that is, pre- 2001 amendment) , is legally misconceived as the Act then did not even contemplate controlled delivery offences nor did it empower the Government of India to undertake controlled delivery operations.
4. This Court, in its decision in *Emma Charlotte Eve v Narcotics Control Bureau (2000 (.54) DRJ 610)* took the view that the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988 does not become a law in force in India without legislative action. That was a case prior to the 2001 amendment of the N.D.P.S. Act 1985. This Court held that in the absence of there being a specific provision in the Act for dealing with an operation relating to controlled delivery, controlled delivery operations are not permissible in India. This Court further held on similar facts that the contraband in that case was sent to India not at the instance of the accused therein but at the instance of the Government of Germany.
5. I am in respectful agreement with the view taken by this Court in *Emma Charlotte Eve (supra)*, more so, in view of the amendment of the N.D.P.S. Act 1985 vide the Amendment Act of 2001. The provisions of the Bill No. XIV of 1998 have been incorporated into the N.D.P.S. Act 1985 by this amendment. The provisions of the Amendment Act of 2001, when contrasted with the provisions of the N.D.P.S. Act 1985 prior to amendment, confirms that prior to the 2001 amendment, it was not permissible for the Central Government to undertake controlled delivery operation in India nor was it an offence to do an act which is now penalised under Section 8A of the Act. In the instant case, even if it is assumed that the Appellant did the act as alleged by the prosecution, the conviction of the Appellant would be hit by Article 20 of the Constitution inasmuch as there was no Jaw at the time of the commission of such act to penalise that act as an offence.
6. I accordingly allow the appeal and quash the conviction of the Appellant. The Appellant is acquitted of the offences punishable under Sections 21 and 23 of

the Act. The Appellant, who is in custody, shall be set at liberty forthwith, if not wanted in any other case. Fine, if paid, shall be refunded to the Appellant. The Appellant's passport shall also be returned to her.

In the Supreme Court of India

Criminal Appeal No. ghi/2003

Narcotics Control Bureau

..COMPLAINANT

Versus

Elizabeth Brown

...ACCUSED

GROUND OF APPEAL

- I. That the Hon'ble High Court failed to appreciate that Sections 21 and 23 of the Act are in such wide terms that they take within their ambit the controlled delivery offences.
- II. That the Hon'ble High Court failed to appreciate that the Preamble to the Act declares that the Act is to implement 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 United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988 which defined "controlled delivery". It follows that even prior to the 2001 amendment; the N.D.P.S. Act 1985 contemplated controlled delivery offences and empowered the Central Government to undertake controlled delivery operations. The Amendment Act of 2001 is at best clarificatory in nature to expressly provide in the N.D.P.S. Act 1985 the powers that already exist.
- III. That in view of the Preamble read with Section 2 (ix) of the Act, the Hon'ble High Court erred in holding that prior to the Amendment Act of 2001, the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988 did not have the force of law in India. As the N.D.P.S. Act 1985 was the law in force, there is no question of invoking Article 20 of the Constitution.
- IV. That the Hon'ble High Court, therefore, erred in holding that the very prosecution of the Respondent under the N.D.P.S. Act 1985 is legally misconceived.
- V. That the Hon'ble High Court failed to appreciate that the Respondent had failed to rebut the presumptions against her raised by Sections 35 and 54 of the Act as to the culpable mental state of the Respondent and the commission of the offence from the possession of the illicit articles.

VI. That the Hon'ble High Court erred in overlooking the provisions of Section 28 of the Act in terms of which attempt to commit an offence punishable under Sections 21 and 23 attract the same punishment as the commission of the offence. The Respondent at least attempted to import cocaine into India.