



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 2731-32 OF 2024

K. Shikha Barman

... Appellant

versus

State of Madhya Pradesh

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. By order dated 4th January 2024, the Special Leave Petition out of which the present Criminal Appeal arises has been dismissed as regards petitioner no.1 therein. Now, this Appeal survives only insofar as the appellant, namely, K. Shikha Barman (the appellant) is concerned.

2. The appellant was arraigned as accused no.2 along with three other accused in a prosecution for the offence punishable under

Sections 8 and 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. On 4th March 2016, PW-5, Sub-Inspector Bhawna Tiwari, who was posted at the relevant time in Hanumantal Police Station, Jabalpur, received an information that some persons, including three men and two women, were carrying Ganja in a WagonR car and were trying to sell the contraband. Accordingly, necessary preparation was made by PW-5. When PW-5 and her team reached Footalal Ground, Hanumanatal, they found that three men and two women were sitting in a WagonR. The women were Seema and Preeti. On search, bags containing Ganja, totally weighing 38.200 kgs. were seized. Samples were drawn, and further procedure was followed. The accused were arrested. In the memo of arrest, one Seema Choudhari was shown as arrested, whose age was recorded as 17 years in the arrest memo.

4. We may note here that, according to the case of the appellant, in fact, one Seema Choudhari was the accused and she was shown as arrested. The appellant's contention is that the said Seema Choudhari was released, and the appellant, who was begging on the road, was caught and falsely implicated. While deciding the

bail application filed by the appellant, an order was passed on 6th September 2016 holding that the real name of Seema Choudhari is Shikha Barman. By the order dated 6th September 2016, by recording a finding that Seema Choudhari and Shikha Barman are the same, the bail application of the appellant was rejected.

SUBMISSIONS

5. The submission of the learned counsel appearing for the appellant who has been appointed to espouse the cause of the appellant by the Supreme Court Legal Services Committee is that there is no evidence adduced at the time of the final hearing to show that the present appellant was Seema Choudhari who was caught sitting in WagonR car and both the High Court and Special Court have erroneously relied upon the order dated 6th September 2016 passed on the application for grant of bail. The submission of the appellant is that only a summary inquiry was held at that time without oral evidence being adduced by the parties. Therefore, on the basis of the said order of 6th September 2016, the argument of the appellant that she is not the accused and that one Seema Choudhari was the real accused cannot be discarded. Therefore, in the absence of any evidence adduced by the prosecution to show that Seema Choudhari and the present

appellant are one and the same, the conviction of the appellant cannot be sustained.

6. The learned counsel appearing for the State invited our attention to statements recorded by the police and findings in the order dated 6th September 2016. He submitted that the findings are based on documents such as the Aadhar card. He submitted that the said order was not challenged by the appellant and hence, has become final.

CONSIDERATION OF SUBMISSIONS

7. The burden was on the prosecution to prove that the present appellant was found sitting in a WagonR car on 4th March 2016, from which contraband was recovered. Therefore, it was the duty of the prosecution to prove that the accused Seema Choudhari, as described in all documents, including documents of seizure, arrest memo, etc., is the present appellant. Firstly, we deal with the contentions based on the order dated 6th September 2016. A perusal of the order dated 6th September 2016 shows that a summary inquiry was conducted by the learned Special Judge under the NDPS Act on the basis of the documents produced on record. He has also relied on an inquiry report submitted by the

investigation officer. The officer had recorded statements of some persons. The said order cannot be treated as a final adjudication of the contention raised by the appellant. The reason is that there was no oral evidence adduced at that stage. Moreover, this inquiry was for a limited purpose of deciding the appellant's bail application.

8. A few factual aspects which emerge from the exhibited documents are as under :

- a.** In the First Information Report registered by PW-5, it is stated that one Seema, daughter of Mohan Choudhari, was found sitting in the car along with the other accused. Therefore, FIR mentions the name of Seema Choudhari;
- b.** In the memorandum sent to the medical officer for medical examination, the name of the accused is shown as Seema Choudhari;
- c.** Even in the seizure memo, the name of the accused mentioned is Seema Choudhari;
- d.** In the arrest memo, the name of the accused is shown as Seema Choudhari;
- e.** The arrest memo records her age as 17 years. Therefore, she was produced before the Juvenile Justice Board,

Jabalpur. By a communication dated 14th March 2016, the Juvenile Justice Board informed the Superintendent of the Children's Home that the age of Seema Choudhari appears to be more than 18 years;

f. In the remand report, the name of Seema Choudhari appears; and

g. In none of the documents, produced along with the charge sheet, K. Shikha Barman was mentioned as an accused;

9. Now, we turn to the evidence of PW-5. The evidence of PW-5 reveals the following factual aspects:

a. On 4th March 2016, PW-5 found five persons sitting in a WagonR car. Three were men and two were women whose names were Seema and Preeti;

b. He has referred to the signatures of Seema on the search memo and other documents;

c. It is pertinent to note here that PW-5, in her examination-in-chief, in paragraph 12 has stated thus:

“When we reached Footatal Ground, Hanumantal, there were five people sitting in a black colored WagonR vehicle CG 010/F 5366 in the ground in front of tank of Police Station, among them three

were boys and two women, **the name of the women were Seema and Preeti. Both the accused have been identified by witnesses in the court.**"

(underlines supplied)

d. In paragraphs 49 and 50, PW-5 stated thus:

"49. It is correct that the informant informed that in the WagonR vehicle parked at the spot, there were 05 persons whose names were Mo. Mehboob, Ashok Sen, Pappu Chakrawarti, Preeti Choudhary, Seema Choudhary were reported to be sitting. **It is correct that I did not get information about Shikha Barman sitting in the vehicle.** The Panchnama of informant information is Ex.P-30. I Roznamcha Sanha the informant information at 6:13 pm (The witness presented the correct copy of Roznamcha Sanha No. 3 dated 04.03.2016, which was marked as Ex.P-31C. A copy of the said Roznamcha Sanha should be provided to the counsel for all the accused today itself). **It is correct that in the diary number 3 also it is written that Mo. Mehboob, Ashok Sen, Pappu Chakrawarti, Preeti Choudhary, Seema Choudhary were reported to be sitting. It is correct that information about Shikha Barman' presence was not recorded in the Roznamcha Sanha.**

50. It is correct that after reaching to the spot of incident and while preparing the Search Panchnama Ex.P-4, **no woman named Shikha Barman was found in the vehicle.** I am not aware that consent of a minor is not taken. It is incorrect to say that age of Pappu Chakrawarti at the time of incident was

15 years **it is correct that signature of Shikha Barman is not present on any Panchnama prepared on the spot. Thumb impression which is on the consent Panchnama and other Panchnama is not of Shikha Barman.** It is correct on the front page of Ex.P-4,5,7,8,9,10,12,13,14,15,16,17 and Ex.P-24 signature or thumb impression of any witness or accused is not present.
(underlines supplied)

- e. Even in paragraph 52, PW-5 referred to the documents in which the name of the accused was shown as Seema Choudhari;
- f. A specific suggestion was given to the witness that the police had let off Seema Choudhari and picked up the appellant, who was begging near the spot. The correctness of the suggestion was denied by PW-5;
- g. PW-5 has not deposed that the appellant who was present in the court is the same person as Seema Choudhari, who was arrested on 4th March 2016.

10. Therefore, the prosecution's evidence clearly shows that on 4th March 2016, one Seema Choudhari was found sitting with another accused in a WagonR car. All the contemporary documents, including the memo of arrest of the same date, do not

mention the name of the appellant as the accused. The accused is described as Seema Choudhari.

11. In the examination of the appellant under Section 313 of the Code of Criminal Procedure, 1973, it is not put to the appellant that she is the same person as Seema Choudhari, who was arrested on 4th March 2016. Therefore, the appellant was deprived of an opportunity to deal with the prosecution case. This causes prejudice to her.

12. Therefore, the prosecution has adduced no evidence to show that the appellant is Seema Choudhari, who was arrested on 4th March 2016.

13. Hence, the guilt of the appellant has not been proved beyond a reasonable doubt. Accordingly, the impugned judgment of the Trial Court dated 9th July 2018 in Special Case No. 24 of 2016 and the impugned judgment of the High Court of Madhya Pradesh at Jabalpur dated 12th July 2022 in Criminal Appeal No.6064 of 2018 is hereby quashed and set aside only insofar as the appellant (K. Shikha Barman) is concerned. The appellant is acquitted of the

offences alleged against her. If the appellant is still in prison, she shall be forthwith set at liberty.

14. The Appeal, as regards appellant K. Shikha Barman, is accordingly allowed.

.....J.
(Abhay S Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
April 16, 2025.**