

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 755/2004

Reserved on: 29th March 2008
Date of judgment: 2nd May 2008.

RAMESH KUMAR RAJPUT @ KHAN Appellant
Through Ms. Hiteshi Arora, Advocate.

Versus

THE STATE NCT OF DELHI Respondent
Through Mr. Manoj Ohri, Advocate.

and

CRL.A. 804/2004

MAKRAND PRABHAKAR SABNIS Appellant
Through Mr. T.A.Mir, Advocate.

versus

THE STATE NCT OF DELHI Respondent
Through Mr. Manoj Ohri, Advocate.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

Dr. S. Muralidhar, J.

1. These appeals are directed against the common judgment and the order dated 8th September 2004 passed by the learned Additional Sessions Judge (ASJ), New Delhi in SC No. 11/2004 convicting the Appellants Ramesh

Kumar Rajput and Makrand Prabhakar Sabnis under Sections 21 read with 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and the order passed on the same date sentencing each of the Appellants to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1 lakh each and in default of payment of fine to further undergo simple imprisonment of one year.

2. The case of the prosecution is that information was received on 15th January 2000 that a person would come from Bombay to Delhi to purchase narcotics drugs. Sub Inspector ('SI') Bhagwan Singh gave the information to the Assistant Commissioner of Police ('ACP') Shri L.N. Rao who constituted a team of SI Inderjeet Singh, SI Bharamjit Singh, SI Bhram Kumar, SI Ranjit Singh, SI Avdhesh Kumar and Assistant Sub Inspector (ASI) Hari Ram. They were directed to develop the information with the help of their associates. According to the prosecution on 18th January 2000 a secret informer came to the office of Special Cell, Lodhi Colony, New Delhi and informed SI Bhagwan Singh and SI Inderjeet Singh that at 6.30 pm Ramesh Kumar, the Appellant in Criminal Appeal No. 755 of 2004, a resident of Fatehpur, Delhi would deliver narcotics drugs in large quantity to a person named Mack from Bombay at the roof of the Palika Car Parking in Connaught Place, New Delhi. This information was reduced to writing by SI Bhagwan Singh. Thereafter, he along with SI Inderjeet Singh informed the ACP Shri L.N. Rao who further telephonically informed the Deputy

Commissioner of Police ('DCP') and directed SI Inderjeet Singh to take necessary action. SI Inderjeet Singh along with the other members of the team and Constable Bhudev constituted a raiding party and left for the spot along with the secret informer. It is claimed that on the way SI Inderjeet Singh tried to associate certain public witnesses in the raiding party but none joined. The raiding party then moved towards Connaught Place and again attempted to associate public witnesses but without success. It is stated that at around 6.25 pm a person wearing a red T-shirt and black pant carrying green plastic bag in his right hand came to the roof of the Palika Car Parking and the secret informer identified him as Ramesh Kumar @ Khan. About ten minutes later from the side of Regal Building, another person reached Ramesh Kumar @ Khan carrying a white packet in a left hand. They started talking and walked towards the north-west corner of the park where they exchanged the packets. In the meanwhile SI Inderjeet Singh gave a signal and the raiding party apprehended both the persons who disclosed their names as the Appellants hereinabove.

3. The prosecution claimed that both the Appellants were given a notice under Section 50 NDPS Act. An option was given to each of them for being searched in the presence of either a Gazetted Officer or a Magistrate. Both Appellants declined the offer. SI Bhagwan Singh informed them that he would take their search and offered himself for being searched by them. Both

appellants again declined. It is stated that none from the crowd that had gathered were prepared to join the proceedings despite being asked.

4. SI Bhagwan Singh checked the green bag in possession of Appellant Makrand Prabhakar. This bag containing a further white packet tied with green thread. When opened it contained a white powder, which when tested was found to be smack, weighing 1 kg. Of this, a sample of 10 gm smack was separated. The sample and the remaining quantity were separately sealed. An FSL form was prepared. The seal of ISB was used to seal the seized quantity, the sample and also the FSL form.

5. Thereafter the packet in possession of Appellant Ramesh Kumar @ Khan was checked. It was found to contain two packets of currency notes of Rs.500/- each and the total Rs.1 lakh. The said packets were also seized and sealed with the seal of ISB and were handed over to SI Sunil Kumar. The sample smack and the recovered smack, the FSL form, the recovery memo and the packet containing of Rs.1 lakh along with the memo, were handed over to ASI Hari Ram at around 9.00 pm with instructions to hand over the case property to the SHO and for registration of the case.

6. It is the case of the prosecution is that on interrogation Appellant Ramesh Kumar informed that he had taken the smack from Abdullah and that he

could get some more smack by ordering the same through mobile phone. It is stated that in the meanwhile, ACP Shri L.N. Rao also reached the spot and interrogated the accused persons. The Appellants were arrested, arrest memo and search memo were prepared and their disclosure statements recorded. It is stated that Abdullah was subsequently arrested but he escaped and was declared a proclaimed offender. The trial against Abdullah was, therefore, separated. A charge sheet was filed and by an order dated 5th January 2001 charges were framed against the Appellants for the offences under Section 21 and Section 21 read with 29 NDPS Act.

7. The prosecution examined 15 witnesses. The accused Ramesh Rajput examined ASI Kishan Singh as DW1 and Om Pal Singh as DW-2. At the conclusion of the trial, the learned ASJ delivered the impugned judgment and order as described in para 1 of this judgment.

8. The submissions of Mr. Tanveer A.Mir and Ms. Hiteshi Arora, learned counsel appearing on behalf of the Appellants Makrand Prabhakar Sabnis and Ramesh Kumar Rajput respectively were as under:

- (i) The secret information received on 15th January 2000 by the police was not been reduced to writing and forwarded to the superior officer. It is stated that this information was independent of the subsequent information dated 18th January 2000 which was reduced to writing. It is accordingly submitted

that the mandatory requirement of Section 42 NDPS Act was not complied with. Reliance has been placed on the judgment in *Abdul Rashid Ibrahim Mansuri v. State of Gujarat JT 2000 (1) SC 471*, *Rajender Kumar @ Pappu v. State 2002 (1) ADD 22* and *State of Punjab v. Balbir Singh 1994 JCC 303 (SC)*.

- (ii) The requirement of Section 50 concerning search of persons was also not complied with. It is stated that the ASI Hari Ram was examined long after the prosecution evidence had been closed. None of the persons who were witnesses to the search of the Appellants were examined.
- (iii) The FIR number could not have been written on the documents claimed to have been prepared at the time of the search and seizure since at that the FIR had not even been registered. This, therefore, tantamounted to manipulation of the records and was fatal to the case of the prosecution. Reliance is placed on the judgments in *State of Karnataka v. K.Yarappa Reddy 1999 (4) Crimes 171 SC*, *Ali Mustafa v. State of Kerala JT 1994 (6) SC 326*, *Mohd. Hashim v.State 2000 Drugs Cases 150*, *Shashi Shekhar Tyagi v. State 2007 (1) JCC Narcotics 18*, *Zofer v. State 2000 Crl.L.J. 1589*, *Ram Prakash v. State 2000 Drugs Cases 113* and *Lalit Shukla v. State 2000 Drugs Cases 110*.
- (iv) Vital aspects of the link evidence concerning the seal movement was not established by the prosecution. The evidence of PWs 2 and 13 indicate that the seals used were not handed over to any independent witness or superior officer. No memo for movement of the seal was prepared. Therefore the seals which were used by PWs 2 and 13 were at their disposal and used subsequently to fabricate evidence.

- (v) According to PW 2 he had embossed the seal of ISB on the recovered contraband. When PW15 deposited the contraband in the malkhana, PW 13 had embossed his seal as 'VSP' on the parcel. However, according to PW 10 Dr.Madhulika Sharma who tested the sample at the CFSL, the two packets received for testing carried the seals of only BS and VSP. The sealed contraband was therefore never sent to the FSL.
- (vi) The case records had included the FSL form which is stated to have been drawn up at the time of search. The absence of the FSL form in the record is fatal to the case. The prosecution is unable to demonstrate that the sample which was sent for testing by the CFSL was kept in safe and secure environment and was not capable of being tampered. Therefore, the authenticity of the sample collected and sent for testing is a serious doubt. Reliance is placed on the judgment in *Satnam Singh v. State of Punjab 1997 Crl.L.J. 2067*, *Pradeep Kumar v. State 1989 Crl.L.J. 2438*, *Dudnath v. State 1997 Crl.L.J. 2050* and *Balwinder Singh v. State 2001 Drugs Cases 197*.
- (vii) The requirement of expeditious despatch of the sample to the CFSL for testing was mandatory. The delay of 13 days in sending the samples for testing was unacceptable since there was no valid reason for the delay. Reliance is placed upon the judgment in *Tej Singh v. State 1996 (1) Crimes 192 (HC)*, *Valsala v. State of Kerala 1993 SCC (Crl) 1082*, *State of Rajasthan v. Gurmail Singh 2005 SCC (Crl.) 641* and *Subhash Chand Mishra v. State 2002 (2) JCC 1379*.
- (viii) Relying on the judgment in *State of West Bengal v. K.Babu Chakraborty JT 2004 (7) SC 216*, it is submitted that the failure to associate independent witnesses for the arrest and seizure would in the circumstances of the case render the evidence of

the prosecution on these aspects unreliable. Reliance is also placed on the judgments in *Bahadur Singh v. State of Madhya Pradesh 2002 (1) JCC 12*, *State of Haryana v. Vikram Singh 2002 (1) JCC 266* and *Ritesh Chakravorty v. State of Madhya Pradesh 2006 (3) JCC Narcotics 150*.

9. It is submitted by Mr. Manoj Ohri, learned counsel appearing for the Respondent that:

- (a) Since the search took place in an open public place i.e. the roof of the Palika parking Section 42 is not applicable and it is Section 43 that applies. That provision does not require reducing the secret information to writing. Nevertheless, both information received on 15th and 18th January 2000 were in fact reduced to writing.
- (b) Since the recovery of the narcotic substance was effected from the green bag held by one of the Appellants, Section 50 NDPS Act did not apply as the packet did not come within the definition of 'person'. Reliance is placed on the judgment in *State of Rajasthan v. Baburam 2007 (6) SCC 55*, *State of Haryana v. Ranbir Singh 2006 (5) SCC 167* and *Babubhai O. Patel v. State of Gujarat 2005 (8) SCC 725*.
- (c) Not associating public witness for the arrest and search that had to be organised in a very short period is not fatal to the case of the prosecution. Reliance is placed on the judgments in *P.P. Beeran v. State of Kerala (2001) 9 SCC 571*, *Hori Lal v. State 58 (1995) DLT 673*, *Rajpal v. State of Himachal Pradesh 2004 CrL.L.J. 695*, *Ravindran v.*

Superintendent of Customs (2007) 6 SCC 410, and *M.Prabhu Lal v. DRI 2003(8) SCC 449*.

- (d) Where in such instances as in the present case an arrest followed by search has to be effected and no specific mode is mandated by the statute, it is substance and not the form of intimation to the accused of his rights that has to be ensured. Reliance is placed on *Krishna Kanwar v. State of Rajasthan 2004 (2) SCC 608* and *Prabha Shankar Dubey v. State of Madhya Pradesh 2004 (2) SCC 56*.
- (e) A false plea was taken by Makrand Prabhakar that he was working as an informer for the U.S. Embassy. The letter dated 8th December 1989 showed that appellant Makrand was in touch with co-accused Ramesh since October 1999 through a drug dealer Sanjeev based in the U.S. The plea of was falsified by the said letter.
- (f) Evidence has come on record to show that Makrand stayed on 15th January 2000 in a hotel under the name Mack and this has been proved by PW-4. There are specific entries in the hotel register to show that appellant Makrand Prabhakar stayed even on 16th January 2000. This falsified his plea that he was not in Delhi at the time of the arrest, that he never knew Ramesh and therefore was not a part of the conspiracy.
- (g) No question was put to the FSL expert in cross examination about not receiving the FSL Form or the samples of the seals. It appears that the FSL Form was in fact handed over to the expert although it may have not come back into the case record which was placed before the trial court. No violation of any mandatory provision has taken place.

- (h) No specific question was put in the cross-examination to the IO regarding the incorporating the FIR Number on the seizure memos. This in any event does not vitiate the case of the prosecution. Reliance is placed on the decision in ***Radhey Sham v. State of Haryana JT 2001 (3) SC 535***.
- (i) The delay of 13 days in sending the samples which were kept deposited in the Malkhana was not material since the record shows that the samples were preserved in a safe environment during this period. The judgments in ***State of Orissa v. Kanduri Sahoo 2004 (1) SCC 337*** and ***State of Gujarat v. Ismail U Haji Patel (2003) 12 SCC 291*** are referred to. The road certificates which have been marked as exhibits prove the dispatch of the sample to and the receipt of the said sample by the FSL. In the circumstances, the non-production of the Malkhana register did not affect the case of the prosecution as held in by this Court in ***Siddiqua v. Narcotics Control Bureau 1 (2007) DLT (CRL.) 481***.

10. This court first proposes to examine the evidence on record regarding the arrest and search as much of the arguments of the appellants centre around these aspects. In his examination-in-chief PW-2 states that both appellants after being apprehended were informed about the secret information received by the police leading to their arrest and were offered choice being searched in the presence of either a Gazetted Officer or a Magistrate. The search memo in respect of each of the appellants has been exhibited. Each of them contains a signed statement by each of the appellant that they do not want to either call any Magistrate or Gazetted Officer to carry out the search nor do they want to

carry out the search of the said witness Inderjeet Singh. The witness PW-2 further stated that the sample of the smack recovered from the appellant Makrand Prabhakar given to him by appellant Ramesh was kept in a pullanda and sealed with the seal of ISB. The remaining quantity of smack was filled up and also sealed with the seal of ISB. The packet carrying the currency notes totaling Rs.1 lakh was also sealed with the seal of ISB and recovery memo was prepared as exhibit PW-2/F. He states that the seal was handed over to SI Anil Kumar. Thereafter a detailed rukka exhibit PW2/G was prepared by PW-2 and sent with ASI Hari Ram along with the rukka two copies of the recovery memo, the case property and the FSL Form instructing him to hand over to SHO and the rukka to duty officer for registration of the case. PW-2 further stated that while preparing rukka, SI Bhagwan also reached the spot, took over the investigation and prepared the site plan. The cross examination of this witness has not yielded much for the accused. A reply was elicited from the witness that he did not record the names and addresses of the persons belonging to the public who were asked to join the raiding party. He also admitted that the fact of requesting the shopkeepers of Palika Bazar and their refusal to join the investigation was also not recorded in the rukka. He stated that he began the writing work exactly 6.45 pm after apprehending the accused. According to him the CFSL Form was filled up by him at 7.30 pm and prepared in duplicate. He retained only the carbon copy and handed it over to SI Bhagwan Singh before 9.30 pm. The original CFSL Form was handed over to ASI Hari Ram at about 9 pm. ASI Hari Ram

left the spot before the arrival of ACP L.N. Rao.

11. PW-15 ASI Hari Ram more or less corroborated what was said by PW-2 about the recovery of the smack from appellant Makrand Prabhakar after handing over the packet to appellant Ramesh Rajput. He also speaks about SI Inderjeet Singh affixing the seal of ISB on three pullandas, filling up three forms and the seizure memo and the rukka. He confirms that the pullandas, CFSL Form and seizure memo were handed over to him along with the rukka. He then states that both accused persons were brought to the Lodhi Colony Special Cell. He states that he reached at police station at about 9 pm.

12. The cross-examination of ASI Hari Ram also did not yield much apart from his admitting that he signed on the notices as well as the seizure memos. He further stated that in his presence the notices under Section 50 and the seizure memos and the CFSL Forms were prepared in total from point A to A.

13. As regards the argument that the requirement of Section 42 NDPS Act was not complied with since the secret information received on 15th January 2000 was not reduced to writing, the learned counsel for the Respondent appears to be right that the applicable Section is Section 43 and not Section 42 since the search, arrest and seizure took place in a public place i.e. the roof

of Palika Bazar car parking. Nevertheless the DD entry 21 (exhibit PW 12/A) and DD entry 29 (exhibit PW 12/D) show that the information received constitute sufficient compliance of reducing that information into writing. The decision in *Narayanaswami Ravishankar v. Asst. Directorate of Revenue Intelligence (2002) 8 SCC 7* applies on the facts of the present case. There the Court held (SCC pp. 8-9):

“In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the Airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 43 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant.”

It was explained in *Abdul Rashid Ibrahim Mansuri v. State of Gujarat* (supra) that the mandatory requirement of reducing the information to writing applied when the information is that the narcotic substance “is kept or concealed in any building, conveyance or enclosed place.” As far as the present case is concerned, the arrest, search and seizure having been made on the roof of the Palika car parking, undoubtedly a public place, the requirement of Section 42 does not apply. Therefore the contention of the appellants in this regard is rejected.

14. It is sought to be contended that the notices in terms of Section 50 were

manipulated since they contained the FIR number. It is submitted that the rukkas having been prepared at 9.30 pm and sent thereafter with ASI Hari Ram for registering, the FIR number could not have been available at 6.30 pm, that the admissions by the witnesses that the documents were prepared from point A to A which did precede the FIR No., in the presence of PW-15 falsify the case of the prosecution that these documents were written up at the spot at 6.30 pm. It was contended that these interpolations in the documents vitiated the entire recovery and that the trial court erred in holding that the compliance with Section 50 was not mandatory. In the first place it requires to be noticed that the recovery was not from the person of the accused but from a bag being carried by him. In a large number of cases the Supreme Court has held that the 'bag' does not come within the definition of 'person' as contemplated under Section 50 NDPS Act. The compliance in substance and not in form has been insisted upon by the Supreme Court in ***Krishna Kanwar v. State of Rajasthan 2004 (2) SCC 608*** and ***Prabha Shankar Dubey v. State of M.P. 2004 (2) SCC 56***. Further in ***State of Himachal Pradesh v. Pawan Kumar 2005 (4) SCC 350*** the Supreme Court has held that Section 50 would not apply when the recovery is from a bag and not from a person.

15. In any event the law as explained by the Supreme Court is that the mere writing of the FIR number on the arrest and search memos cannot entirely falsify those documents. Significant among the decisions is ***Radhey Shyam v.***

State of Haryana JT 2001 (3) SC 535. Also, there is merit in the contention of the Respondent that there was no specific question put to the officers concerned in their cross-examination. What the counsel for the accused appears to have been done is to ask the witness whether the portion of the document from “point A to A” (which included the portion containing the FIR number) was written at the same time. This might be intelligent cross examination but if the defence wants to prove that the FIR number was in fact written at a later point in time the witness ought to have been asked that question. The failure to elicit any answer from the witnesses on this point can only indicate that the defence may have been inconvenienced by the possible answer that might have been given by the witness or that the witness may have explained that the writing of the FIR number was only for cross verification of the details and therefore the FIR number was written at a subsequent point in time.

16. The contention that the arrest and search having taken place in a public park, independent witnesses ought to have been associated appears to be negated by the decisions of the Supreme Court in *P.P. Beeran v. State of Kerala (2001) 9 SCC 571* and *M. Prabhu Lal v. DRI 2003(8) SCC 449*.

17. In *M. Prabhu Lal* it was held : (SCC @ p. 449)

“6. Next, learned counsel contends that the independent witnesses of the recovery of the contraband having not been examined and only police witnesses having been examined, the recovery becomes doubtful. Reliance is placed upon the decision

in *Pradeep Narayan Madgaonkar and Ors. v. State of Maharashtra*. In the decision relied upon while observing that prudence dictates that evidence of police witnesses needs to be subjected to strict scrutiny, it was also observed that their evidence cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigating or prosecuting agency, but as far as possible, corroboration of their evidence in material particularly should be sought....”

This Court is satisfied on a reading of the depositions of the prosecution witnesses that every effort was made to associate witnesses from the public. Also, that the raid itself had to be organized in a very short time. The submission of the appellants regarding Section 50 NDPS Act is therefore also without merit.

18. The central plank of the argument is about whether the CFSL Form was drawn up at all and whether it was sent along with the packet containing the sample to the CFSL for testing. The case of the appellants is that if indeed the CFSL Form was drawn up, it should form part of the case record but it does not. The only inference therefore is that the sample which was sent for testing was not the same sample which was drawn at the time of the arrest. It is also stated that the link evidence is not established in as much as the movement of the seal was not spoken to by the witnesses. It is submitted that the evidence does not speak of the seal being handed over to any superior officer which meant that PW-2 and PW-13 had the seals with them and use it subsequently to fabricate the evidence. PW-10 Dr. Madhulika Sharma only mentions receiving the parcels bearing the seals of BS and VSP and not with

the seal of ISB and therefore what was sent for testing is not what was recovered. Further, it is contended that this strengthens the submission that the delay of 13 days in sending the samples for testing was fatal to the case of the prosecution.

19. This Court has examined the evidence on this aspect. PW-2 speaks of the seals being handed over by him to SI Anil. The rukka also corroborates this. PW-8 speaks of finding both the pullandas and Form CFSL was prepared by PW-2 to be intact. Thereafter he put his own seal as BSP. The seals were checked by the MHCM Siri Niwas PW-5 who also entered entry No. 2360 in Register 19. This Court has also perused the road certificate for evidencing the dispatch of the seals to the CFSL, New Delhi at Malviya Nagar. Much was made about what was received at the CFSL by referring to the writing on the reverse of the road certificate. The endorsement reads “retained 2 (two) sealed parcels in Division.” It was sought to be contended that since only two sealed parcels were received the CFSL Form obviously did not accompany it whereas on the front portion of the road certificate there is mention of a CFSL Form for each of the parcel. The evidence of PW 10 is also referred to in this behalf to contend that the CFSL Form was never sent along with the parcels. This Court is unable to agree that the mere endorsement extracted hereinabove actually talks of the absence of CFSL Form. It only talks of the receipt of the parcels and not of the non-receipt of the CFSL Form. Significantly there was no cross-examination of either PW-

10 Dr. Madhulika Sharma or the witness who received the parcels at the CFSL that no CFSL Form was received with those parcels. Therefore this Court is unable to come to the conclusion that no CFSL Form accompanied the parcels. While it is true that CFSL Form did not form part of the case record, it appears that at least one such Form was retained in the CFSL itself. At one stage of the proceedings, this Court appears to have asked the CFSL to send to this Court the copy of the forwarding letter which is from the police station bearing the seal impression. It was sought to be argued that this document ought not to be looked into by this Court since it was not part of the case record. Suffice it to say that this does indicate that for some reason the CFSL form was retained at the CFSL itself. As regards the seals, again nothing has been elicited by the defence in the cross-examination of PW 10 to disbelieve her statement that she compared the seals and satisfied herself as to their authenticity. Consequently, there is no force in the contention of the appellants regarding the link evidence in connection with the seal movement.

20. The law concerning the effect of the delay in sending samples to the CFSL was first explained by the Supreme Court in *Valsala*. This was followed in *State of Gujarat v. Ismail U Haji Patel* where it was held in para 5 as under: (*SCC @ p. 292*)

“5. We find that there was really no material brought on record to show as to where the seized articles were kept. The High Court after

analyzing the evidence on record came to hold that the identity of the articles sent for analysis was not established and it was not established that the articles seized were in fact sent for chemical examination. In view of the judgment of this Court in *Valsala v. State of Kerala* the view of the High Court is in order. **It is not the delay in sending the samples which is material. What has to be established is that the seized articles were in proper custody, in proper form and the samples sent to the Chemical Analyst related to the seized articles.**” (emphasis supplied)

21. No doubt there is a gap of 13 days in sending the samples but as explained in the above decisions and *Kanduri Sahoo*, what is to be seen is whether the samples were in fact in safe custody in Malkhana during that period and were not tampered. The evidence of PWs 2, 13 and 15 when scrutinized carefully do not give rise to any doubt that the samples in this case were not in a secure environment in the Malkhana or were tampered with during this period. Therefore the delay of 13 days in sending the samples to the CFSL in the present case is not fatal to the case of the prosecution.

22. There is merit in the contention of the Respondent that the stand taken in the statement made by accused Makrand Prabhakar during his questioning under Section 313 CrPC that he was working as an informer for the U.S. Embassy is false. The letter dated 8th December 1999 and the seizure memo of the fax of that letter exhibit PW 13/H indicates that the Embassy itself had asked the Narcotics Control Bureau to verify the one time information given

by Makrand Prabhakar. It also appears that the prosecution gathered credible evidence in the form of the hotel register to show that Makrand Prabhakar stayed at Hotel Airlines, Karol Bagh on 15th January 2000 as it is corroborated by PW-4 who was the hotel Manager. In fact in his statement under Section 313 CrPC Makrand Prabhakar has admitted to this fact. Thereafter on 16th January 2000 he checked into Hotel Raj International, Karol Bagh giving his name as M.P. Sabnis. PW-13 brought the hotel register and proved this. He also corroborated the recovery of articles from the hotel room. Then we have the DD entries about the secret information received on 18th January 2000. It can therefore be safely concluded that the prosecution acted on credible information received regarding the transaction that was to take place between the accused.

23. For the aforementioned reasons, this court finds no legal infirmity in the impugned judgment and order of the learned trial court warranting interference in appeal. The appeals are accordingly dismissed.

S. MURALIDHAR, J

May 2, 2008

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