

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 769/2010 & CrI.M.A. 2148/2011 (interim bail)

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Reserved on: 5th March, 2012

Decided on: 13th April, 2012

RAMJIYAWAN VERMA

..... Appellant

Through Mr. Ajay Verma, Adv.

versus

THE NARCOTICS CONTROL BUREAU

..... Respondent

Through Mr. S.K. Goel, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant challenges the judgment dated 15th April, 2010 passed by the learned Special Judge convicting the Appellant for offence under Section 21(c) NDPS Act and the order dated 22nd April, 2010 directing him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1 lakh in default thereof to undergo simple imprisonment of one year.

2. Learned counsel for the Appellant contends that there are material contradictions in the prosecution case. Though as per the case of the prosecution 2.5 kgs of heroin was recovered from the suitcase from a cavity at the bottom side of the suitcase wherein both the packets were lying, however when the suitcase was produced before the Trial Court, the same had two cavities one at the top and the other at the bottom and each cavity had one packet lying in it. Further, the two public witnesses allegedly associated at the time of recovery in the train from the Appellant were

namely Vinod Kumar and Ravi Kumar, however they have not been examined as witnesses before the Trial Court. No plausible explanation has been given as to why the public witnesses have not been examined. Further the Appellant proved on record that the said two independent witnesses of the prosecution were stock witnesses as they had deposed in favour of the NCB in NCB Vs. Kashmira Singh (Session's case No. 92/2008) and NCB Vs. Prakash (Sessions case No. 128/2008). It is further the case of prosecution that on disclosure of the Appellant, a search was conducted at his residence from where further 2.5 kgs of heroine were recovered. From the recovery 4 samples were drawn, however two samples did not contain diacetylmorphine. PW-2 the complainant in his testimony has admitted that the key of the room was with Lala Warsi. Further PW-10 the owner of the house has stated that no recovery was made in his presence. Thus, there is no evidence that the Appellant was in possession of the said room and 2.5 kgs of contraband was recovered from the conscious possession of the Appellant. As regards the recovery from suitcase in the train, no reservation chart has been exhibited to show that the Appellant booked the ticket for travel. The ticket allegedly exhibited does not show name of the Appellant and that the Appellant was travelling on the said ticket. The case of the Appellant is that he was picked up along with PW-17 & 18, however they were let off and the Appellant was implicated with the help of PW-17 & 18.

3. Learned counsel for the Respondent on the other hand contends that the Respondent has proved the case against the Appellant beyond reasonable doubt. Heavy recovery of contraband was made from the possession of the Appellant. In view of the Appellant having been found in possession of the

contraband, the presumption under Section 54 of NDPS Act has to be raised. Further, merely because two witnesses have not been produced before the Trial Court the case of the prosecution does not get indented. There are no contradictions in the prosecution case. The cavities in the suitcase have been duly exhibited before the Trial Court. Thus, there is no merit in the present appeal and hence the same be dismissed.

4. I have heard learned counsel for the parties. Briefly the case of the prosecution as per PW-2 the complainant is that one Shahid Hasan I.O. received a secret information on 28th August, 2003 at 11.00 AM that one Ramjiyawan Verma aged 23 years thin built and dark complexion would board August Kranti Express Train at Nijamuddin Railway Station on berth No. 22 in coach No. AS-7 along with 4-5 kgs of heroine concealed in his suitcase. On a search authorization being issued along with two independent witnesses Vinod Kumar and Ravi Kumar, a raiding team conducted a raid. The complainant found the Appellant looking for his reservation in the reservation chart pasted on coach AS-7. He was shown search authorization and served a notice under Section 50 of NDPS Act apprising him of his legal right to which he recorded his refusal. He was then taken near the staircase. One silver grey colour VIP suitcase was recovered from his possession which was opened with the help of keys in the Appellant's possession. The officers unscrewed the suitcase from all the sides and two chambers of false cavities on both the sides of the suitcase were found. On opening false cavities, two plastic transparent packets containing some brown colour powder testing positive for heroin weighing 2.5 kgs each were recovered. Two samples of 5 grams each from each packet A1, A2 & B1, B2 were

taken and sealed using paper slips with the seal of Narcotics Control Bureau DZU-3. The statement of the Appellant was recorded under Section 61 NDPS Act wherein he disclosed that some more narcotics has been concealed in his house at 5288, 1st floor, Surya Kothi, Bharat Nagar, Paharganj, New Delhi. A raid was conducted at the said house and two witnesses PW-17 & 18 Ram Udgar Pandit and Vinod Kumar Chawla were joined in the raiding party. The premises was found locked. The Appellant stated that the keys of the premises were taken by Lala Warsi. With the consent of the Appellant, the lock was broken and the search was taken. A green colour safari suitcase was found which was opened by the keys kept near the window, handed over by the Appellant to the officers. It had 6 transparent polythene bags each containing 2.5 kgs dark brown colour powder. Two samples X1 and X2 of 5 grams each were taken out from the packets and sealed using the paper slips with seal of NCB-DZU4. One transparent polythene packet containing white powder weighing 200 grams was also recovered, which on testing gave positive for heroin. Two samples Y1 & Y2 of 5 grams each were taken from the packet and sealed using the paper slips with the seal of NCB-DZU4. Besides Rs. 1,00,000/- some polythene bags weighing scale, 2 weights, calculators, spoon and screw driver from one green bag marked Adidas were also seized as material used in dealing with narcotics substance. A panchnama was drawn and the statement of the Appellant was recorded under Section 67 NDPS Act.

5. As regards the contention that the suitcase has been changed, it may be noted that PW-2 Jagmohan Khati, the complainant in his examination-in-chief has stated that they unscrewed the suitcase from all the sides and from

a false cavity in the bottom side of the said suitcase two plastic packets were recovered containing brown coloured powder which on testing by Field Testing Kit gave positive for the presence of heroin. Two samples of each were drawn as A-1 and A-2 and B-1 & B-2. He has further stated that both the packets marked A & B were put inside the cavities of the suitcase. Thus from the examination-in-chief of this witness it is clear that there were two cavities though the two packets were recovered from one cavity. However, while keeping the same were kept in two cavities. Thus, the contradiction as sought to be pointed out on the basis of cross-examination that the suitcase has two cavities and the packets were recovered from the two cavities is misconceived. Further this version of PW-2 is also supported by the statement of PW-9 R.G. Gokhale then posted as Intelligence Officer, NCB.

6. The contention that witnesses Ravi and Vinod are stock witnesses and thus affect the prosecution case is also meritless. Firstly these witnesses have not been examined. Secondly the Learned Special Judge on inspection of records has noted that Ravi and Vinod who were witnesses in NCB case have given their address of Saroop Nagar whereas in the present case they were residents of R.K. Puram. Further Vinod Kumar was not the witness in case NCB Vs. Kashmira Singh.

7. As regards the recovery of 15 kgs of heroin from the residence of the Petitioner, the contention raised is that the said house was not possessed by the Appellant as the keys were with Lala Warsi. As per the prosecution case it may be noted that PW-10 Manik Chand, the landlord of the said premises has been examined who stated that the Appellant was inducted as a tenant for the last 4-5 months in the year 2003 on the 1st floor of his house and he

was paying a monthly rent of Rs. 1200/-. Thus, merely because the Appellant did not have in his possession the keys of the tenanted premises at the time when the search was conducted would not absolve him of the conscious possession of the 15 kgs of heroin found from the room.

8. The Learned Special Judge has duly observed that on examination of the case property it was found that it was sealed properly and no tampering therewith could be done without tampering with the seals. The statement of the Appellant has been recorded under Section 67 of the NDPS Act by PW-7 Mrs. Pushpa Debnath. The said witness has also recorded the statement of public witness Ram Udgar Pandit. Further samples A1, B1 and X1 contained diacetylmorphine. Only sample Y1 taken from the packet containing 200 gms gave negative of diacetylmorphine. Thus the recovery of 20 Kg of diacetylmorphine stand proved beyond reasonable doubt.

9. Further as regards the defence of the Appellant that a raid was conducted at the hotel of PW-18 Vinod Kumar Chawla along with PW-17 his worker Ram Udgar Pandit and thereafter the two were let off, it may be noted that both PW-17 & 18 have been examined in the witness box. PW-18 Vinod Kumar Chawla has not supported the prosecution case, however he has stated that the Appellant used to come to his hotel frequently for meeting his boss namely Lala. However, this defence of the Appellant has not been put to PW-18 Vinod Kumar Chawla or PW-17 Ram Udgar Pandit. Though, PW-17 Ram Udgar Pandit has turned hostile, however on cross-examination by the Special Public Prosecutor he has admitted the entire prosecution case. Thus, in view of the overwhelming evidence on record, I do not find any

infirmity in the impugned judgment and order on sentence passed by the learned Trial Court.

10. The Appeal and application are dismissed. The Appellant, who is in custody, will undergo the remaining sentence. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

APRIL 13, 2012
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