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

DECIDED ON : 27th SEPTEMBER, 2013

+ **CRL.L.P. 121/2012**

NARCOTICS CONTROL BUREAU Petitioner

Through : Mr.B.S.Arora, Advocate.

versus

GURNAM SINGH & ANR. Respondents

Through : Mr.S.S.Das, Advocate.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Open Court)

1. Narcotics Control Bureau (the petitioner) has filed Criminal Leave Petition to challenge a judgment dated 30.08.2011 of learned Special Judge, NDPS, New Delhi by which the respondents – Gurnam Singh and N.C.Chellathambi were acquitted of the charges. The leave petition is contested by the respondents. I have heard the learned counsel for the parties and have examined the record. Allegations against the respondents were that on or before 27.01.2003, they entered into criminal conspiracy with Lal Man Pua (Chinese national), Gurbachan Singh,

Devinder Singh and Shekhar (not arrested) to illegally acquire, possess and deal with controlled substance. On 27.01.2003, the Philippine Drug Enforcement Agency (in short PDEA) seized one ton of Ephedrine, a controlled substance, which was exported by the respondents in furtherance of criminal conspiracy from India to Manila, Philippine. During the course of investigation both the respondents were arrested and their statements under Section 67 of NDPS Act were recorded. It transpired that the Ephedrine was consigned to Philippine through M/s. Gray Fox Inc., RZ-F-208, Nihal Vihar, Sayad Nangloi, New Delhi to M/s. Premier Sea and Air Cargo Movers Corporation, Manila, Philippine in container No. HDMU-2294884 through shipper Aquarius Logistic Pvt. Ltd., 409, Ansal Tower, Nehru Place, New Delhi. The documents received from the concerned agency from Manila were forwarded by the NCB (Headquarters) to the Zonal Director, Delhi Zonal Unit, NCB. The investigation was taken over by Mangal Das, who visited the premises RZ-F-208, Nihal Vihar, Sayad Nangloi, New Delhi on 18.03.2004 and found respondent No.1 – Gurnam Singh present there. Respondent No.1 in his voluntary statement under Section 67 of NDPS Act on 18.03.2004 disclosed that his brother-in-law Devinder Singh and younger brother Gurbachan Singh had floated M/s. Gray Fox Inc. and two other companies

by the name of Sidana's Collection and Singh Cargo (Air and Sea). He further disclosed that he was working in Singh Cargo and used to deliver letters to M/s. Impex Trade Agencies, 37B, Pocket-A, Ashok Vihar Phase-III, Delhi run by Gurnam Singh and Virender Singh. The Investigating Officer visited B-2-B Block, Janakpuri, New Delhi, where Devinder Singh was residing with his family. During search of the said house, certain cargo bills and debit notes of Aquarius Logistic Pvt. Ltd. were recovered and seized. In his second statement under Section 67 of NDPS Act on 19.03.2004. Respondent No.1 revealed that he was aware that Ephedrine was sent by his brother-in-law Devinder Singh and younger brother Gurbachan Singh by concealing it along with bleaching powder arranged through M/s. Impex Trade Agencies. Statements of Gurnam Singh and Virender Singh, owner of M/s. Impex Trade Agencies were recorded under Section 67 of NDPS Act and they revealed that they had arranged the bleaching powder from New National Cohan Company, Tilak Bazaar, Delhi and were aware that Devinder Singh had concealed Ephedrine along with the said bleaching powder and exported to Philippine. It also emerged that M/s. Impex Trade Agencies was dealing with respondent No.2 – N.C.Chellathambi for procuring orders for supply of stainless steel utensils from Myanmar for the last 3 – 4 years and they

were aware that respondent No.2 was exporting bleaching powder through Devinder Singh's clearing agency Singh Cargo. They introduced respondent No.2 to Devinder Singh and arranged for the bleaching powder to be consigned to Manila. Statement of respondent No.2 was recorded under Section 67 of NDPS Act and he admitted that Ephedrine was sent by putting the same in bleaching powder to Manila for which he got ₹ 2 lacs to ₹ 3 lacs as commission. After recording the statements of the witnesses conversant with the facts, the respondents were charge-sheeted under Sections 29 & 25A of NDPS Act. To establish the charges, prosecution examined thirteen witnesses. In their 313 statements, the respondents pleaded false implication. Second respondent appeared as defence witness as DW-2. DW-1 (C.Kali Amma) and DW-3 (Ashwani Kumar Gaiind) were examined in defence. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, for the detailed reasons acquitted the respondents of the charges.

2. On 27.01.2003, Ephedrine, weighing a ton, was seized by PDEA at Manila (Philippine) allegedly exported through M/s. Gray Fox Inc., RZ-F-208, Nihal Vihar, Sayad Nangloi, New Delhi. No information was conveyed by PDEA to the Indian authorities soon after its seizure on

27.01.2003. Only during a conference held in Bangkok, Mr.A.P.Kala, Deputy Director General (Enforcement) was apprised about the seizure of Ephedrine on 27.01.2003. He thereafter, on 31.12.2003 wrote a letter (Ex.PW-13/A) to Mr.Avenido, Director General, PDEA for a detailed report along with copies of the statements and relevant documents. Pursuant to the said letter, vide letter dated 06.02.2004 (Ex.DX), he received documents from the said agency collectively exhibited (PW-13/B) running into 50 pages. It appears that no immediate steps were taken to unearth the conspiracy soon after NCB came to know about the seizure of Ephedrine during Bangkok conference. PW-13 (A.P.Kala) admitted in the cross-examination that he did not see the case property and no efforts were made to bring it into India. He had no personal knowledge about the company who had exported the contraband. The documents were not called from the said country through Letter of Rogatory. PW-7 (Mangal Dass), the Investigating Officer, also admitted in the cross-examination that he had not seen the case property i.e. Ephedrine at any point of time and had not requisitioned or asked the Philippine Authorities to send it or its samples to India. He was not aware if any officer / staff of NCB had gone to Manila for the purpose of investigation in this case. PW-8 (Shankar Rao), who was overall incharge of the investigation, admitted

that he had not seen the substance at any point of time. He however, admitted that he had never given any directions either to his subordinate staff or to the Philippine counterpart to send the substance or sample in the present case to India. Similarly is the testimony of PW-9 (Sandeep Kumar), who also admitted that the case property was not seen at any point of time physically either in India or in Manila. He disclosed that he had visited Manila for discussion with PDEA. Oral discussions were reduced into writing and were a matter of record in the office of NCB but are not part of the judicial file. He elaborated that they could not see the case property or sample at Manila due to legal complications despite their efforts. No permission was sought to draw the samples of the substance to bring it to India. Apparently, none of the witnesses was able to physically inspect the case property i.e. Ephedrine and it was never brought to India and exhibited in the Court. The prosecution also did not bring on record any document to show the outcome of the investigation carried out by PDEA at Manila or to place on record the judgment whereby any individual with whom the respondents had allegedly conspired was held responsible / guilty for importing the controlled substance from India. The prosecution did not examine any witness from PDEA to establish recovery of any controlled substance. In the absence of case property / sample and

in the absence of cogent and reliable evidence of its recovery, the respondents cannot be held responsible for the controlled substance allegedly recovered by PDEA at Manila. The Trial Court has discussed the relevant contentions of the petitioner's counsel and has dealt with them minutely with valid reasoning. The prosecution did not explain as to why Devinder Singh, brother-in-law of respondent No.1 who was the Director in M/s. Gray Fox Inc. was not implicated despite availability. The prosecution could not produce any cogent material if respondent No.1 had any active role to play in M/s. Gray Fox Inc. or was responsible for its day to day affairs. Mere presence of respondent No.1 at the office of M/s. Gray Fox Inc. at the time of visit of PW-7 (Mangal Dass) is not enough to connect him with M/s. Gray Fox Inc. PW-7 admitted that before summoning Gurnam Singh, premises of M/s. Gray Fox Inc. were searched but no incriminating article was recovered from there. Despite having come to know that M/s. Gray Fox Inc. was constituted by Devinder Singh as Director, no proceedings were initiated against them. The premises at Nihal Vihar, Sayad Nangloi, New Delhi belonged to Devinder Singh's father-in-law and it were a residential premises occupied by Devinder Singh's father-in-law and family. Devinder Singh and his family were staying at another place at Janakpuri. He admitted that the occupants at

RZ-F-208, Nihal Vihar, Sayad Nangloi, New Delhi were residing since long. PW-7 was unable to disclose as to from where Devinder Singh used to perform his day to day affairs of the company M/s. Gray Fox Inc.

3. Number of prosecution witnesses resiled from their previous statements and turned hostile. No independent public witness was associated. The whole case of the prosecution is based only upon the statements recorded under Section 67 of NDPS Act of the respondents and various other witnesses. However, the Trial Court came to the conclusion that the statements were not voluntary. Detailed reasons have been narrated in the impugned judgment to arrive at this conclusion. Moreover, there was no corroborating material in support of the statements allegedly recorded under Section 67 of the NDPS Act. The prosecution did not investigate as to from where the contraband was procured by the respondents. No call details were placed on record. The relevant documents showing the export were not collected and proved. There is no evidence as to how much consideration was received for the alleged export of contraband, and if so, by whom and when. The prosecution was unable to adduce clinching evidence to establish when and under what circumstances, the respondent No.2 made statement under Section 67 of

NDPS Act. He appeared as DW-2 in his defence and categorically denied to have made any such statement voluntarily.

4. Burden to prove the case beyond reasonable doubt was upon the prosecution. The provisions of the Act and the punishment prescribed therein being indisputably stringent, the extent of burden to prove the foundational facts on the prosecution i.e. 'proof beyond all reasonable doubt' would be more onerous. A heightened scrutiny test would be necessary to be invoked. It is a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. Defence witnesses have to be given weightage at par with that of the prosecution witnesses.

5. Taking into consideration all these facts and circumstances, I find no illegality or material irregularity in the impugned judgment which is based upon fair appraisal of the evidence and needs no interference. The leave petition is unmerited and is dismissed. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

SEPTEMBER 27, 2013/tr