

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

Reserved on: 7th January, 2013
Pronounced on: 24th January, 2013

+ **CRL.A. 605/2012**

RATTAN @ RATAN SINGH Appellant
Through: Mr. Atul Kumar, Advocate

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through: Ms. Rajdipa Behura, APP for State

+ **CRL.A. 1239/2012**

BILAL Appellant
Through: Ms. Saahila Lamba, Adv.

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through: Ms. Rajdipa Behura, APP for the State.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These Appeals are directed against the judgment dated 16.01.2012 and order on sentence dated 18.01.2012 whereby the Appellants were convicted under Section 20 (b) (ii) (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and were sentenced to undergo rigorous imprisonment for ten years each and to pay fine of

₹1,00,000/- each. In default of payment of fine, they were sentenced to undergo simple imprisonment for a period of six months each.

2. According to the prosecution version on 28.10.2007 at about 1:00 P.M. SI Balbir Singh PW-3 (IO) while he was present in his office, received a secret information that two persons, namely, Rattan and Bilal, who were engaged in supply of *Charas* were to come in front of Okhla Subzi Mandi, Captain Gaur Marg at about 3:00 P.M. to deliver *Charas*. The information was brought to the notice of Inspector Vijay Singh, In charge, Special Staff, who in turn informed the ACP (Operation Cell) about the same. Inspector Vijay Singh directed SI Balbir Singh to take immediate action in the matter. DD No.5 was recorded in the office at about 1:30 P.M. and a copy of the DD entry was sent to the SHO Police Station (PS) Srinivaspuri through Constable Ashok.
3. A raiding party comprising of ASI Ashok Kumar (PW-4), HC Shyambir (PW-10), HC Manoj, HC Vijay, HC Bir Singh and HC Hawa Singh (PW-6) was organized. All of them along with the secret informer started from the office in a Qualis car at about 1:45 P.M. On the way at Chirag Delhi Bus stand, PW-3 (the IO) requested 4-5 passersby to join the raiding party but they declined. At Kalkaji Mandir again, some passersby were requested to join the raiding party but they also showed their inability.
4. At about 2:30 P.M. the raiding party reached Captain Gaur Marg in front of Okhla Subzi Mandi. The Qualis car was parked near Canara Bank and the raiding party kept a watch on the persons coming from the side of East of Kailash and going towards Modi Mill flyover. At about 3:15 P.M. two boys were seen coming from East of Kailash side. The secret

informer pointed out towards them. The Appellant Rattan Singh was holding a white colour polythene in his hand whereas, the Appellant Bilal was holding a black colour polythene in his hand. At the pointing out of the secret informer both the Appellants were intercepted by the police party and were apprised of the secret information.

5. The Appellants were informed about their legal rights to be searched in presence of a Magistrate or a Gazetted officer. They were served with statutory notice under Section 50 of the NDPS Act. Both the Appellants declined to be searched in presence of a Magistrate or a Gazetted officer. In the meanwhile, some public persons gathered at the spot. They were requested to be witness to the search, but none of them agreed. On searching the white polythene being carried by Appellant Rattan Singh it was found to contain one other black colour polythene which contained some black colour '*battinuma*' substance which from its smell and appearance appeared to be *Charas*, which was also confirmed by Appellant Rattan Singh. The substance was weighed and found to be weighing one kg.
6. Similarly, the black colour polythene being carried by Appellant Bilal was found to contain two kgs. of *Charas*. PW-3 took two samples of 100 gms. each from each of the two substances suspected to be *Charas* found in possession of the Appellants. The samples and the residue were sealed with the seal of 'DK'. FSL forms were filled up by the IO. Seizure memos were prepared in respect of the recovery of *Charas*. The seal after use was given to HC Hawa Singh (PW-6).
7. The *rukka* along with the sealed pullandas, FSL forms, copies of the seizure memos and the notice under Section 50 of the NDPS Act were

sent to the Duty Officer through HC Hawa Singh on the basis of which FIR No.545/2007 was registered in the PS.

8. The samples along with FSL forms were forwarded to FSL Rohini. On analysis the samples were confirmed to be of *Charas*. During trial, on the request of the Appellants fresh samples were taken out of the residue in the Trial Court on 01.10.2009 and were sent to the Central Revenue Control Laboratory (CRCL) for determination of percentage of Tetra Hydro Cannabinol (THC). As per the CRCL report, the THC percentage in the samples of the Appellants Rattan Singh and Bilal was found to be 4.9% and 5.1% respectively.
9. A charge for the offence punishable under Section 20 (b) (ii) (c) of the NDPS Act was framed by the learned Special Judge by an order dated 04.02.2009. During trial the prosecution examined 11 witnesses. SI Balbir Singh PW-3 (IO), ASI Ashok Kumar (PW-4), HC Hawa Singh (PW-6) and HC Shyamvir (PW-10) are the witnesses to the recovery of *Charas* from the Appellants. Rests of the witnesses are formal witnesses who deposed about the registration of the case, recording of certain DD entries and provided various links in the case of the prosecution.
10. On conclusion of the prosecution evidence, the incriminating evidence brought on record was put to the Appellants. The Appellants denied prosecution's allegations and pleaded false implication.
11. The Appellant Rattan Singh took up the plea that some police officials lifted him from Okhla Bus Stand on 24.10.2007 at about 6:30 P.M. He was taken to the office of the special staff at Ambedkar Nagar and was subsequently implicated in the case falsely. Appellant Bilal claimed that he was also lifted by the police from Okhla Subzi Mandi on that very day

at 9:30 P.M. and *Charas* was planted on him and he was also falsely implicated in the case.

12. Appellant Rattan Singh produced his sister Pinky as DW-1. She deposed that in the year 2007 there was a quarrel between her brother and local police officials. His brother was physically assaulted and was threatened by the police officials to be falsely implicated in some case. Subsequently, his brother Rattan Singh was falsely implicated in this case. Appellant Bilal, however, declined to produce any evidence in his defence.
13. On appreciation of evidence, the learned Special Judge found that the recovery of one kg. of *Charas* from the possession of Appellant Rattan Singh and 2 kgs. of *Charas* from the possession of Appellant Bilal was fully established; there was no material contradiction to discard the testimony of the official witnesses, particularly when genuine efforts were made to join independent witnesses in the raiding party. The defence raised by the Appellants was found to be inconsistent and unsubstantiated. Thus, relying on the prosecution evidence, the learned Special Judge found that the prosecution case was established beyond shadow of all reasonable doubt. The learned Special Judge thus convicted and sentenced the Appellants as stated above.
14. The following contentions are raised by Mr. Atul Kumar, learned counsel for Appellant Rattan Singh and Ms. Saahila Lamba, learned Amicus for Appellant Bilal:-
 - (i) The provisions of NDPS Act entail heavy penalties in the shape of minimum substantive imprisonment. The legislature, therefore, enacted Section 50 in the NDPS Act entitling a person to be

searched in presence of a Magistrate or a Gazetted Officer. In the instant case, the notice Ex.PW-3/A in case of Appellant Bilal and Ex.PW-3/B in case of Appellant Rattan Singh have been created by the IO without actually informing the Appellants about their rights. Thus, there is noncompliance with the provisions of Section 50 of the Act. According to the rukka both the Appellants declined to be searched in presence of a Magistrate or a Gazetted officer; and in case of Appellant Rattan Singh the notice Ex.PW-3/B was signed in Hindi whereas Bilal thumb marked on his notice. It is urged that a perusal of the notice Ex.PW-3/B shows that Rattan Singh had signed the same in English and not in Hindi which belies the case of the prosecution.

- (ii) No genuine effort was made to join any independent witness in the raiding party and the search was not conducted in presence of any independent witness. In a serious case of this nature, which entails minimum punishment, it is unsafe to rely on the testimony of police officials.
- (iii) The seizure memos Exs.PW-3/E and PW-3/F were the first documents to be prepared at the spot even before sending of rukka to the Police Station. These documents contain FIR number on the top which shows that there was manipulation by the police officials and the Appellants were falsely implicated in the case.
- (iv) There are material contradictions and discrepancies in the testimonies of official witnesses produced by the prosecution to make them unworthy of reliance.

- (v) There was delay in sending the samples to the CFSL which gives scope for manipulation.
- (vi) As per the Notification issued under Section 2 of the NDPS Act possession of any quantity upto 100 gms. of *Charas* is to be considered as a small quantity and possession of one kg. and above of *Charas* is to be considered as commercial quantity. In the instant case, in case of Rattan Singh, the percentage of THC as per the report Ex.PA-2 of CRCL was found to be 4.9%. Whereas in case of Appellant Bilal it was found to be 5.1%. Thus, the quantity in real terms in their possession was only 49 gms. and 102 gms. respectively which was a small quantity in case of Appellant Rattan Singh and was of intermediate quantity in case of Appellant Bilal. The sentence awarded is, therefore, excessive and disproportionate. Reliance is placed on *Mohd. Yunus v. CBI 2008 (1) JCC (Narcotics)* 33.

15. On the other hand, Ms. Rajdipa Behura, learned APP for the State submits that a notice under Section 50 of the NDPS Act was duly served upon the Appellants. The discrepancy in the rukka about the language in which the notice was signed by Appellant Rattan Singh is not very material. The other discrepancies pointed out by the learned counsel for the Appellants are not material and, therefore, do not affect the case of the prosecution. It is urged that it is a well known fact in order to avoid harassment in the investigation and during trial the public persons are reluctant to join the raiding party as a witness. With regard to incorporation of the FIR number on the seizure memos, it is urged that IO was not questioned on this aspect to seek his explanation. She contends that normally the FIR number is incorporated later on on the seizure

memo for record purposes and subsequent mentioning of the FIR number on the memo does not create any doubt with regard to recovery of the contraband substance and the prosecution version. The learned APP for the State relies on a Division Bench judgment of this Court in *Dilip v. State 2011 Crl.J. 334* to urge that percentage of THC in *Charas* is not material because the Appellants were prosecuted under Section 20 of the NDPS Act for being found in possession of *Charas*, which is defined under Section 2(3) of the NDPS Act as being cannabis and not as a psychotropic substance like THC, which is also found in *Charas*.

16. I have bestowed my thoughtful consideration to the respective contentions raised on behalf of the parties.

RE: NOTICE UNDER SECTION 50 OF NDPS ACT

17. I have before me the notices Ex.PW-3/A in case of Appellant Bilal and Ex.PW-3/B in case of Appellant Rattan Singh and the rukka Ex.PW-3/G. It is true that in the rukka Ex.PW-3/G it has been mentioned that the notices under Section 50 of the NDPS Act were served upon both the Appellants. It is mentioned that Appellant Rattan Singh put his signatures in Hindi whereas Appellant Bilal put his right thumb impression. A perusal of the notice Ex.PW-3/B in case of Appellant Rattan Singh reveals that the English letters are not very clear. The IO being in a hurry might have taken those signatures to be in Hindi and accordingly recorded in the rukka that the Appellant Rattan Singh had signed the notice in Hindi. It is important to note that the attention of the IO to this discrepancy was not drawn in cross-examination, had it been so, the explanation given by the IO would have been before the Court to appreciate the same. In the circumstances, the factum of recording in the

rukka that Appellant Rattan Singh signed in Hindi rather strengthens the prosecution's case as if, there would have been any manipulation by the IO that would have been perfect and this discrepancy would not have been there. Thus, in the absence of any explanation being sought from the IO, I am not inclined to attach any importance to this discrepancy.

NON JOINING OF INDEPENDENT WITNESSES

18. SI Balbir Singh (IO) deposed about three attempts being made by him to join independent witnesses. First at Chirag Delhi bus stand, then at Kalkaji Mandir and ultimately after apprehension of the Appellants and before making their searches. PW-4 and PW-6 also deposed about the attempts made by the IO to join independent witnesses. Thus, it cannot be said that no attempt was made by the IO to join any independent witness before conducting the search of the Appellants. I am in agreement with the learned APP for the State that public witnesses are reluctant to come forward to join police investigation in order to avoid their repeated visits to the Police Station and Court. In *Ajmer Singh v. State of Haryana 2010 (2) SCR 785*, the Supreme Court held that it is not always possible to find independent witnesses at all the places at all the times. The obligation to join public witness is not absolute. If the police officer is unable to join any public witnesses after genuine efforts, the recovery made by the police officer would not be vitiated. The Supreme Court held that in such circumstances, the Court will have to appreciate the relevant evidence to determine whether the evidence of a police officer is believable so as to place implicit reliance thereon. A learned Single Judge of this Court in *Union of India v. Victor Nnamdi Okpo, Criminal Appeal No.617/2004 decided on 16.09.2010* in a case under the NDPS Act echoed the sentiments that public is averse to become a

witness because of the attitude of the Court in summoning the witnesses time and again and sending them back unexamined on the ground that either the counsel of the accused was not available or the accused was not there.

19. As stated earlier, the IO made genuine efforts to join independent witnesses on no less than three occasions. The evidence of four material witnesses (PW-3, PW-4, PW-6 and PW-10) examined by the prosecution is consistent and trustworthy. No material was placed on record so as to impel this Court to construe that the Appellants would be falsely implicated in a serious case under the NDPS Act. Although, the Appellant Rattan Singh tried to build a case that he was falsely implicated in the case for refusing to provide free chicken to the police officers and a suggestion in this regard was also given to ASI Ashok Kumar, but no suggestion was given to the IO (PW-3) and other witnesses of the recovery. Thus, defence raised by Appellant Rattan Singh is not such so as to create a doubt in the prosecution's version. I do not find any reason to disbelieve the official witnesses even in the absence of any corroboration from independent witnesses.

MANIPULATION OF SEIZURE MEMOS

20. It is true that the seizure memos Exs.PW-3/E and PW-3/F do contain the FIR number on the top left side. SI Balbir Singh (IO) duly proved the seizure memos. No explanation was obtained by the defence counsel as to the presence of the FIR number thereon, particularly when the FIR had not come into existence by the time seizure memos were written. Thus, the contention raised on behalf of the State that the FIR number was subsequently mentioned by the IO for the purpose of the record is

convincing and must be accepted. A similar contention was raised before the Delhi High Court in *Ramesh Kumar Rajput @ Khan v. The State NCT of Delhi, Criminal Appeal No.755/2004*, decided on 02.05.2008 where after referring to *Radhey Shyam v. State of Haryana, JT 2001(3) SC 535* the learned Single Judge of this Court held as under:-

“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.”

21. Thus, mere mentioning of the FIR on the seizure memos Exs.PW3/E and PW3/F would not mean that the memos were prepared after the FIR came into existence.

CONTRADICTIONS & DISCREPANCIES

22. The learned counsels for the Appellants points out that as per the secret information the names of the persons who were to come to Okhla Subzi Mandi with the contraband *Charas* were disclosed to SI Balbir Singh, yet

SI Balbir Singh (the IO) inquired names of the persons who were intercepted at the pointing out of the secret informer. If the prosecution version of the receipt of secret information is accepted, there was no necessity for the IO to have inquired the names of the two persons.

23. In my view, there is nothing unusual for the IO to inquire the names of the two persons who were apprehended on the basis of the secret information. Admittedly, the IO did not know them since before. Therefore, the names of the two persons who were intercepted were to be confirmed. This conduct of the IO is not unusual and does not in any way affect the prosecution case.
24. Learned counsels for the Appellants state that as per the IO DD No.5 was lodged in PS Srinivaspuri at 1:30 P.M. but the said DD was not produced. Similarly, it is stated that the rukka runs into three pages. However, the last page of the rukka has been numbered as '2' instead of '3'. It is urged that the rukka has been changed later on.
25. I do not find much substance in the contention. PW-3 SI Balbir Singh in his examination-in-chief had testified that DD No.5 was recorded at 1:10 P.M. and a copy of the DD entry was sent to the SHO, P.S. Srinivaspuri through Constable Ashok. The IO was not cross examined in respect of this part of the testimony. The IO's testimony shows that this DD was not recorded in the P.S. Srinivaspuri but was recorded in the office of the Special Staff, South District and a copy thereof was sent to the SHO, P.S. Srinivaspuri. A perusal of the Trial Court record reveals that a copy of the said DD entry was proved as Ex.PA which makes a mention of the receipt of secret information by the IO and bringing it to the notice of the Inspector, Special Staff and ACP (Operation Cell). Similarly, giving

number '2' on the last page of the rukka is also not of much significance, especially when no explanation with regard to the same was obtained from the IO. The first and the second page of the rukka is on the same leaf. It is just possible that the IO had given number '2' on the second leaf. In any case, it is not of much significance. It cannot be said that this page was subsequently added because the contents of the rukka had already been recorded in the FIR.

26. The learned counsels for the Appellants drew my attention to the discrepancies in the testimonies of PWs 3,4,6 and 10 as to the time till which they remained at the spot, they reached the Police Station and the time when PW-6 left with rukka and returned with the FIR. The official witnesses remain busy in carrying out one work or the other. They give the time of the various proceedings only by approximation. The discrepancies in carrying out different works, reaching Police Station and returning to the spot by themselves do not create any serious dent in the prosecution case so as to entitle the accused to acquittal.
27. Learned counsels for the Appellants urges that DD No.16 in P.S. Srinivaspuri talks about visit of HC Hawa Singh alongwith *rukka*, sealed packets containing case property, the samples and also the notice under Section 50 of the NDPS Act. It is urged that the DD was recorded at 7:50 PM. At the same time, malkhana register, copy of which is proved by the prosecution as Ex.PW11/C talks about deposit of the notice under Section 50 NDPS Act by SI Balbir Singh. It is urged that SI Balbir Singh admittedly reached Police Station only at 10.25 PM (vide DD No.21B Ex.PW3/R). Thus, the version as given in DD no.16 and in Ex.PW11/C is contradictory.

28. The contention raised by the learned counsels for the Appellants on the face of it appears to be very attractive but is without any substance. DD No.16 deals with visit of HC Hawa Singh along with the articles as stated earlier. This was for the purpose of registration of the case. After registration of the case etc., the property which is handed over to the duty officer is also to be deposited in the *malkhana* which is normally taken care of by the IO when he reaches the Police Station. Thus, not only the notice under Section 50 NDPS Act but also other articles as mentioned in DD No.16 were deposited with the *moharar* Head Constable by the IO. Thus, in my view, there is no contradiction between the DD No.16 and the extract of *malkhana* register Ex.PW11/C.
29. The learned counsels for the Appellants points out that in the *rukka* Ex.PW3/G the Sections under which the FIR is sought to be recorded is 20/20/61/85 NDPS Act, whereas the FIR was registered under Section 20/29 of the NDPS Act. This, according to the learned counsels for the Appellants, indicates some manipulation. The contention raised is devoid of any merit. Sections 20 and 29 of the NDPS Act were stated to be contravened by the two Appellants who were found to be in possession of a large quantity of *Charas*. The figures 61 and 85 were mentioned in the *rukka* as NDPS Act is Act No.61 of the year 1985. Thus, there is no contradiction in the *rukka* and the FIR registered on the basis of the same.

DELAY IN SENDING SAMPLES:

30. It is urged by the learned counsels for the Appellants that there was delay of about one month in sending the samples to the FSL which would be fatal to the case of the prosecution as no explanation has been given for this delay. The learned Special Judge dealt with this submission raised

on pages 21 to 24 of the impugned judgment and relied on *Ramesh Kumar Rajput @ Khan v. State of NCT of Delhi*, MANU/DE/0786/2008 and *Bilal Ahmad v. State*, 2011 III AD (Crl) (DHC) 293 where there was a delay of 59 days in sending of the samples to the FSL. Para (v) of page 24 of the impugned judgment is extracted hereunder:

“In case of Rajput @ Khan v. State of NCT of Delhi, MANU/DE/0786/2008, there was a delay of 13 days in sending the sample pullandas to the CFSL, but the same was not considered to be fatal keeping in view the fact that there was nothing on record to suggest or to infer from that the sample pullandas were tampered in the police malkhana. In a recent case of Bilal Ahmad v. State, 2011 III AD (Crl) (DHC) 293 also even a delay of 59 days in sending of the samples was considered to be not fatal in the absence of any such evidence or inference of tampering with the sample pullandas on the basis of the record. Hence, in view of the above, this argument of ld. defence counsels also carries no weight.”

31. All the samples duly sealed were properly received in the office of FSL. The learned Special Judge dealt with the testimony of PW11 HC Om Prakash with whom the samples had been deposited and Constable Harinder Singh PW5 who carried the samples to the FSL. In view of this, mere delay of about one month in sending the samples is not fatal to the prosecution.

COMMERCIAL QUANTITY:

32. It is urged by the learned counsels for the Appellants that a notification No.2941(E) dated 18.11.2009 was issued by the Government of India whereby it was clarified that the quantity shown in column No.5 and column No.6 of the table relating to respective drugs shown in column No.2 shall apply to the entire mixture of any solution or any one or more

narcotic drugs or psychotropic substances of that particular drug. It is urged that in the instant case, the recovery was effected on 28.10.2007, that is, much before the notification referred to earlier. The notification cannot be made applicable to the Appellants to their detriment. Considering that the percentage of THC in the report Ex.PA2 of CRCL in case of Appellant Rattan was found to be 4.9% and in case of Appellant Bilal to be 5.1%, the quantity of THC in real terms was only 49 gms and 102 gms respectively and Appellant Rattan was really found in possession of small quantity of *Charas* whereas Appellant Bilal was found in possession of an intermediate quantity of *Charas*. The learned counsels for the Appellants place reliance on a judgment of a learned Single Judge of this Court in *Mohd. Yunus v. CBI, 2008(1) JCC (Narcotics) 33* whereby recovery of 11 kgs of *Charas* on the basis of the percentage of Dytetrahydrocannabinol was converted into 473 gms and the Appellant in that case was convicted for intermediate quantity and sentenced to imprisonment for nine years and six months which he had already undergone. Reliance is also placed on the report of the Supreme Court in *E.Micheal Raj v. Intelligence Officer, Narcotic Control Bureau, 2008 (2) JCC(Narcotics) 78* wherein quantity of 4 kgs of heroin was converted to 250 gms on the basis of purity.

33. The contention raised on behalf of the Appellants is fallacious. The question of purity of a contraband was considered by the Division Bench of this Court in *Dilip v. State, (2011) Cri L.J., 334*, wherein the judgment in *E.Micheal Raj* was also duly considered by this Court. The Division Bench considered the definition of cannabis as given in Section 2(iii) as including *Charas* in Section 2(iii)(a) of the NDPS Act, possession whereof is punishable under Section 20 of the NDPS Act and possession

of psychotropic substances which is punishable under Section 21 of the Act. *Charas* as defined in Section 2(iii)(a) is the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish. Thus, *Charas* is a separated resin, whether crude or purified obtained from the cannabis plant. For the purpose of applicability of Section 20 of the NDPS Act, the Court is simply to see whether the substance recovered is *Charas* or not and not its purity. Entry 150 of the notification No.S.O.527(E) dated 16.07.1996 shows that possession of just 2 gms of Tetra Hydro Cannabinol would fall in the small quantity and anything beyond 50 gms would be a commercial quantity, whereas in case of *Charas*, any quantity upto 100 gms would be small quantity whereas 1 kg and above of *Charas* will be commercial quantity. In para 14, the Division Bench in *Dilip* held as under:

“14. From the above provisions, it is apparent that cannabis is a narcotic drug under Section 2(xiv). On the other hand, THC is a psychotropic substance as it finds mention at S.No.13 in the list given in the Schedule to the NDPS Act. Thus, while cannabis contains THC and THC forms an important constituent of cannabis, THC by itself is a psychotropic substance and is separately regarded under the NDPS Act. This is important because the nature of the offence and the punishment prescribed for the offence depends on whether a substance is a narcotic drug or a psychotropic substance. The punishment for contravention in relation to cannabis plant is specifically given in Section 20 of the NDPS Act. On the other hand, the punishment for contravention in relation to psychotropic substances is provided in Section 22 of the NDPS Act. Consequently, it would make a material difference as to whether the alleged contraband is cannabis (a narcotic drug) or THC (a psychotropic substance). The question that requires our decision is not in the context of the percentage of THC as a psychotropic substance, but, the percentage of THC in charas

(cannabis), which is a narcotic drug. Thus, the classification of the recovery as a small, intermediate or commercial quantity has to be done from the standpoint of charas (a narcotic drug) and not from the standpoint of THC (a psychotropic substance).”

34. In this view of the matter, the entire quantity of *Charas* would govern the fact whether it was a small quantity or a commercial quantity. Since the Appellant Rattan was found in possession of 1 kg of *Charas* and Appellant Bilal was found in possession of 2 kgs of *Charas*, the same were clearly commercial quantities. The learned Special Judge rightly considered the quantity recovered to be commercial quantity.
35. In view of the above discussion, the learned Special Judge rightly concluded that the prosecution had established its case against the Appellants beyond shadow of a reasonable doubt. The Appellants have been awarded the minimum sentence as provided under Section 20(b)(ii)(C) of the NDPS Act.
36. The Appeals are, therefore, devoid of any merit. The same are accordingly dismissed.

(G.P. MITTAL)
JUDGE

JANUARY 24, 2013
vk/pst