

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

RESERVED ON : 16th SEPTEMBER, 2013

DECIDED ON : 08th NOVEMBER, 2013

+ CRL.A. 783/2012 & CRL.M.A. 17117/2012

MOHD. IRFAN

..... Appellant

**Through : Mr.C.Mohan Rao, Advocate with
Mr.Trivender Chauhan, Advocate.**

VERSUS

DIRECTORATE OF REVENUE INTELLIGENCE..... Respondent

Through : Mr.Satish Aggarwala, Spl. P.P.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Mohd. Irfan questions the legality and correctness of a judgment dated 26.03.2012 of learned Addl. Sessions Judge / Spl. Judge, NDPS in Sessions Case No. 126/04 by which he was held guilty for committing offence punishable under Section 21 (c) of the NDPS Act. By an order dated 27.03.2012, he was awarded RI for ten years with fine ₹ 1 lac. In nutshell, the prosecution case is as under :

2. On 07.04.2004, Sh.Raman Mishra, Intelligence Officer received intelligence report at 03.00 P.M. to the effect that Mohd. Irfan

aged around 27 years and of wheatish complexion would be carrying

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around 20 kg narcotics / drugs in a red and black colour 'Polo World' zipper bag on platform No. 8/9, New Delhi railway station at about 07.15 P.M. The intelligence was reduced into writing as Ex.PW-2/A and put up before PW-24 (Sh.Samanjasa Das, Addl. Director). It is alleged that a raiding party was organised and two public witnesses – Raju and Vijay were associated. At about 07.15 P.M., Mohd. Irfan was found standing near the stairs of platform No. 8/9 carrying a bag. On interception, he revealed his identity as Mohd. Irfan R/o Distt. Mandsur, M.P. Since the place was not conducive to conduct search and other proceedings, Mohd. Irfan was taken to the office of DRI at Lodhi Road. On search of the bag, 13 packets containing heroin weighing 16.760 kg was recovered. Necessary legal proceedings were conducted. On 08.04.2004, Mohd. Irfan tendered his voluntary statement (Ex.PW-1/G) under Section 67 of the Act. During investigation, it revealed that the appellant used to stay in Bombay Orient Hotel, 926 Jama Masjid and Hotel Sun Rise, Paharganj under the assumed name of Mohd. Almas. On 08.04.2004, room No. 410 in Hotel Bombay Orient, 926 Jama Masjid, where the accused had stayed under the fictitious name of Mohd. Almas was searched and cash ₹ 30,000/- and receipt No. 5646 dated 07.04.2004 regarding the booking of the room was recovered from a trolley bag lying therein and seized vide

panchnama (Ex.PW-4/A). During the course of investigation, statements of the witnesses conversant with the facts were recorded and after completion of investigation, a complaint case was filed by Directorate of Revenue Intelligence (hereinafter referred as 'DRI') through Sh.Ashwani Kumar Sharma, Intelligence Officer. The prosecution examined twenty seven witnesses to establish the guilt. In 313 statement, the appellant pleaded false implication. He examined Mohd. Irshad, his brother, in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the appellant under Section 21 (c) of the Act. Being aggrieved, the appellant has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. Appellant's conviction is based primarily on the statement of complainant – PW-1 (Sh.Ashwani Kumar Sharma, Intelligence Officer) and confessional statement under Section 67 of the Act allegedly tendered voluntarily by the appellant. The prosecution was bound to establish beyond reasonable doubt about the apprehension and arrest of the appellant at platform No. 8/9 of New Delhi Railway Station on 07.04.2004 at about 07.15 P.M. PW-1 (Sh.Ashwani Kumar Sharma, Intelligence Officer) deposed that he was briefed about the intelligence

report by Addl. Director, DRI, DZU at 1530 hours. He joined two witnesses at about 1600 hours to witness the interception of the suspect. A team was formed and at 1730 hours, they left for platform No. 8/9 and reached there at about 1900 hours. A surveillance was mounted and at about 1915 hours a person of wheatish complexion aged about 27 years carrying red and black colour 'Polo World' brand bag near the stairs at platform No. 8/9, New Delhi Railway Station was spotted and intercepted. Since the place of interception was not safe and proper for search and other proceedings, Mohd. Irfan along with the bag was brought to DRI office, CGO Complex, New Delhi. The proceedings regarding search and preparation of 'panchnama' were conducted there on 08.04.2004 till 05.00 A.M. Intelligence report (Ex.PW-2/A) contained the name of the suspect as Mohd. Irfan, aged about 27 years, wheatish complexion, who would be carrying narcotics of about 20 kg in red and black colour 'Polo World' zipper bag. PW-1 (Sh.Ashwani Kumar Sharma, Intelligence Officer) did not state as to how much quantity of the narcotics would be in possession of the suspect. He also did not state that name of the suspect was disclosed to him at the time of briefing. No other description / features of the suspect were known to him. Immediately after getting briefing from PW-2 (Raman Mishra), two public witnesses were associated from Paryavaran

Bhawan, CGO Complex, New Delhi. The complainant did not elaborate the full and complete names of the two public witnesses associated in the raid, with their parentage, designation, place of work and place of residence. In the cross-examination, he admitted that he had not verified the identity of the public witnesses and was not aware if they were working in a department or office. He was unable to disclose as to in what connection both the public witnesses were present on the 6th floor of CGO Complex and how and under what circumstances, they were called to join the investigation. He did not verify the qualification of public witnesses to ascertain whether they were conversant with Hindi and English. In his deposition before the Court, he did not give reason as to why both these witnesses were dropped and were not examined. Counsel for the prosecution emphasized that the witnesses had given incorrect addresses and were not traceable. The prosecution was under no obligation to verify the addresses given by them before associating in the raiding team. In the instant case, however, in my view, the prosecution had ample time to ascertain the addresses of the public witnesses. The secret information was received at about 03.30 P.M. and the suspect was apprehended at 07.15 P.M. The public witnesses allegedly remained with the complainant till 05.00 A.M. the next day. The panchnama (Ex.PW-1/C) merely reflects

name of the public witnesses as Raju and Vijay without any further details about their addresses and parentage. No sincere attempts were made to get the summons served at specific addresses on these witnesses and conveniently on 02.06.2010, the prosecution opted to drop them without giving any valid reasons. Apparently, the complainant's version remained uncorroborated from independent sources / witnesses. Joining of independent public witnesses is not a formality to be performed and sincere attempts were required to be made by the prosecution before apprehension of the accused to procure the public witnesses whose identity / particulars were not doubtful.

4. The complainant was evasive to inform as to who were the other members in the raiding team. No such member of the raiding team was examined by the prosecution to corroborate the complainant's version. The secret informer was not a member in the raiding team. The driver of the vehicle in which the raiding team had gone to New Delhi Railway Station was also not joined. The extracts of the log book of the vehicle were not placed on record to find out the movement of the vehicle used in the raid. PW-1 admitted in the cross-examination that after raid at the New Delhi Railway Station, no information was given to the security guards / RPF personnel present there. No railway official available there

was requested to join the investigation or the proceedings. The vendors / stall owners on the platform No. 8/9 were also not associated in any proceedings. The complainant during investigation did not investigate as to how and when the complainant had reached at platform No. 8/9. He was not found in possession of any railway ticket or platform ticket. After apprehension of the suspect, no intimation was given to the Station Master, GRP / RPF staff or the security incharge. Admittedly, no proceedings whatsoever were conducted at the spot of apprehension and the appellant was brought directly to the office of DRI, CGO Complex. He was not served with notice under Section 50 of the Act at the place of apprehension. Nothing material has come out on record to infer that the place of apprehension was not conducive to conduct the proceedings. Except the bald statement of the complainant, there is no evidence worth the name to infer that the appellant – Mohd. Irfan was apprehended in the manner and at the place described by him. Adverse inference is to be drawn against the prosecution for not examining the independent public witnesses whose existence itself was in doubt.

5. The prosecution examined PW-3 (N.D.Azad), PW-4 (Arvind Kumar Sharma), PW-10 (Asifuddin), PW-11 (Syed Abid Hussain), PW-13 (Mohd.Sarvar) and PW-17 (Tarun Tuli) in an endeavour to establish

that Mohd. Irfan stayed at Bombay Orient Hotel, 926 Jama Masjid and Hotel Sun Rise, Paharganj under the assumed name of Mohd. Almas. The photocopies of the guest register of relevant dates were procured and proved. However, the prosecution was unable to establish that Mohd. Irfan was the person who stayed under the assumed name of Mohd. Almas in the said hotels. Neither of these witnesses identified him in the Court to be the visitor to the hotels. When room No. 410 in Hotel Bombay Orient, 926 Jama Masjid was searched, the official witness was unable to find out any material to connect that the bag containing ₹ 30,000/- belonging to the appellant. The handwriting on the visitors' register where he made entries in his own handwriting were not sent for comparison with admitted handwriting of the accused for comparison to handwriting experts. The recovery was not affected pursuant to the disclosure by the appellant and he was not taken to the said hotel at the time of its search. No call details were proved to show as to with whom the appellant had remained in contact prior to his apprehension. It is unclear as to whom the appellant was to deliver the consignment and if so, at what place and for what consideration. The appellant categorically denied to have made statement under Section 67 of the NDPS Act voluntarily. The contents of the statement (Ex.PW-1/G) were found incorrect during investigation. It was

alleged that Man Mohan Sharma was kin pin for whom the appellant was working. Accordingly, during investigation, as a follow up, residential premises of the appellant and Man Mohan Sharma were searched. However, no incriminating / objectionable material was recovered from there. The prosecution rather examined Man Mohan Sharma as PW-16 and he disclosed that he was working as a teacher in a government school and was President of Teachers' Association for the last ten years. Nothing emerged that he had any association with Mohd. Irfan.

6. It was alleged that in the confessional statement, the appellant had disclosed that he had come to Delhi by Intercity Express and had reached Nizamuddin Railway Station at about 06.30 A.M. on 07.04.2004; had checked in room No. 410 in Hotel Bombay Orient, 926 Jama Masjid and went to Keberia Sarai after leaving his bag containing his personal belongings; contacted one African on his mobile No. 9811463504 and collected ₹ 30,000/- from him and came back to the hotel. He was informed by Man Mohan Sharma that 16.5 kg of heroin was being sent by him through a person wearing a yellow shirt by Golden Temple Express and the said person would travel by AC Ist class and would be waiting for him in front of the above coach. Accordingly, he reached platform No.9 at 07.00 P.M. and collected the bag from that

person and when he was going back to his hotel he was apprehended by DRI Officers. The contents of disclosure statement remained unproved. The Investigating Officer did not collect any document to show if any such person had travelled in Golden Temple Express or the said train had reached that day at New Delhi Railway Station at 07.00 P.M. After collecting the bag from the said person, there was no occasion for the appellant to wait for about fifteen minutes for his apprehension there. The secret information / intelligence with the DRI Officers was not that the bag with contraband would be delivered to him by a person travelling in Golden Temple Express. The alleged secret information was that a person by the name of Mohd. Irfan would be carrying a bag at platform No. 8/9 with contraband. There was no certainty that the bag in question in every eventuality was to be delivered to him at 07.00 P.M. Moreover, Man Mohan Sharma who appeared as a witness in the Court did not substantiate the alleged version narrated in the confessional statement. The prosecution was unable to unearth the source from where the alleged heroin originated. Apparently, the confessional statement purported to have been made can't be relied. It is now well settled that the Court must seek corroboration of the purported confession from independent sources which is lacking in the instant case.

7. The appellant was apprehended on 07.04.2004 at about 07.15 P.M. However, his arrest was shown the next date at 1900 hours and he was not produced soon after his arrest before the Magistrate. He was kept in a lock up though-out the night and was produced before the Court on 09.04.2004. The complainant did not explain the inordinate delay in effecting the appellant's arrest after his apprehension on 07.04.2004 at 07.15 P.M. The MLC (Ex.PW-1/J) does not record the time when Mohd. Irfan was produced for medical examination.

8. PW-2 (Raman Mishra) received the intelligence and conveyed the information (Ex.PW-2/A) to Sh. S.Das. He admitted in the cross-examination that in the present case secret information was not submitted before the immediate Superior Officer. He explained that it was not done so due to non-availability of the Superior Officer in the department. This fact did not find mention in any document on the judicial file. PWs have given inconsistent version as to when the complainant was briefed about the intelligence / secret information. The complainant admitted that intelligence report was not shown to him when he was briefed about secret information and was not given any written authorization to take over the further investigation.

9. Taking into consideration the discrepancies, contradictions, omissions and inconsistencies in the prosecution case and other surrounding circumstances, in my view, the prosecution was unable to establish its case beyond reasonable doubt. It must be borne in mind that severer the punishment, greater has to be the case taken to base conviction. The impugned judgment cannot be sustained and is set aside. The appeal is allowed and conviction and sentence are set aside. The appellant be set at liberty forthwith, if not required in any other case. Trial Court record be sent back forthwith. Copy of the order be sent to the appellant – Mohd. Irfan through Superintendent Jail.

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The application has been moved by the respondent for destruction of the case property i.e. 16.760 kg heroin. Since the appeal has been allowed, the respondent is granted permission to destroy the case property i.e. 16.760 kg heroin including the representatives samples as per rules.

The application stands disposed of.

**(S.P.GARG)
JUDGE**

NOVEMBER 08, 2013/*tr*