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

+ CRL.A. 800/2000

MUKESH

..... Appellant

Through: Mr. Anil Soni, Advocate (*Amicus Curiae*)

versus

STATE

..... Respondent

Through: Mr. Ravi Nayak, Additional Public
Prosecutor for respondent-State
with SI Pradeep Kumar

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
09.01.2014

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Appellant was tried for offence under Section 20(ii) of *The Narcotic Drugs and Psychotropic Substances Act, 1985* upon being found in unlawful possession of 1.250 kg. of *charas* on 19th June, 1993 at about 7:00 p.m. in the thoroughfare at *Shahjahan Road*, near Children Park, New Delhi. Vide impugned order of 10th October, 2000 appellant has been convicted for committing offence under Section 20 (ii) of *The Narcotic Drugs and Psychotropic Substances Act, 1985* and vide order of 12th October, 2000 appellant has been sentenced to rigorous imprisonment for ten years with fine of Rupees One Lac, with default clause.

While entertaining this appeal, the substantive sentence awarded to

appellant was suspended vide order of 27th July, 2001 while taking note of the fact that as per nominal roll of appellant, he had already undergone sentence of nine years and eight months out of the total sentence of ten years.

The factual background of this case, as noticed in the impugned judgment is as under:-

'Precisely the brief facts of the case are that on 19.6.93 the secret informer came at the Police Station and informed to SI Arun Kumar that a person having charas with him would come on Shahjahan Road towards India Gate for going to Delhi Gate. SI Arun Kumar discussed the information with the Insp. Ram Swarup Meena, SHO Tilak Marg and recorded the same vide DD No. 15/A and thereafter organized a raiding party consisting of ASI Prakash Chand, SHO Ram Swaroop and the secret informer and left for C-Hexagan, Shahjhan Road and in the way they requested to some public persons to join the raiding party. One Lalit Kumar voluntarily agreed to join the raiding party. Inspector S.K. Giri and Const. Harish met them near C-Hexagan Tilak Marg and also joined the raiding party and all of them held nakabandi at C- Hexagan road near Children Park at about 6.55 p.m. At about 7.05 p.m. on the insistence of informer, accused Mukesh was stopped who was having a brown colour bag in his hand. He was apprised about the secret information and notice u/S 50 of the NDPS Act was given to him and an option was also given to him that his search could be taken in the presence of Gazetted Officer or

Magistrate. SHO asked ASI Prakash Chand to call ACP Alok Kumar. ACP Alok Kumar reached at the spot at about 7.35 p.m. and made enquiries from the accused. On the directions of ACP Shri Alok Kumar , SI Arun Kumar offered his search to the accused in the presence of Public Witness Lalit Kumar. Thereafter, he took the search of the brown colour bag which was in possession of accused Mukesh upon which Lion Club International was printed with a monogram. On checking the same, a white colour cloth bag was recovered which was having three polythene and each polythene was containing charas in the shape of candle. SI Arun Kumar took the weight of charas separately from each packets No. 1, 2 and 3. The same were found to be 500 grams, 900 grams and 850 grams respectively. From the each packet 50 grams charas was taken out as sample and gave serial No. S1, S2 and S3. The remaining substances were kept in the same thaila and sealed with the seal of AK after putting the thaila in the same bag. All the sample packets and remaining stuff were sealed with the seal of AK. SHO also affixed his seal of RSM on sealed packets. SI Arun Kumar also filled up the CFSL form and both the seals i.e. the seal of AK and RSM were also affixed on it. Thereafter, the seal of AK was given to public witness Lalit Kumar and SHO kept his seal RSM in safe custody. All the sealed packets alongwith CFSL form were handed over to SHO for depositing the same in the malkhana. Thereafter, SI Arun Kumar sent rukka for the registration of the case through ASI Prakash Chand and

prepared the site plan, recorded the statement of witnesses, arrested the accused Mukesh. Thereafter, he sent the exhibits of this case along with CFSL form to CFSL for analysis, Mukesh to the hospital for his medical examination. After completion of the investigation, the challan was filed against the accused Mukesh and presented in the court. '

Prosecution case rests upon deposition of nine witnesses which includes deposition of public witness – *Shri Lalit Kumar (PW-7)* , who has not supported the prosecution case.

Appellant in his statement under Section 313 of the Cr.P.C. had asserted before the trial court that he is innocent and has been falsely implicated in this case and nothing was recovered from his possession. After trial, appellant stands convicted and sentenced as noticed above.

After the substantive sentence imposed upon appellant was suspended, none has been appearing on behalf of appellant. Court Notice sent to appellant and his surety has been received back unserved and Court Notice issued to his counsel was served but none had appeared when this matter was taken up for final hearing on 30th July, 2013 and 30th September, 2013. Court Notice to appellant, his counsel and surety was sent through concerned S.H.O. for today. As per report received back qua appellant and his surety, *they are not residing at the given address*. In such a situation, Mr. Anil Soni, Advocate, present in the Court has agreed to appear on behalf of appellant as *Amicus Curiae* in this case. He is so appointed to argue this appeal on behalf of appellant.

With the assistance learned *Amicus Curiae* Counsel, the evidence

on record has been scrutinized and thereupon, it is found that there is compliance of mandatory provisions of Section 42 (2) as well as Section 50 of *The Narcotic Drugs and Psychotropic Substances Act, 1985*. It is evident from deposition of ACP – *Alok Kumar (PW-3)* that public witness *Lalit Kumar (PW-7)* had taken search of SI *Arun Kumar (PW-9)* who had then taken search of appellant in the presence of senior officer ACP – *Alok Kumar (PW-3)*. It was vehemently argued by learned *Amicus Curiae* counsel that public witness *Lalit Kumar (PW-7)* has given true version of this incident, which exonerates appellant completely and so, appellant's conviction is rendered unsustainable and is liable to be set aside.

Mr. Ravi Nayak, learned Additional Public Prosecutor for respondent-State submits that public witness seldom come forward to depose in such like matters and when they are called to assist in such proceedings, they do not support the prosecution case which stands amply proved from the evidence on record.

Upon hearing both sides, on perusal of evidence on record and impugned judgment, I find that there is compliance of mandatory provisions of law and hostility of public witness- *Lalit Kumar (PW-7)* to the prosecution case is not sufficient to demolish the prosecution case. Appellant fails to probalise his false implication in this case.

Finding no substance in this appeal, it is dismissed.

Trial court be apprised of this order forthwith.

(SUNIL GAUR)
JUDGE

JANUARY 09, 2014

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