

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.L.P. 310 of 2013

DIRECTORATE OF REVENUE INTELLIGENCE

..... Petitioner

Through: Mr. Satish Aggarwala, Advocate.

versus

MANJINDER SINGH

..... Respondent

Through: Mr. Dhruv Gupta, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER
23.01.2014

1. This is a petition seeking leave to appeal against the impugned judgment dated 14th February 2013 passed by Special Judge, NDPS in Sessions Case No. 18A/08 acquitting the Respondent of the offences under Sections 21 and 27A of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. The case of the prosecution is that on 6th October 2007 an intelligence was gathered by Shri Diwakar Joshi, (PW1), an Intelligence Officer of Directorate of Revenue (DRI), through a reliable source that the Respondent, carrying narcotic drugs, would be coming in a Bolero Jeep at HP Petrol Pump, Mahipal Pur, near Radisson Hotel, New Delhi, at around 10.00 p.m. The

intelligence was reduced to writing, placed before the senior officer Shri Sanjay Bansal (PW2), who directed Shri N.D. Azad (PW9) to immediately organise a team for surveillance and interception of the person along with the contraband substance.

3. After associating two public witnesses, the DRI officers are stated to have left their office at 8.00 p.m. and reached the petrol pump at about 9.00 p.m. At around 10.30 p.m., the Bolero jeep arrived at the petrol pump and was immediately intercepted. The driver of the jeep was the Respondent, who happened to be a resident of Village Sammipur in District Jalandhar, Punjab.

4. The case of the prosecution is that although the Respondent initially denied carrying any narcotic substance, on persistent questioning by the team, he admitted that he was carrying approximately 5 kgs of Heroin concealed in a greenish colour VIP suitcase lying in the boot of the jeep. Notice under Section 50 of the NDPS Act (Ex. PW11/B) was given to the Respondent at the spot and he gave a reply in writing on the said notice in his handwriting that he did not require any Magistrate or Gazetted Officer for the search proceedings and that it could be undertaken by any officer of the DRI. It is also stated that at the request of the accused, a search was effected at a secure

place away from the place of interception. From the suitcase, two packets weighing 2.438 kgs and 2.346 kgs were recovered. A personal search of the accused was also conducted and recovery of cash of Rs. 1.98 lakhs and one mobile phone with one sim card was made. Three representative samples were taken from the packets. On testing, the sample showed the presence of diacetylmorphine of 60.4% and 57.7% purity respectively.

5. The case of the prosecution is that a detailed *panchnama* (Ex. PW11/A) was prepared with regard to the interception, search and seizure. Further, it was stated that in response to the summons issued to the accused under Section 67 of the NDPS Act (PW11/C), the accused appeared and tendered his voluntary statement (PW11/D). He disclosed that the owner of a stand at Jalandhar used to send the vehicle on hire to one Bittoo. On 6th October 2007, Bittoo called the Respondent at around 1.00 p.m. at BMC Chowk, Jalandhar and had given him the VIP suit case in question and Rs. 2 lakhs and asked him to go to Delhi and deliver it near the Radisson Hotel. The accused was promised to be paid Rs. 6,000/- as charges for the delivery and Rs. 500 for the payment of toll. From the sum of Rs. 2 lakhs, he spent Rs. 2000/- on diesel. However, the Respondent did not give the DRI Officers any contact number or address of Bittoo.

6. In the impugned judgment after discussing the entire prosecution evidence, the learned trial court has come to the following conclusions:

i. Section 50 of the NDPS Act was contravened in as much as the notice issued under that provision, Ex. PW11/B, to the accused at the spot appeared to be a fake document, created and manufactured after the alleged time of interception.

ii. Sections 41 and 42 of the NDPS Act were not complied with since the Investigating Officer (IO) (PW11) did not possess a valid authorisation to effect the seizure. The authorisation was given by PW2 Sanjay Bansal in favour of PW9 Shri N.D. Azad who in turn authorised Shri Devender Singh (PW7). However, PW7 Devender Singh was neither the seizing officer nor a member of the raiding team of DRI. The seizure of this case was effected by PW11 Shri K. Shashi Bhushan in whose favour there was no authorization. Merely because PW9 was himself a member of the raiding party, it would not obviate the need for a valid authorisation in favour of PW11 to carry out the seizure.

iii. Section 43 of the NDPS Act would not apply since the seizure was effected not by way of chance recovery but on the basis of specific prior information.

iv. The summons issued to the Respondent under Section 67 of NDPS Act appeared to be a document prepared and manipulated subsequent to the search and seizure from the accused. While the retraction application of the Respondent was in Punjabi, his statement was in Hindi of poor quality and this raised further doubts as to its genuineness.

v. The failure to associate public witnesses in the search and seizure raised sufficient doubts as to their genuineness; there were also doubts regarding the site plan; the issuance of the seal of DRI by PW10 in favour of PW11 and the very constitution of the raiding team.

vi. The failure to produce the necessary certification regarding the mobile phone recovered from the Respondent also contributed to the weakening of the prosecution case against the Respondent.

vii. The accused could not be found guilty under Sections 27 and 27 A of the NDPS Act merely because of the recovery of cash of Rs. 1.98 lakhs.

7. Mr. Satish Aggarwala, Senior Standing Counsel for DRI submitted that since the recovery was made from the vehicle there was no need for issuance of notice under Section 50 of the NDPS Act and, therefore, the finding of the learned trial court in that behalf was erroneous.

8. This Court is unable to agree with the above submissions. In the present case a personal search was also made of the body of the accused. A notice under Section 50 NDPS Act had therefore to be mandatorily issued.

9. What is however, disconcerting is that the details recorded in this notice were contrary to what was deposed by the prosecution witness, as to what transpired on 6th October 2007. The notice under Section 50 (Ex. PW11/B) mentions the time of occurrence as around “11.30 hrs. today” which was 6th October 2007. In the absence of any indication that it was ‘p.m.’ or ‘a.m.’ it could well be taken to be ‘a.m.’. Even if it was taken to be p.m., it contradicted the case of the prosecution that the accused was apprehended at around 10.30 p.m. The second factor pointed out is that a typed notice could not possibly have been served at the time and place of apprehension of the accused. There was nothing to show that the raiding party took any computer with them from which a typed notice could have been prepared at the spot. These factors indicate that the notice Ex. PW11/B was a document prepared subsequently. There is no satisfactory explanation for the above glaring discrepancies concerning the notice issued to the accused under Section 50 of the NDPS Act.

10. As regard the non-compliance with provisions of Sections 41 and 42 of the NDPS Act, the submission of Mr. Aggarwala is that since the seizure was effected from a vehicle in transit in a public place, Section 43 of the Act that would at best apply and not Sections 41 and 42. As pointed out by the learned trial court, since the interception took place upon receipt of specific intelligence and not by way of chance recovery and by assembling a team of officers, it was a mandatory requirement to comply with Sections 41 and 42 of the NDPS Act. The reliance placed in this regard by Mr. Aggarwala on the decisions in ***Ramesh Kumar Rajput v. State 11 (2008) DLT (Crl) 828*** and ***Directorate of Revenue Intelligence v. Mohammad Nisar Holia (2008) 2 SCC 370*** is to no avail since both the decisions are distinguishable on facts. In any event, in the latter case a distinction was drawn between recovery from a public place on receipt of specific information in advance and a recovery by chance. The rigours of the law might not apply. In the present case, however, the recovery from the vehicle on a public highway was not as a matter of pure chance but on specific advance information and therefore the requirements of Sections 41 and 42 of the NDPS Act had to be complied with.

11. Further the mere fact that PW9 went along with the raiding party did not

mean that he was not required to authorise the officer who in fact effected the seizure. The seizure in the case was effected by PW11 who was required to be specifically authorised to do so. The fact of the matter was that there was no specific authorisation in favour of PW11.

12. As regards non-compliance with Section 67 of the NDPS Act, Mr. Aggarwala submitted that it was possible for the DRI to have served upon the accused summons on 6th October 2007 itself requiring him to appear before the DRI at 7.00 a.m. on 7th October 2007 for the purpose of recording his statement.

13. The above submission overlooks the glaring inconsistencies pointed out by the learned trial court as regards the summons, Ex. PW11/C. Although it was dated 6th October 2007, the fact of the matter is that the *panchnama* proceedings concluded at 10.00 a.m. only on 7th October 2007. The question of accused appearing at 7.00 a.m. on 7th October 2007, therefore, simply did not arise. The finding of the trial court that the said summons could never have been served on the accused on 6th October 2007 and that the said document was possibly prepared subsequently cannot be faulted.

14. The careful examination of the record also bears out that the other findings of the learned trial court in the impugned judgment are detailed and reasoned.

15. The Court is unable to find any valid ground for granting leave to appeal against the impugned judgment. Accordingly, the petition is dismissed with no order as to costs.

16. The trial Court record be sent back forthwith.

JANUARY 23, 2014
‘vn’

S. MURALIDHAR, J.

