

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

RESERVED ON : 2nd SEPTEMBER, 2014

DECIDED ON : 8th SEPTEMBER, 2014

+ CRL.A. 973/2011

BHOOP SINGH @ PAPPU Appellant

Through : Ms.Rakhi Dubey, Advocate.

VERSUS

STATE NCT OF DELHI Respondent

Through : Mr.M.N.Dudeja, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 11.11.2010 of learned Special Judge, NDPS (Central) Tis Hazari Courts, Delhi, in Sessions Case No. 09/2009 arising out of FIR No. 318/2008 PS Pahar Ganj by which the appellant – Bhoop Singh @ Pappu was convicted under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'). By an order dated 16.11.2010, the appellant was was sentenced to undergo RI for ten years with fine ₹ One lac.

2. Allegations against the appellant as reflected in the charge-sheet were that on 24.12.2008 at about 07.25 A.M. he was found in unlawful possession of 2.5 Kg. of Charas at a public place on Rajguru Road, near Imperial Cinema, Paharganj, Delhi. During investigation, statements of the witnesses conversant with facts were recorded. The exhibits were sent to Central Forensic Science Laboratory (in short 'CFSL') for examination. After completion of investigation, a charge-sheet under Section 20(b) of NDPS Act was submitted in the Court. The appellant was duly charged and brought to trial. The prosecution examined eleven witnesses to prove its case. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication. DW-1 (Hukam Chand) was examined in defence. After considering the rival contentions of the parties and appreciating the evidence on record, the Trial Court, by the impugned judgment, held the appellant guilty and sentenced him as mentioned previously. Being aggrieved and dissatisfied, he has preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. Material testimony to infer the appellant's involvement in the crime is that of PW-9 (SI Sultan Singh Meena) who along with HC Latoor Singh and Const.Jawahar Singh was on patrolling

duty in the area of police station Pahar Ganj on 24.12.2008. They had left to patrol the area at 06.05 A.M. vide DD No.8B (Ex.PW-9/A). When they were present near Imperial Cinema, SI Sultan Singh Meena received a secret information that an individual would come from DBG Road side with heavy quantity of Charas. This information was recorded as Ex.PW-6/A and sent to SHO through Const.Jawahar Singh. PW-9 (SI Sultan Singh Meena) deposed that thereafter, he requested four or five persons to join the raiding party. One Puran Chand volunteered to join the investigation. At around 07.25 A.M. on the pointing out of the secret informer, the appellant carrying a polythene bag was asked to stop. In the meantime, Const.Jawahar Singh handed over to him the copy of DD entry (Ex.PW-9/B) about the directions by the SHO to carry on the investigation. The appellant was informed about the information about Charas in his possession. He was further informed that he had legal right to call any Gazetted Officer or Magistrate for the purpose of search. Notice (Ex.PW-3/A) under Section 50 of NDPS Act was prepared. Its contents were explained to the accused who put his thumb impression at point 'Q' on Ex.PW-3/A. He refused to call any Magistrate and also refused to take search of the police party. Endorsement about his refusal was recoded at points 'AA' to 'AA-1' on Ex.PW-3/A and the appellant

put his thumb impression at point 'Q-1'. Further case of the prosecution is that thereafter, on search of the bag in the right hand of the accused, five packets were found. Each packet contained two strips of Charas. On weighing, each strip was found containing 250 grams of Charas. The total recovery of Charas was 2.5 Kg. 10 grams were taken from each strip as sample. FSL form was filled up. Case property and the FSL form were seized vide seizure memo Ex.PW-3/B. PW-9 (SI Sultan Singh Meena) prepared rukka (Ex.PW-9/C) and lodged First Information Report through Const.Jawahar Singh. When ASI Rajan Singh along with Const.Jawahar Singh arrived at the spot, SI Sultan Singh Meena handed over the custody of the accused and the memos to him. In the cross-examination, the witness revealed that he remained at the spot till 10.00 A.M. He denied the suggestion that the appellant was falsely implicated in this case and nothing was recovered from his possession. Apparently, the material facts stated by the crucial witness remained unchallenged in the cross-examination. Nothing was suggested to the witness if there was non-compliance of Sections 42, 50 and 57 of NDPS Act. The appellant did not deny presence of witness - Puran Chand at the spot in whose presence the contraband was recovered from his possession. He even did not disclose as to from where else he was apprehended. Nothing material was elicited

in the cross-examination to suspect the recovery of the contraband from his possession. No ulterior motive was assigned to the witness for false implication.

4. PW-3 (HC Latoor Singh) and PW-10 (Const.Jawahar Singh), other members of the raiding team have deposed on similar lines and are consistent in their statements about the recovery of 2.5 Kg. Charas from the bag of the appellant. In the cross-examination, PW-3 (HC Latoor Singh) disclosed that Puran Chand was associated during investigation and to his knowledge, he was not a witness in any other case. There were shops on both sides of road but none of them was open at that time. He denied the suggestion that the appellant was called from his house in the police station and the Charas was planted upon him. It was not suggested as to when the accused was called from his house and what was the extraneous consideration for the police officials to involve him in a false case in the absence of any prior enmity or animosity. No such suggestion was put to PW-10 (Const.Jawahar Singh) in his cross-examination.

5. PW-2 (Puran Chand) is a star witness who participated in the investigation on the request of the initial Investigating Officer. He fully supported the prosecution and corroborated the version given by the other members of the raiding party. He was categorical to depose that from the

possession of the accused the contraband was recovered. He identified the memos prepared at the spot which contained his signatures. In the cross-examination, he denied to be on visiting terms to the police station Pahar Ganj. He claimed that he had never appeared as a witness in any police case. He denied the suggestion that the accused was falsely implicated in this case. Again, no material discrepancies could be elicited in the cross-examination of this independent public witness who had no annoyance with him to toe the line of the police. No motive was imputed to the public witness to make a false statement against him. The appellant examined DW-1 (Hukam Chand) in his defence who for the first time deposed that the appellant had a quarrel with four individuals and has sustained head injuries in the said incident prior to December, 2008. He further deposed that those four individuals had told the appellant that they were associates of one Puran Chand who used to lend rickshaws on rent. He further deposed that the appellant used to tell him that Puran Chand used to ask him to assist for release of his rickshaws seized by traffic police. This statement of defence witness lends-credence to the prosecution case to the extent that Puran Chand was not a non-existent entity. The appellant never claimed that Puran Chand was acquainted with him or that he had any

confrontation with him or his associates any time. No such suggestion was put in the cross-examination of PW-2 (Puran Chand) or to other witnesses.

6. From the testimonies of these witnesses, it stands established that the contraband was recovered from the possession of the accused. In 313 statement, the accused did not give plausible explanation to the incriminating circumstances proved against him. He did not claim his presence at any other specific place on that day. He did not examine any family member or neighbour to substantiate his plea that he was called from his house and was falsely implicated in this case in the police station. Minor contradictions or discrepancies highlighted by the appellant's counsel do not shake the basic structure of the prosecution case and are inconsequential.

7. PW-6 (Insp.Indermeet Singh) has testified that on 24.12.2008 Const.Jawahar Singh gave him written intimation about having received secret information at 07.05 A.M. He had returned the copy of the said intimation after putting his initials with instructions to conduct further proceedings to SI S.S.Meena. The copy bearing his signatures is Ex.PW-6/A. He further deposed that at about 09.30 A.M., Const.Jawahar Singh produced two parcels bearing marks 'A' & 'B' sealed with seal of SSM; carbon copy of seizure memo and FSL form. He checked the parcels and

after satisfying about their preparation, affixed his own seal of ISB. Sample seal was also affixed on FSL form. He handed over all the articles to MHC(M) Shailesh Kumar by calling him in his office and he made entry in register No.19. He also recorded DD No.9A (Ex.PW-6/B) in the roznamcha in this regard. Subsequently, at about 01.00 P.M., IO ASI Rajan Singh produced the accused before him. He made enquiries from the accused to satisfy himself. Despite an opportunity given, the witness was not cross-examined. PW-11 is ASI Rajan Singh who took over the investigation. He proved report Ex.PW-4/A prepared under Section 57 of NDPS Act. The report was put up before the SHO who forwarded the same to ACP Pahar Ganj. The testimonies of all these witnesses establish that there was compliance of the provisions of Section 42, 50 & 57 of NDPS Act. Contention of the appellant's counsel about violation of certain guidelines at the time of recovery of the contraband has no merit. No such guidelines have been brought on record and it is not reflected as to what prejudice was caused to the appellant for non-compliance of any specific guideline. The Trial Court has dealt with all the material aspects in the impugned judgment which is based upon fair appraisal of the evidence and warrants no interference. Conviction under Section 20(b) of NDPS Act is affirmed.

8. The sentence awarded to the appellant is the minimum sentence prescribed for the possession of commercial quantity of the contraband under the NDPS Act, which cannot be altered or modified. Sentence order, however, requires modification to the extent that default sentence for non-payment of fine of ₹ One lac would be SI for three months instead of RI for one year.

9. The appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent jail for information.

(S.P.GARG)
JUDGE

SEPTEMBER 08, 2014 / tr