

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

Reserved on: 11.03.2014
Date of Decision: 19.03.2014

+ CRL.A. 896/2013

SATPAL MANN

..... Appellant

Through: Mr Mukesh Kalia, Adv.

versus

STATE

..... Respondent

Through: Mr Feroz Khan Ghazi, APP

+ CRL.A. 1140/2013

SHAFI ISLAM

..... Appellant

Through: Ms Saahila Lamba, Adv.

Versus

STATE (GOVT. OF NCT) DELHI

..... Respondent

Through: Mr Feroz Khan Ghazi, APP

And

+ CRL.A. 1285/2013

JAFAR ALI

..... Appellant

Through: Mr Inderjeet Sidhu, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr Feroz Khan Ghazi, APP

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

JUDGEMENT

V.K. JAIN, J.

On 07.09.2010, at about 3.30 PM, Head Constable Baljit Singh of Crime Branch, Sector 18, Rohini, received a secret information that three persons, namely, Ganesh, Jafar Ali and Shafi Islam had been obtaining *Ganja* from Orissa, booked in parcels sent through post office, in connivance with the Satpal Mann, postman of Post Office Burari and that at about 5-6 PM, they would receive *Ganja* from the aforesaid postman near the house of Mahavir Tyagi in village Burari. The information was conveyed by Head Constable Baljit Singh to his superior ASI Ramesh. The informer was also produced before him. ASI Ramesh produced the secret information before Inspector Satyaprakash, who, in turn, intimated Additional DCP. The information was recorded vide DD No. 12 at about 3.55 PM and a copy of the DD was sent by ASI Ramesh to his superior officers. A raiding party headed by ASI Ramesh then reached near the house of Mahavir Tyagi in village Burari. At about 5.20 PM, the appellants Ganesh, Jafar Ali and Shafi Islam came in the street followed by the

appellant Satpal after five minutes. All the appellants were identified by the secret informer, who thereafter left the spot. The appellant Satpal went inside the house of Mahavir and brought out parcels three each of which were handed over by him to the appellants Ganesh, Jafar Ali and Shafi Islam. As soon as they had kept their respective parcels on the road and the appellant Satpal handed over one more parcel each to them, all the four appellants were apprehended and were apprised of the information. They were also informed that it was their legal right to be searched in the presence of a Gazetted Officer or a Magistrate. They, however, declined to avail the offer. The response of the appellants Ganesh, Jafar Ali and Shafi Islam, they being illiterate was noted by ASI Ramesh on their respective notice, whereas the appellant Satpal Mann wrote his response in his own. Thereafter, the above-referred parcels were searched and were found to contain *Ganja*. The weight of 12 *Ganja* parcels, found in possession of appellants, individually was found to be 10.800 kg, 13.200 kg, 10 kg, 13.590 kg, 10.400 kg, 13.180 kg, 13.350 kg, 14.550 kg, 11 kg, 10.500 kg, 11.200 kg and 10.900 kg. The total weight of *Ganja* contained in the 12 parcels was found to be 142.67 KG. 500 Gram from each parcel was drawn as sample and after preparing their parcels, the samples were sealed with the seal of

RC. The residual Ganja in each parcel was also sealed with the same seal. Form FSL was also filled on the spot and the seal of RC was affixed on it. The seal, after use, was handed over to Head Constable Baljit Singh and the sample as well as the parcels containing the residual Ganja were deposited in Malkhana. The addresses on the parcels were found to be fake, when verified by the Postal Department. On 20.09.2010, the samples were sent to FSL. When examined in the laboratory, samples were found to be of Ganja. Accordingly, all the appellants were prosecuted under the provisions of NDPS Act.

2. The appellants were charged under Section 20 of the Act read with Section 29 thereof. Since they pleaded not guilty to the charge, as many as 14 witnesses were examined by the prosecution.

3. ASI Ramesh came in the witness-box as PW-12 and inter alia stated that on 07.09.2010, Head Constable Baljit Singh shared the secret information, which he had received, with him (the witness), whereupon, he produced the informer before Inspector Satyaprakash and apprised him of the facts. Inspector Satyaprakash, after verifying the information, forwarded the same to Additional DCP, SIT. The information was recorded by the witness vide DD Ex.PW-12A and its copy was sent to the senior officers.

The raiding party having Field Testing Kit and weighing scale with it then reached Burari village. Some persons were requested to join the raiding party, but no one agreed. The members of the raiding party, all of whom were in civil dress, were deputed near the house of Mahavir Tyagi in village Burari. At about 5.20 PM, they noticed three persons coming in the street. The informer identified them as Ganesh (who has been declared PO), Jafar Ali and Shafi (appellants). After about five minutes, the appellant Satpal also came to the street and entered the house of Mahavir Tyagi. He came back with parcels wrapped in white clothes and delivered the same to the aforesaid three accused persons. The accused persons were checking the parcels and placing them on the ground. They were over-powered and the police party was introduced to them. They were informed about their legal rights to be searched in the presence of a Gazetted Officer or a Magistrate and the search of members of the raiding party was also offered to them. However, all of them declined to exercise their right, whereupon all the 12 parcels which Satpal had brought from the house of Mahavir Tyagi and handed over to Ganesh, Jafar Ali and Shafi Islam were checked and were found to contain Ganja in card boxes wrapped in white cloth parcel. Out of the 12 parcels, 9 were addressed to Ram Kumar, House No. 669, Gali No. 6,

Baba Colony, Burari, whereas the remaining three parcels were addressed to Ramesh Bhati, KH-118124, Gali No. 4, Burari, Delhi. The slips of the post office were also tagged on each parcel. The total weight of Ganja found in the aforesaid parcels was 142.670 gram. According to the witness, he also noted down the EPP number of each parcel mentioned on the postal slip in the seizure memo as well as the rukka. The witness further stated that he drew two samples of 500 gram each from all the parcels, which were kept in four separate poly bags and given Serial No. 1A, 1B to 12A, 12B. Thereafter they were wrapped in cloth parcels. The remaining ganja was kept back in their respective boxes and parcels which were then kept in separate plastic bags and sealed with the seal of RC. The samples were also sealed with the same seal. After putting the same seal on FSL form, it was handed over to Head Constable Baljit Singh vide memo Ex. PW-2/J.

4. PW-5 Head Constable Baljit Singh inter alia stated that on 07.09.2010, he received a secret information that three Bengali boys, namely, Ganesh, Jafar Ali and Shafi Islam, used to book parcels contain ganja from Puri in Orissa and supply the same in collusion with postman Satpal. The information was shared by him with ASI Ramesh Chand who, in turn, disclosed it to Inspector Satyaprakash. He also corroborated the

deposition of ASI Satpal with respect to their going to village Burari, the appellants coming there, Satpal handing over four parcels each to the appellants Jafar Ali and Shafi Islam and the accused Ganesh (PO), drawing of samples from the said parcels as well as the seizure of the samples as well as the residual ganja.

PW-2 Constable Pradeep Kumar also corroborated the deposition of ASI Ramesh and Head Constable Baljit Singh in all respects. PW-2 Constable Pradeep also took the rukka to the Police Station inter alia stated that after registration of FIR, SHO had put FIR numbers on the pulandas and counter sealed the same with the seal of KSY.

5. PW-6 Inspector Kuldeep Singh inter alia stated that in the night intervening 7/8.09.2010, he was posted as SHO, Police Station Crime Branch and on that day, at about 12.15 AM, Constable Pradeep Kumar came to his office and handed over to him 12 boxes and 24 cloth parcels all sealed with the seal of RC as well as the FSL form and copy of seizure memo. He affixed his own seal of KSY on all the parcels as well as the FSL form and also wrote down FIR numbers on them. He then called MCH(M) in his office and handed over the papers as well as the sealed parcels to him for depositing the same in malkhana. He also signed the relevant entry in

register No. 19 which is Ex.PW-3/A and also lodged a DD in this regard, which is Ex.PW-6/A.

PW-3 Head Constable Jag Narain was working as MHC(M) at Police Station, Crime Branch. He inter alia stated that on 08.09.2010, Inspector Kuldeep Singh called him to his office along with register No. 9 and handed over to him 36 parcels sealed with the seal of RC and KSY. He further stated that on 20.09.2010, parcels marked 1A to 12A were sent by him to FSL through Constable Manjit along with FSL form.

PW-4 Constable Manjit stated that on 20.09.2010, he collected 12 parcels duly sealed with the seal of RC and KSY to FSL and deposited the same with FSL office, Rohini.

PW-9 Shri Vishal Gaurav is an officer of Bharti Airtel who proved the copy of application form Ex.PW-9/A along with a copy of ID and call details record Ex.PW-9/B in respect of Mobile No. 9971025048 in the name of Rakesh Kumar S/o Satpal Resident of -292-B, Kera Khurd.

PW-10 V.S. Duhoon was posted as Assistant Superintendent Posts and he inter alia stated that on 30.08.2010, he had handed over 8 parcels to the postman Satpal Mann as per list Ex.PW-10/A. Six parcels were handed over to Satpal on 06.09.2010 vide list Ex.PW-10/B and three parcels were

handed over to him on 07.09.2010 vide list Ex.PW-10/C. He also proved the Speed Post Manifest of the said parcels, Ex. PW-10/D1 to Ex.PW-10/D12. He further stated that as per record, eight parcels mentioned in Exd.PW-10/A were delivered on 30.08.2010, whereas the six parcels mentioned in EX.PW-10/B were delivered on 06.09.2010. He also proved the report regarding verification of addresses Ex.PW-10/E and PW-10/F.

PW-13 Inspector Satyaprakash stated that on 07.09.010, ASI Ramesh informed him of a secret information, which was recorded vide DD No. 12, Ex.PW-12/A and he forwarded the same to the senior officers. This witness also conducted investigation of the case after the seizure had been effected.

PW-14 Mahavir Singh was working as Postal Assistant in Burari Post Office. He inter alia stated that the delivery of the slips Ex.PW-10/A to C was signed by the appellant Satpal Mann and the parcels mentioned in the said lists were received by him from the witness in the post office.

6. PW-7 Mahavir Tyagi is the owner of the house in which parcels were allegedly kept by the appellant Satpal Mann. He, however, did not support the case of prosecution though he admitted Satpal Mann was known to him, he being the postman delivering post in their village. He claimed that Satpal had never kept any parcel or other post material in his house.

7. In their respective statements under Section 313 of Cr.P.C., the appellants denied the allegations against them. The appellant Satpal Mann claimed that he had been lifted from the post office Burari, illegally detained and falsely implicated in the present case. The other appellants also claimed to be innocent and also alleged that they had been taken into custody three days prior to 8.09.2010.

8. The impugned judgment has been assailed by the learned counsel for the appellants primarily on the following grounds:

- a) no public witness was joined in the alleged seizure, despite having prior information;
- b) the appellant Satpal Mann could not have kept the aforesaid parcels in the house of Mahavir Tyagi, without his permission and the aforesaid witness has not supported the prosecution in this regard;
- c) as per the personal search memo of the appellant Satpal Mann dated 08.09.2010, mobile number 9971025048 was seized from him at the time of his personal search, which must have been taken only after his arrest at 4.30 AM on that date and the case of the prosecution is that the aforesaid appellant remained with the police officers from about 5.25 PM, in village Burari, whereas as per the call details records, one call was received on the

aforesaid mobile phone somewhere near Haiderpur Extension at 6.31 PM, through Cell Tower No.30376 and 30378 and one SMS was received in Rohini at about 8.45 PM through Cell Tower No. 59453, Sector 18, Rohini on 07.09.2010.

9. As regards failure to join public witnesses, since the seizure was not effected from the house, the provisions of Section 100 of the Code of Criminal Procedure would not *ipso facto* apply to the said seizure.

Addition

10. Coming to the contention that the appellant Satpal Mann had no access to the house of Mahavir Tyagi, though witness has not supported the prosecution, he did not dispute that he was a resident of village Burari and the appellant Satpal Mann being the postman distributing mail in the village was known to him. According to the witness, if he was expecting something to be delivered to him, he would enquire from the appellant Satpal, he being known to him personally and also on telephone and the said appellant would also visit his house, whereupon his family members would inform him. I see no reason to disbelieve the deposition of the police officials with respect to the appellant Satpal bringing the parcels containing ganja from the house of Mahavir Tyagi and delivering the same to the other appellants. None of the

appellants claims any enmity or ill-will between him and the aforesaid witnesses. Therefore, there could have been no reason for the witnesses to falsely implicate them in this case. The quantity of *ganja* seized by the police being quite large, there is no reasonable possibility of its having been planted.

11. Moreover, since admittedly the aforesaid parcels were taken by the appellant Satpal from the post office, for delivery to the addresses, in view of the provisions contained in Section 106 of Evidence Act, the onus would be on him to explain how those parcels came to be seized by the police officers on 07.9.2010. In his statement under Section 313 Cr.P.C., he simply stated that he was lifted from the post office and illegally detained. More importantly, it has come in the deposition of PW-10, Assistant Superintendent Posts that eight parcels detailed in list Ex. PW-10/A were handed over to the appellant Satpal Man on 30.08.2010, six parcels mentioned in list Ex.PW-10/B were handed over to him on 06.09.2010 and three parcels mentioned in list Ex.PW-10/C were handed over to him on 07.09.2010.

The following are the serial numbers which the post office had given to the parcels, which according to the prosecution, the appellant Satpal

Mann delivered to the other appellants on 07.9.2010:-

405300569 IN, 405300499 IN, 405300422, 370853471 IN, 370853485 IN, 3708534999 IN, 405300325 IN, 405300161 IN, 3708537461 IN, 405306779 IN, 405306694 IN, 405306093 IN, 405306840 IN, 405306076 IN, 405306853 IN, 405306164 IN 405306221 IN.

The following are the serial number of the parcels mentioned in Ex.PW-10/A to Ex.PW-10/C:-

405300569 IN, 405300499 IN, 405300422, 370853471 IN, 370853485 IN, 3708534999 IN, 405300325 IN, 405300161 IN, 3708537461 IN, 405306779 IN, 405306694 IN, 405306093 IN, 405306840 IN, 405306076 IN, 405306853 IN, 405306164 IN 405306221 IN.

It would thus be seen that the parcels bearing serial number 4053006076 IN, 405306853 IN and 405306779 IN, which appear in the list Ex.PW-10/A were delivered to the appellant Satpal on 30.08.2010. PW-14 Shri Mahavir Singh, Postal Assistant is the official, who has identified the signature of the appellant Satpal Mann on Ex.PW-10/A to PW-10/C. Since the aforesaid three parcels were received by the appellant on 30.08.2010, he was not supposed to retain them with him till 07.09.2010. In case the addressee was not available, he was expected to make an endorsement to

this effect on the parcel though he could visit him again to deliver the same to him. In any case, the postman cannot be expected to keep the parcels with him for a week or so, without even making any endorsement on them. More importantly, as per the report submitted by Satpal to the Post Office, all the eight (8) parcels received by him on 30.8.2010 and six (6) parcels received by him on 6.9.2010 were delivered by him on the same date on which he received them from the Post Office. If that is so, none of these parcels could have been seized by the police. This clearly shows that a false report was given by him to the Post Office. In any case, the address on the parcels being fake, he could not have delivered them to the addressee.

Though, in his cross-examination, PW14 Mahavir Singh claimed that on 7.9.2010, police officials came to the Post Office at about 2:30 p.m., the parcels mentioned in Ex.PW10/C were given to Satpal, on the instructions of police officers and thereafter they had accompanied him for distribution of those three (3) parcels, the aforesaid part of his deposition is not acceptable. The Post Office officials are not expected to comply with any such direction, particularly when it is not in writing. He does not name the police officer giving such a direction. Moreover, no suggestion to this effect was given to any police officer including the IO of the case. More importantly, it would

be illogical for the appellant Satpal, to accompany the police officials for distribution of the parcels. In any case, even if the parcels mentioned in Ex.PW10/C are excluded from consideration, the charge against the appellants stands duly proved, on the basis of quantity of *ganja* in other parcels.

12. Out of the 12 parcels, 9 parcels were addressed to Ram Kumar resident of House No. 669, Gali No. 6, Baba Colony, Burari whereas 3 parcels were addressed to Ramesh Bhati resident of KH-118124, Gali No. 4, Burari, Delhi. The aforesaid addresses, on verification, were found to be fake, meaning thereby that there was no one by the name of Ram Kumar and Ramesh Bhati at the aforesaid addresses. The verification report Ex.PW10/E would show that no one by the name of Ram Kumar was residing at House No. 669, Gali No. 6, Baba Colony, Burari and no one by the name of Ramesh Bhati was residing at KH-118124, Gali No. 4, Burari, Delhi. The appellant Satpal Mann, in case he did not know it earlier, would have come to know either on 30.8.2010, the date the parcels were delivered to him or on 31.8.2010 that there was no person of the name of Ram Kumar residing at House No. 669, Gali No. 6, Baba Colony, Burari. Therefore, he ought to have returned the aforesaid parcels to the Post Office along with his

endorsement, either on 31.8.2010 or by 1.9.2010. His not returning the parcels immediately and retaining the same with him till the time they were seized by the police on 7.9.2010 is a clear indicator that he knew that the aforesaid parcels did not bear a genuine address and were meant for the accused from whom they were later seized by the police.

13. A perusal of the call details record Ex.PW9/B would show that two calls were made to the appellant Satpal on his mobile No.9971025048 from Mobile No.8826473971. The aforesaid mobile No.8826473971 was recovered from the appellant Jafar as would be evident from his personal search memo Ex.PW2/R. There is no explanation as to why appellant Jafar would call the appellant Satpal on 1.9.2010 when none of the parcels seized in this case was addressed to him. In case the appellant Jafar and Satpal were innocent, the appellant Jafar could not be expecting the appellant Satpal to deliver to him a parcel addressed to Ram Kumar and Ramesh Bhati. On 6.9.2010, the appellant Satpal also made a call to the appellant Jafar from Mobile No.8826473971 and there is no explanation from the appellant Satpal for calling Jafar without his having any parcel addressed to Jafar with him.

The aforesaid call detail record would also show that there was a

telephone call made to appellant Satpal from Mobile No.9540537894 on 1.9.2010. The aforesaid mobile was recovered from the appellant Shafi as would be evident from his personal search memo Ex.PW2/S. No parcel addressed to the appellant Shafi was with the appellant Satpal. Therefore, had both of them been innocent persons, there could be no reason for appellant Shafi to call appellant Satpal since he could not expect the Postman to deliver the parcel addressed to another person, to him.

On 1.9.2010 there was a telephone call made to the appellant Satpal from Mobile No.8145879352. A perusal of personal search of accused (PO) Ganesh would show that the aforesaid mobile phone was recovered from his personal search on 8.9.2010. Again, there is no explanation from the appellant Satpal as to why he had called upon Ganesh when he had no parcel addressed to Ganesh, to deliver.

On 1.9.2010, appellant Jafar made another call to appellant Satpal at about 10:16 p.m. There could be no reason for appellant Jafar to call appellant Satpal so late in the night particularly, when no parcel addressed to him had been given to Satpal for delivery. On 2.9.2010, Jafar made another call to Satpal at about 9:30 a.m. The appellant Shafi made two calls to appellant Satpal, one at 11:30 a.m. and the other at 11:35 a.m. On that date Ganesh also

made two calls to Satpal, one at 4:33 a.m. and the other at 4:54 a.m. Jafar also made a call to Satpal at 10:15 a.m. on 3.9.2010 whereas Ganesh made a call to Satpal on that date at about 10:17 a.m. Another call was made by Ganesh to Satpal on the same day at about 11:03 a.m. The appellant Shafi made three calls to Satpal on 3.9.2010 whereas Jafar and Ganesh made two calls each to Satpal on that date. The accused Ganesh made a call to appellant Satpal on 3.9.2010 at about 6:47 p.m., by the time his office hours were already over. Ganesh called appellant Satpal eight times on 4.9.2010 whereas Shafi called him twice and Jafar called him once on that date. On 5.9.2010, appellant Satpal called Ganesh three times whereas Ganesh called him once. On 6.9.2010, the appellant Shafi called appellant Satpal once, Jafar called him three times and Ganesh called him six times. Satpal also called Jafar two times Ganesh four times and Shafi one time on that date. On 7.9.2010, the accused Ganesh called Satpal as many as three times. There is no explanation as to why the appellants were regularly calling each other on the aforesaid dates despite Satpal having no parcel addressed to any of the appellants with him, to deliver.

It is only the appellants who knew for what purposes they had been calling each other on the aforesaid dates. Therefore, in my view the provisions contained in Section 106 of the Evidence Act, it was for them to tell the Court for what purposes they were regularly calling each other. Since they have not

come out with any explanation in this regard, the court, in the facts and circumstances of the case would be justified in presuming that the appellant Satpal had been delivering parcels addressed to fictitious persons to the other appellants before this Court and accused Ganesh and that is why they were regularly in touch with each other.

14. The thrust of the learned counsel for the appellant – Satpal was on the fact that one telephone call on mobile number 9540537894 of Satpal was received through the mobile tower situated in New Hyderpur at 6.31 pm on 7.9.2010 and one SMS on the aforesaid phone was received through a tower in Sector 18 of Rohini at about 8.45 pm on that date. The contention of learned counsel was that since the appellant Satpal admittedly remained in the company of the police officers after about 5.25 pm on that date, he could not have received the call through New Hyderpur of the mobile tower nor could he had received the SMS through the tower in Sector 18 of Janakpuri, the aforesaid places being somewhat away from Village Burari, which in turn, falsifies the case set up by the prosecution. Per contra, the learned APP contended that there is a possibility of the aforesaid mobile phone having been seized from the appellant – Satpal immediately after he was apprehended by the police officers and same police officers carrying the mobile phone with him when he travelled to the office of the Crime Branch situated in Rohini and on

the way, the call as well as the SMS could have been received on the said mobile phone.

The response given by the learned Additional PP may or may not be correct but what I find from a perusal of the record is that there was absolutely no cross-examination of the Investigating Officer on this aspect of the case. He was not asked as to how a call and an SMS were received on the mobile phone of the appellant Satpal Mann at about 6:31 p.m. in the area covered by the mobile tower situated in New Haiderpur and the SMS was received at about 8:45 p.m. in the area covered by the tower in Sector 18 of Rohini. In my view, in the absence of cross-examination of any witness on this aspect, no adverse inference against the prosecution can be drawn on account of receipt of the above-referred call and SMS. If the appellants wanted to impeach the case of the prosecution on account of the receipt of the aforesaid call and SMS on the mobile of the appellant Satpal, they ought to have cross-examined the Investigating Officer in this regard thereby giving him an opportunity to explain how and in what circumstances the aforesaid call and SMS were received on the said mobile phone.

Even otherwise though the seizure of the mobile phone may have formalised by referring to it in the personal search memo of the appellant Satpal after he had been arrested, no police officer is likely to allow the

accused in a case of this nature to continue to retain the mobile phone, once the narcotic drug delivered by him to his co-accused had been seized. The police officer would like to ensure that none of the accused is able to convey the information with respect to seizure of the contraband and/or his having been apprehended by the police, to an outsider by such as the source of his supply using his mobile phone for the purpose. Therefore, the mobile phone would be the first article which he would take in his possession, though its seizure may be formalised after the arrest of the accused. If that be so, the contention made by the learned Additional PP cannot be said to be far-fetched or even speculative.

It would be appropriate to note here that the case of the appellant Satpal is that he was apprehended from the Post Office. However, no witness from the Post Office has been produced by him to prove that he was apprehended from there on 7.9.2010. Two witnesses from the Post Office have been examined – one as PW10 and the other as PW14. It was not suggested to either of them that the appellant Satpal was apprehended from the Post Office, Village Burari on that date.

15. The deposition of PW12 ASI Ramesh, PW5 Head Constable Baljeet Singh and PW2 Constable Pradeep Kumar clearly prove that the appellant Satpal handed over 12 parcels, nine addressed to Ram Kumar and three

addressed to Ramesh Bhati to the appellant Shafi Islam and Jafar Ali and their co-accused Ganesh on 7.9.2010. The samples drawn from the substance found in the aforesaid 12 samples, when analyzed by FSL vide its report Ex.PZ and PX was found to be *ganja* (cannabis).

The facts & circumstances of the case, as discussed hereinbefore also prove beyond reasonable doubt that the appellant Satpal Mann was fully aware of the said parcels containing *ganja* and that is why he delivered nine (9) parcels addressed to Ram Kumar and three (3) parcels addressed to Ramesh Bhati to them. The appellants obtained joint possession of the parcels containing *ganja* from the appellant Satpal Mann. This is not the case of the appellants Ganesh, Jafar Ali and Shafi Islam that they obtained possession of the aforesaid parcels from the appellant Satpal without knowing that they contain *ganja*, their case being that neither they took any parcel from him nor was any parcel seized from them. Section 54 of the NDPS Act to the extent it is relevant provides that in trials under the said Act it may be presumed unless and until the contrary is proved that the accused has committed an offence under this Act in respect of any narcotic drug or psychotropic substance or controlled substance as the case may be for the possession of which he fails to account satisfactorily. Since none of the four appellants have been able to give any satisfactory explanation for their possessing the parcels containing *ganja*, it

would only be appropriate to draw the statutory presumption against them. None of the appellants has either led evidence or shown existence of facts & circumstanced from which the abovesaid statutory presumption may stand rebutted.

16. The prosecution has also produced the entire link evidence. PW4 Constable Manjeet is the police official who collected 12 samples duly sealed with the seals of RC and KSY from *malkhana* of the police station on 20.9.2010 and deposited the same with FSL on the same date. The prosecution has also examined Head Constable Jag Narain who was working as MHC(M) at the police station and with whom the 36 samples sealed with the seals of RC and KSY were deposited on 8.9.2010 by Inspector Kuldeep Singh. A perusal of the report of FSL would show that 12 parcels with seals intact on them as per the forwarding letter were deposited with FSL on 20.9.2010. The RC whereby 12 parcels were sent to FSL on 20.9.2010 is Ex.PW7/B and it is clearly stated in the said document that 12 sealed parcels with the seals of RC and KSY were being sent to FSL. Ex.PW3/C is the acknowledgement issued by FSL on the same date. Had there been any tampering with the seals, the FSL would not have noted, in its report that the seals were intact as per the forwarding letter.

17. The learned counsel for the appellant has referred to the decision of the

Hon'ble Supreme Court in Gurbax Singh Vs. State of Haryana (2001) 3 SCC

28. In the aforesaid case, the learned counsel for the appellant *inter alia* contended that IO had not followed the procedure prescribed under Sections 52, 55 & 57 of the Act. It was held by the Apex Court that though the provisions of Section 52 & 57 of the Act are directory and their violation would not *ipso facto* vitiate the trial or conviction, the IO cannot totally ignore them and the failure to comply with them would have a bearing on appreciation of the evidence regarding the arrest of the accused or seizure of the article. Noticing that the witness to whom the seal had been handed over had kept the same with him for ten (10) days and the parcels were not sealed by the Officer-in-Charge of the police station as required under Section 55 of the Act and also noticing that the prosecution had not led any evidence whether the Chemical Examiner received the sample with proper intact seals, the Apex Court *inter alia* observed that the aforesaid circumstances created a doubt whether the same samples were sent to the Chemical Examiner. In this regard, the Court noted that a report containing particulars of the arrest and seizure had not been sent by the IO to his immediate superior officer and according to one of the witnesses the seal used was a wooden seal whereas according to the other it was a brass seal. However, in the case before this Court, there is no contradiction with respect to the seal. The seal of RC was returned to ASI

Ramesh on the next day, and it never came in possession of the IO of this case, Inspector Satyaprakash. Moreover Constable Pradeep Kumar on reaching the police station handed over all the parcels sealed with the seal of RC to PW6 Inspector Kuldeep Singh who then put his own seal of KSY on them as well as on FSL form. Therefore, there was no possibility of anyone tampering with the parcels containing the samples since no such tampering was possible without having access to seal of KSY which belonged to Inspector Kuldeep Singh who was not the Investigating Officer of this case and, therefore, had no reason to part with the aforesaid seal.

There is no evidence that the seal of RC was returned to the IO before PW6 put his own seal on them and deposited all the 36 parcels duly sealed with the seals of RC and KSY in the *malkhana* of the police station. Therefore, the prosecution has ruled out any reasonable possibility of the case property having been tampered with.

It has come in the deposition of PW13 Inspector Satyaprakash that they left the spot at 5:15 a.m. and reached the Police Station Crime Branch Nehru Place at 6:00 a.m. where the personal search memos of the accused persons were deposited in the *malkhana* and the statements of SHO and MHC(M) were recorded. Therefore, it cannot be said that there was any delay in taking the appellants to the police station.

18. The reports sent by Inspector Sat Prakash under Section 57 of the NDPS Act are Ex.PW13/A & Ex.PW13/C. The report Ex.PW13/A refers to the arrest of the appellants whereas Ex.PW13/C refers to the seizure of *ganja* from them. Therefore, there was due compliance with the statutory requirements. Since the rukka was sent at 10:40 p.m. and the case property was received by PW6 Inspector Kuldeep Singh at about 1215 a.m. on the same day, there was no delay in forwarding the case property to the Officer-in-Charge of the police station. In any case, all the parcels were duly sealed with the seal of RC at the time they were received by PW6, thereby ruling out any reasonable possibility of the same having been tampered with. The arrest of the appellants was completed by 4:30 a.m. on 8.9.2010 and there is no evidence of any inordinate delay in their being produced before the Officer-in-Charge of the police station. In any case, the provisions of Section 52 of the Act being directory and no prejudice to the appellants having been shown on account of the delay if any in their being forwarded to the Officer-in-Charge of the police station, no ground for acquittal of the appellants is made out.

19. For the reasons stated hereinabove, there is no ground to interfere with the conviction of the appellants. However, in the facts & circumstances of the case the substantive sentence awarded to the appellants

is reduced from fifteen (15) years each to ten (10) years each while maintaining the sentence of fine imposed on them. In default of payment of fine unless already deposited, the appellants shall undergo SI for three (3) months each.

One copy of this order be sent to the concerned Jail Superintendent for information and necessary action.

LCR be sent back along with a copy of this order.

MARCH 19, 2014
BG/rd/b'nesh

V.K. JAIN, J.