

\$~R-54-A

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

% *Judgment reserved on : 29.9.2015*
Judgment delivered on : 08.10.2015

+ CRL.A. 230/2013
MOHD. SABIR

..... Appellant
Through Mr. K. Singhal, Advocate.
versus

STATE
Through Mr. Kewal Singh Ahuja, APP for
the State. Respondent

CORAM:
HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 11.12.2012 and 22.12.2012 respectively wherein the appellant stands convicted under Section 21 (C) of the Narcotics Drugs and Psychotropic Substances Act (in short NDPS Act). He had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.1 lac and in default of payment of fine to undergo SI for 2 years.

2 The version of the prosecution is that on 15.11.2010, a secret information was received by PW-10 (SI Sharat Kohli) which was to the

effect that one person by the name of Mohd. Sabir resident of Bijour, UP would be supplying smack in Delhi and UP and would be coming to supply smack between 03:00 PM to 04:00 PM on a black coloured Pulsar motorcycle. This information was reduced into writing vide DD No. 10. A raiding team was constituted comprising of PW-10, HC Amit Tomar (PW-1), constable Narender (PW-2) and constable Dabbu (PW-6). At 03:40 pm, two persons riding on a motorcycle were apprehended whose names were later on revealed as Mohd. Sabir (the appellant) and Mohd. Nawaj Shareef. The appellant was carrying a black bag on his right shoulder. Before conducting his search, a notice under Section 50 of the NDPS Act (Ex.PW-1/A) was served upon him informing him that he has a right to get his search conducted either before a Magistrate or before a Gazetted Officer. He declined the option. From this shoulder bag, a transparent polythene containing a peach colour powder was recovered. It was weighed. The weight was 872 gms. Two samples of 10 gms each marked A and B were taken. The remaining contraband was put in a polythene and seized and sealed; so also the samples. The case property was deposited with HC Jag Narayan (PW-5), the MHCM of police station Crime Branch. These parcels were deposited through

Inspector Kuldeep Singh (PW-7). The sample parcels marked A were then sent on 08.12.2010 through constable Vikas Rana (PW-8) to the CFSL vide road certificate No. 428/21 (Ex.PW-5B). The CFSL had tested the sample positive for smack.

3 In the statement of the accused recorded under Section 313 of the Cr.PC, he had pleaded innocence. One witness was produced in defence. He was Vishal Gaurav, Nodal Officer of Bharti Airtel Ltd. This was to substantiate his submission that on the fateful date, the location of his cell phone No. 9910441659 (which had been recovered from the personal search vide his personal search memo) showed that he was not in the vicinity of the area where the offence had occurred i.e. Japanese Park, Rohini but his mobile had shown his location at Sector-11, Rohini which is distant from the place of the alleged offence. The defence was rejected.

4 On the basis of the aforementioned evidence collected by the prosecution, the appellant was convicted and sentenced as aforementioned.

5 The foremost submission of the learned counsel for the appellant is that the compliance of Section 42 of the NDPS Act has not been effected and a mere recording of secret information in a DD is not

sufficient compliance of Section 42 of the NDPS Act. The second submission is that the mandate of Section 57 has also not been complied with. The senior officer to whom the report under Section 57 had allegedly been sent was not examined for which there is no explanation. There are inherent contradictions in the version of the prosecution. The link evidence is missing. Possibility of tampering cannot be excluded.

6 Needless to state, these arguments have been refuted by the learned Public Prosecutor for the State. His statement is that on no count, does the impugned judgment call for any interference.

7 Arguments have been heard. Record has been perused.

8 The members of the raiding party have been examined as PW-1, PW-2, PW-6 and PW-10. PW-1 has deposed that on the fateful day pursuant to a secret information, he had constituted a raiding party comprising of himself, PW-2, PW-6 and PW-10. The police party had taken their positions at the spot. As per the secret information, a person by the name of Mohd. Sabir, resident of Bihar would be coming to Delhi between 03:00 PM to 04:00 PM to supply smack; he would be on a Pulsar motorcycle. Near the Japanese Park at gate No. 3, the appellant was apprehended. The police party introduced themselves to the

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appellant. The appellant was carrying a shoulder bag. Notice under Section 50 of the NDPS Act (Ex.PW-1/A) was served upon him before conducting his search. During his search, a peach coloured powder was recovered which was weighed and on weighing on the electronic scale, it was found to be 872 gms from which two samples of 10 gms each were drawn. The FSL Form was prepared at the spot. Inspector Arti Sharma (PW-12) also reached the spot as investigation was thereafter marked to her. This witness was subjected to a lengthy cross-examination but nothing has been elicited which could discredit her version.

9 The subsequent version of PW-2, PW-6 and PW-10 are also on the same lines. In fact nothing has been pointed out by the learned counsel for the appellant to dent their version; a mere bald submission has been made, without any elaboration, that the version of the witnesses of the prosecution is contradictory. This Court is not in agreement with this submission as the versions of all the aforementioned members of the raiding party were consistent.

10 Compliance of Section 42 of the NDPS Act also stands effected.

DD No. 10 was the secret information which had been reduced into
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writing. PW-1 has categorically stated that on 15.11.2010 at 12:30 pm, this secret information was received which was then conveyed to Sh. Joy Tirkey, Additional DCP. This secret information had been reduced into writing at about 01:00 pm by PW-10. This has been proved as Ex.PW-3/D. PW-4 ASI Subhash Chand working as SO to Additional DCP has proved DD No. 10 recorded vide diary No. 1415 as Ex.PW-3/C. In view of the version of PW-10 and PW-4 it has been established that compliance of Section 42 (1) and 42 (2) has been effected.

11 Section 57 also stood complied with. This is also clear from the version of PW-10 and PW-4. PW-10 had deposed that on 15.11.2010, he had prepared the report under Section 57 of the NDPS Act regarding the seizure of 872 gms of smack (Ex.PW-4/A) which has been corroborated in the version of PW-4 who had on oath deposed that this report under Section 57 of the NDPS Act was received through PW-10 regarding the seizure and was diaried as diary No. 1416. A second report under Section 57 of the NDPS Act dated 16.11.2010 was sent through PW-12 (Inspector Arti Sharma) regarding the arrest of the accused and this information was diaried by PW-4 in his diary vide diary No. 1427 and was proved as Ex.PW-4/B. There was no cross-examination of these

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witnesses on this aspect. Compliance of Section 57 of the NDPS Act also stood effected.

12 The submission of the learned counsel for the appellant that the link evidence was missing and there was possibility of tampering is also negatived. PW-5 was the MHCM. He has deposed that on 15.11.2010, PW-7 had deposited the case property with him which included three sealed pulanda along with FSL form having the seals of SK and KSY. An entry to this effect was made in Registry No. 19. This version of PW-5 was corroborated by the version of PW-7. Further documentary evidence which is Register No. 19 reflects that on 08.12.2010, PW-8 had taken the sealed pulanda to the CFSL. This version of PW-5 is again corroborated by PW-8. Both of them have deposed that the sample pulanda was intact with the seals. The CFSL in its report (Ex.PX) dated 05.01.2011 stated that the CFSL had received the pulanda in an intact condition and the specimen seals tallied with the seals affixed on the samples; the orange coloured powdery material had tested positive for smack. The possibility of tampering was wholly excluded; the bald submission that the link evidence was missing is also negatived as not only the MHCM but the person who had taken the sample to the CFSL

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was also examined. The link evidence was connected. This argument of the learned counsel for the appellant is also without any merit.

13 The defence of the appellant produced through DW-1 had set up a plea of alibi but was an afterthought. Even otherwise and even presuming that the location of the appellant (as per his mobile) was at Sector-11, Rohini which is hardly at a distance of about 1 kilometer from the Japanese Park, Rohini and the range of the mobile tower being wide could have encompassed the location at Sector-11, Rohini. The place of apprehension i.e. the Japanese Park is in fact towards Sector-11, Rohini and this has also come in the version of PW-10. This Court further notes that this defence was not the defence of the appellant at the time of cross-examination of the witnesses of the prosecution and nor was this defence taken at the time when his statement under Section 313 of the Cr.PC was recorded. At the time of recording of his statement under Section 313 of the Cr.P.C, his submission was that he had been lifted from Shastri Park as his motorcycle had hit a car pursuant to which a quarrel that had taken place. The defence, vacillating, was rightly rejected.

14 On no count, does the impugned judgment call for any

interference. The appellant was found to be in illegal and unlawful possession of commercial quantity of heroin for which he has rightly been convicted under Section 21-C of the NDPS Act. The sentence which has been imposed upon him is also of minimum of RI 10 years and a fine of Rs.1 lac. The sentence also calls for no interference.

15 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

OCTOBER 8, 2015

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