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

% *Judgment reserved on :28.9.2015*
Judgment delivered on :06.10.2015

+ CRL.A. 259/2012

SADDAM ALAM

..... Appellant

Through Mr. Ashok Kumar Tanwar and
Mr. Vikas Jain, Advocates.

versus

STATE

..... Respondent

Through Ms.Meenakshi Dahiya, APP
along with ASI Rajveer Singh.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 18.02.2012 and 29.02.2012 respectively wherein the appellant stands convicted under Section 21(C) of the Narcotic and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act). He had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.1,00,000/- in default of payment of fine to undergo RI for 4 months.

2 The nominal roll of the appellant reflects that as on date he has
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undergone incarceration of about 4 years and 10 months; remissions being inapplicable to a convict under the NDPS Act.

3 The version of the prosecution is that pursuant to a secret information received by SI Bhagwan Singh (PW-9) that the accused would come near Masjid at Lahori Gate between 2.00 p.m. to 2.30 p.m. on 24.11.2011 a raiding party was constituted. The members of the raiding party included SI Bhagwan Singh (PW-9), H.C. Kanwal Singh (PW-2), H.C. Mahesh Kumar (PW-3) and SI Rajbir Singh (PW-5). The accused was seen coming from the side of railway track; he had an orange coloured polythene bag on his right hand on the pointing out by the secret informer the appellant was apprehended. Before taking his search a notice (Ex.PW-2/A) under Section 50 of the NDPS Act was served upon the appellant. From the search of the appellant and on checking the polythene, one polythene tied with rubber band containing mud colour powder was recovered. When the powder was tested on the test kit and same was tested positive for heroin. The total weight of the powder was 750 grams. Two samples of 5 gram each of the contraband were drawn and marked as A and B. The balance heroin and samples were seized and sealed. The case property was deposited in the

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Malkhana. It was sent for analysis to FSL. It was tested positive for heroin.

4 The appellant in his statement recorded under Section 313 Cr.P.C. pleaded innocence. In defense two witnesses were produced. DW-1 Jasbir Hussain who was the brother of the appellant and DW-2 Avdhesh Pratp Singh who was running a food stall at Lahori Gate both of them deposed to the effect that the accused was picked up from outside the Delight Cinema when he had gone to watch a cinema. On the basis of the aforementioned evidence, while rejecting the defense of the appellant, he was convicted and sentenced as aforementioned.

5 On behalf of the appellant arguments have been addressed in detail. It is pointed out that mandate of Section 42 of the NDPS Act has not been complied with. Admittedly there was a secret information but the said secret information was not reduced into writing. Second submission being that there is no there is no explanation as to why no public witnesses had been asked to join the raid and in the absence of which doubt is created on the veracity of the parrot like recitation of the police witnesses. Attention has been drawn to the testimony of PW-5 and PW-10. Submission being that the log book of the vehicle also did

not mention that the members of the raiding party had gone to the spot for the apprehension of the appellant and this has clearly come in the version of the aforementioned two witnesses; this also throws doubt on the veracity of the version of the prosecution. The defense of the appellant all along was that he has been falsely picked up outside the Delight Cinema. There was no reason as to why this defense of the appellant was rejected. On all counts the appellant is entitled to benefit of doubt and consequent acquittal.

6 Arguments have been refuted. Record has been perused.

7 The first argument of the learned counsel for the appellant qua the mandate of Section 42 of the NDPS Act has been appreciated. Admittedly, this was a case where pursuant to the secret information the raiding party was constituted. The secret information has been reduced into writing by SI Bhagwan Singh (PW-9). This DD entry was proved as Ex.PW-1/A. This was the secret information. PW-1 Karuna Karan Nayar had produced relevant register wherein the said DD was recorded. This secret information (Ex.PW-1/A) was forwarded to the Senior Officer (ACP Subey Ram Yadav). This has also come in the version of PW-9. This documentary evidence establishes the fact that the mandate

of Section 42 of the NDPS Act stood complied with.

8 The members of the raiding party as noted supra were PW-2, PW-3, PW-5 and PW-9. All members of the raiding party had consistently deposed that before the search of the appellant was conducted notice under Section 50 of the NDPS Act was served upon the appellant. PW-2, PW-3 and PW-9 had categorically deposed that members of the public were asked to join the raid but none had agreed.

9 The law is clear on this aspect. Public persons are normally reluctant to join the investigation as it is the common knowledge that they are unwilling to do so and if the testimony of the police witnesses is cogent and coherent there is no reason to disbelieve the same.

10 In this context, the observations of a Bench of this Court reported as Tahir v. State (Delhi) (1996) 3 SCC 338, are relevant; they read as under:-

6. ...In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny,

inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.”

11 Thus merely because no public persons had joined the raid would not vitiate the proceedings and cast suspicion on the versions of the police. In fact no cross-examination of any of these witnesses has been highlighted to point out any such discredit qua their versions.

12 PW-5 in his cross-examination had admitted that he did not check the meter reading of the vehicle but he had mentioned the kilometers in the log book of the vehicle. This witness was not asked to produce the log book. PW-9 admitted that he did not make any entry in the log book about the use of the vehicle. This was the obviously for the reason that it was only one of the two officers (either PW-5 or PW-9) who had to do the relevant entry and the version of PW-5 in this context is clear. It was his duty to have made entry in the log book which he had done which is clear in his version. At the cost of repetition, this witness was not asked to produce the log book. There is thus no reason to draw an adverse inference against the prosecution on this count.

13 The defense of the appellant that he had been falsely implicated

and he has been picked up outside the Delight Cinema (in the versions of DW-1 and DW-2) was also his defense in his statement recorded under Section 313 Cr.P.C. but this Court notes that this defense was taken at a highly belated stage and was not a defense in the course of trial; no such suggestion has been given to any of the witnesses of the prosecution on this count. The suggestions given to the members of the raiding party were that the police party had a grudge against him; that is why he has been implicated; this is clear from the cross-examination of PW-9. Noting these defenses to be contrary and conflicting, the Trial Judge has rightly rejected the defense.

14 The appellant was found to be in illegal possession of the 750 grams heroin which false in a commercial quantity. He was rightly convicted under Section 21(C) of the NDPS Act and the sentence imposed upon him of RI 10 years and a fine of Rs.1,00,000/- was also the minimum. The impugned judgment on no count calls for any interference.

15 Appeal dismissed.

INDERMEET KAUR, J

OCTOBER 06, 2015/ndn