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

% *Judgment reserved on : 03.12.2015*
Judgment delivered on : 11.12.2015

+ CRL.A. 390/2013
IRSHAD AHMED

..... Appellant
Through Mr. Pramod Kumar Dubey,
Advocate

versus

STATE NCT OF DELHI

..... Respondent
Through Ms. Kusum Dhalla, APP for the
State with SI Karamveer Singh

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 05.12.2012 wherein the appellant stands convicted under Section 20 of the NDPS Act. He has 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 one year.

2 Nominal roll of the appellant has been requisitioned. This reflects

that as on date he has undergone incarceration of about almost 4 years & 4 months.

3 The version of the prosecution as unfolded discloses that on 26.07.2011 at about 09:10 AM, SI Paramjeet Singh (PW-9) posted at the Narcotic Department received a secret information that the appellant who was a supplier of charas would be coming to Delhi. He would reach the Yamuna Bazar bus stand opposite Nigam Bodh Ghat between 10:30 to 11:00 AM for supply of charas. This information was shared by PW-9 with Inspector Kuldeep Singh (PW-4). ACP Bir Singh was informed. A raiding party was constituted comprising of PW-9, HC Subhash Singh (PW-10) and HC Sanjeev Kumar (PW-3). They reached the spot. At the pointing out by the secret informer, the appellant was apprehended. The raiding team introduced themselves to the appellant. He was informed that he had a right to get his search conducted either before a Magistrate or before a Gazetted Officer. Notice under Section 50 of the NDPS Act (Ex. PW-3/A & B) was served upon him. He refused the option and in lieu thereof, he has fixed his thumb impression at point 'Z'. From the search of the accused, the bag which he was carrying was found to contain a polythene which contained pieces of black solid material

which when tested with the field testing kit found positive for charas. The material was weighed. It weighed 3 kgs and 400 gms. Two separate samples of 50 gms each were drawn from the contraband. The case property and the samples were seized and sealed with the seal of SHO CRM. The FSL form was filled in at the spot. The case property was deposited with HC Jag Narain (PW-2), the then MHCM of PS Crime Branch. The sample parcels along with FSL form was taken by constable Satpal (PW-6) to the FSL, Rohini. The report of the FSL (Ex. PW-8/G) had tested the sample positive for charas.

4 In the statement of the accused recorded under Section 313 of the Cr.PC, he pleaded innocence stating that he has been falsely implicated and no recovery was made from him.

5 No evidence was led in defence.

6 Learned counsel for the appellant submits that no log book entry was made by the raiding party at the time of leaving the Crime Branch. The driver who was driving the vehicle and was part of the raiding party was not examined. The sample which had been sent for analysis weighed 50 gms but as per the report of the FSL, the sample which was analyzed was 50.67 gms. The difference in the weight remained

unexplained. The public witnesses were also not joined for which there is no explanation. Benefit of doubt must accrue in favour of the appellant.

7 Needless to state that these arguments have been refuted.

8 The members of the raiding party have been examined as PW-9, PW-10 and PW-3. PW-9 on oath deposed that on the fateful day after receipt of a secret information which he had shared with PW-4, a raiding party was constituted. DD No. 14 (Ex.PW-4/A) was lodged pursuant to which the raiding party was constituted and vide DD No. 15 (Ex.PW-9/A), the official vehicle driven by constable Rajender was taken to the spot. Public persons were specifically asked to join the raid but none agreed. PW-9 had categorically stated that 5-6 persons had been asked but they had shown their dis-agreement. Before the search of the appellant was conducted, a notice under Section 50 of the NDPS (Ex.PW-3/A & B) was served upon the appellant wherein he had declined to get his search conducted either before the Magistrate or before the Gazetted Officer; he had put this thumb impression at point 'Z'. The contraband which was recovered was tested with the field testing kit. It weighed 3kgs and 400 gms inclusive of polythene. Two

separate samples marked 'A' and 'B' from the contraband were drawn which were sent to the FSL. In his cross-examination, the witness stuck to his stand. He was not dis-credited. He categorically stated that all efforts to join the public persons were made but they failed.

9 Testimony of PW-9 was fully corroborated by the version of PW-10 who was the another member of the raiding party. He also deposed on the same lines. He deposed that they had reached the spot at 10:30 am wherein 5-6 persons were asked to join the raid but they had not agreed. From the search of the appellant, the contraband as described by PW-9 was recovered which was seized and sealed.

10 This witness was also cross-examined but his testimony could not be discredited.

11 The next member of the raiding party was PW-3 who has also withstood the test of being a credible and cogent witness. He has also categorically deposed that inspite of efforts made to join public persons, none had agreed.

12 From this aforesaid evidence, it is clear that at the time of departure, entry in the log book was made. The vehicle which was taken for the use in the raid was duly entered into vide separate DD. PW-9 had

exhibited both these DDs i.e. Ex.PW-4/A and Ex.PW-9/A. Defence of the appellant that the log book entries were not made is thus negated. The driver who was driving the vehicle was not a necessary party as he had not participated in the raid; he had only driven the vehicle to the spot. His non-examination is thus of little relevance. The minor difference in the weight of the samples is also not relevant as the weighment of the contraband was done at the spot; it weighed 3 kgm and 400 gms of which approximately 50 gms were drawn out as sample. The FSL vide its report (Ex.PW-8/G) has tested the sample positive for charas and the weight of the contraband was 50.67 gms which was inclusive of the polythene; .67 gms is well attributable to the weight of the polythene. There is no discrepancy in this report. Efforts to join public persons were also made and it has come in the categorical version of all the members of the raiding party who have all stated that inspite of best efforts, none had agreed to join the raid. It is common knowledge that the members of the public do not easily volunteer to join raids as they know that the efforts involved are long drawn as even after the investigation is over, they are called for evidence in Courts which is not an easy task. This is largely the reason for non-joining of the public

persons.

13 Testimony of PW-3, PW-9 & PW-10 is cogent. It cannot be discarded merely because members of the public did not join for the reason as afore-described.

14 All other statutory compliances i.e. compliance under Section 42 and Section 50 of the NDPS Act have been made. In fact no other argument except the arguments as noted supra (which have been answered aforesaid) have been addressed.

15 The conviction of the appellant under Section 20 of the NDPS Act who had been found to be in illegal possession of contraband calls for no interference. The sentence which has been imposed upon him is also the minimum. This also calls for no interference. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 11, 2015

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