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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 6th April, 2015

+ CRL.A.603/2013 & CrI.M.B.No.1107/2014
JAGJEET SINGH @ RAJU Appellant
Through: Mr. Ajit Sharma, Advocate
(DHCLSC)

versus

STATE (NCT OF DELHI) Respondent
Through: Ms. Ritu Gauba, APP for the State
along with SI Varun Kumar, PS Jamia
Nagar, Delhi.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 4th September, 2012 and order on sentence dated 12th September, 2012 passed by learned Special Judge, NDPS, South and South East in Sessions Case No. 05A/10 arising out of FIR 399/2009 u/s 15/25/29 NDPS Act, Police Station Badarpur vide which the appellant was convicted for offence punishable u/s 15(c), 25 and 29 NDPS Act and was sentenced to undergo rigorous imprisonment for a period of 10 years each and fine of Rs.1,00,000/- each for all the offences, in default to undergo

simple imprisonment for a period of two months each. All the sentences were to run concurrently. Benefit of Section 482 Cr.P.C. was given to the convict.

2. Prosecution case, in brief, is that on 21st December, 2009, Head Constable Rajender Singh, Head Constable Ram Avtar and Constable Dharampal of Police Station Badarpur were on duty on a checking picket at the Badarpur Border and they were checking the vehicles coming to Delhi from the side of Haryana. At about 7:20 pm a Mahindra Logan vehicle bearing registration No. PB-10CF-0733 came from the side of Haryana and was stopped for checking. As soon as vehicle was stopped, the driver of the vehicle as well as the person sitting on the front seat by the side of the driver tried to run away. However, the driver was apprehended by the police official and his identity was revealed as Jagjeet Singh @ Raju, resident of village Jassiya, District Ludhiana, Punjab. The other person sitting in the vehicle managed to escape. On checking the vehicle, it was found that four plastic bags were kept in the dickey of the car and the smell of *chura post (poppy straw)* was emanating from the bags. As such, information was conveyed to police station on the basis of which DD 37A was recorded which was assigned to SI Mahender Singh Dahiya,

who reached the spot along with Head Constable Harender. Head Constable Rajender Singh produced Jagjeet Singh @ Raju as well as the above vehicle before Investigating Officer SI Mahender Singh Dahiya. Notice u/s 50 of NDPS Act was served upon the accused apprising him that search of his person and the above car was to be conducted and, in case he wanted, the same could be conducted in the presence of a Magistrate or a Gazetted Officer. However, the accused, vide his written reply, refused to call the aforesaid officers. The police officials also offered their search to him but he declined. Thereafter, the four plastic bags found in the dickey of the car were checked which was found to contain *chura* post. Then further proceedings were conducted. After completing investigation, charge sheet was submitted against the accused.

3. In order to substantiate its case, prosecution examined 12 witnesses. In his statement recorded u/s 313 Cr.P.C., the accused denied the case of prosecution pursuant to all the incriminating evidence put to him. He claimed himself to be innocent and alleged false implication in this case at the instance of PW5-Harbaksh Singh. He further stated that he was an employee of Harbaksh Singh who called him at Police Station Badarpur on 21st-22nd December, 2009 as

his car was seized by the police officials of Police Station Badarpur. When he reached the police station, Harbaksh Singh gave him instructions to get the car released from the Court and to bring the same to Ludhiana. Thereafter, he was made to sign some documents by the police officials on the pretext of release of the vehicle and then he was falsely implicated in this case. After meticulously examining the evidence adduced by the prosecution and the defence taken by the accused, vide impugned judgment and order on sentence, the appellant was convicted and sentenced as mentioned above. Feeling dissatisfied, the present appeal has been preferred.

4. The basic challenge to the impugned judgment by the learned counsel for the appellant is twofold:-

- (i) Giving of notice u/s 50 of NDPS Act was imperative as it was not a case of chance recovery, however, in the instant case, although a notice u/s 50 was served upon the appellant, however, there was no substantial compliance of the provisions of Section 50. As such, on this ground alone, the appellant is entitled to be acquitted. Reliance was placed on *State of Rajasthan vs. Parmanand & Anr.*, (2014) 5 SCC 345 and *State of Delhi vs. Ram Avtar @ Rama*, (2011) 12 SCC 207.

- (ii) It was incumbent upon the prosecution to prove that the appellant was in conscious possession of the contraband articles. It was further submitted by placing reliance on *Abdul Rashid Ibrahim Mansuri vs. State of Gujarat*, (2002) 2 SCC 513 that though the appellant has not adduced any evidence on his own, however, from the answers elicited from prosecution witnesses through cross-examination, he has been able to discharge the burden which was upon him.

It was further urged that the appellant was employed as driver by PW5-Harbaksh Singh only about 5 days back of the incident. Harbaksh Singh was a resident of Ludhiana. According to Harbaksh Singh, he had given the vehicle to the appellant on his request that he had to bring some of his relative from IGI Airport. It was submitted that it is highly improbable that the owner of the vehicle would give the car to a stranger who was employed only few days back for bringing his relatives from the Airport. In fact, it was PW5 who was apprehended with the contraband articles, however, accused was called in the police station on the pretext of getting the

vehicle released from the police and thereafter Harbaksh Singh was let off by the police and he was falsely implicated in this case.

5. Per contra, it was submitted by the learned Additional Public Prosecutor for the State that the instant case was a chance recovery. That being so, there was no requirement of fulfilling the condition as contemplated under Section 50 of NDPS Act. Reliance was placed on *State of Himachal Pradesh vs. Sunil Kumar*, (2014) 4 SCC 780 and *Krishan Kumar vs. State of Haryana*, (2014) 6 SCC 664. Even otherwise, notice u/s 50 of NDPS Act was served upon the appellant, however, he refused to call any Gazetted Officer before taking search. The judgments relied upon by the learned counsel for the appellant were also sought to be distinguished on the ground that in those cases, there was secret information regarding Narcotic drugs with the accused and, therefore, compliance of Section 50 was imperative.

6. It was further submitted that the recovery of the narcotic drugs from the possession of the accused was proved from the testimony of the police officials. No independent witness agreed to join the recovery. Moreover, the accused is not alleging any enmity with the police officials, therefore, there is no reason as to why they will

implicate him in such a serious offence. Since the recovery was affected from the possession of the accused, as such, the burden of proof was on the accused u/s 35 of the Act to prove that he was not in conscious possession of the same which he has failed to discharge. As such, it was submitted that the impugned judgment does not suffer from any infirmity which calls for interference. Accordingly, the appeal is liable to be dismissed.

7. It is not in dispute that the appellant was employed as a driver by PW5-Harbaksh Singh. According to Harbaksh Singh, on 21st December, 2009, the appellant had taken the vehicle bearing registration no. PB-10CF-0733 to Delhi from Punjab on the pretext that he had to bring some of his relatives from IGI Airport and when he did not return back, on the next day, he enquired from the accused for the reason of delay to which the accused stated that the flight is delayed. However, subsequently he came to know about the involvement of the accused and the vehicle in this case.

8. PW3-Head Constable Rajender Singh, PW3A-Head Constable Ram Avtar and PW4-Constable Dharampal were on duty on a checking picket at Badarpur Border and they were checking the bus coming into Delhi from the side of Haryana. All these witnesses have

deposed that at about 7:20 pm, accused came driving the aforesaid vehicle which was stopped for checking. As soon as the vehicle was stopped, the accused and the person sitting on the front seat by the side of his driver seat tried to run away from the spot, however, accused was apprehended while the other person managed to escape. They have further deposed that on checking the car, four plastic bags were found in the dickey of the car and smell of *chura post* was emanating from the bags. As such, information was conveyed to the police station. Thereafter SI Mahender Singh Dahiya came and on checking the bags, it was found to be containing *chura post* weighing 162 kgs. Thereafter remaining proceedings were conducted. The recovery of *chura post* from the four plastic bags lying in the dickey of the car also stands corroborated by PW11-SI Mahender Singh Dahiya and PW2-Head Constable Harender. All these witnesses were subjected to lengthy cross-examination, however, nothing material could be elicited to discredit their testimony. It has further come in their statements that some independent persons were tried to be joined, however, none agreed. Ordinarily, the public at large show their disinclination to come forward to become the witness. If the testimony of the police officer is found to be reliable and trustworthy,

the Court can definitely act upon the same. The Court cannot disbelieve the testimony of police officials solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weights over the quantity of evidence. These aspects have been highlighted in *State of UP vs. Anil Singh*, 1989 SCC (Cri) 48; *State (Govt. of NCT of Delhi) vs. Sunil*, 2001 SCC (Cri) 248; *Ramjee Rai vs. State of Bihar*, (2007) 2 SCC (Cri) 626; *Kashmirilal vs. State of Haryana*, (2014) 1 SCC (Cri) 441. Appreciating the evidence on record on the anvil of the aforesaid principles, there is no acceptable reason to discard the testimony of the official witnesses which is otherwise reliable and trustworthy.

9. Before taking search of the bags, a notice (Ex.PW1/C) u/s 50 of NDPS Act was served upon the accused informing him about his legal right that if he wants, his search can be taken in the presence of a Gazetted Officer or a Magistrate. However, accused refused to get himself searched in the presence of the officers and gave a written reply in Punjabi language which is Ex.PW3/B. However, legality of this notice has been challenged by the learned counsel for the appellant on the ground that it does not meet the requirement of law.

10. Before considering the legality of notice, it is required to be seen whether the accidental or chance recovery of narcotic drugs during search would attract the provisions of Section 50 of the NDPS Act.

11. Substantially similar issue came up for consideration before Hon'ble Supreme Court in *State of Himachal Pradesh* (supra), where the accused was travelling in a bus which was stopped for "traffic check" by the police officials. During checking, it was noticed that the accused was concealing something under his clothes and thereafter on checking, he was found to be concealing a polythene envelope containing *charas*. The Sessions Court convicted the accused by observing that the accused was in conscious possession of narcotics substance and the recovery was a chance recovery, accordingly, provisions of Section 42 of the Act relating to search and seizure were not applicable since the police officials had no prior information about the possession of *charas* by the accused. However, the High Court acquitted the accused on the ground that though the search conducted was a random search but the police officers had a positive suspicion that the accused might be carrying contraband. Therefore, compliance of Section 50 of the Act was mandatory. Since

no option was given to the accused, therefore, his conviction and sentence was not justified. State preferred an appeal against the acquittal of the accused and the broad submission was that the recovery of *charas* from him was a chance recovery. As such, in view of the Constitution Bench decision in ***State of Punjab vs. Baldev Singh***, 1999 SCC (Cri) 1080 which endorsed the view taken in ***State of Punjab vs. Balbir Singh***, 1994 SCC (Cri) 634, the personal search of accused resulting in recovery of contraband did not violate Section 50 of the Act. Hon'ble Supreme Court extracted para 25 of Baldev Singh's case which reads as follows:-

“(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Code of Criminal Procedure and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.”

12. Thereafter it was observed by the Supreme Court that the expression “chance recovery” has not been defined anywhere and its plain and simple meaning seems to be a recovery made by chance or

by accident or unexpectedly. It is true that the respondent behaved in a suspicious manner which resulted in his personal search being conducted after he disembarked from the bus. However, there is no evidence to suggest that before he was asked to alight from the bus, the police officers were aware that he was carrying a narcotic drug, even though that area may be one where such drugs are easily available. At best, it could be said that the police officers suspected the respondent of carrying drugs and nothing more. Mere suspicion, even if it is “positive suspicion” or grave suspicion cannot be equated with “reason to believe”. These are two completely different concepts. It is this positive suspicion, and not any reason to believe, that led to the chance recovery of charas from the person of respondent. Similarly, the positive suspicion entertained by the police officers cannot be equated with prior information. The procedure to be followed when there is prior information of the carrying of contraband drugs is laid down in the NDPS Act and it is nobody’s case that that procedure was followed, let alone contemplated. Applying this to the facts herein, it is clear that the police officers were looking for passengers who were travelling ticketless on the bus in question on the highway and nothing more. They accidentally or unexpectedly

came across drugs carried by a passenger(the respondent). This can only be described a recovery by chance, since they were neither looking for drugs nor expecting to find drugs carried by anybody. In view of **Baldev Singh**, it was not necessary for the police officers to comply with the provisions of Section 50 of the Act. As such, the appeal was allowed.

13. In *Krishan Kumar* (supra) also, the appellant/accused was spotted by the police party at bus stand holding a plastic bag in his hand. On seeing the police party, the appellant tried to conceal himself. He was apprehended on suspicion and notice under Section 50 was served upon him seeking his consent as to whether he wanted his search to be made in the presence of a Gazetted Officer or Magistrate. The appellant desired that the plastic bag which he was carrying be searched in the presence of a Magistrate. Thereupon a Tehsildar was summoned to the place of recovery and in his presence search of bag of the appellant was conducted. Opium was found in the bag which was in possession of the appellant. Eventually, the appellant was convicted under Section 18 of the Act. In appeal, it was urged that there was violation of Section 50 of the Act as the

Tehsildar was not discharging the duties of Executive Magistrate.

Repelling the contention, it was observed as under:-

“10. We are of the opinion that entire argument is misdirected. In fact, the exercise undertaken by the Courts below viz. whether Chet Ram was discharging the duties of Executive Magistrate or not was totally irrelevant as Section 50 of the Act has no application in the present case. Section 50 of the Act, which is the sheet anchor of the Appellant's defence reads as under:

50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised Under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in Sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct the search be made.

(4) No female shall be searched by anyone except a female.

(5) When an officer duly authorised Under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided Under Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under Sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy two hours send a copy thereof to his

immediate official superior.

It is clear from the reading of the aforesaid provision that it is applicable only where search of a person is involved. It is not made applicable in those cases where no search of a person is to be conducted.

*11. In the instant case the Appellant was carrying a bag which was to be searched and on his request Chet Ram was summoned in whose presence search was conducted which pertained to a bag. In **Aimer Singh v. State of Haryana**, (2010) 3 SCC 746 this aspect is specifically considered and dealt with. Following earlier Constitution Bench judgment, the Court held that when search and recovery from a bag, brief case, container etc. is to be made, provisions of Section 50 of the Act are not attracted. It is so stated in the following manner:*

*“14. The object, purpose and scope of Section 50 of the Act was the subject-matter of discussion in a number of decisions of this Court. The Constitution Bench of five Judges of this Court in **State of Punjab v. Baldev Singh**, (1999) 6 SCC 172 after exhaustive consideration of the decisions of this Court in **Ali Mustaffa Abdul Rahman Moosa v. State of Kerala** (1994) 6 SCC 569 and **Pooran Mal v. Director of Inspection (Investigation)**, (1974) 1 SCC 345 have concluded in para 57:*

“(I) When search and seizure is to be conducted under the provisions of the Act, it is imperative for him to inform the person concerned of his right of being taken to the nearest gazetted officer or the nearest Magistrate for making search.

(II) Failure to inform the accused of such right would cause prejudice to an accused.

(III) That a search made by an empowered officer, on prior information, without informing the accused of such a right may not vitiate trial, but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction is solely based on the possession of the illicit article recovered from his person, during such search.

(IV) The investigating agency must follow the procedure as envisaged by the statute scrupulously and failure to do so would lead to unfair trial contrary to the concept

of justice.

(V) That the question as to whether the safeguards provided in Section 50 of the Act have been duly observed would have to be determined by the court on the basis of the evidence at the trial and without giving an opportunity to the prosecution to establish the compliance of Section 50 of the Act would not be permissible as it would cut short a criminal trial.

(VI) That the non-compliance of the procedure i.e. informing the accused of the right under Sub-section (1) of Section 50 may render the recovery of contraband suspect and conviction and sentence of an accused bad and unsustainable in law.

(VII) The illicit article seized from the person of an accused during search conducted without complying with the procedure Under Section 50, cannot be relied upon as evidence for proving the unlawful possession of the contraband.”

15. The learned Counsel for the Appellant contended that the provision of Section 50 of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned Counsel. It requires to be noticed that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where search of a person is involved and the said section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more *res integra* in view of the observations made by this Court in **Madan Lal v. State of H.P.**, (2003) 7 SCC 465. The Court has observed:

*“16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see *Kalema Tumba v. State of Maharashtra* (1999) 8 SCC 257, *State of Punjab v. Baldev Singh* (1999) 6 SCC 172*

and Gurbax Singh v. State of Haryana (2001) 3 SCC 28. The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance.

16. In *State of H.P. v. Pawan Kumar*, (2005) 4 SCC 350 this Court has stated:

“11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, agathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required, They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word 'person' occurring in Section 50 of the Act.

17. After discussion on the interpretation of the word "person", this Court concluded:

“14. ...that the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which [the accused] may be carrying.”

The Court further observed:

“27. ...In view of the discussion made earlier, Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was allegedly recovered from the bag which was being carried by the accused.”

12. Moreover, even if we proceed on the basis that Section 50 applies, we find that the requirement of Section 50 is the search by Gazetted Officer or nearest Magistrate. It was not disputed by the learned Counsel for the Appellant, at the time of arguments, that Chet Ram was a Gazetted Officer. Therefore, even otherwise we find that the requirement of Section 50 was fulfilled.”

14. In the instant case also, there was no prior information with the police officials. It was during a routine check, a vehicle driven by the appellant was stopped at Badarpur Border for checking and then on checking the dickey, four bags containing *chura* post (poppy straw) were recovered. That being so, it was a case of chance recovery. Therefore, there was no need of compliance of Section 50 of the Act. Moreover, the recovery was not from the person of the accused but from the bags lying in the dickey and for that reason also Section 50 was not attracted. However, the investigating officer did serve a notice u/s 50 of the Act, however, accused refused to avail that benefit.

15. The judgments relied upon by the learned counsel for the appellant are distinguishable, inasmuch as, in ***Parmanand*** (supra), there was **prior information with the Narcotic Commissioner** that the accused would hand over the Opium to a smuggler. Moreover, when the accused were apprehended, **a joint notice was served upon**

them. Under those circumstances, it was observed that accused must be individually informed that u/s 50(1) of the NDPS Act, he has a right to be searched before the nearest Gazetted Officer or before the nearest Magistrate. Joint communication of the right available u/s 50 of the Act would frustrate the very purpose of the Section. Similarly, in *Ram Avtar Sharma* (supra), **acting on secret information**, the accused was apprehended and, therefore, compliance of Section 50 was mandatory. However, in the instant case, firstly, it was a case of chance recovery and secondly it was not the person of the accused which was to be searched but the bags which were lying in the dickey which on checking were found to be containing narcotic substance. That being so, compliance of Section 50 was not imperative.

16. Since the recovery of narcotic substance from the possession of the accused was proved, therefore, learned counsel for the State sought to rely on the legal presumption envisaged under Section 35 of the Act which reads thus:-

“Presumption of culpable mental state.

(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.-In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."

17. Once the recovery of the narcotic drugs kept in the dickey was proved, the burden of proof was on the appellant to prove that he had no knowledge about the fact that those bags contained such a substance. The standard of such proof is delineated in Sub-section (2) as "beyond a reasonable doubt". If the Court, on an appraisal of the entire evidence does not entertain doubt of a reasonable degree that he had real knowledge of the nature of the substance concealed in the polythene bags then the appellant is not entitled to acquittal. However, if the Court entertains strong doubt regarding the accused's awareness about the nature of the substance in the polythene bags, it would be a miscarriage of criminal justice to convict him of the offence keeping such strong doubt dispelled. Even so, it is for the accused to dispel any doubt in that regard.

18. Learned counsel for the appellant referred to para 22 of **Abdul Rashid**(supra) wherein Hon'ble Supreme Court observed that this burden of proof cast on the accused under Section 35 can be discharged through different modes. One is that, he can rely on the

materials available in the prosecution evidence. Next is, in addition to that he can elicit answers from prosecution witnesses through cross-examination to dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence. In other words, if circumstances appearing in prosecution case or in the prosecution evidence are such as to give reasonable assurance to the Court that appellant could not have had the knowledge or the required intention, the burden cast on him under Section 35 of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence.

19. The submission of learned counsel for the appellant that since the appellant was employed as driver by PW5 only five days before the crucial day, by no stretch of imagination, the employer would have given the vehicle to the accused for bringing his relatives from IGI Airport, more particularly, when the employer as well as the accused were based at Ludhiana. This submission, although seems to be attractive, but is not borne out from the record, inasmuch as, although it has come in the testimony of PW5 Harbaksh Singh that the accused was employed by him as a driver only few days back but he was known to him for the last 2½ years as he was working as a driver

with one of his friends and thereafter he employed him as driver. Moreover, even no suggestion was given to this witness that he had not given the car to the accused for bringing his relatives from IGI Airport. Although, a suggestion was given to this witness as well as to some of the prosecution witnesses that in fact it was Harbaksh Singh who was driving the vehicle and the narcotic substance may have been recovered from him but he was subsequently called by Harbaksh Singh on the pretext of getting the vehicle released on *superdari* and thereafter he was falsely implicated in this case. This suggestion has been denied by all the prosecution witnesses. There is no other material on record to prove this fact. On the other hand, from the testimony of the police officials it stands established beyond reasonable doubt that it was the accused who was found driving the vehicle on the fateful day at the relevant time when he was intercepted by the police officials in routine checking and then narcotic substance was recovered from the polythene bags kept in the dicky of the car. Neither from the materials available in the prosecution evidence nor from the answers elicited by the accused through cross-examination of the prosecution witnesses the appellant was able to show that he could not have had the knowledge or the required intention so as to

discharge the burden casted on him under Section 35 of the Act. Accused himself has not led any evidence of his own. As such, he failed to discharge the burden which was casted on him under Section 35 of the Act.

20. No other point was urged during the course of arguments.

21. Under the circumstances, on merits, the prosecution had established the guilt of the appellant/accused by leading cogent evidence and the guilt is proved beyond reasonable doubt. There is no scope of interference with the said findings. Thus, there is no merit in this appeal, which is hereby dismissed.

Trial Court record along with copy of the judgment be sent back.

Appellant be informed through the Superintendent Jail.

(SUNITA GUPTA)
JUDGE

APRIL 06, 2015

RS