

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 745/2011 & CRL.M.(BAIL) 10545/2014**

Date of Reserve: 03.09.2015

Date of Decision: 09.09.2015

NETRAPAL Appellant
Through: Mr.Rajtilak Guha Roy, Advocate.

versus

NCB Respondent
Through: Mr.Rajesh Manchanda and Mr.Rajat
Manchanda, Advocates.

+ **CRL.A. 829/2011 & CRL.M.(BAIL) 10591/2015**

VIR CHAND RAI Appellant
Through: Mr.Dhan Mohan, Advocate.

versus

NCB Respondent
Through: Mr.Rajesh Manchanda and Mr.Rajat
Manchanda, Advocates.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. Both the appeals are being disposed of by this common judgment.
2. The appellants have been convicted under Sections 20(b) (ii) (C) read with 29 of the NDPS Act by judgment of conviction dated 21.4.2011 passed by the Special Judge, NDPS, Patiala House Courts,

New Delhi in Sessions Case No.N 149/08. By order of sentence dated 23.4.2011, the appellants were directed to undergo Rigorous Imprisonment for 10 years and a fine of Rs.1 lakh, in default of which, to further suffer Simple Imprisonment for a period of one year.

3. The appellants assail the judgment and order of conviction on the following grounds:- (i) despite the fact that the truck from where the contraband was recovered was seized from in front of Adarsh Nagar police station but no one from the police station was made a witness to the search and seizure; (ii) the appellants were found sitting in the cabin of the truck along with the driver Bhupender Singh and a cleaner but for reasons unknown to the appellants, Bhupender Singh was not put on trial and he did not even step in the witness box to confirm the factum of the recovery from the said truck; (iii) the name of the appellants did not transpire in the secret information; (iv) independent persons were not examined and one person who joined investigation namely Sushil Gupta was not brought to the witness box to support the prosecution version; (v) contradictions in the date and time of the search and seizure proceedings; (vi) despite the case of the prosecution being that the consignment of contraband was to be handed over to appellant Netrapal by appellant Vir Chand Rai but no cash was recovered from the possession of Netrapal; (vii) the only evidence against the appellants being their presence in the cabin of the truck from where the contraband is stated to have been recovered and their statements recorded under Section 67 of the NDPS Act; (viii) non-observance of the mandatory procedure under Section 42 and 50 of the NDPS Act; (ix) no recovery from the conscious possession of

the appellants and finally non consideration by the Trial Court of the evidence of DW-2 in correct perspective.

4. It has also been argued on behalf of the appellants that the provisions of NDPS Act deal with very serious offences and more serious the offence, the stricter is the requirement of adherence to the provisions of the Act regarding search and seizure. It has been pointed out by the learned counsel for the appellants that they have served major part of the sentence by now and are in custody for more than 9½ years.

5. The facts giving rise to the prosecution of the appellants are as hereunder.

6. P.C.Khanduri (PW-3) received a secret information (Ex.PW-3/1) on 30.10.2005 that one Veera has brought ganja from Bihar in truck bearing registration No.UP 12H 7336 and the aforesaid truck is scheduled to reach Azadpur Mandi Chowk in between 2 to 3 P.M for the purpose of delivering ganja to the customers. The aforesaid information was forwarded to A.Shankar Rao (PW-8), Zonal Director, NCB who on receipt of such information commanded for conducting a raid after constituting a team for the same.

7. A team comprising P.C.Khanduri (PW-3), N.S.Yadav (PW-5) and Vikas Kumar (PW-7) found a truck by the aforesaid registration number parked in front of Adarsh Nagar police station. Three persons were found to be sitting in the driver's cabin, who disclosed their names as that of the appellants and one Bhupender Singh who claimed himself to be the driver of the truck. Initially the response of the

appellants was that the truck contained boxes of fruit juices of Dabur Company and some clothes. A statement was made by Bhupender Singh, the driver of the truck that the 12 boxes of clothes belonged to appellant Vir Chand Rai who had loaded the same on 26.10.2005 near a petrol pump in the district of Motihari, Bihar. Aforesaid Bhupender Singh referred to appellant Netrapal as the person who was to be delivered the 12 boxes of clothes.

8. The members of the team after disclosing their identity and making the appellants and another know about the information which they had about them, conducted search of the truck. Apart from the boxes of fruit juices, in each of the 12 boxes, stated to be containing clothes, two parcels wrapped in black polythene bag tied with jute thread were also found. The parcels, on being smelt was tentatively found to be ganja. In order to avoid obstruction of the traffic on the road where the search and seizure proceedings took place, the appellants were asked to come to the NCB office at R.K.Puram. At the NCB office, the truck was off loaded. A total quantity of 275 kgs of ganja was recovered. Samples were drawn in a random manner and were serially marked. The remaining contraband of each parcel was also sealed after being put in cloth pullandas. The samples and parcels were sealed with the seal of NCB DZU 3 which was procured by PW-3 from the office before proceeding for the raid. A test memo in triplicate and recovery memo were prepared and the case property was later deposited in the malkhana.

9. The appellants gave their statement under Section 67 of the

NDPS Act regarding their participation in the crime.

10. The samples which were drawn from the recovered contraband were sent for testing to CRCL which confirmed that the contraband was ganja. The appellants were, therefore, put on trial for the offences under Section 20 (b) (ii) (C) of the NDPS Act.

11. The learned Trial Court after examining 11 witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellants as aforesaid.

12. In order to appreciate the contention of the appellants it is necessary to examine the evidence of the members of the raiding team which had apprehended the truck and the appellants and had recovered the contraband.

13. P.C.Khanduri (PW-3) testified to the fact that on 30.10.2005, while he was posted as Intelligence Officer, NCB, DZU, R.K.Puram, New Delhi he received a secret information on telephone that a person by the name of Veera was bringing ganja in huge quantity in truck No.UP-12H-7336 and the vehicle in question would reach Azadpur Mandi Chowk between 2 PM to 3 PM. The aforesaid information was reduced in writing and transmitted to A.Shankar Rao, Zonal Director (PW-8) who directed for the search. He has testified to the fact that the contraband was recovered from the truck. In the cabin of the truck, the appellants were found to be sitting. He has stated that at about 5.30 PM, the truck and the appellants were brought to the NCB office at R.K.Puram where the parcels were unloaded. 650 cartons of fruit juices of Dabur Company and 12 parcels of white plastic bag were

found. In the 12 plastic bags were 24 parcels, which were marked A to X and the contents of the same were separately weighed. The total weight of the contraband, (ganja) was found to be 275 kgs. The sampling was done in accordance with the rules and the same were marked with the seal of NCB, DZU-3. The test memos and the recovery memos were prepared which too were affixed with the same seal. The proceedings concluded at about 11.40 PM in the office of NCB. The recovery memo has collectively been exhibited as Ex.PW-3/2 which bears the signature of Sushil Gupta, a public witness (not examined). PW-3 recorded the statement of the appellants under Section 67 of the Act which was signed by the appellants and Manoj Kumar Aggarwal (PW-4).

14. The samples along with the test memos were deposited in the CRCL on 3.11.2005 through Hawaldar Shiv Rattan (PW-2). The recovery cartons of fruit juices were given on superdari on 1.12.2005 to M/s.Dabur Company Ltd, which fact was entered in the malkhana register. The truck in question was also released on superdari on 28.2.2006, which fact also was mentioned in the malkhana register. The aforesaid witness denied the suggestion that the recovery proceedings are fictitious and sham.

15. N.S.Yadav (PW-5) who at the relevant time was on deputation to NCB has confirmed the fact that on 30.10.2005, a raid was conducted and he was part of the raiding team. He has testified to the fact that the appellants were caught and contraband was recovered.

16. Similarly, Vikas Kumar (PW-7) was also a member of the

raiding team as he was on deputation to NCB from CISF. He has testified to the fact that he was incharge of the seal and he issued the seal to P.C.Khanduri (PW-3) and made the relevant and corresponding entry in the register (Ex.PW-3/5).

17. Thus from the statement of the aforesaid witnesses, it stands established and confirmed that the appellants were found in the truck, from which 275 kgs of ganja apart from other things were recovered.

18. Hawaldar Shiv Rattan (PW-2) has testified to the fact that the samples were taken to CRCL vide forwarding letter PW-1/1 and he deposited its receipt with the malkhana incharge.

19. R.P.Meena, Assistant Chemical Examiner, CRCL (PW-1) has stated before the Court that on 3.11.2005 Hawaldar Shiv Rattan (PW-2) brought 24 samples boxes marked A-1 to X-1; test memos in duplicate along with a forwarding letter to the CRCL. The same was received by him and was found to be sealed with seven intact lac seals of the description "Narcotics Control Bureau, DZU-3". The facsimile of seal affixed on each of the 24 sample boxes tallied with the specimen of seal as given on the test memo. After receiving the same, PW-1 gave the receipt (Ex.PW-1/2).

20. The aforesaid samples were kept in the strong room. The samples were taken out from the strong room on 9.1.2006 and that time also the packets were found to be intact and there was no evidence of tampering. The samples were opened and the analysis was carried out. The contents of the samples tested positive for ganja. A report was prepared by the Chemical Examiner, M.D.Mandol on

10.1.2006 which was signed by him. The aforesaid report is Ex.PW-1/3 which bears the signature of PW-1 and M.D.Mandol. PW-1 has categorically denied the suggestion that when the samples were produced before him they were found to be tampered.

21. Manoj Kumar Aggarwal (PW-4) has stated that he joined the raiding team in the office of NCB after the recovery of the ganja. He has testified to the fact that he issued summons to both the appellants to tender their statements. He also recorded the statement of one D.N.Sharma of M/s.Dabur Foods (Ex.PW-4/11). The driver of the truck namely Bhupender Singh and the owner of the truck namely Nokha Singh tendered their statements which have been exhibited as PW-4/12 and PW.4/13 respectively.

22. Thus from the deposition of the aforesaid witnesses it transpires that all the mandatory provisions of the NDPS Act have been duly complied with. No folly could be found by this Court in the sampling process or in the procedure by which the samples were kept in the malkhana and were later sent to CRCL. There is no evidence of any tampering of the seal, prior to it being analysed for determining the nature of the contraband.

23. The appellants have denied the entire set of allegation in their statement under Section 313 of the Code of Criminal Procedure. They have stated that it is a case of false implication. They have denied to have tendered any statement under Section 67 of the NDPS Act. The specific defence of the appellants are that they were picked up on 29.10.2005 from near a liquor vend at Sahibabad, Uttar Pradesh and

that they had not hired the truck for the purposes of carrying the contraband and are not at all involved in the illicit trafficking of ganja.

24. Two defence witnesses have been examined on behalf of the appellants.

25. Pawan Singh (DW-1), Nodal Officer of IDEA has stated that no record is available with the company for the period 29.10.2005 to 1.11.2005 of telephone numbers 9911318844 and 9911365252, which telephone numbers belong to Vikas Kumar (PW-7) and N.S.Yadav (PW-5) who were the members of the raiding team. Aforesaid defence witness has also stated that these numbers were not active at that time.

26. Manak Chand who is the brother-in-law of appellant Netrapal has been examined as DW-2. Aforesaid Manak Chand has stated that his sister informed him that Netrapal had gone to his brother's house at Sahibabad from where he did not return. This information was provided to him by his sister at 8 P.M on 29.10.2005. The telephone number of Netrapal, according to DW-2 was found to be switched off. A resident of Sahibabad informed DW-2 that while Netrapal was buying liquor from a vend, he was taken in a vehicle, which vehicle was found unclaimed in the police post of Sahibabad.

27. Appellant Vir Chand Rai examined himself as a witness under the provisions of Section 315 of the Code of Criminal Procedure and reiterated his defence that he was picked from the liquor vend at Sahibabad where after he was made to sign on some blank papers under duress.

28. The defence of the appellant that in the secret information

received by PW-3, one Veera was named and not the appellants, is of no significance. The secret information which was reduced in writing was to the effect that huge quantity of contraband is being brought on a truck by a person called Veera. The truck number was informed. Pursuant to such information, after obtaining approval of a superior officer of the NCB, a raid was conducted. The appellants were found to be occupying the driver's cabin. It is not necessary that the names of the accused persons must be mentioned in the secret information. Secret information is only for the purposes of apprising the police officer about the possibility of a crime being committed and such intimation is for the purpose that in case the police authorities act with dispatch, the accused persons could be apprehended. Such information, for practical reasons also, may not contain specific names of the accused persons/miscreants who later are apprehended and put to trial. The statements tendered by Bhupender Singh, the driver of the truck and Nokha Singh, the owner of the truck clearly establish that they were completely unaware of the contents of the 12 boxes which were stated by appellant Vir Chand Rai as containing clothes. Aforesaid Nokha Singh has been examined as PW-10 who has testified to the fact that Bhupinder Singh was the driver of the truck which he owned and also proved his statement (Ex.PW-4/13) which was given by him to the NCB officials. In this context, it would be relevant to point out that the appellants, in their statement under Section 67 of the NDPS Act have not alluded to any knowledge of the availability of the contraband in the luggage which was loaded by appellant Vir Chand Rai at Motihari, to aforesaid Bhupender Singh.

The suspicion raised by the defence that Bhupender Singh was deliberately let off and the independent witness at the time of seizure by Sushil Gupta was purposely not brought in the witness box is without any substance.

29. The Trial Court has found, from the records, that summons were sent to Bhupender Singh but he was not found to be living at the said address. Sushil Gupta was issued summons under Section 67 of the NDPS Act to tender his statement on 31.10.2005 and pursuant to such a notice he appeared before the NCB officials and gave his statement. Since he was only a witness to the search and seizure, his address was not verified at the time of the request made to him to join the proceedings.

30. This Court is of the view that this is not the proper procedure and the address of any person who joins the search and seizure proceedings, is required to be verified for the reason that his examination before the Court would be necessary for bringing transparency in the entire process of search and seizure. Be that as it may, his non examination has not rendered the prosecution version doubtful in as much as factum of recovery has been duly proved and established through the mouth of PWs.3, 5 & 7.

31. The minor contradictions with respect to time and place of search and seizure, in the testimony of witnesses, do not assume any significance. The testimony of even a single witness if found consistent and cogent could be the basis of conviction.

32. The contention of the appellants regarding non observance of

the mandatory requirement of Section 56 of the NDPS Act is not tenable. The recovery of the contraband has been made from the truck, hence no notice under Section 50 also was required.

33. In *State of H.P. vs. Pawan Kumar*, (2005) 4 SCC 350, the Supreme Court has held that if the recovery is not from the possession of the person concerned, it would be difficult to insist for strict compliance of Section 50 of the NDPS Act. After defining and explaining the term “person”, the Supreme Court held that containers, bags, brief case etc can under no circumstances be treated as part of a human body. It would not, therefore, be possible to include such containers within the ambit of the word “person” keeping in Section 50 of the Act. The Supreme Court in *Pawan Kumar* (Supra) at paragraphs 8, 9 and 10 has stated as follows:-

8. One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity (see Craies on Statute Law, 7th Edn., pp. 83-85). In the well-known treatise — Principles of Statutory Interpretation by Justice G.P. Singh, the learned author has enunciated the same principle that the words of the statute are first understood in their natural, ordinary or

popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary (see the chapter — “The Rule of Literal Construction”, p. 78, 9th Edn.). This Court has also followed this principle right from the beginning. In Jugalkishore Saraf v. Raw Cotton Co. Ltd. [(1955) 1 SCR 1369 : AIR 1955 SC 376] S.R. Das, J. said: (SCR p. 1374)

“The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.”

A catena of subsequent decisions have followed the same line. It, therefore, becomes necessary to look to dictionaries to ascertain the correct meaning of the word “person”.

9. The dictionary meaning of the word “person” is as under:

Chamber's Dictionary:

“An individual; a living soul; a human being; b: the outward appearance, & c: bodily form; a distinction in form; according as the subject of the verb is the person speaking, spoken to or spoken of.”

Webster's Third New International Dictionary:

“an individual human being; a human being as distinguished from an animal or thing; an individual having a specified kind of bodily appearance; the body of a human being as presented to public view usually with its appropriate coverings and clothing; a living

individual unit; a being possessing or forming the subject of personality;”

(emphasis supplied)

Black's Law Dictionary:

“In general usage, a human being (i.e. natural person), though by statute term may include a firm, labour organizations, partnerships, associations, corporations,”

Law Lexicon by P. Ramanatha Aiyar:

“The expression ‘person’ is a noun according to grammar and it means a character represented as on the stage, a human being; a self-conscious personality.

10. *We are not concerned here with the wide definition of the word “person”, which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word “person” appears to be — “the body of a human being as presented to public view usually with its appropriate coverings and clothing”. In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would*

not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word “person” would mean a human being with appropriate coverings and clothings and also footwear.”

34. Thus the aforesaid contention of the appellants has rightly been rejected by the Trial Court.

35. True it is that independent persons are to join the investigation, especially the search and seizure proceedings. Nonetheless in the present case, absence of any independent person testifying to the search and seizure proceeding has not made the case doubtful a bit.

36. The defence of the appellants that their statements under Section 67 of the NDPS Act has been taken as gospel truth and the conviction has been recorded on such statement only is not true.

37. The issue with respect to the evidentiary value of the statements recorded under Section 67 of the NDPS Act is still res integra.

38. In **Kanhaiyalal vs. Union of India**, (2008) 4 SCC 668, it has been categorically held by the Supreme Court that an officer under Section 63 of the NDPS Act is not a police officer. The aforesaid conclusion is based on a decision rendered in **Raj Kumar Karwal vs. Union of India and Ors.**, (1990) 2 SCC 407. The aforesaid judgments namely Raj Kumar Karwal and Kanihya (Supra) were considered by the Supreme Court in **Noor Aga vs. State of Punjab**

and another, [2008 (9) Scale 681] wherein it was held that an officer under Section 53 of the Customs Act is a police officer and, therefore, any statement recorded by him would attract the provisions of Section 25 of the Evidence Act.

39. Though Noor Agha (Supra) is a case under the Customs Act but the reason for holding customs officers as police officer may apply in the context of NDPS Act as well.

40. Considering this aspect of the matter in **Tofan Singh vs. State of Tamil Nadu**, (2013) 16 SCC 31, the Supreme Court has referred the aforesaid matter to a larger bench for consideration as to whether the officer under the NDPS Act qualifies to be called a police officer or not and whether any statement recorded by him has to be treated as a statement under Section 161 of the Code of Criminal Procedure.

41. However, the conviction of the appellants has not been recorded only on the statements tendered by the appellants under Section 67 of the NDPS Act.

42. The statement of DW-1, the Nodal Officer does not help the defence version. There is no reference of any telephone number through which the secret information was received in the police station. Thus the statement of the nodal officer with regard to two numbers not being active on or at the relevant time does not impact the prosecution version.

43. Since no complaint was made either by DW-2 or his sister about the appellant Netrapal having been lifted and whisked away from the liquor vend at Sahibabad, the version of DW-2 also becomes

unacceptable. Similar is the case with the statement made by appellant Vir Chand Rai before the Trial Court under Section 315 of the Code of Criminal Procedure.

44. It does not appear to be probable that such a huge quantity of narcotics substance would be planted/foisted on the appellants for being dragged and tried in the present case.

45. Thus on the aforementioned discussion, this Court is of the opinion that the judgment of the Trial Court brooks of no interference.

46. The appeal, thus fails and is dismissed.

47. Trial Court records be returned.

Crl.M.(B) 10545/2014 in CRL.A.745/2011 & Crl.M.(B) 10591/2015 in Crl.A No.829/2011

1. In view of the appeals having been dismissed, no orders are required to be passed in the instant applications.

2. Dismissed as infructuous.

ASHUTOSH KUMAR, J

SEPTEMBER 09, 2015

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