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

\+ **Date of Decision: 29.01.2015**

% **CRL.A. 378/2008**

D.D.A. ..... Appellant

Through: Mr. Rajesh Mahajan, Advocate.

versus

R.S.SAMDARIA ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present appeal has been preferred to assail the judgment passed by Sh.A.K. Chaturvedi, Metropolitan Magistrate, New Delhi in the complaint preferred by the appellant under Section 14 read with Section 29(2) of the Delhi Development Act, 1957 (the Act) against the respondent registered as Complaint Case No.419/01. By the impugned judgment, the respondent accused has been acquitted by the learned Magistrate.

2. The case of the complainant/ DDA in brief was that on inspection conducted on 07.11.2001, the accused was found putting to use – premises No.F-80, First Floor, Bhagat Singh Market, New Delhi, for running a shop/ showroom under the name and style of 'M/s Samdaria Jewellers' on the first floor in an area of about 800 sq.ft. instead of using the same for residential

purpose as prescribed under the Master Plan. Consequently, the accused was show-caused and the aforesaid complaint was preferred. Since the accused pleaded 'not guilty', the matter was sent for trial.

3. The appellant examined two witnesses. Sh.R.P. Sharma (CW-1), Surveyor of the DDA is the prime witness. CW-1 stated that on 07.11.2001, he visited the premises in question and found a shop/ showroom under the name of 'M/s Samdaria Jewellers' functioning on the first floor in an area of about 800 sq.ft. Two persons were seen working there. One Sh.Nand Ballabh Joshi, employee, met at the site and disclosed that the accused is the proprietor of 'M/s Samdaria Jewellers'. The FIR (Exhibit CW-1/A) was prepared by him at the site and the same was signed by him as well as by Nand Ballabh Joshi at Point 'A'. CW-1 deposed that the premises was in Zone No.D-5 and could be used for residential purpose. He also exhibited the plan prepared by him, wherein the premises was indicated.

4. The appellant also examined Sh.G.S. Bakshi, an official of MTNL as CW-2, who deposed that Telephone No.23365359 was installed in the premises in question in the name of 'M/s Samdaria Jewellers'.

5. The defence of the accused was that the said premises was being used for residential purpose of the employees of Mr.R.R. Samdaria. Nand Ballabh Joshi was staying at the said premises. The accused examined Nand Ballabh Joshi as DW-2. He stated that he was staying at the premises in question, which belongs to Sh.S.S. Samdaria. He stated that Mr. Samdaria had a factory at Begumpur Khotalla, Gurgaon and that workers are engaged from Moradabad and suburbs to work at the factory. They come to Delhi to

stay at the premises in question. He claimed that it was a residential flat. He also stated that he cannot read or write English and that he can read Hindi as he is a 3rd class drop-out. In his cross-examination, he admitted his signatures on Exhibit CW-1/A. The case of the prosecution was put to him, which he denied.

6. The reasoning of the Trial Court, as found in the impugned judgment, is as follows:

> *"13. In a criminal trial it is the duty and responsibility of the prosecution to prove the guilt of accused beyond all shadow of reasonable and if a doubt persist in the prosecution theory the benefit of doubt it given to the accused. As far the level of proof is concerned the criteria for the prosecution is beyond all shadow of reasonable doubt but for accused it is only preponderance of probabilities and it is sufficient for the accused to create a doubt in the prosecution story and the moment the accused is able to do it the entire prosecution story collapses in its entirety and prosecution case fails. This burden never shifts and always remained with the prosecution. Reliance in this connection may be placed Goswami Vs. State of M.P. AIR 1972 S.C. Page 716.*
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> *14. Now coming to the facts of the present case it was the duty and responsibility of the complainant DDA to establish on record that not only the premise were misused but also to link the offence with the offender it DDA is not able to prove either of the said two things the prosecution theory is not complete and the case is not proved and the complaint fails.*
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> *15. Now in the present case the star witness of DDA has stated that the prescribed land use is residential and he has visited the said premises on 7.11.2001 and found that the premises were being used for running a jewellery shop. In support of its case DDA has relied upon the testimony of MTNL who has stated that the telephone number 23365359 is installed*

in the name of M/s Samdaria Jeweller at the given address. Apart from that there is no independent evidence except the testimony of DDA official to bring on record and prove beyond all shadow of reasonable doubt. The point that the said flat was being used for commercial purpose for running a shop/ showroom of jewellery.

16. It was incumbent upon the DDA not only to prove that the premises were being misused but also link the offence with the offender and to prove the misuse DDA could have led the independent evidence either from sales tax department of from the licencing department of MCD or from any other independent department with which the jewelers might have to interest like Gold Council of India or whole marketing society etc. to indicate and bring on record the factum of premises being used for running a jewellery show room simply by leading an evidence from MTNL it cannot be said that the premises are being used for running a jewellery shop and for commercial purpose.

17. It may be noted that what is punishable actual user and not that the premises are being capable for use for commercial purpose. The installation of telephone connection make the premises pliable and functioning for use as jewellery show room but DDA apart from that got to prove that the premises were infact used for running the said show room by way of leading independent evidence as aforesaid. The witness from MTNL is not sufficient to give a finding in a criminal trial that the premises were being used for commercial purpose. It is correct that the testimony of DDA official is on record but it may be noted that the DDA official has not join any neighbor etc. in the inspection carried out at the site or any other independent witnesses and further the said testimony of DDA official is not corroborated by any other independent witness to the effect the premises are being used for business and commercial purpose. If the entire evidence led by the complainant is seen in the light of the evidence of DW-1 & DW2 a doubt persist in the prosecution theory and prosecution theory does not appear to be full proved and as already stated *whenever a doubt persist the benefit of the same go to the accused."*

7. Mr. Mahajan, learned counsel for the appellant/ DDA submits that CW-1 had surveyed the premises in question and prepared FIR (Exhibit CW-1/A) in the discharge of his official duties and there was no basis to reject the same. He submits that CW-2 from the Telephone Department had further corroborated the testimony of CW-1 by establishing that the telephone connection in the name of 'M/s Samdaria Jewellers' was installed at the premises in question.

8. In support of his submission that official witnesses cannot be disbelieved even in the absence of any independent witness to corroborate them, he places reliance on ***Tahir Vs. State (Delhi)***, 1996 SCC (Cri) 515; and ***Karamjit Singh Vs. State (Delhi Administration)***, 2003 Cri.LJ 2021. In ***Tahir*** (supra), the Supreme Court observed as follows in paragraph 6:

> *"6. Mr. D. D. Thakur, the learned senior counsel appearing for the appellant, submitted that PW-4 to PW-7 on whose evidence the conviction has been recorded were all police officials and in the absence of any independent witness to corroborate them, it was not safe to rely upon their testimony to sustain the conviction of the appellant. We cannot agree. In our opinion no. infirmity attaches to the testimony of 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 the 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 from 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."

9. Similarly, in ***Karamjit Singh*** (supra), the Supreme Court, inter alia, observed as follows in paragraph 8:

> *"8. … … … … …In our opinion the contention raised is too broadly stated and cannot be accepted. The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down…. … … … …"*

10. I have perused the impugned judgment, the Trial Court record and considered the submissions of Mr. Mahajan. The accused has been given the benefit of doubt by the Trial Court, and in appeal, this Court would not interfere with the same unless the reasoning adopted by the Trial Court is found to be perverse, or there is clear misappreciation of evidence by the Trial Court.

11. In the present case, though CW-1 stated that he had prepared the FIR (Exhibit CW-1/A), which was also signed by Nand Ballabh Joshi, an employee of the accused, apart from the aforesaid, there was no other credible corroborative evidence produced by the appellant.

12. So far as the telephone connection in the name of 'M/s Samdaria

Jewellers' is concerned, it is well-known that a telephone connection in the name of a business entity may be obtained, installed and used even in a residential premises. Telephone connections are not categorized according to the purpose for which they may be obtained. Therefore, a personal connection may be obtained by any human-being at his business premises and, similarly, telephone connection in the name of the business entity may be obtained and installed and used at residential premises. Mere installation of the telephone connection in the name of the business entity in a particular premises is not conclusive of the use to which such premises is part.

13. The cross-examination of CW-1 shows that though CW-1 had claimed that he had visited the premises in question at 11:30 a.m., he has not noted the time of his visit in the FIR. In the FIR, he does not make any record of the things that he found lying at the premises, which could suggest that it was being used for commercial purpose. Though, it was claimed that the premises was being used as a shop/ showroom, pertinently, CW-1 states that no board was installed outside the premises. It does not stand to reason that shop/ showroom would be run without even a display board. He further states that he did not see any receipt, cash book, etc. being used in the premises. He states that he saw two persons who were 'alleged buyers' but they did not disclose their names and CW-1 did not note anything in his record qua the said persons. Though the witness claimed that he had called for information from the House Tax Department of the MCD, however, none was produced during the trial.

14. As noted, DW-2 Nand Ballabh Joshi had stated that he does not know English language and he was only conversant with Hindi. On this aspect, he

was not cross-examined. A perusal of CW-1/A shows that the same was signed by him in Hindi language, whereas the FIR (Exhibit CW-1/A) was prepared in English language. Obviously, DW-2 would not be aware of the contents noted by CW-1 in the FIR (Exhibit CW-1/A). His signatures on CW-1/A, therefore, cannot amount to an admission by Nand Ballabh Joshi of the position recorded therein by CW-1 to the effect that a shop/ showroom under the name and style of 'M/s Samdaria Jewellers' is functioning at the premises.

15. Keeping in view the aforesaid, it cannot be said that the Trial Court has acted with perversity, or has not appreciated the evidence led before it in the right perspective. No doubt, official witnesses cannot be disbelieved even when there is no corroborative evidence, however, the Supreme Court has observed that their evidence has to be scrutinized with circumspection. Having so scrutinized the evidence led by the prosecution, I am of the view that the Trial Court was right in giving the benefit of doubt to the accused and acquitting him as the offence was not proved beyond reasonable doubt. Accordingly, the appeal stands dismissed.

VIPIN SANGHI, J

JANUARY 29, 2015
B.S. Rohella