

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

% *Judgment reserved on :21.08.2015*
Judgment delivered on : 27.08.2015.

+ CRL.A. 1003/2012 & Crl. M.A. No.8986/2015
HARMEET SINGH

..... Appellant

Through Mr.Atul Kumar Sharma, Adv.
versus

STATE

..... Respondent

Through Ms.Kusum Dhalla, APP for the
State.

+ CRL.A. 1446/2012
ASHWANI

..... Appellant

Through Mr.Mohit Mathur, Sr. Adv. With
Mr.S.N. Qureshi, Adv.
versus

STATE

..... Respondent

Through Ms.Kusum Dhalla, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 These appeals have been directed against the impugned judgment and order on sentence dated 12.07.2012 and 25.07.2012 respectively wherein the two appellants have been convicted under Section 20 (b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, (in

short NDPS Act); appellant Harmeet Singh 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 a period two years. Appellant Ashwani has been sentenced to undergo RI for a period of 15 years and to pay a fine of Rs.1.5 lac and in default of payment of fine to undergo SI for a period three years.

2 The version of the prosecution is that on 16.07.2010, SI Surender Singh (PW-10) was marked DD No. 7 which was information to the effect that apprehension and recovery of ganja from two persons near the Durlabh Nath Park, Mangolput Industrial Area had been made. On reaching the spot, constable Shamsheer (PW-2), constable Prem (PW-9), constable Ajit (PW-8) and constable Satbeer were present. An Alto Car (which in the course of investigation was found to be in the name of Kuki Devi, the mother of the accused Harmeet Singh proved through its registration Ex.PW-2/J-3 through the version of Bhupender Singh PW-6) was parked there. This car had been stopped by the members who were on patrol duty namely PW-2, PW-8, PW-9 and constable Satbeer. As per this version, during patrolling at about 01:00 pm when they had

reached Durlabh Nath Park, the aforementioned Alto car was found near the road. One person was coming out from the car and his movement appeared to be suspicious. The patrolling party accosted the accused. The aforementioned persons revealed their names as Ashwani Kumar and Harmeet Singh. Eight bags of ganja were found lying in rear seat of the car. This information was passed on to the local police station pursuant to which it was marked for investigation which was conducted by PW-10. From the aforementioned black bags, the ganja recovered weighed 142 kgms. From each bag a 50 gm sample was taken out; the remaining contraband and the samples were sealed with the seal of 'SS' and thereafter 'PSR'. The CFSL form was prepared at the spot. Rukka was sent pursuant to which the present FIR was registered and investigation was initiated. In the course of investigation, CFSL had opined the contraband which had been sent to the CFSL, positive for ganja and being in the commercial bracket, the accused were charge-sheeted, tried, convicted and sentenced as aforementioned.

3 On behalf of appellant Ashwani Kumar, arguments have been addressed by the learned senior counsel Mr. Mohit Mathur. On behalf of appellant Harmeet Singh, arguments have been addressed by Mr. Atul

Kumar Sharma, Advocate.

4 Learned counsel for the appellants submit that there are various infirmities in the investigation carried out by the investigating agency and when taken cumulatively as a whole, benefit of doubt has to be given to the appellants. Attention has been drawn to the versions of PW-2, PW-8 & PW-9 who were all members of the raiding party. It is pointed out that the version of PW-2 was that the SHO had come to the spot but this is not the version of the SHO Satish Yadav who had been examined as PW-3. The consistent version of the prosecution is that the SHO had not come to the spot. This discrepancy is irreconcilable. Attention has also been drawn to the deposition of PW-8 who had stated that the contraband was taken to a junk dealer shop for weighing but he did not remember the name of junk shop owner. Submission being reiterated that this is not the version of the prosecution. The version of the prosecution being that the contraband was weighed at the spot. This discrepancy is also unexplained. Submission being that there is also no explanation as to why no public witness had joined when admittedly there were factories in front of the spot where the accused were apprehended; PW-8 had stated that there was no petrol pump in front of

the spot whereas PW-2 had stated that there was a petrol pump near the spot. This petrol pump is also not deciphered in the site plan prepared by the Investigating Officer (Ex.PW-8/DB). The report under Section 57 of the NDPS act was also not received by the immediate superior as is evident from the testimony of ACP Om Parkash (PW-7); this report had been sent by PW-10 and being in the rank of a SI, he had to send this to his immediate superior i.e. to the SHO but it was forwarded to the ACP. This again is an infirmity. Additional submission being that the mandate of Section 55 of the NDPS Act has also not been fulfilled as the version of the prosecution is that two seals were affixed on the sample which were the seals of 'SS' and 'PSR' which is not the seal of the SHO who is Inspector Satish Yadav; moreover it is fairly understandable that the seal of the SHO was not available at the spot for some reason but in this case as per the version of the prosecution, the SHO had affixed his seal in the police station, why he did not affix his own seal but affixed the seal of PSR is again a confusion which has not been answered by the prosecution. To support the same submission, attention has also been drawn to the entry in Registry No. 19 (Ex.PW-11/A) wherein after the seal of 'SS', there is a blank; the seal of the SHO has not been

mentioned. These cumulative features when read together clearly make out a case of a grossly inadequate investigation for which the benefit must accrue to the appellants, as the members of the investigating agency are confused about the factual matrix. The appellants are entitled to a benefit of doubt and a consequent acquittal.

5 Arguments have been refuted. Learned Public Prosecutor points out that the discrepancies, if any, which have been argued by the learned senior counsel for the appellant Ashwani and the counsel for the appellant Harmeet have been explained and answered by the witnesses and the witnesses having come into the witness box after more than one year after the date of the incident, it is natural that memory does fade and minor inconsistencies in their version cannot go to the benefit of the accused; the accused also have no defence; the submission that they have been lifted from their respective houses and falsely implicated is too far fetched and there is no special reason for this false implication; it is not their case that the investigating agency had any special enmity against them. Impugned judgment calls for no interference.

6 Arguments have been heard. Record has been perused.

7 The members who were on patrolling duty and initially suspected

the accused persons were PW-2, PW-8 & PW-9.

8 PW-2 has deposed that on 16.07.2010, while he was posted at Special Staff, he along with PW-8, PW-9 and constable Satbeer were on patrolling duty in the Mangolpuri Area. When they reached Durlabh Park, they saw an Alto car of a silver colour standing; the movements of the two persons in the car appeared to be suspicious. They tried to apprehend the car but initially it did not stop. From the rear seat, eight bags which contained a substance from which smell was emanating; which on suspicion appeared to be ganja. The accused persons revealed their names as Ashwani Kumar and Harmeet Singh. Information was transmitted to the local police station. Investigation was marked to PW-10 who also reached the spot. Statement of PW-2 was recorded. Before the bags were opened, notice under Section 50 of the NDPS Act was served upon the accused persons and the carbon copies of the same were proved as Ex.PW-2/B & Ex.PW-2/C. The accused persons had refused to get their search conducted either before a Gazetted Officer or before the Magistrate. Further deposition of PW-2 is that the SHO also reached the spot. It is this version which has been highlighted by the learned senior counsel for the appellant to state that the SHO reached the spot,

CrI. Appeal Nos.1003/2012 & 1446/2012

this version is otherwise inconsistent with the version set up by the prosecution. As per their version, the SHO had never reached the spot. On this count, it is relevant to state that this witness had been examined on 24.02.2011. On that date, he had made this statement. Further examination-in-chief was deferred at the request of the defence counsel as he wanted two recovery witnesses to be examined simultaneously. On the following day, a clarification had been given by PW-2 to the effect that the SHO had not come to the spot and earlier due to confusion, that this fact had been wrongly mentioned. Further version of PW-2 is that the case property was weighed at the spot and seal of 'SS' on the contraband and the samples were affixed. The case property was taken into possession.

9 In his cross-examination, he stated that the Investigating Officer had brought the weighing kit at the spot and weighing was done at the spot itself. The Alto Car was driven back by PW-9 to the police station. There were factories at a distance of 100 meters but no public persons had joined. He further stated that there was a petrol pump but he could not tell on which side it was located. Learned senior counsel for the appellant on this count has also submitted that this version of PW-2 is

contrary to the version of PW-8 who had stated that there was no petrol pump. However, this fact is negated by the version of PW-10 who in his cross-examination has clearly stated that there was a petrol pump across the road and it was on the other side of the divider. A suggestion was given to PW-2 that nothing incriminating was recovered from the accused and they had been lifted from their respective houses and falsely implicated in the present case.

10 The second member of the raiding party who was examined was PW-8. He has also deposed on the same lines as PW-2. He has deposed that eight bags of black colour on which "Classic" was written were recovered from the rear seat and dikki of the car. Further version of PW-8, that the case property was weighed at the spot; it was taken to the police station where the SHO had affixed his seal before depositing the same in the malkana.

11 In his cross examination he had admitted that there were factories surrounding the area and public persons were also moving but none had joined; this has been explained in the version of Investigating Officer (PW-10) who had stated that efforts had been made to join public witness but none had agreed to join.

12 These inconsistencies as noted supra which are pointed by the learned senior counsel for the appellant are too minor to give any benefit on this count to the accused as it is a well known fact that no witness has a photographic memory and the witness entered into the witness box more than 1½ years after the incident, their clarity as to whether there was a petrol pump on the spot or not which would even otherwise not really effect the gist of the offence for which the accused persons have been charged is not relevant. Moreover, the version of all the members of the raiding party has been that there were factories surrounding that area and public persons had been asked to join but none had agreed to join. This version has remained categorical and consistent.

13 A similar suggestion had been given to PW-8 also; submission being that the accused persons had been falsely implicated. Relevant would it be to point out that no reason for the false implication has been mentioned.

14 PW-9 was the next member of the raiding party. His deposition is also on the same lines as PW-2 and PW-8. In his cross examination he admitted that there were factories on either side of the road. Members of the public were asked to join but none had joined. The process of

weighing was done at the spot. Weighing scale was brought by the Investigating Officer.

15 In his cross-examination, he admitted that there were 8 raxine bags; FSL form had been filled in at the spot. The seals of 'SS' were affixed on the samples and the contraband and thereafter in the police station, the seal of 'PSR' was affixed by the SHO. In a further part of his evidence he stated that the ganja which was recovered was not having any flowers but he does not remember if any buds were there or not. He admitted that there was a petrol pump across the road.

16 PW-10 was the Investigating Officer. He has also deposed on the same lines as PW-2, PW-8 & PW-9. DD No. 7-A had been marked to him and he had done the initial investigation. He had sent his report to the ACP (PW-7).

17 In his cross-examination, he explained that the report under Section 57 was not addressed to any particular senior officer. Weighing scale was of an exact measurement and had started with '0' and went upto 100 kg. His seal had been returned to him after 20-25 days. He admitted that on perusal of register No. 19 (Ex.PW-11/A), there was a blank where the seal of SHO was to be mentioned.

18 The SHO Inspector Satish Yadav was examined as PW-3. He admitted that he had not reached the spot because of some official work and it was in the police station that the seal of 'PSR' had been affixed on the samples and the contraband. He was not carrying his own seal and he had used the seal of Inspector Pawan Singh Rana. This explanation as furnished by him was sufficient and justified. There was no reason to disbelieve this version. The sample pulanda thus bore the seal of 'SS' (Investigating Officer) and seal of 'PSR' (SHO) (Inspector).

19 The MHC (M) was examined as PW-11. He has deposed that on 1.07.2010 while he was working as MHC (M) at Mangolpuri, PW-3 had deposited 8 pulandas and 8 samples with seals of 'SS' and 'PSR' along with FSL form. Entries in register No. 19 were proved. A perusal of these entries show name of the depositor as Inspector Satish Yadav. The case property was deposited on 16.07.2010 along with FSL Form and sample pulandas. It was sent on 13.08.2010 through road certificate No. 15321/2010 (through PW-11) who has also testified to this effect. In Ex.PW-11/A the entry showed that at the time of deposit, the case property had the seal of 'SS' but there was a blank in the abbreviated seal of the SHO. Learned Public Prosecutor points out that it is a well

known fact that all entries which are made in register No. 19 are reproduction of the seizure memo. This seizure memo was prepared on the spot and the case properties along with the samples were also sealed with the seal of 'SS', also at the spot. The seal of 'PSR' was affixed by PW-3 in the police station; that was the reason why there was a blank in the column of the seal of the SHO. This is a wholly justifiable explanation and this submission of the learned Public Prosecutor carries weight. Moreover no cross-examination has been effected, either of the SHO or of the Investigating Officer on this score who would have been able to explain the query as has now been explained. It was obviously for this reason that the seizure was effected on the spot and till that point of time, only the seal of 'SS' has been affixed; entry in register No. 19 being a reproduction of the seizure memo and that is why the abbreviated alphabets of 'PSR' did not find mention there. Even otherwise, it is not the defence of the accused that the case property was tampered.

20 The FSL report has been proved as Ex.PW-1/R. It is dated 23.11.2010. It fully describes that 8 sealed parcels having seals were duly intact and tallied with the specimen seals as per the forwarding

Crl. Appeal Nos.1003/2012 & 1446/2012

letter. This report from a senior scientific officer was also never the subject matter of challenge.

21 Report under Section 57 of the NDPS Act was received by the ACP (PW-7) who was the immediate superior of the SHO (PW-3). PW-7 had proved the original report as Ex.PW-7/A. In his cross-examination, he explained that since this case was investigated by the special staff and the Investigating Officer was SI Surendra Singh, the same had been forwarded by him. Compliance of Section 57 was wholly made.

22 On all counts, the prosecution has been able to prove its case. The arguments raised by the learned senior counsel for the appellant do not have any merit. It was through cogent, coherent and credible evidence, both oral and documentary, established that the accused were in illegal and unlawful possession of the contraband i.e. ganja weighing 142 kgm which was in the commercial bracket and thus they were rightly convicted under Section 20 (b)(ii)(C) of the NDPS Act. Appellant Harmeet Singh has been awarded the minimum punishment and calls for no interference. However, the sentence of appellant Ashwani, whose circumstances are no different from that of appellant Harmeet Singh, is

reduced from RI 15 years to RI 10 years. His fine is also reduced from Rs.1.5 lacs to Rs.1 lac and in default of payment of fine, to undergo SI for two years.

23 Appeals are without any merit. Dismissed.

INDERMEET KAUR, J

AUGUST 27, 2015

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