

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

% *Judgment reserved on :23.9.2015*
Judgment delivered on :30.9.2015

+ CRL.A. 1055/2012 & Crl. M. (B) No.3108/2015
SANJAY MANDAL

..... Appellant
Through Mr.Siddharth Yadav, Advocate.

Versus

STATE

..... Respondent
Through Mr. Akshai Malik, APP

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order on sentence dated 22.05.2012 and 29.05.2012 respectively the appellant stands convicted under Section 20 of the Narcotic Drugs and Psychotropic Substance Act (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 3 months.

2 Nominal roll of the appellant reflects that as on date, he has undergone incarceration of approximately 4 years.

3 The version of the prosecution is that on 24.08.2011 while HC Dalip Kumar (PW-3) and SI Siddappa (PW-6) and constable Ramesh Chand (PW-4) had gone to apprehend the appellant with regard to another FIR i.e. FIR No.31/2011 registered under Section 25 of the Arms Act; the appellant was found carrying a polythene in his right hand; on his formal check and on checking the polythene, it was found to contain charas. Notice under Section 50 of the NDPS Act had been served upon him. The contraband which was recovered was weighed and two samples of 500 gms each were drawn. It was sent to the CFSL which has tested this seized contraband positive for charas. The investigation was thereafter handed over to ASI Swadesh Kumar examined as PW-7. Compliance of Section 57 of the NDPS Act was effect by him.

4 In the statement of the accused recorded under Section 313 of the Cr.PC, he had pleaded innocence stating that he has been falsely implicated by the members of the raiding party who had a grudge against him and they had threatened him to implicate him in a false case. To support this argument, the appellant had also produced one witness in defence. He was examined as DW-1. Contention was that on

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03.06.2011, he had been abused by the local police which included HC Dalip Kumar (PW-3) and ASI Swadesh Kumar (PW-7); they had asked for money from him. On 04.06.2011, they had again tried to extort money. He had reported the matter to the Vigilance Branch and had also filed a complaint before the Commissioner of Police proved as Ex.DW-1/C. He was constrained to file a bail application seeking anticipatory protection in view of these threats which have been given to him which was declined by the Court of Sessions on 02.06.2011 Ex.DW-1/B.

5 On the basis of the aforementioned evidence collected by the prosecution, both oral and documentary, the appellant was convicted and sentenced as aforementioned.

6 The only argument of the learned counsel for the appellant is that the appellant has been falsely implicated by the members of the raiding party especially HC Dalip Kumar (PW-3) and ASI Swadesh Kumar (PW-7) and they all being police personnel posted at the local police station Sadar Bazar had threatened him as he being a kabadi was asked to pay up the money to the police personnel to which he objected and this was the grudge against him; this is a clear case of false implication.

Ex.DW-1/C which was the complaint dated 04.06.2011 almost one
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month prior to the date of the incident in fact evidenced his apprehension; his apprehension was that PW-3 and PW-7 would embroil him in a false case as he had failed to pay up the money which they were demanding from him. He has also moved an application seeking anticipatory bail application which has been declined by the Sessions Judge vide Ex.DW-1/B. No other argument has been pressed before this Court.

7 These factual submissions as noted above are matter of record. It is a matter of record that the appellant had all along taken a defence that he has been falsely implicated in the present case because of his unwillingness to pay up the money to PW-3 and PW-7. The fact that he had made a complaint on 04.06.2011 to the Commissioner of Police, Headquarter and thereafter was also constrained to file an application seeking anticipatory protection which was declined are also a matter of record.

8 The version of the prosecution as revealed from the record shows that the police official including PW-3 and PW-6 had gone to the appellant to execute the NBWs against him in another case (under Section 25 of the Arms Act). At that time, he was found carrying a

polythene bag. It contained charas. This was a chance recovery. As such the compliance under Section 50 of the NDPS Act was not really required although a notice under Section 50 of the NDPS Act had been served upon the appellant.

9 The recovered contraband was seized, samples were drawn and deposited in the malkhana along with contraband and was sent to the CFSL which had tested the contraband positive for charas. As noted supra, learned counsel for the appellant has not addressed on the merits of the case; his submission is that this is a case of false implication only on the basis of Ex.DW-1/B and Ex.DW-1/C.

10 This argument of the learned counsel for the appellant was rightly rejected by the Trial Court and the reasons shall now be discussed in the subsequent part of the judgment.

11 Record shows that the appellant was clearly a bad character of the area; he was a B.C.; the fact that he is involved in several other criminal activities has been noted. It is also come on record that on 03.06.2011 (one day prior to 04.06.2011) three persons had been apprehended by HC Dalip Kumar (posted as police constable in police station Sadar Bazar); they were booked under Section 107/151 of the Cr.PC. This was

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by DD No. 11-A dated 09.06.2011. The appellant was a part of this quarrel. If the police personnel did have any grudge against the appellant, they could have well arrested the appellant to embroil him in the false case on 03.06.2011 i.e. when the proceedings under Sections 107/151 of the Cr.PC had been recorded. The fact that the raiding party in the present case had gone to execute the NBWs against the appellant in a FIR under Section 25 of the Arms Act (which he was facing) is an admitted fact. Criminal background of the appellant has been noted.

12 Section 54 of the Indian Evidence Act reads herein as under:-

“[54. Previous bad character not relevant, except in reply.—In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.]”

13 Although under this provision of law in criminal proceedings, the fact that the accused person has a bad character is irrelevant but where evidence has been given that he has a good character, his bad character would then become relevant.

14 In the instant case, the defence of the appellant all along was that this is a case of false implication and he is a man of good character who has been embroiled in this false criminal proceeding for which evidence of DW-1 had been led and Ex.DW-1/B and DW-1/C had also been relied upon as the documentary evidence. This has been negated by the other criminal record of the appellant which are proceedings pending against him not only under Sections 107/151 of the Cr.PC but also an FIR registered under Section 25 of the Arms Act. His evidence that he has a good character has been rebutted by his bad character which has been evidenced through his criminal record. This Court is thus not inclined to accept the submission of the learned counsel for the appellant that this is a case of false implication.

15 The prosecution has been able to establish that the appellant was found to be in possession of an illegal quantity of charas which on weighing was found to be 2 kgs and 200 gms which is in the commercial bracket. The conviction of the appellant and the sentence which is imposed upon him being already the minimum which is 10 years RI and minimum fine of Rs.1 lac thus calls for no interference.

16 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 30 , 2015

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