

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

RESERVED ON : 17th MARCH, 2016

DECIDED ON : 29th MARCH, 2016

+ CRL.A.55/2013

CUSTOMS Appellant

Through : Mr.P.C.Aggarwal, Advocate.

VERSUS

YUTAKA KOCHI Respondent

**Through : Mr.S.S.Das, Advocate with
Mr.Tarun Priyadarshi, Advocate.**

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal has been preferred by Customs to challenge the legality and correctness of a judgment dated 30.04.2011 of learned Addl. Sessions Judge in Sessions Case No. 40/3/08 under Section 20 (b) NDPS Act by which the respondent was acquitted of the charge. It is contested by the respondent.

2. Briefly stated, the appellant's case as reflected in the complaint case was that on 02.12.2006, the respondent was found in

possession of 600 grams of Hashish. It was concealed in an iron trunk kept by him with M/s.Raj Luggage Room, Paharganj, New Delhi.

3. Admitted position is that on 01.12.2006 the respondent was going to London (U.K.) in flight No.VS 301 carrying two hand bags. On suspicion he was intercepted and questioned. Foreign and Indian currency of ₹16,63,867/- was recovered from his possession. Necessary proceedings were initiated against him in that regard. During the investigation of the said case, two bunches of keys, one visiting card of luggage room T-302, Paharganj along with some other documents were recovered. It was found that the respondent had booked an iron trunk with M/s. Ajay Luggage Room, T-302, Main Bazar, Paharganj. A team of custom officers was sent to the said luggage room and the concerned manager was asked to handover the said trunk. In the presence of panch witnesses, the proceedings regarding seizure of the iron trunk were conducted and it was brought at IGI Airport. Notice under Section 50 NDPS Act was served upon the respondent. Lock of the trunk was opened in his presence. It was found containing two zipper bags having 12 small pouches and 4 small pouches respectively. The recovered substance was weighed and it was found to be 600 grams of Hashish. Necessary investigation/proceedings were carried out. Statement of the respondent

was recorded under Section 67 NDPS Act. Upon completion of investigation, a complaint case was filed by Mr.Uday Shankar Sharma, complainant, against the respondent for committing offence punishable under Section 20 of the NDPS Act before the Trial Court. In order to establish its case, the prosecution examined 17 witnesses. CW-1 (Rakesh Singh) was also examined by the prosecution. In 313 Cr.P.C. statement, the respondent denied his involvement in the crime and pleaded false implication. After hearing the rival contentions of the parties and on appreciation of the evidence, the Trial Court, acquitted the respondent of the charge. Aggrieved by the said orders, the Department has preferred the instant appeal.

4. I have heard the learned counsel for the parties and have examined the file minutely. On scanning the impugned judgment, it transpires that the Trial Court has discussed all the relevant contentions of the appellant comprehensively. A number of material discrepancies, contradictions and infirmities have been noted in the impugned judgment to conclude that the evidence led by the prosecution was highly deficient to base conviction. This Court finds no valid reasons to deviate from the findings recorded by the Trial Court whereby the respondent was given benefit of doubt and was acquitted.

5. Admittedly, the respondent was in custody of the prosecution on 01.12.2006 when he was apprehended for possessing unauthorized foreign / Indian currency to the tune of ₹16,63,867/-. On his search, a bunch of keys, visiting card and some other documents were recovered. The Investigating Agency came to know that the respondent had booked an iron trunk at a luggage room at T-302, Main bazaar, Paharganj. Strange enough after coming to know about this vital information, no attempt was made by the Investigating Agency to take the respondent to the place where he had booked the iron trunk containing contraband substance. The Trial Court has noted that the visiting card (Ex. PW1/N) recovered from the respondent did not contain the name of the luggage room. It merely contained the details as luggage room T-302, Main Bazaar, Paharganj. Name of M/s.Ajay Luggage Room, Paharganj, New Delhi did not find mention on the visiting card. It is mystery as to how the Investigating Agency, on their own, came to know that the respondent had booked the iron trunk with M/s.Ajay Luggage Room. Letter (Ex.PW-2/B) addressed to the Manager of the Luggage Room mentions the name of Hotel Anoop / Ajay Luggage Room. It was, however, not clarified as to how initially name of Hotel Anoop came to be recorded on the letter (Ex.PW-2/B). It is not the case of the prosecution that the respondent had

disclosed the name of Ajay Luggage Room or hotel Anoop. Even in report under Section 57 NDPS Act (Ex.PW-1/K) there is no indication of hotel Anoop or Ajay Luggage Room. It simply describes that during the personal search of the respondent, a visiting card of luggage room No.T-302, Main market, Paharganj was recovered. At the time of proceedings at Luggage Room, its owner was not associated in the investigation. No plausible explanation has been offered by the prosecution witnesses as to why pursuant to the disclosure statement regarding booking of an iron trunk with a luggage room at Paharganj, it was not recovered at the respondent's instance. He was not taken to the Luggage Room even for identification purpose. The natural course of action after respondent's apprehension could have been to immediately recover the iron trunk allegedly booked by him with the Luggage Room at his instance and to get him identified from the concerned individual present at the Luggage Room at the time of booking. Only photocopy of a passport containing the photo of the respondent was shown to the individual at the Luggage Room and as per PW-2 (Bhavesh Kumar Pandya), he identified him to be the person who had booked the Luggage Room on 01.12.2006. Testimony of CW-1 is entirely contradictory to him. CW-1 is Rakesh Singh, employee at Ajay Luggage Room. In his examination-in-chief, he

did not support the prosecution and did not identify the accused to be the individual who had booked the luggage in the Luggage Room. No TIP Proceedings for identification of the respondent was conducted.

6. The Trial Court has noted in the impugned judgment that the respondent was not found having any original receipt bearing No.9158, the copy of which (Ex.PW-2/A) was affixed on the trunk. PW-2 (Bhavesh Kumar Pandya) admitted in his Court statement that he had not taken any signatures or other handwriting of the respondent on the receipt issued for booking the trunk. It is highly unbelievable that PW-2 (Bhavesh Kumar Pandya) would not get any signatures of the person who booked the trunk in question with them for a particular duration on any register / document. It is also unclear as to how much payment was received by PW-2 (Bhavesh Kumar Pandya) for booking the said trunk. He disclosed that at the time of booking the trunk, he had issued the receipt; the original of which was handed over to the respondent. Copy of the same was attached with the trunk. No such original copy of the receipt was recovered from the respondent at the time of his apprehension. Obviously, the said receipt was a very crucial document to retrieve the trunk from PW-2 (Bhavesh Kumar Pandya). The contents of the trunk in question were not noted on any document though PW-2 (Bhavesh Kumar Pandya) admitted that they

used to get recorded declaration about the contents of the locked objects in their register. Nothing is on record to show if the respondent had put any signatures or handwriting on any document at the time of booking the trunk with PW-2 (Bhavesh Kumar Pandya). No such handwriting was sent to handwriting experts to ascertain his signatures thereon. The Investigating Officer did not find out as to from where the respondent had arranged the heavy trunk; when it was arranged and for what consideration. It was also not verified as to from where the respondent had procured the contraband. It is unclear as to when the respondent had visited India and when the contraband was procured and kept in the trunk. The Investigating Agency did not ascertain as to what was the motive or purpose of the respondent to keep the contraband in the trunk with PW-2 (Bhavesh Kumar Pandya) for long duration of one and one and a half month and for whom it was meant.

7. The Trial Court in the impugned judgment was skeptical about the identification of the case property. There was overwriting in the digit 8 in the panchnama (Ex.PW-2/C) prepared at Ajay Luggage Room in the absence of the respondent. When the case property was produced before the Court it was having Custom's seal No.6. The Trial Court also noted various discrepancies and contradictions in the testimonies of the

panch witnesses PW-7 (Vijay Veer Singh) and PW-9 (Vijay Dhyani). It further observed that the trunk when produced in the Court on 04.07.2007 for the first time was not found properly sealed, as without breaking the seal and without disturbing the paper slip, the thread tied on the trunk could be removed. It also noted that the keys recovered from the respondent at the time of his apprehension were in possession of the custom officers when the trunk was allegedly seized from Ajay Luggage Room and possibility of its being misused could not be ruled out.

8. In the light of above referred discrepancies, inconsistencies and discrepancies, the statement of the Investigating Officer and the evidence produced by the prosecution can't be believed to base conviction for stringent provisions of the Act. The law on this aspect is that "stringent the punishment stricter the proof". In such like cases, the prosecution evidence has to be examined very zealously so as to exclusive very chance of false implication. The prosecution has failed to establish the commission of offence by the respondent and beyond reasonable doubt. It cannot be allowed to take benefit of the respondent's inability to establish his defence in 313 Cr.P.C. statement. Mere apprehension of the respondent is not enough. The evidence is scanty and lacking to establish that the contraband was recovered from the possession of the respondent

in the manner alleged by the prosecution on the said date and time. The respondent rightly deserved the benefit of doubt and the impugned judgment on that score cannot be faulted.

9. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the Trial Court have been succinctly explained by the Apex Court in a catena of evidence. In ‘*State of Goa vs. Sanjay Thakran & Anr.*’, (2007) 3 SCC 75, it was held :

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the

accused is connected with the commission of the crime he is charged with.”

10. Similar principle has been laid down by the Apex Court in the cases of ‘*State of Uttar Pradesh vs. Ram Veer Singh and Ors.*’, AIR 2007 SCW 5553 and in ‘*Girja Prasad (Dead) by LRs vs. State of M.P.*’, AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

“It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.”

11. In the light of above discussion, the appeal lacks merit and is dismissed. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MARCH 29, 2016 / tr