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

Judgment delivered on: 29th March, 2016

+ **CRL.A. 787/2001**

DIRECTORATE OF REVENUE INTELLIGENCE Appellant

Represented by: Mr. Satish Aggarwala,
Advocate.

Versus

RAMESH BEHL & ORS.

..... Respondents

Represented by: Mr. Sanjiv Kumar, Senior
Advocate with Mr. S.K.
Santoshi, Advocate for
Respondent No.2.
Mr. Aditya Wadhwa, Advocate
for Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal has been directed by the Directorate of Revenue Intelligence against the judgment dated 31.10.2001 whereby learned Trial Court acquitted the respondents from the charges leveled against them punishable for the offences under the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred as the NDPS Act).

2. The case of the prosecution in brief was that a secret information was received by DRI officials that one Ramesh Behl (since deceased) (hereinafter referred as 'respondent No.1') was involved in the smuggling of narcotic drugs and that he would be receiving about 30 KG of heroin on that date (26.11.1996) in the afternoon at Azad Pur Subzi Mandi, Delhi

from some persons who would come from Punjab; he will use Neptune colour Maruti Van bearing registration No.DL-3CG-5120 for taking the delivery of the narcotic. Accordingly, a raiding party was formed and on reaching the Subzi Mandi exit gate intercepted the said Maruti Van being driven by respondent No.1, co-accused Gurdev Singh (hereinafter referred as respondent No.2) was sitting by his side; and another person by the name of Dault Singh was sitting on the back seat. Summons under Section 67 of the NDPS Act were served upon the occupants of the Van and as the place was not found conducive for search, the Van and occupants were brought to the DRI office at ITO, New Delhi. Two panch witnesses namely Raju and Sandeep were joined in the proceedings and in their presence notices under Section 50 of the NDPS Act were served to all the three occupants of the Van. Nothing incriminating was found from the personal search of the occupants. On search of the Van, one sack was found lying on the back seat which contained several packets which were taken to DRI office and examined after opening in the presence of above noted two panch witnesses and occupants of the Van. The contraband weighing about 29 KG was recovered from the sack in 29 separate packets. The entire contraband was weighed and it came to 29.105 KG of opium. Accordingly, samples were drawn and sealed. The statements of occupants were recorded. Besides admitting their guilt, it was also disclosed by respondent No.2 that he had used truck bearing registration No.UP-81C-9112 for transporting the contraband from Amritsar, Punjab to Delhi which was parked near Seb (Apple) Mandi, Azadpur, Delhi and the said truck was seized. Pursuant to the disclosure statement made by respondent No.1, his shop premises at Chandni Chowk, Delhi was searched and accused Mohammad Hanif (hereinafter referred as respondent No.3) found at the

shop was summoned. His statement under Section 67 of the NDPS Act was recorded wherein he admitted that he was in the drug trade with respondent No.1. Upon completion of investigation, all three respondents were chargesheeted for the offences punishable under Section 29 read with Section 23 & 18 of the NDPS Act. Separate charges were framed under Section 18 & 23 of the NDPS Act against respondent Nos.1 & 2.

3. Respondents pleaded not guilty to the charges framed against them and claimed trial. In support of its case, the appellant examined as many as 16 witnesses during trial before learned Trial Court.

4. As per the deposition of PW1 Shri S.K.Srivastava, who is informant of the FIR a secret information was received on 26.11.1996 at about 10.00 AM in the office which was reduced into writing as Ex.PW1/B. As per said information, respondent No.1 who was dealing in narcotic drug was taking delivery of about 30 KG of heroin from some persons from Azadpur, Subzi Mandi, Delhi in the afternoon on that date and that he would be using his Maruti Van, mentioned above. Accordingly, a raiding team was formed and deployed at Subzi Mandi, Azadpur at around 01.00 PM, who intercepted the said Van at the exit gate of Azadpur Subzi Mandi, Delhi. The said van was being driven by respondent No.1 at that time and respondent No.2 was sitting next to him. The *panchnama* was drawn in support of the proceedings regarding the seizure of the case property as Ex.PW1/K and as per the noting thereupon the same was concluded at about 11.30PM on said date.

5. Mr.Satish Aggarwala, learned counsel appearing on behalf of appellant submitted that learned Trial Court has failed to appreciate that in

the present case the recovery was made from the Car in possession of respondent Nos.1 & 2. The evidence against the respondents is by way of solemn testimony of witnesses and the *panchnama* duly signed by them, voluntary statements of the respondents, statement of Daulat Singh and other documents. Learned Trial Court should have appreciated the huge quantity of heroin which could not have been planted upon respondents and there was no allegation of enmity/grudge against the officers of the department. The statements of the respondents were recorded voluntarily without any pressure which is admissible under the law. Sections 50 & 67 of the NDPS Act had already been duly complied with and the procedure adopted by the appellant was just and proper. However, learned Trial Court has acquitted all the respondents without appreciating the facts mentioned above.

6. I have heard learned counsels for parties and gone through the impugned judgment passed by learned Trial Court.

7. It is not disputed that respondent No.1 expired during pendency of instant appeal and vide order dated 07.04.2015 proceedings were abated and his surety was also discharged.

8. From the material on record, it cannot be denied that on 26.11.1996 from 01.00 to 11.30PM the complainant / PW1 was busy with *Nakabandi*, interception, seizure, sampling and sealing of the contraband. Respondent Nos.1 & 2 were present with him from the time of interception at about 04.00PM till 11.30PM till the conclusion of *panchnama* proceedings.

9. It is further the case of the prosecution that thereafter statement of occupants of the Van i.e. respondent Nos.1 & 2 and Dault Singh were

recorded. Statement of respondent No.1 is Ex.PW4/B which was recorded in the presence of PW4 Shri B S Bakshi. On 27.11.1996 statement of respondent No.2 as Ex.PW6/H was recorded by PW14 Shri N N Sinha in the presence of Intelligence Officer Shri K.S. Duhan, who has been examined as PW6.

10. In his statement respondent No.2 had disclosed that he had brought the consignment from Punjab to Delhi in his Tata 407 truck bearing registration No.UP81C-9112 which was parked at Seb (apple) Mandi. Accordingly, he (PW6) went to spot along with two independent witnesses namely PW10 Shri Dharamvir and PW11 Shri Rohtas Mann, who were working in the Income Tax Department in the drum shape building at ITO and seized the said truck which had cavities concealed in the compartment.

11. As per deposition of PW10 and PW11 the *panchnama* regarding seizure and search of the truck established that Shri K.S. Duhan had gone to Seb Mandi in search of the truck in the afternoon of 26.11.1996 itself whereas the Van is shown to have been intercepted and brought to the office of DRI at about 04.00PM on that date. The said truck bearing registration No.UP81C-9112 was either seized after or around the same time as the Van was seized on that date and was not seized pursuant to the disclosure statement of respondent No.2 on 27.11.1996.

12. It is further the case of the prosecution that as per statement of PW4 Shri B S Bakshi it was on the same date i.e. 26.11.1996 he was informed by the Assistant Director about the recovery of about 29 KG heroin from said Van possessed by respondent No.1 and his two associates. He was asked by the Assistant Director to conduct the search of the shop of

respondent No.1 at 1408 Jhajjarwala Katra, Chandni Chowk, Delhi. Accordingly, he conducted the search of said shop vide *panchnama* Ex.PW3/A from 05.00 to 06.00PM when respondent No.1 was still witnessing the proceedings regarding sampling and sealing of the contraband in the DRI office and had not yet made any disclosure about his shop. Respondent No.3 was found present at the said shop of respondent No.1. He was summoned and his statement under Section 67 of the NDPS Act was recorded on 27.11.1996. Thereafter, all the three respondents were arrested.

13. Accordingly, from the evidence it was emerged that on 26.11.1996 prior information was with the DRI official only about the respondent No.1 taking the delivery of the narcotics from some persons from Punjab at Azadpur Subzi Mandi in the afternoon of 26.11.1996 for which purpose he would be using his blue colour Maruti Van bearing No.DL-3CG-5120. The said Van was intercepted when respondent No.1 was driving it and respondent No.2 was sitting by his side. The said Van was taken to DRI office at about 04.00PM on 26.11.1996 where on search thereof, a sack containing the contraband was recovered from the back seat and the proceedings about seizure, recovery, sampling and sealing thereof continued until at about 11.30PM that night. However, there is no record to show that any further information was received by the DRI official till that time. The statement of respondent Nos.1 & 2 were obviously recorded after the *panchnama* proceedings were concluded by 11.30 PM regarding seizure of the Van. It has come to the knowledge of the DRI official from the statements of respondent Nos.1 & 2 that latter had used the truck Tata 407 for transporting this narcotic consignment from Punjab to Delhi on

that date and that said truck was parked near Seb Mandi, Azadpur, Delhi. It is only during the proceedings of statements of respondent No.1 that it came to the notice of DRI officials that he was involved in narcotic trade in which respondent No.1 used to take delivery from one person namely Raju in Punjab and transported it to Delhi and delivered to respondent No.1. One person by the name of Mohammad Hanif/ respondent No.3 was also involved with respondent No.1 and used to sit at the shop of respondent No.1 at Chandni Chowk, Delhi. Only after these facts were disclosed to DRI officials, they could have seized the said truck in which the contraband was allegedly transported by respondent No.2 and could raid the shop and arrested respondent No.3 therefrom. However, the evidence adduced shows that shop of respondent No.1 was searched by PW4 and other officials of DRI on 26.11.1996 in the afternoon. It is also a matter of record that said truck was seized by PW6 Shri K S Duhan in the presence of PW10 and PW11 in the afternoon of 26.11.1996 itself.

14. The appellant failed to explain on record that as to how the DRI officials searched the shop of respondent No.1 and seized the truck from Seb Mandi on 26.11.1996 when the seizure and sampling was still going on in the office of DRI in the presence of respondent Nos.1 & 2, who had not made any statement till that time and had not made any disclosure about the aforesaid facts. Thus, it was emerged that the truck had allegedly been seized at same point of time when the Van was intercepted.

15. The recovery of contraband from respondent Nos.1 & 2 could not be proved, but it was also established that said Tata Truck was found abandoned in the area of Azadpur Subzi Mandi, Delhi by DRI officials in the afternoon of 26.11.1996 at the same time of interception of Van itself.

It was emerged on record from the evidence adduced by the appellant before learned Trial Court that with the seizure of the contraband, simultaneously search of the shop of respondent No.1 was done at the same time and respondent Nos.1 & 2 were present in the DRI office on 26.11.1996 itself. On one hand, the seizure, sampling and recovery of the contraband was being done by the team of DRI officials in their office premises itself in the presence of respondent Nos.1 & 2. On the other hand, the said truck was also seized on the same date in the afternoon before the seizure and sampling of contraband and search of the shop of respondent No.1 had taken place while the seizure and sampling were going on between 05.00 to 06.30 PM. Accordingly, it was established that while the alleged contraband was seized at about 04.00 PM on 26.11.1996 proceedings regarding its seizure and sampling and sealing thereof continued until 11.30 PM night in the presence of respondent Nos.1 & 2. The said Tata truck was seized on 26.11.1996 itself in the afternoon lying abandoned from Seb Mandi and search of the shop of respondent No.1 was taken place from 05.00 to 06.30PM on the same date while the proceedings regarding seizure, sampling and sealing of the contraband continued in the office of DRI.

16. In view the facts recorded above, serious doubts crept in the case of prosecution to the effect that whether the contraband was recovered from the truck No.UP81C-9112 or from Van No.DL3CG-5120. Further doubt was crept whether the respondent No.1 and respondent No.2 were actually found present with the contraband in the Van or the contraband was found lying abandoned in the truck having cavity for concealing the articles and the Van driven by respondent No.1 was intercepted separately.

17. Accordingly, learned Trial Court vide the impugned judgment observed that it may be possible that seized contraband was recovered from respondent No.1 in the Van or from respondent No.2 in the truck, but it appears that in an effort to rope in all three respondents, the appellant mixed up the true facts of the case to such an extent that it was not possible to bring out the truth as to from where and whose possession the said contraband was recovered and whether it was recovered from the Tata truck or Maruti Van.

18. Further doubt crept in the version of the appellant that the contraband was seized while the delivery was being made by respondent No.2 to respondent No.1 or whether it was seized from respondent No.1 and other accused persons were roped in later on. Accordingly, learned Trial Court had given benefit of doubts to all respondents and acquitted them from all the charges leveled against them.

19. In view of the settled proposition of law that during the trial proceedings if there are two views possible, the view favouring the prosecution is to be adopted, however, the position is reverse at the final disposal upon conclusion of trial that the view favouring accused charged with any offence has to be granted the benefit of doubt while returning the finding of acquittal in favour of guilty.

20. The appellant has failed to establish its case beyond reasonable doubt even during trial or in appeal as well, whereas in the present case as noted above, there are doubts after doubts. Therefore, I do not find any discrepancy in the judgment dated 31.10.2001 passed by learned Trial Court whereby the respondents were acquitted.

21. Consequently, finding no merits in instant appeal, same is hereby dismissed with no order as to cost.

22. As noted above, pursuant to death of respondent No.1 the proceedings already stood abated vide order dated 07.04.2015 and his surety was discharged.

23. Regarding respondent nos. 2 and 3, their personal bonds or surety bonds, if any, stand discharged. Consequently, they are directed to be released if not wanted in any other case.

24. Copy of this order be sent to concerned Jail Superintendent at Delhi and Amritsar, Punjab for information and compliance.

25. Trial Court Record be remitted henceforth.

Crl.M.A.Nos.11938/2013 & 18990/2014

In view of above order, these applications stand disposed of.

**SURESH KAIT
(JUDGE)**

MARCH 29, 2016

M/jg