

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

Date of Decision: 28th March, 2016

+ CRL.A. 60/2011 & Crl. M (B) 8288/2015

RAJVEER @ MILLAR

..... Appellant

Through Mr. Narender Sharma & Mr.
Siddharth Pandit, Advocates

versus

STATE

..... Respondent

Through Ms. Neelam Sharma, APP along with
Sub Inspector Sukhbir Malik, Crime
Branch.

AND

+ CRL.A. 970/2011 & Crl. M (B) 8287/2015

RAJEEV GREWAL

..... Appellant

Through Mr. Habibur Rehman, Advocate

versus

STATE

..... Respondent

Through Ms. Neelam Sharma, APP along with
Sub Inspector Sukhbir Malik, Crime
Branch.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common judgment, I shall dispose of two criminal appeals bearing Crl.A. No.60/2011 & Crl.A.No.970/2011 filed by Rajveer @ Millar

and Rajiv Grewal respectively challenging the common judgment dated 8.10.2010 and order on sentence dated 11.10.2010 passed by learned Additional Sessions Judge, Rohini Courts in Sessions Case No. 170/2008 whereby the appellants were convicted for offence under Section 20 NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.1 lac each and in default of payment of fine to undergo rigorous imprisonment for six months.

2. The prosecution case in nutshell, is that on 28.02.2008 at about 2PM, a secret information was received by SI Satish Rana that two persons namely appellants Rajiv and Rajveer, both residents of Bamla Village, District Bhiwani, Haryana, who indulge in supply of charas alongwith their associates Sethi and Ramesh, in Delhi and Haryana would come near Ghevara Mor at the corner of the Indane Gas plant between 4:30 PM to 5PM to supply huge quantity of charas to someone. The secret informer was produced before the SHO Insp. M.C.Katoch and on the directions of the SHO, SI Satish Rana formed a raiding party consisting of himself, Constable Sanjeev, Head Constable Om Prakash, Head Constable Jagdish Prasad and Constable Praveen. Raid was conducted. Raiding party reached the spot at about 4:15 PM and at about 4:35 PM, both the appellants were seen coming towards the Gehwara Mor and were carrying plastic kattas on their right shoulders. Raid was conducted and both the appellants were apprehended. Mandatory provisions of NDPS Act were complied with. From possession of Accused Rajiv, 23 kg of charas was recovered and from possession of Accused Rajveer, 22 kg of charas was recovered. The required samples were taken and accused persons were thereafter arrested. The samples sealed were sent to FSL on 7.03.2008 and as per report Ex.PX, the same were found to

be charas. After completion of the investigation, charge sheet was filed against the accused persons.

3. Both the accused were charged for the offence punishable u/s 29 NDPS Act, Section 20 NDPS Act and in the alternative u/s 22 NDPS Act to which they pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution examined as many as 10 witnesses. Statement of both the accused persons were recorded u/s 313 Cr.P.C., wherein they denied the entire evidence and pleaded innocence. They further stated that they were lifted from their respective houses and were falsely implicated in this case and claimed that nothing was recovered from them. However, they did not lead any evidence in their defence.

5. The learned Special Judge on appreciation of evidence on record convicted and sentenced the appellants, as mentioned above. Appellants were acquitted of the charge u/s 29 NDPS Act as no evidence was brought on record to prove factum of conspiracy.

6. Counsel for the appellants submitted that instead of addressing oral arguments, they will submit written submissions. Vide order dated 25th February, 2016, they were directed to file written submissions within one week but till date same has not been filed. Learned Additional Public Prosecutor for the State supported the judgment passed by the learned Trial Court and submitted that the same does not warrant interference. I have gone through the grounds of appeal and will decide the appeals on the basis of the same.

7. Broadly speaking, the impugned judgment was challenged, inter alia on the following grounds:-

- (i) No effort was intentionally made by SI Satish Rana to join independent person in investigation from a stable place.
- (ii) There is no eye witness or any public witness regarding the recovery of the alleged contraband from the appellants which clearly casts a doubt on the prosecution version in submitting that the contraband was recovered from the possession of the appellants.
- (iii) There is inordinate delay in registration of FIR. As per the prosecution version, the appellant was apprehended at around 4:30 to 5 PM on 28.02.2008 whereas the FIR was registered on 29.02.2008.
- (iv) Learned Trial Court failed to acknowledge the contradictions in the deposition of the witnesses regarding the test of the case property. On the one hand, PW1 has deposed that the test was conducted simultaneously whereas the ACP has stated that the test of samples was conducted one after the other.
- (v) Samples were not taken from all the sticks and therefore it cannot be said that all the sticks allegedly recovered were of charas.
- (vi) Recovery was done in an open space near Ghevara Mor which renders the application of Section 42 NDPS as inapplicable. The prosecution has failed to provide any explanation as to why no warrant or authorisation was issued before conducting the raid despite the fact that the high rank officials such as SHO and ACP were duly informed about the alleged incident.

- (vii) Despite police remand, the police failed to bring on record as to when the contraband was to be delivered.
- (viii) There were every chance of tampering with case property as sample was sent to FSL after eight days.

8. I have given my considerable thoughts to the grounds urged in the appeals and have perused the record.

9. PW4-SI Satish Rana was the SI at PS Narcotics Branch. On 28.02.2008 at about 2PM, an informer came to him and gave a secret information that two persons namely Rajveer and Rajiv residents of Bhiwani District, Haryana indulged in supply of charas in Delhi and Haryana alongwith their associates Sethi and Ramesh and that on that day, these two persons would come to supply huge quantity of charas to someone near Gehvera Mor at the corner of Indane Gas plant between 4:30 to 5 PM and if raid is conducted, both the above persons with the articles can be apprehended. PW4 Satish Rana thereafter produced the secret informer before the SHO PW6 Inspector M.C. Katoch who after satisfying himself with the information conveyed the same to PW7 ACP Narcotics Sh. Mahender Sngh telephonically who directed PW4 to conduct the raid. PW4 then recorded the information vide DD no.15A Ex.PW2/D. Factum of receiving a secret information regarding supply of huge quantity of charas by these two accused persons to someone in Ghewara Mor stands proved from the corroborative testimony of PW4 SI Satish Rana, PW1 HC Om Prakash, PW6 ACP M.C. Katoch, PW7 Sh Mahender Singh and DD No.15A Ex.PW2/D duly signed by PW6 ACP Katoch.

10. A raiding party was thereafter organized by PW4 SI Satish Rana consisting of himself, PW3 Const Sanjeev Kumar, PW1 HC Om Parkash, HC Jagdish Prasad and Const Parveen as the driver. The raiding party left the PS at about 2:45 PM vide DD No. 16A in a private vehicle no. DL3CT1624 driven by Const Parveen. PW4 carried a field testing kit, IO bag and electronic weighing scale with him. Outside the PS, he requested four passengers at the bus stop to join the raiding party but they refused. The raiding party reached the spot at 4:15 PM and on the way they had requested four passengers at the ISBT, four persons outside the Rohini Court complex at the bus stop and four persons at the spot to join the raiding party but none agreed. Thereafter, at about 4:35 PM, two persons carrying plastic kattas on their right shoulders were seen coming towards Gehwara. The secret informer identified the person wearing a white kurta pajama as accused Rajbir who was carrying a white colour plastic katta and the person wearing a pink colour shirt and cream colour pant as accused Rajeev who was carrying a yellow colour plastic katta. When the accused persons were getting up to leave the spot, they were apprehended by PW4 and his raiding team at about 4:45 PM. Thereafter, separate notices u/s 50 NDPS were given to both the accused persons namely Rajveer and Rajiv vide Ex.PW1/A and Ex.PW1/B respectively. Both the accused persons recorded their refusal in their own handwriting vide Ex.PW1/C and Ex.PW1/D. Thereafter again PW4 requested four persons to join the investigation but all of them refused. At about 5:30 PM when he was about to take the search, PW7 ACP Mahender Singh arrived at the spot and was briefed by him about the facts. ACP Mahender Singh introduced himself to both the accused persons. Thereafter, PW4 took search of accused Rajeev and checked the yellow

plastic colour katta which he was carrying. The mouth of the plastic was found tied with a black colour feeta. On the katta, Shri Churi chana was found printed in red ink. When he opened the mouth of the katta and checked it, he found 23 packets wrapped in brown colour tape. On removing the tape from the packets, dark brown colour cylindrical sticks in two layers were found inside a transparent polythene. On checking the brown colour substance from each packet with the field testing kit, it was found to be charas and on weighing it, each packet was found to be one kg. In total, 23 kg of charas was found. From each packet, some charas was taken out and two samples of hundred gms each were prepared which were kept in two separate transparent poythenes and were reduced into two pullandas. The case property and FSL form filled by him was seized vide Ex.PW1/E. Thereafter, PW4 checked the white colour plastic katta which was in possession of accused Rajveer. The plastic katta was having a green colour corner and a cream colour towel piece was tied on the mouth of the katta. On checking the plastic katta, he found 22 packets wrapped in a brown colour tape. The tapes were removed and dark brown colour cylindrical sticks in two layers were found inside the transparent polythene under the tape in 11 packets and in the rest 11 packets, four layers of dark brown colour slabs were found in transparent polythene under the tape. The brown colour substance from each packet was checked with the field testing kit and the same was found to be charas. On checking the weight of each packet, the same was found to be one kg. In total, 22 kgs of charas were found. From 11 packets, containing cylindrical charas, some charas were taken out from each packet and 2 samples of 100 gms each were prepared and reduced to two pullandas. From the other 11 packets of slabs containing charas, some

charas were taken out from each packet and 2 samples of 100 gms each were prepared and reduced to two pullandas. Case property and the FSL form Ex.PW1/F bearing his signatures were seized. He thereafter prepared the rukka Ex.PW4/A and handed the same to Constable Sanjeev(PW6) alongwith 8 pullandas, two FSL forms and two carbon copies of seizure memo. Constable Sanjeev left the spot in the private vehicle driven by Constable Parveen at about 1:30 AM on 29.02.2008. At about 4:30 AM on 29.02.2008, SI Bhagwan Singh (PW10) came to the spot in a government vehicle driven by Constable Parveen and PW4 handed over the documents and the custody of both the accused persons to him who inspected the site, recorded the statement of HC Om Prakash, interrogated both the accused, conducted their personal search and arrested them vide arrest memo Ex.PW1/G and Ex.PW1/H at about 8AM and recorded their disclosure statements vide Ex.PW1/K and Ex.PW1/L. Thereafter, they left the spot and reached the PS at 10 AM. PW4 prepared a special report u/s 57 NDPS Ex.PW4/B and submitted the same before SHO.

11. The testimony of PW4 SI Satish Rana finds substantial corroboration from the testimony of PW1 HC Om Prakash, PW3 Constable Sanjeev Kumar, PW6 ACP M.C. Katoch, PW7 ACP Mahinder Singh and PW10 SI Bhagwan Singh.

12. The plea of the appellants that no effort was intentionally made by SI Satish Rana to join any independent persons from a stable place or there is no eye witness or public witness regarding the recovery of the contraband from the appellants which clearly casts a doubt on the prosecution version is without substance. It has come in the testimony of the police officials

namely PW1 HC Om Prakash, PW3 Sanjeev Kumar, PW7 ACP Mahinder Singh and PW4 SI Satish Rana that PW4 made every effort to make public persons join the proceedings. SI Satish Rana initially asked four persons outside the PS to join the proceedings but they refused. Thereafter, when the raiding party was on the way, he asked four persons at ISBT, four persons outside Rohini Court complex and four persons at the spot to join but none of them agreed. Thereafter, before the search of the accused persons took place, he asked four more persons to join but they too refused to join the proceedings. It is common experience that public persons are generally reluctant to join police proceedings for variety of reasons. Investigation itself is a tedious process and a public witness, who is associated, has to spend hours at the spot. Normally, nobody from public is prepared to suffer any inconvenience for the sake of society. The other reason for the public witness not readily agreeing to associate with investigation is harassment of public witness that takes place in the courts. Normally a public witness should be called once to depose in the court and his testimony should be recorded and he should be discharged. But experience shows that adjournments are given even in criminal cases on all excuses and if adjournments are not given, it is considered as a breach of the right of hearing of the accused. These adjournments are specifically taken by counsels for accused persons, when witnesses are present, just to see that witnesses get harassed by calling them time and again. The excuses normally given in the courts are; the counsel having urgent personal work, left the court; death of some near relatives etc; the counsel being busy in arguing other matter in other court or cross examining other witness in some other court. This attitude of the courts of sending witness back is a major

cause of harassment which discourages public from associating in the investigation of any case. Since the police is faced with this handicap, the police cannot be blamed for not associating public witness. There is no presumption that the police witnesses are not credible witnesses. The testimony of every witness, whether from public or police, has to be judged at its own merits and the court can believe or disbelieve a police witness considering the intrinsic value of his testimony. Police witnesses are equally good witnesses and equally bad witnesses as any other witness and the testimony of police witness cannot be rejected on the ground that they are official witnesses.

13. Presumption of honesty is as much available to a police officer which is available to any other official witness. There is no presumption that police officials are liars. The effect of non-joining of independent witness is only that the court has to view the submission of the police or other witnesses with caution and circumspection and the veracity of the same has to be decided before placing reliance upon them for arriving at any conclusion regarding the guilt of the accused.

14. In ***Ajmer Singh vs. State of Haryana***, (2010) 3 SCC 746, Hon'ble Supreme Court observed:

"16. The learned Counsel for the appellant has submitted that the evidence of the official witness cannot be relied upon as their testimony, has not been corroborated by any independent witness. We are unable to agree with the said submission of the learned Counsel. It is clear from the testimony of the prosecution witnesses PW-3 Paramjit Singh Ahalwat, D.S.P., Pehowa, PW-4 Raja Ram, Head Constable and PW-5 Maya Ram, which is on record, that efforts were made by the investigating party to include independent witness at the time of recovery, but none was willing. It is true that a charge under the Act is serious

and carries onerous consequences. The minimum sentence prescribed under the Act is imprisonment of 10 years and fine. In this situation, it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule. Therefore, in the peculiar circumstances of this case, we are satisfied that it would be travesty of justice, if the appellant is acquitted merely because no independent witness has been produced. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence. In the present case, both the trial court and the High Court by applying recognized principle of evaluation of evidence of witnesses has rightly come to the conclusion that the appellant was arrested and Charas was recovered from the possession of the appellant for which he had no licence. We find no good reason to differ from that finding.”

15. Moreover, the Apex Court in ***P.P. Beeran vs. State of Kerala***, (2001) 9 SCC 571 has held that there is no mandatory requirement of having public witnesses in an NDPS case. The Supreme Court has further held that if the evidence of the Police Officer inspires confidence, then even if it is not corroborated by any other source, it can nonetheless be made sole basis for conviction. The aforesaid judgment has been relied upon by this Court in ***Paramjit Singh @ Pammi vs. State***, 154 (2008) DLT 524 and ***Nwadike Ugo Ben vs. State***, 2012 (4) JCC 180.

16. Appreciating the evidence on record on the anvil of the aforesaid principles, there is no acceptable reason to discard the testimony of the official witnesses which is otherwise reliable and trustworthy. The prosecution case cannot be disbelieved merely on the ground of non-joining

of public witnesses if the deposition of the police witnesses are convincing and credible. A perusal of the testimony of the prosecution witnesses reveals that despite cross-examination, nothing material could be elicited to discredit their testimony. Both the appellants are resident of District Bhiwani, Haryana and there would be no reason for the police officials to falsely implicate them in this case. Moreover, the accused persons did not allege any animosity or grudge against any of the police officials for which they would be falsely implicated in this case.

17. Regarding the ground of inordinate delay in lodging the FIR as the appellants were apprehended between 4:30-5 PM on 28.02.2008 whereas the FIR was registered on 29.02.2008, the same is satisfactorily explained from the testimony of the police officials. It is clear from the testimony of prosecution witnesses and the evidence on record that the raiding party reached the spot at about 4:15 PM and took their positions. At about 4:35 PM, both the appellants were seen coming towards the spot. Thereafter, both the appellants were apprehended and at about 5:30 PM, when PW4 SI Satish Rana was about to take the search of the appellants, PW7 ACP Mahender Singh arrived at the spot and thereafter search was taken of both the appellants. Samples were prepared, FSL form was filled, case property was seized and rukka was prepared vide Ex.PW4/A. PW3 Constable Sanjeev thereafter left the spot with Constable Parveen at about 1:30 AM and reached the PS at about 3 AM after which he handed over the rukka to PW2 HC Ramesh Chand on the basis of which PW2 recorded the present FIR vide Ex.PW2/A. Therefore, the submission of delay in lodging FIR does not hold water as course of event in registering the FIR is well explained by the prosecution witnesses.

18. The plea regarding contradictions in the testimony of the prosecution witnesses is again without merit. It was submitted that while PW1 HC Om Prakash stated that the test was conducted simultaneously whereas PW7 ACP Mahender stated that the test was conducted one after the other. PW1 HC Om Prakash in his cross examination has clearly stated that small quantity i.e. equivalent to the tip of the matchstick was taken out from the corner of each packet for testing and the test was conducted one by one. PW7 ACP Mahender also stated in his cross-examination that the test was conducted one after the other i.e. after the result of first packet was obtained. From the testimony of the prosecution witnesses, it is proved that first the search of appellant Rajeev took place whereby the test was conducted, contents were weighed, samples were prepared, remaining sticks were converted into a parcel and the parcels along with FSL were seized vide memo Ex.PW1/E. Only thereafter, search of appellant Rajveer was taken and the whole process was again followed. Therefore, the question of the test being conducted simultaneously does not arise which is clearly stated in the testimony of PW1 HC Om Prakash. Moreover, minor contradictions do not throw away the case of prosecution which is otherwise consistent.

19. It was also submitted in the appeal that samples were not taken from all the sticks and therefore it cannot be stated that all the sticks allegedly recovered were charas. It is clear from the testimony of PW1, PW3, PW4 and PW7 that field testing kit was carried to the spot. When the plastic katta of appellant Rajeev was checked, it contained 23 packets wrapped in brown colour tape. On removing the tape from the packets, dark brown colour cylindrical sticks in two layers were found inside a transparent polythene.

On checking the brown colour substance from each packet with the field testing kit, it was found to be charas and on weighing it, each packet was found to be one kg. In total, 23 kg of charas was found. From each packet, some charas was taken out and two samples of hundred gms each were prepared which were prepared in two separate transparent polythenes and was reduced into two pullandas. Thereafter, on checking the plastic katta of appellant Rajveer, 22 packets wrapped in a brown colour tape were found. The tapes were removed and dark brown colour cylindrical sticks in two layers were found inside the transparent polythene under the tape in 11 packets and in the rest 11 packets, four layers of dark brown colour slabs were found in transparent polythene under the tape. The brown colour substance from each packet were checked with the field testing kit and the same was found to be charas. On checking the weight of each packet, the same was found to be one kg. In total, 22 kgs of charas were found. From 11 packets, containing cylindrical charas, some charas were taken out from each packet and 2 samples of 100 gms each were prepared and reduced to two pullandas. From the other 11 packets of slabs containing charas, some charas were taken out from each packet and 2 samples of 100 gms each were prepared and reduced to two pullandas. It is clear that each packet found in the kattas of both the appellants were checked with the field testing kit and the same were found to be charas. Thereafter some charas was taken out from each packet and 2 samples of 100 gms were prepared. Therefore, it cannot be said that samples were not taken from all the sticks.

20. Regarding the submission that since the recovery of the contraband was done from an open place, Section 42 NDPS is not applicable and prosecution has failed to provide any explanation as to why no warrant or

authorization was issued before conducting the raid is, without merit. It is clear from the testimony of the prosecution witnesses and the evidence on record that after the secret informer informed PW4 SI Satish Rana about the supply of huge quantity of charas to someone near Gehvera Mor at the corner of Indane Gas plant between 4:30 to 5 PM, PW4 produced the secret informer before the SHO Inspector M.C. Katoch who after satisfying himself with the information conveyed the same to ACP Narcotics Sh. Mahender Singh telephonically who directed PW4 to conduct the raid. PW4 then recorded the information vide DD no.15A Ex.PW2/D. It is rightly alleged that Section 42 NDPS is not applicable in this case as the recovery was done in an open place i.e. at Ghevara Mor near the Indane Gas plant. In the present case, Section 43 is applicable.

21. Section 43 of NDPS Act states:

“43. Power of seizure and arrest in public places. Any officer of any of the departments mentioned in section 42 may-

(a) Seize in any public place or in transit, any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter IV relating to such drug or substance;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter IV, and if such person has any narcotic drug or psychotropic substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company
Explanation.-For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

22. Section 43 NDPS nowhere states that a warrant or a authorization is required before search is done in an open place. In **Ramesh Kumar**

Rajput@Khan v State, CrI.A.755/2004 decided on 2.05.2008, this Court held:

*13. As regards the argument that the requirement of Section 42 NDPS Act was not complied with since the secret information received on 15th January 2000 was not reduced to writing, the learned Counsel for the Respondent appears to be right that the applicable Section is Section 43 and not Section 42 since the search, arrest and seizure took place in a public place i.e. the roof of Palika Bazar car parking. Nevertheless the DD entry 21 (exhibit PW 12/A) and DD entry 29 (exhibit PW 12/D) show that the information received constitute sufficient compliance of reducing that information into writing. The decision in **Narayanaswami Ravishankar v. Asst. Directorate of Revenue Intelligence** 2003CriLJ27 applies on the facts of the present case. There the Court held (SCC pp. 8- 9):*

In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the Airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 43 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant.

It was explained in Abdul Rashid Ibrahim Mansuri v. State of Gujarat (supra) that the mandatory requirement of reducing the information to writing applied when the information is that the narcotic substance is kept or concealed in any building, conveyance or enclosed place. As far as the present case is concerned, the arrest, search and seizure having been made on the roof of the Palika car parking, undoubtedly a public place, the requirement of Section 42 does not apply. Therefore the contention of the appellants in this regard is rejected.

23. In the present case, PW4 SI Satish Rana duly produced the secret informer before the SHO Insp. M.C. Katoch who after being satisfied, telephonically informed ACP Mahender Singh. Thereafter PW4 SI Satish Rana reduced the information in writing as DD no.15A vide Ex.2/D. Section 43 NDPS Act does not require a warrant or authorization when seizure or

arrest is done in an open place. Therefore, this submission of the appellants is also without any merit.

24. It was pleaded that the police failed to bring on record as to when the contraband was to be delivered. There is no requirement that for conviction under Section 20 NDPS, the police is suppose to furnish any information regarding when and where the contraband is being delivered. Section 20 NDPS Act states:

“20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder –

(a) Cultivates any cannabis plant; or

*(b) Produces, manufactures, **possess**, sells, purchases, transports, imports inter-State, exports interstate or uses cannabis, shall be punishable, - [(i) Where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and (ii) Where such contravention relates to sub-clause (b),-*

(A) xx

(B) xx

(C) And involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

25. Appellants Rajiv Grewal and Rajveer were found in possession of 23kg and 22kg of charas and were convicted under Section 20(b) NDPS Act by the Learned Trial Court for being in possession of commercial quantity of charas. Therefore the question of where and to whom the same was to be delivered is irrelevant.

26. As regards last limb of ground of attack regarding possibility of tampering with case property having been sent after seven days of recovery, same is devoid of merit. It has come in the statement of PW4 SI Satish Rana that the samples as well as remaining contraband were sealed with the seal of '6APSNBDELHI'. Form FSL was filled in and on that also same seal was affixed. The sample pulanda, case property along with Form FSL were sent through PW3-Head Constable Sanjeev Kumar who produced the aforesaid articles before SHO Inspector M.C. Katoch who affixed his seal of '1SHO/N.BR.DELHI' on all pullandas and form FSL. He deposited the case property with PW9-Head Constable Vijay Pal who was working as MHC(M) at Police Station Narcotics Branch on that day and he made entries in the register No.19, Ex.PW9/A. Thereafter on 7th March, 2008, he handed over sealed pulandas duly sealed to PW8-Head Constable Mahesh vide RC 185/21 for depositing the same at FSL, Rohini and as per deposition of Head Constable Mahesh, he deposited the articles duly sealed at FSL, Rohini. Both these witnesses have deposed that nobody tampered with the case property till the same remained in their possession. The same went un-rebutted and unchallenged as no cross-examination was effected on this point. As per report of FSL Ex.PX, three cloth parcels duly sealed with the seal of '1SHO/N.BR.DELHI' and '6APSNBDELHI' were received in FSL and it tallied with the specimen seals as per the forwarding letter. Therefore, mere fact that there is a delay of seven days in sending samples to FSL does not raise any presumption that the case property was tampered with. In ***Ramesh Kumar Rajput @ Khan vs. The State of NCT of Delhi*** Manu/DE/0786/2008 delay of 13 days in sending the sample *pullandas* to FSL was not considered to be fatal keeping in view the fact that there was

nothing on record to suggest or to infer that the sample *pullandas* were tampered in the Malkhana. Similarly, in *Ahmad vs. State* 2011 III AD (Crl.) (DHC) 293 delay of 59 days in sending samples was not considered to be fatal in the absence of any evidence or inference of tampering with the sample *pullandas* on the basis of record. In *Mohan Lal* (supra) again a plea was taken that the seized articles were not sent immediately for chemical examination. Supreme Court relied upon *Hardip Singh vs. State of Punjab*, (2008) SCC 557 where a two-Judge Bench while dealing with the question of delay in sending the samples of Opium to the FSL opined that it was of no consequence for the fact that the recovery of the said sample from the possession of the appellant had been proven and established by cogent and reliable evidence and that apart, it had also come in evidence that till the date parcels of samples were received by the chemical examiner, the seal put on that parcels was intact. Under the circumstances, the delay of seven days in sending sample to FSL is immaterial and would not dent the prosecution case.

27. No other grounds were urged in the grounds of appeal.

28. After meticulously examining the entire material on record, the learned Trial Court has convicted the appellants u/s 20 of the NDPS Act which does not call for any interference.

29. Accordingly, both the appeals are dismissed. Pending applications also stand disposed of.

Trial Court record along with copy of the judgment be sent back.
Appellants be informed through the Superintendent Jail.

(SUNITA GUPTA)
JUDGE

MARCH 28, 2016/rs