

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

RESERVED ON : 3rd MAY, 2016

DECIDED ON : 21st JULY, 2016

+ **CRL.A. 1150/2014 & CrI.M.B.10359/2014**

JAGROOP SINGH @ CEETA

..... Appellant

Through : Mr.Neeraj Bhardwaj, Advocate.

Versus

DIRECTORATE OF REVENUE INTELLIGENCE..... Respondent

Through : Mr.Satish Aggarwala with Mr.Vineet
Sharma, Advocates.

AND

+ **CRL.A. 1691/2014 & CrI.M.B.11166/2014**

AQIL

..... Appellant

Through : Mr.S.B.Dandapani, Advocate.

Versus

STATE

..... Respondent

Through : Mr.Satish Aggarwala with Mr.Vineet
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 01.02.2014 of learned Special Judge in Sessions Case No.02A/09 in a case titled 'Directorate of Revenue Intelligence vs. Jagroop Singh @ Ceeta and others', whereby Jagroop Singh @ Ceeta (A-1) and Aqil (A-2) were held guilty for committing offences under Section 21(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (In short 'NDPS Act'), they have filed the instant appeals. By an order

dated 06.02.2014, they were sentenced to undergo RI for ten years with fine ₹1 lac each each.

2. Briefly stated, in the complaint case instituted by Directorate of Revenue Intelligence (In short 'DRI') allegations against the appellants were that on or before 19.07.2008, they hatched criminal conspiracy to deal in supply of narcotics drugs i.e. heroin, a contraband substance. On 19.07.2008, they both were apprehended near Yamuna Vihar Bus Depot being in possession of 8.932 kg. heroin (having purity from 0.97% to 34.9%).

3. On 18.07.2008 at about 05.10 p.m., PW-1 (Sujeet Kumar), Intelligence Officer, received a secret information that two individuals would bring some narcotics concealed in a silver colour Toyota Innova car bearing registration No. PB 08 BD 9648 to deliver it to someone at Yamuna Vihar Bus Depot, Delhi at about 01.30 a.m. on the night intervening 18/19.07.2008. The secret information (Ex.PW-1/A) was reduced into writing and put up before PW-2 (P.K.Singh). PW-3 (R.Roy) was instructed to take necessary action for seizure of the contraband substance. A raiding team was organised and two independent public witnesses – Azim Khan and Annu were associated therein. At around 01.30 a.m. the aforesaid vehicle was found coming at the spot. It was occupied by two male individuals who parked the vehicle opposite bus depot and remained seated therein. The DRI officials continued to keep a discreet watch over them. The individuals waited for 15 – 20 minutes and when none arrived, the driver started the vehicle to move. On that, the said vehicle was intercepted. The DRI officials introduced themselves to both the occupants. A-2 had driven the

said vehicle and A-1 was sitting adjacent to him on the front seat. They were shown Search Authorization (Ex.PW-3/A).

4. Further case of the prosecution is that since the spot was not conducive to conduct the necessary proceedings, with consent of both the occupants identified as A-1 and A-2 subsequently, they were brought to the parking area on the ground floor of the building situated at D Block, IP Bhawan, IP Estate, New Delhi. Notices under Section 50 of NDPS Act (Ex.PW-3/B and Ex.PW-3/C) were served upon the appellants. Their written replies were recorded on the said notices. Systematic examination of innova car conducted by complainant / PW-3 (R.Roy) resulted in recovery of nine cloth packets having different types of marking from an empty space behind the cabinet of dash board. Nine packets and the documents recovered from the appellants along with 'panch witnesses' were taken to 7th floor office of the DRI situated in the aforesaid building and personal searches of the appellants were conducted. Detailed examination of the recovered nine packets was undertaken and these were found containing white granular substance emanating pungent smell. The gross weight of the nine packets of heroin was found to be 9.170 kg.; net weight was 8.932 kg. Two representative samples of 5 grams each from the aforesaid packets were drawn. Necessary proceedings were conducted at the spot regarding seizure of the contraband. Panchnama (Ex.PW-3/D) was prepared. Pursuant to summons (Ex.PW-3/H) under Section 67 of the NDPS Act, A-1's voluntary statement (Ex.PW-3/J) was recorded. Similarly pursuant to the summons (Ex.PW-3/I), A-2's statement (Ex.PW-3/K) under Section 67 of the NDPS Act was recorded. Both the accused persons were formally arrested on 19.07.2008 vide arrest memos (Ex.PW-3/L and Ex.PW-3/M); they were

medically examined vide MLC (PW-13/A and Ex.PW-13/B) respectively. Residential premises of the appellants were searched in a follow up action but nothing incriminating was recovered. The exhibits collected during investigation were deposited with CRCL. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a complaint case was filed against both the appellants in the Court.

5. In order to establish its case, the prosecution examined fourteen witnesses in all. In 313 Cr.P.C. statements the appellants denied their involvement in the crime and pleaded false implication. They examined DW-1 (D.P.Singh) and DW-2 (Jyoti Kumar) in defence. The trial resulted in their conviction under Section 21(c) NDPS Act. It is relevant to note that both the appellants were acquitted of the charge under Section 29 of the NDPS Act and DRI did not challenge the said acquittal.

6. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective. It ignored vital discrepancies and infirmities in the statements of the prosecution witnesses without cogent reasons. It overlooked that material independent public witnesses were not produced during evidence. The case property was tempered with. Learned counsel for the DRI urged that there are no valid reasons to disbelieve the testimonies of official witnesses particularly when in 313 Cr.P.C. statement A-1 admitted about their apprehension during their presence in Innova at the relevant time. Huge recovery of contraband is not expected to be planted by the DRI officials who had no prior animosity with any of the appellants. All possible steps

were undertaken to search the independent public witnesses whose signatures appeared on various documents but they could not be traced.

7. At the outset, it may be noted that appellants' conviction is primarily based upon the sole testimony of PW-3 (R.Roy). Two independent public witnesses – Azim Khan and Annu were allegedly joined during investigation. The prosecution, however, failed to produce them before the Court for examination. No sincere efforts seem to have been made to secure their appearance before the Court. The secret information was received at around 05.10 p.m. Soon thereafter, it was allegedly put up before PW-2 (P.K.Singh) who called PW-3 (R.Roy) in his office; discussed the information and directed him to take appropriate action for seizure of the contraband vide endorsement from 'A to A' on Ex.PW-1/A. It is unclear as to at what time, the secret information was put up before PW-2 (P.K.Singh) and when PW-3 (R.Roy) was called in the office for discussion. It is also unclear as to at what time PW-3 (R.Roy) organised a raiding party after receipt of the directions from PW-2 (P.K.Singh). No genuine efforts seem to have been made by the Investigating Officer to associate independent public witnesses promptly. It has come on record that both these public witnesses were called in the office on 19.07.2008 at 0015 hours. It has not been elaborated by PW-3 (R.Roy) as to from where these witnesses were arranged; and for what connection, they both were together at that odd hours. In the cross-examination, the complainant was specifically inquired as to who had gone to call the public witnesses. In response to that, PW-3 (R.Roy) merely informed that he had sent some office staff to call 'panch witnesses' and they had brought Azim Khan and Annu to their office situated at 7th floor of the building. He did not mention the name of the

officials who had brought them to the office. The Investigating Officer did not explain as to why names and addresses of both these witnesses were not verified. As happens in number of such cases, both these independent public witnesses allegedly associated in the investigation were not produced for examination before the Court. Summons were issued to both these witnesses, however, they were found not residing at the given addresses. Consequent to that, DRI counsel opted to drop both these witnesses from examination. No genuine efforts were made by the Investigating Officer to find out where both these witnesses had suddenly disappeared. It is relevant to note that both these witnesses were allegedly available to PW-3 (R.Roy) when pursuant to the summons (Ex.PW-3/R and Ex.PW-3/S) under Section 67 of the NDPS Act, they had appeared before him on 22.07.2008 to record their statements (Ex.PW-3/T and Ex.PW-3/U). It is mystery as to by what mode summons were served upon both these witnesses. The individual who had served the summons at the given addresses has not been examined. It is curious to note that when both these witnesses were available to the Investigating Officer at the given addresses on 22.07.2008, why they could not traced or located when summons were issued for their appearance by the Court. The Investigating Officer did not examine any witness from the said locality to ascertain if both these witnesses had ever lived at the given addresses or when they vacated it or where else they had shifted. Joining of independent public witnesses in the investigation is not a mere formality. The Investigating Officer did not furnish any believable reasons as to why no independent public witness was associated from any office, shop or residence. It appears that deliberately no independent public witness from known / certain place was joined. Observations of this Court in *Nnadi*

K.Iheangi vs.Narcotics Control Bureau in CrI.A.No.1416/2010 decided on 4th September, 2014 are relevant in similar circumstances:-

“25. The above submission conveniently ignores the position that it is the duty of the prosecution to ensure the presence of its witnesses. It was the responsibility of the NCB to provide the correct address of the witness and ensure that the process was served at the said address. Once it was known from the report on the reverse of the summons for the hearing on 15th July 2009 that the address furnished by the NCB was incomplete, there was no justification in getting summons prepared for the two subsequent dates for the address at E-15/12 G.T.K Road. The process server had noted that one Mr. Jain was residing in E-15, G.T.K. Road, Delhi and that there was no E-15/12. In the circumstances, it was incumbent on the NCB to ascertain the correct address of Rajiv Chauhan. Further, on two occasions, the trial Court directed the service of summons to the said witness through the IO, since he was the only public witness. On the first occasion, when such an order was passed on 13th January 2010, the trial Court was informed that the direction could not be complied with since the IO was unwell. On the second occasion, when such an order was passed, on 24th May 2010, the Director, NCB was called upon “to monitor the service and submit action taken report on separate letter addressed to the Court.” The said order was not complied with. If only NCB had taken effort of finding out what was written on the reverse of the summons, it would have been obvious that the summons was being sent repeatedly to an address, which was incomplete and not correct. This points to an abject failure on the part of NCB to produce the panch witness for examination in the Court. The responsibility for producing the said witness cannot be shifted to the accused. The prosecution was given at least six opportunities and deliberately failed to take steps to find out the correct address and serve the summons on such correct address.

26. The lapse of the NCB points to another difficulty. The summons issued to the panch witness in the very first instance

by the NCB during investigation, gave the address as E-15/12, G.T.K. Road, Delhi. The summons was dated 15th December 2007. Rajiv Chauhan was asked to appear before the NCB on 4th January 2008. He is stated to have appeared pursuant to the said summons. The NCB failed to explain how it managed to get the summons in the first instance served on Rajiv Chauhan at an address that was either incomplete or false.

28. Nevertheless, the inescapable conclusion is that the NCB having failed to produce the named panch witness who was shown as being present at the time of arrest and seizure, there remains a serious unexplained doubt whether such a witness in fact existed. The trial Court appears to have overlooked the above features of the prosecution case and easily accepted the explanation that the witness was perhaps not served with the summons in the first instance by post. That was a surmise which was not warranted. In the process, the trial Court overlooked its own orders requiring service of summons upon Rajiv Chauhan through the IO and calling for a report from the Director, NCB.

29. The evidence of PWs 4 and 5, both NCB officers, stating that Rajiv Chauhan was associated in the arrest and search of the Appellant was at best self-serving and not re-assuring when summons were repeatedly received back unserved stating that the address given for Rajiv Chauhan was either incomplete or false. The first line of Rajiv Chauhan's statement under Section 67 NDPS Act recorded that he appeared pursuant to the summons issued to him. If the address given on the summons was false or incomplete, then the onus of proving how Rajiv Chauhan appeared on his own before the NCB on 4th January 2008 was squarely on the prosecution and that burden was not discharged by it.

30. In a large number of cases involving the NCB, there is a failure to produce the panch witness named. There are cases where panch witnesses are not associated at all and it is sought to be explained by the prosecution that despite its request no person from the public came forward to join in the raid. The latter explanation has been accepted by some Courts by taking

judicial notice of the fact that the members of the public are generally reluctant to be involved in criminal cases as witnesses. However, in a case where the NCB specifically names a public witness as being associated in the arrest and seizure, its failure to produce such person for cross-examination must be specifically explained by it.

31. In the present case the failure to produce the public witness was attributable to a false address given for the witness. This raises serious doubts as to whether such a witness existed at all. It will amount to falsification of the trial Court record if the thumb impression on the arrest and seizure memo is attributed to a witness who is not able to be produced and it is shown that the address given for him, even in the first instance in the summons issued by NCB, was false. This casts serious doubts on the trustworthiness of the prosecution version and in that circumstance the benefit of doubt should certainly go to the accused. Retracted statement of the Appellant under Section 67 NDPS Act.”

(Emphasis given)

8. This Court also made similar observations in ‘*Rakesh Kumar Mehra and Ors. vs. State and Ors.*’, MANU/DE/2460/2015 in CrI.A. 1360 decided on 24.08.2015. In the said case also, DRI had allegedly associated two independent public witnesses – Sandeep Singh and Akshit @ Sonu, however, they could not be located despite so-called efforts made by the prosecution. Co-incidentally, the accused therein were apprehended on the basis of secret information from reliable source that a white colour maruti 800 car bearing registration No. JK 02G 4126 occupied by two male persons would cross Singhu Border on GT Karnal road to enter Delhi between 09.30 a.m. to 10.30 a.m. and some narcotic drug was concealed therein. The said information was also reduced into writing and was placed

before Mr.P. K.Singh (PW-2 in the present case). Incidentally, PW-12 (Jyothimon) in the instant case was the Investigating Officer in the said case and he was directed to take appropriate action in the matter immediately by PW-2 (P.K.Singh). It is again relevant to note that the Investigating Officer R.Roy (PW-3) was one of members in the said raiding team. The accused persons therein were also brought in similar circumstances to the parking lot and all the proceedings were conducted there. Needless to say, the appeals were accepted and the conviction and the sentence recorded by the Trial Court were set aside.

9. True, it is not a rule of law that public witnesses should be joined in every eventuality and no conviction can be based upon the testimonies of police/ official witnesses. Sometime it becomes highly difficult for the police/ official witnesses to associate independent public witnesses for various reasons. At the same time, it is undoubtedly true that joining of independent public witness is not an empty formality. The Investigating Officer is required to make genuine efforts to associate genuine independent public witnesses (if available). This is necessitated so as to lend authenticity and credibility to the search and recovery that are effected.

10. The most glaring feature of the instant case is that the raiding party comprised of PW-3 (R.Roy); Kamal Sharma, Intelligence Officer, Yogesh Chaudhary, Intelligence Officer, Ajay Bhasin (SDA) and one or two other staff members. Various documents including Panchnama (Ex.PW-3/D) prepared at the spot, however, do not bear signatures of any other member of the raiding team. None of them was cited as a witness. The complainant did not deem it fit to examine any other member of the raiding

team to corroborate his version. Adverse inference is to be drawn against the investigating agency for withholding material witnesses. No plausible explanation has been offered as to why signatures of the other members of the raiding team were not taken on various documents purportedly executed in their presence.

11. As noted above, it is uncertain at what time the secret information was received. PW-1 (Sujeet Kumar), Intelligence Officer merely informed that on 18.07.2008 at around 1710 hours, he received a phone call from his informer and the information was reduced into writing vide Ex.PW-1/A. It was put up before PW-2 (P.K.Singh) at 1730 hours. In the cross-examination, he admitted that the secret information was received in the DRI Control Room on phone and he was informed by a peon that the call was for him. He did not know who received the phone call in the control room. Peon's name who had informed him about the telephone call was not revealed.

12. Secret information is required to be placed before immediate superior officer. Admittedly PW-2 (P.K.Singh) before whom the secret information was put up by PW-1 (Sujeet Kumar) was not his immediate superior officer / appraisal. PW-1 (Sujeet Kumar) did not explain as to why he opted to put up the secret information only before PW-2 (P.K.Singh) posted as Deputy Director in DRI Headquarters. No written document has been placed to infer if PW-1 (Sujeet Kumar) was required to report only to PW-2 (P.K.Singh) and was working directly under him.

13. The secret information (Ex.PW-1/A) was written on a loose paper; it does not bear any official number. It was not reduced into writing in a official register duly maintained in the office. It is unclear as to by what

mode PW-2 (P.K.Singh) directed PW-3 (R.Roy) to take up appropriate action for seizure of the contraband. The secret information did not reveal the broad-features of the occupants of the car; from where the vehicle was to arrive and who would be driving it. The secret information was not verified to ascertain its authenticity. Strange enough, as per secret information, the vehicle was to arrive at 01.30 hours on the night intervening 18/19.07.2008, and it arrived at the very spot exactly at that time.

14. The Investigating Officer did not give plausible explanation as to how the spot where the accused persons were allegedly apprehended was not conducive to conduct necessary proceedings. Both the accused persons were brought to the parking lot of the DRI office and all the proceedings were conducted therein. What sanctity can be attached to such proceedings? Notices under Section 50 NDPC Act were served allegedly at the parking lot. Both the accused persons were illiterate and their responses in verbatim were allegedly recorded by the 'panch witnesses' who were never produced before the Court during trial. It has come on record that owner of the seized vehicle was one Mr.Kulwant Singh. No proceedings whatsoever were initiated against him; he was not cited a witness. It was not ascertained as to how and in what manner, the vehicle in question came into possession of the appellants, and if so, when and where. PW-3 (R.Roy) admittedly did not visit Punjab in connection with further investigation. Role of the owner of the vehicle in the entire occurrence has not been ascertained / investigated. Report under Section 57 (Ex.PW-4/C) is suspect. Again, it is on a loose sheet and its dispatch number does not find mention in any record duly maintained in the office. It is doubtful as to when this report was submitted to PW-4 (B.K.Banerjee), and if so, by what mode and by whom. It does not

contain any diary / dispatch number. Regarding compliance of Section 50 of NDPS Act the notices were not served at the spot. The responses are in the handwriting of the alleged 'panch witnesses' who have not appeared to corroborate IO's statement.

15. Statements recorded under Section 67 NDPS Act do not inspire confidence. These have not been corroborated or substantiated. In the follow up action, no incriminating material whatsoever could be recovered at the appellants' residences. The Investigating Agency was unable to find out as to who was the supplier of the contraband to the appellants; from where the contraband had originated; who was the person to whom the contraband was to be delivered. Appellants' previous involvement has not been ascertained. It is unbelievable that the kingpin after handing over huge quantity of contraband of substantial value in the international market would not remain in touch with the appellants for its due and proper delivery to the relevant person. No Call Detail Record has been collected. It did not emerge if prior to the apprehension, the appellants were in constant touch with the supplier of the contraband or with the person to whom the contraband was to be delivered. It was also not verified as to from where the vehicle originated, what was its route. The Investigating Officer was unable to disclose as to which vehicle was used to travel by the members of the raiding team and who was its driver. Log book regarding the movement of the official vehicle has not been produced. The accused persons were not produced before the Court soon after their arrest on 19.07.2008. They were allegedly taken for medical examination at late hours on 19.07.2008; put up in the lockup of the Darya Ganj Police Station and could be produced before the Court only on 20.07.2008. The 'seal' used to seal the case property

did not belong to the complainant; it did not bear his 'initials'. The seal was allegedly of "Directorate of Intelligence Officer". The case property remained allegedly in occupation of PW-8 (K.K.Sood), Assistant Director DRI Headquarters, New Delhi till 21.07.2008 when the sealed trunk containing the case property were handed over to PW-3 (R.Roy) to deposit in the valuable godown. Possibility of the case property to be tampered with during this period cannot be ruled out.

16. Statements under Section 67 Evidence Act are in the handwriting of PW-5 (Ram Kanwar) and PW-6 (Jaiprakash Raju). They both were working as Tax Assistants in DRI Headquarters on the relevant date i.e. 19.07.2008. It is unclear as to how the appellants approached them to record their statements. They were not so directed by the Investigating Officer to assist the appellants. No sanctity can be attached to the statements under Section 67 of the Act particularly when A-2 had admittedly opted to retract it at the earliest available opportunity.

17. The appellants have produced many documents containing information received through RTI. Number of documents produced in defence reveal that in similar circumstances, in most of the cases, independent public witnesses relied upon by DRI were dropped and could not be served or were found not traceable. It is really a matter of concern. It cannot be coincidence that in various cases detailed in Ex.DW-1/D, the public witnesses won't be available / traceable.

18. In the light of the above referred deficiencies, inconsistencies and discrepancies, statement of the Investigating Officer without corroboration from other members of the raiding team and independent witnesses cannot 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 exclude every chance of false implication. The prosecution has failed to establish the commission of offence by the appellants beyond reasonable doubt. It cannot take benefit of appellants’ inability to establish their defence pleaded in 313 Cr.P.C. statements beyond reasonable doubt. Mere apprehension of the appellants is not enough. The evidence is scanty and lacking to establish that the contraband was recovered from the possession of the appellants in the manner alleged by the prosecution on the said date and time. They deserve benefit of doubt.

19. Resultantly, the appeals filed by the appellants are accepted. Pending applications also stand disposed of. The conviction and sentence are set aside. The appellants shall be released forthwith if not required to be detained in any other case.

20. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information.

(S.P.GARG)
JUDGE

JULY 21, 2016 / tr