

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

RESERVED ON : 4th MAY, 2016

DECIDED ON : 18th JULY, 2016

+ **CRL.A.1715/2014 & CRL.M.B. 11208/2014**

AJAY

..... Appellant

Through : Mr.Biswajit K.Patra, Advocate.
versus

STATE (GNCT OF DELHI)

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 24.05.2014 of learned Addl. Sessions Judge in Sessions Case No.12A/2011 arising out of FIR No.200/2011 PS Malviya Nagar by which the appellant – Ajay was convicted for committing offence under Section 20(b)(ii)(C) of NDPS Act. By an order dated 27.05.2014, he was sentenced to undergo RI for ten years with fine ₹1 lac.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 25.05.2011 at about 05.40 a.m. at Police Picket Shivalik Road, near Jal Bord Office, Malviya Nagar, the appellant - Ajay was found in possession of 161.200 Kg. of 'Ganja' without licence.

3. On 25.05.2011, PW-9 (SI Amit Chaudhary), PW-1 (HC Netrapal) and PW-11 (Const.Suraj Vir Tomar) were present at Anti-Snatching Picket, Shivalik Road. At about 05.40 a.m. one red colour Maruti Zen without number plate was seen coming from Panchsheel flyover side.

On being signalled to stop, SI Amit Chaudhary made enquiries from the appellant driving the said car and asked him to produce relevant documents. The appellant did not furnish the documents. The car was found loaded with bags; two bags were lying in the front seat. On checking one bag, smell like 'Ganja' was found coming out of it. On further enquiries, it was found that the bags total numbering eight loaded in the car had 'Ganja' contained therein. Notice under Section 50 NDPS Act (Ex.PW-9/C) was served upon the appellant. Weighing machine was arranged and the total weight of the 'Ganja' came to be 161.200 kg. Two samples of 250 grams each were taken out the eight bags. Necessary proceedings were conducted. Ex.PW-9/A was prepared and sent for lodging FIR. Subsequent investigation was taken over by ASI Vijay Singh. The appellant was arrested. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed against the appellant in the Court. In order to establish its case, the prosecution examined twelve witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime and pleaded false implication. He did not examine any witness in defence. The Trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

4. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. No independent public witness was associated at any stage of the investigation despite their availability. Number of material infirmities have emerged in the statements

of the prosecution witnesses. Delay in sending the samples to Forensic Science Laboratory has not been explained. Possibility of tampering with the case property can't be ruled out. Certain material witnesses were not examined. Learned Addl. Public Prosecutor controverting the arguments urged that there are no valid reasons to disbelieve the testimonies of the police officials in the absence of any material inconsistency.

5. The occurrence took place on 25.05.2011 at around 05.40 a.m. when PW-9 (SI Amit Chaudhary) along with his police staff PW-1 (HC Netrapal) and PW-11 (Const.Suraj Vir Tomar) was present on patrolling duty in the area. When they were in the process of checking the vehicles, it was found that a Maruti Zen without number plate was approaching from the side of Panchsheel flyover. When the appellant driving the said vehicle failed to furnish the documents and answer satisfactorily, further enquiries were made. The vehicle was found loaded with eight bags. On suspicion, the bags were checked and these were found to contain 'Ganja'. Notice under Section 50 (Ex.PW-1/A) was served upon the accused. Vide reply (Ex.PW-1/B), he declined to be searched in the presence of Metropolitan Magistrate / Gazetted Officer. Admittedly, the said reply is in the appellant's handwriting and bears his signature. Necessary proceedings were conducted and the total weight of the 'Ganja' was assessed as 161.200 kg. Rukka (Ex.PW-9/A) was prepared and sent for lodging First Information Report at 09.10 a.m. It gives detailed account as to how and under what circumstances the appellant was apprehended and recovery of the 'Ganja' contained in eight bags loaded in the car was recovered. Since the FIR was lodged without any delay and the appellant was named to be the perpetrator of the crime, there was least possibility of the police officials to

fabricate a false story in such a short interval. The vehicle Maruti Zen used for transportation of 'Ganja' was seized vide seizure memo (Ex.PW-1/D). Subsequently, it was found to be a stolen vehicle belonging to PW-3 (Chetan Logani) who had lodged FIR No.68/2011 under Section 379 IPC at Police Station Malviya Nagar on 14.02.2011 about its theft. The appellant did not deny the possession of the vehicle with him at the relevant time. He did not offer any explanation as to how the stolen vehicle came in his possession; if so when and from whom. The police officials are not expected to plant the stolen vehicle upon the appellant on their own. This vehicle was released on superdari to PW-3 (Chetan Logani) subsequently and was identified by him. At the time of examination appellant's counsel specifically stated that he had no objection regarding exhibition of the car in evidence and its identity would not be disputed.

6. Undoubtedly the evidence produced by the prosecution primarily consists of only of police officials and no independent public witness was associated at any stage of investigation. It is relevant to note that the occurrence had taken place at about 05.40 a.m. when at that hour of time, no independent witness to be associated was available at the spot. The police officials have explained that some drivers of the passing vehicles were requested to join the investigation but none of them agreed. Non-joining of independent public witnesses per se is not fatal. It only puts the Court on guard to scrutinize the testimony of the police officials with great care and caution.

7. In the present case, all the witnesses PW-9 (SI Amit Chaudhary), PW-1 (HC Netrapal) and PW-11 (Const.Suraj Vir Tomar) have corroborated each other on all material facts and despite very lengthy cross-

examination, no material infirmities could be extracted to disbelieve them. Nothing has surfaced on record if any of the police officials was acquainted with the accused prior to the occurrence and nurtured any animosity to falsely implicate him in the crime. Testimonies of all the police officials are consistent throughout.

8. Recovery of the contraband as such is not under challenge. In 313 Cr.P.C. statement the appellant admitted recovery of the 'Ganja', however, he attempted to shift the blame entirely upon Bunty (since Proclaimed Offender). His defence is that one day after playing with his friends in the street, when he was sitting on a 'chabutara' on the ground floor outside a house owned by PW-5 (Jai Bhagwan), some police officials enquired from some neighbours regarding a room on the ground floor lying locked that time. Neighbours wrongly told the police officials that the said room belonged to him. When the police officials broke open the lock of the said room, some bags containing 'Ganja' were recovered from there. Subsequently, on enquiry, the police officials found that the said room was taken on rent by Bunty who was also in occupation of first floor premises of the said house. Bunty was not available at his residence that time. The police officials took him to the police station and falsely implicated him in this case. This defence deserves outright rejection. The appellant did not examine any witness from the locality to substantiate his plea. No such defence was put in the cross-examination of the prosecution witnesses. The appellant did not examine any neighbour who had allegedly given wrong information to the police about the ownership of the room on the ground floor. He also did not examine any of his friends to substantiate his version that after playing with them, he was just sitting on the 'chabutara' when the

police officials arrived there. No complaint whatsoever was lodged by the appellant or any of his family members for his false implication. PW-5 (Jai Bhagwan) owner of house No.A-104B, Hari Enclave, Kirari Suleman, Sultanpuri, Delhi, categorically deposed that about a year before, he had let out first floor premises consisting of two rooms, kitchen, bath room and toilet on rent to one Bunty who lived there along with his wife and children. He further deposed that the appellant also lived along with Bunty in the said house. Subsequently, Bunty vacated the rented accommodation and left to some unknown destination. In the cross-examination, he explained that the appellant was not known to him prior to the incident. He volunteered to add that he had seen him wandering around his locality / house sometimes. PW-5 (Jai Bhagwan) did not state if the room on the ground floor was on rent with Bunty. He also did not state if any contraband was recovered from the room on the ground floor as alleged by the appellant. In 313 Cr.P.C. statement the appellant gave his residential address as House No.248-249, H-1 Block, Hari Enclave, Suleman Nagar, J.J.Colony, Sultanpuri, Delhi. However, he did not produce any document as to since when he was residing there and who was its owner. The appellant did not explain as to what connection / nexus he had with Bunty (Proclaimed Offender).

9. The Trial Court has dealt with all the relevant contentions raised in the instant appeal. These have been dealt with minutely and this Court finds no sound reasons to deviate from the said findings. Since it was a case of chance recovery, Investigating Officer was under no legal obligation to serve notice under Section 50 of the NDPS Act. However to be on the safer side, notice under Section 50 NDPS Act (Ex.PW-9/C) was served upon the accused and he declined to exercise his right vide reply

(Ex.PW-1/B). Besides this, the recovery of the contraband effected is not from the “person of the accused”. Mere delay in sending the sample to FSL is not fatal. In the instant case the appellant has not shown if any prejudice was caused due to small delay in sending the samples to FSL. Nothing has come on record to infer if the samples were tampered with. When these samples were received in Forensic Science Laboratory, its seals were found intact.

10. Minor discrepancies, inconsistencies or infirmities highlighted by the appellant’s counsel are inconsequential as they do not affect the core of the prosecution case about the recovery of the ‘Ganja’, a contraband, from the appellant at the relevant time. The impugned judgment based upon fair and proper appreciation of the evidence deserves no intervention. The accused did not furnish plausible explanation to the incriminating circumstances appearing against him. He did not prove his presence at the relevant time at any other particular place. He did not explain as to what was the purpose of the transportation of the ‘contraband’ in a stolen vehicle at odd hours on 25.05.2011.

11. The sentence order based on fair reasoning deserves no modification. The appeal lacks merits and is dismissed. Pending application also stands disposed of. 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 18, 2016 / tr