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

+ CRL.A. 1236/2015

BISHAN SINGH @ NATIA

..... Appellant

Through: Mr. Raman Sahni and Mr. R.K.
Bachchan, Advs.

versus

STATE

..... Respondent

Through: Mr. Tarang Shrivastava, APP for
State.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **29.09.2016**

By this appeal, appellant has assailed the judgment and order on sentence of trial court whereby he has been convicted under Section 21 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (the Act, for short) and sentenced to undergo rigorous imprisonment for 10 years with fine of ₹1 lac and in default of payment of fine to undergo simple imprisonment for one year. As per the prosecution, 150 gm of smack was recovered from the personal search of Praveen Singh @ Kalia; whereas 1 kg of smack was recovered from a polythene bag being carried by Mohd. Anwar @ Annu and 1 kg smack was recovered from the polythene bag in the right hand of appellant. All the three were apprehended at the spot and the recoveries were effected from them. Recovered material was sealed and seized by the

separate seizure memos, after taking out the sample of 10 gms.

Praveen Singh @ Kalia and Mohd. Anwar @ Annu were also convicted under Section 21 of the Act by the same judgment and sentenced to undergo rigorous imprisonment for 10 years each with fine of ₹1 lac each and in default of payment of fine to undergo simple imprisonment for one year. They also challenged their conviction as well as sentence before this Court by filing separate appeals.

It may be noted that vide judgment dated 11th November, 2010 passed in Crl. A. 493/1999, appeal of Praveen Singh @ Kalia has been allowed by a learned Single Judge of this Court, for non-compliance of Section 50 of the Act. Vide judgment dated 28th February, 2011 passed in Crl. A. 501/1999, learned Single Judge has acquitted the co-accused Mohd. Anwar @ Annu.

The case of the appellant is similar to that of Mohd. Anwar @ Annu, inasmuch as, evidence relating to him is same. Learned Single Judge has disbelieved the recovery in view of the interpolation in the recoveries effected from the appellant and Mohd. Anwar @ Annu. While allowing the appeal, learned Single Judge has held as under :-

“15. Though, there is discrepancy in the testimony of PW2 ACP Amrik Singh Bhuller between the two polythenes recovered from Appellant Mohd. Anwar and his co-accused Bishan Singh however the other witnesses i.e. PW6, PW7,

PW10, PW11 are consistent in their statement that from Bishan Singh a white coloured polythene on which 'Menzone' was written containing one black colour polythene with 1 K.g. smack was recovered and from the Appellant Mohd. Anwar a purple colour polythene on which 'Ganga Drydeaner' was written which contained one black colour polythene with 1 k.g. smack was recovered. It is stated that the said polythene was found in the right hand of the Appellant When the case property was produced in the Court and said parcels were shown to PW2 sealed parcel No. 1 containing Shri Ganga Dry cleaners polythene as Ex.P-1, a black polythene as Ex.P-2 and smack as Ex.P-3 were found. PW2 deposed that the said recovery was attributable to accused Bishan Singh whereas when sealed parcel No. 2 containing white polythene with 'Menzone' written on it as Ex.P-5, black polythene Ex.P-6 and smack as Ex.P-7 was opened in Court, PW-2 attributed the said recovery to the Appellant. This testimony of PW-2 identifying the case property is contradictory to the testimony of other witnesses i.e. PW6, PW7, PW10 and PW11. At this stage, it would be appropriate to reproduce the relevant portions of the testimony of the other witnesses:

PW6 - SI Karan Singh

xxx xxx xxx xxx xxx xxx xxx xxx

Thereafter, Inspector Babu Singh took search of accused Bishan Singh. One white colour plastic polythene was recovered from right hand on which Menzol etc was printed. That plastic bag was containing a black polythene bag which contained heroin. It was weighed and found to be 1 kgm. out of which 10 grams were taken out as sample. Recovered smack was given SI.No.1 and the sample parcel was also marked as S-1

xxx xxx xxx xxx xxx xxx xxx xxx

Thereafter, from right hand of Mohd. Anwar, light purpled colour polythene was recovered which contained black polythene containing heroin. On weighing it came out to 1 kgm. out of which 10 grams were taken out as sample and sample and remaining smack were converted into parcels and sealed with the seal of BS.

Xxx xxx xxx xxx xxx Xxx xxx xxx

I can identify the case property if shown to me. Witness identifies light purple colour having print of Shri Ganga Drycleaners Ex.P-1, black polythene Ex.P-2, smack Ex.P-3 to be the same which was recovered from accused Mohd. Anwar. Remnants of sample are Ex.P-4.

Witness identifies white polythene Ex.P-5 black polythene Ex.P-6, smack Ex.P-7 to be the same which were recovered from accused Bishan Singh. Witness identifies remnants of sample Ex.P-8 taken from smack Ex.P-7.

PW7 - Inspector Bharat Singh

...Thereafter, the polythene which accused Bishan Singh was having, words Menzole was written. It was containing one more polythene which contained heroin. On weighing, it came out to be 1 kgm. out of which 10 grams were taken out as sample. Sample as well as remaining heroin were sealed in separate pullandas with the seal of BS and the sample was marked as S-1 and the remaining heroin was given SI. No. 1. Thereafter polythene which accd. Mohd. Anwar was carrying in his right hand was checked. It was of purple colour and words of some Drycleaners were printed on that polythene. That polythene contained one black coloured polythene which contained heroin. On weighing it came out to be 1 kgm. out of which 10 grams were taken as sample. Sample and remaining smack were sealed with the seal of BS and given SI. No. 2 and sample was marked as S-2

Xxx xxx xxx xxx xxx Xxx xxx xxx

I can identify the case property if shown to me.

At this stage, a sealed parcel No. 1 bearing court seal is opened and the contents shown to the witness. Witness states that purple polythene which has been taken out from this parcel did not pertain to parcel No. 1 but it pertains to parcel No. 2. However, he identifies black coloured polythene which contained smack. The witness states that since the polythene has changed, he cannot say this smack was recovered from which of the two accused i.e. Bishan Singh or Mohd. Anwar

At this stage, parcel No. 2 sealed with the seal of court is opened and the contents shown to the witness. Witness statement that white polythene having words of Menzole

pertains to parcel No. 1 and not parcel No. 2. He identifies the black polythene which contained smack. He states that since the polythene has been interchanged, I cannot say from whom this smack shown in parcel No. 2 has been recovered i.e. from Bishan Singh or Mohd. Anwar.

PW10 - Inspector Ishwar Singh

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Thereafter, in search of Bishan Singh, he was carrying one white polythene bag on which Manzone was written. That white polythene bag contained one black polythene which contained heroin. On weighing, it came to be 1 kgm. out of which 10 grams were taken out as sample and the sample and remaining smack were converted into parcels and sealed with the seal of BS.

Thereafter, Mohd. Anwar was searched and he was carrying a purple colour polythene bag on which Ganga drycleaners was written. That polythene bag contained another black polythene which contained heroin. On weighing it came to be 1 kgm. out of which 10 grams was taken out as sample and sample and remaining smack were converted into parcels and sealed with the seal of BS.

Xxx xxx xxx xxx xxx Xxx xxx xxx

I can identify the case property if shown to me.

...At this stage, a sealed parcel bearing No. 1 bearing court seal is opened and the contents shown to the witness. It contains purple colour polythene on which Ganga Drycleaners is written and it contained black polythene which contained heroin. Witness states that this polythene containing smack was recovered from accused Mohd. Anwar and parcel was given Serial No. 2 and sample was given serial No.S-2. He identifies purple-colour polythene Ex.P-1 black polythene Ex.P-2; smack Ex.P-3 to be the same which was recovered from accused Mohd. Anwar.

.....At this stage, a sealed parcel No. 2 bearing court seal is opened and the contents shown to the witness. It contains white polythene having print of Manzone which contained black polythene having smack. Witness states that this polythene was recovered from accused Bishan Singh present in court and it

was given SI. No. 1 and its sample was given SI. No. 1. Witness identifies white polythene Ex.P-5, black polythene, Ex.P-6 and smack Ex.P-7 to be the same which was recovered from accused Bishan present in court today.

PW11 - Inspector Babu Singh

Xxx xxx xxx xxx xxx Xxx xxx xxx

First of all, I took search of accd. Bishan Singh. From his right hand one polythene bag was recovered on which Manzone was written. That contained one black colour polythene which contained smack. On weighing smack came out to be 1 kgm. out of which 10 gram was taken as sample. The sample and remaining smack were given Serial No.1 and sample as S-1. It was sealed in pullanda with the seal of BS. Thereafter, accused Mohd. Anwar was searched. From his right hand, a purple colour polythene on which Ganga Drydeaners was written was recovered which contained black polythene which was containing smack. On weighing it came out to be 1 kgm. out of which 10 grams was taken out as sample. Smack was given SI. No. 2 and sample was given S-2

Xxx xxx xxx xxx xxx Xxx xxx xxx

I can identify the case property if shown to me.

...At this stage, parcel No. 1 is shown to the witness. Witness states that purple colour polythene having the print of Ganga Drydeaners and the black polythene inside this polythene containing smack was recovered from accud. Mohd. Anwar and he further states that he had given these articles as serial No. 2. He further states that these articles were wrapped in a parcel made of cloth but the cloth shown to him in the Court today does not bears his signatures and even the other particulars on this cloth are not in his handwriting. According to him somebody has changed this cloth and written the particulars of the case and also wrote on it parcel No. 1 whereas in fact the articles which were recovered in the purple polythene was from Mohd. Anwar and he had given it as serial No. 2. However he states that polythene (purple colour) and black polythene smack are the same which were recovered from accud. Mohd. Anwar. He identified purple colour polythene Ex.Pl, black polythene Ex.P-2, smadc Ex.P-3 to be the same

which were recovered from accud. Mohd. Anwar.

At this stage, parcel No. 2 and its contents are shown to the witness. Witness identifies white polythene Ex.P-5, black polythene Ex.P-6 and smack Ex.P-7 to be the same which was recovered from accud. Bishan Singh present in the court today. However, according to him, these articles were also sealed by him in a pullanda made of cloth on which he had given serial No. 1 but the cloth shown to him today in the court bears serial No. 2 and according to him although he had signed the parcel but the cloth cover shown to him does not bears his signature and the other particulars are also not written in his hand.

16. Thus on a perusal of the above noted testimonies it is evident that PW6 SI Karan Singh has correctly identified the case property, the purple coloured polythene with 'Ganga Drydeaners' written on it which was recovered from the Appellant Mohd. Anwar and the white polythene on which 'Menzone' was written which was recovered from accused Bishan. PW7 has stated that that the polythene bearing words of 'Menzone' written on it was recovered from accused Bishan and polythene with the name of some drycteaner written on it was recovered from accused Mohd. Anwar and has also stated that the contents of Parcel No. 1 pertains to parcel No. 2 and not parcel No. 1 and due to this interchange in the outer white cloth of the parcels, he could not identify the smack so recovered whether it is attributable to accused Bishan or Mohd. Anwar. PW10 Insp. Ishwar Singh has also deposed on similar lines on the fact of recovery from accused Bishan and Mohd. Anwar and has also identified the case property, stated about the recovery and sealing of parcels. Thus, the factum of recovery and sealing of the case property has been proved by PW11, Inspector Babu Singh duly corroborated by the version of PW6, PW7, PW10 and the contemporaneous documents i.e. ruqqa Ex. PW 11/C and the seizure memo EX.PW2/A. However, PW11 Insp. Babu Singh has deposed that the said pullandas which he sealed beared his signature and information of the contents of the pullanda and that the pullanda which have been opened in the court do not bear his handwriting and are not the same.

17. From the evidence it is dear that the cloth parcel in which

the seized articles i.e., the polythene bags and the smack were sealed have been interpolated with. On this aspect the learned Trial Judge has directed an enquiry be held by the Commissioner of Police, as to who and at what juncture the cloth parcel were changed. Hence, the sanctity of the case property being kept in Malkhana in sealed condition without being tempered with becomes doubtful. Thus the prosecution has not been able to prove the link evidence of the case property.”

It is apparent from the above that learned Single Judge has found that the parcels of the appellant and Mohd. Anwar @ Annu had been interchanged. Thus, recovery from the appellant has also become doubtful and appellant is entitled to acquittal by giving benefit of doubt. Appeal is allowed and appellant is acquitted. Appellant be released forthwith, if not required in any other case.

Appeal is disposed of in the above terms.

Copy of the order be sent to the Superintendent Jail for serving it on the appellant and compliance.

A.K. PATHAK, J.

SEPTEMBER 29, 2016

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