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

+ CRL.L.P. 87/2017

STATE (NCT OF DELHI)

..... Petitioner

Through : Mr. Amit Chadha, APP with ASI
Sanjay PS Narcotics, Crime.

versus

DARSHANA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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13.02.2017

Crl.M.A.2528/2017 (Delay)

For the reasons as stated in the application, delay is condoned.

Application is disposed of.

Crl. M.A.2529/2017 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

CRL.L.P. 87/2017

Vide judgment dated 9th September, 2016, trial court has acquitted the respondent of the offences punishable under Sections 21(C) & 31 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Aggrieved by the acquittal of respondent, petitioner has prayed for the grant of leave to appeal

against the judgment of the trial court.

As per the prosecution, PW-13 SI Karamveer Singh received a secret information on 26th February, 2015 that respondent will deliver a huge quantity of heroin to someone at the Slip Road to Janak Puri, Peeragarhi Flyover Chowk, Delhi between 7:00 pm to 7:30 pm. Information was reduced into writing vide DD No.26 (Ex.PW-7/A). Section 42 of the NDPS Act was complied with and a raiding team was formed for laying a trap. At about 7:10 pm, respondent was apprehended. Notice under Section 50 of NDPS Act was served upon her. PW-5 W/ASI Amla Merry searched the respondent and found one black colour polythene packet in the left hand of respondent. On opening the same, another transparent polythene packet was recovered. On opening it, a soil coloured powder was recovered. It was weighed and found to be of 300 grams. Two samples of 5 grams each were taken out and sealed in separate pullandas. Remaining powder was also sealed in separate pullanda. PW-13 SI Karamveer Singh filled in the FSL form. Pullandas were marked as Mark A, B & C. Thereafter, all the three sealed pullandas and FSL form were seized vide a seizure memo and deposited in malkhana.

During the trial, prosecution examined 14 witnesses. PW-1 constable

Sonu Tomar was one of the members of raiding party and he took the rukka and case property to the police station. PW-2 HC Jag Narain, MHC(M) has proved various entries in the malkhana register no. 19 & 21. PW-3 HC Amar Lal is the photographer. PW-4 Mr Manoj Singh is the Junior Judicial Assistant in the Record Room of Tis Hazari Courts. He has proved the copy of order on sentence dated 10th February, 2015 in the case FIR No.161/2012 PS Crime Branch passed by Learned Additional Sessions Judge/Special Judge (NDPS), Central District, Tis Hazari Courts, Delhi. PW-5 HC Sudhir Kumar had deposited the exhibits in FSL and has deposed in this regard. PW-6 W/ASI Amla Merry, one of the members of the raiding party, has deposed about the proceedings conducted in her presence. PW-7 ASI Dinesh, reader to ACP Ravinder Kumar Tyagi, has proved the receipt of reports under Sections 42 and 57 of the NDPS Act. PW-8 HC Raj Kumar was the duty officer and had recorded the FIR on the basis of rukka. PW-9 Inspector Manjeet Tomar had affixed his seal on the sealed pullandas and got the same deposited in the malkhana. PW-10 Inspector Kuldeep Singh is the inspector in the Narcotics Cell. PW-11 Mr Harvinder Singh, learned Metropolitan Magistrate had conducted the proceedings under Section 52A of the NDPS Act. PW-13 SI Karamveer Singh is the initial investigating

officer and has deposed about the proceedings conducted by him and has also proved the documents. PW-14 SI Rajveer Singh is the subsequent investigating officer. In her statement under Section 313 Cr.P.C. respondent has denied that the contraband was recovered from her. She alleged that she was lifted from her house and falsely implicated in this case. She has alleged that her father had lodged a complaint vide DD No.3A in this regard and that FIR No.248/2015 dated 27th February, 2015 was registered at police station Aman Vihar. Respondent examined DW-1 HC Narender and DW-2 Mr. Kishan Lal (her father) in her defence.

Trial court has meticulously scrutinized the ocular and documentary evidence on record and has concluded that section 42 of the NDPS was not complied with. Trial court has also noted that FSL result was doubtful as it was silent as regards to the nature of scientific tests conducted for arriving at the opinion that the recovered substance was heroin. Reliance has been placed on Mahmad Hanif Ibrahim Vs. State of Gujarat, 1995 (1) Crimes 274. Trial court has also noted that there was overwriting in DD No.26, which fact was admitted by PW-13 SI Karamveer Singh. Overwriting creates a doubt about the veracity of the prosecution story. Non production of logbook has also been looked upon by the trial court with suspicion. Trial

court has finally noted that prosecution has failed to prove that FSL form was filled, later on deposited in malkhana and sent to FSL. It is held that there was nothing on record to prove that FSL form was prepared, deposited with the MHC(M), sent to FSL and that it was ever received back. It has been also noted that FSL form was neither produced nor proved. Trial court has also noted that the delay of six days in sending the samples for testing was fatal to the prosecution. Reliance has been placed on Des Raj Vs. State, 83 (2000) DLT 282.

I do not find the view taken by trial court to be perverse. In fact, the view taken by the trial court is in consonance with the legal principles governing the field. FSL form was neither placed on record nor proved. In the absence of the FSL form, I am of the view that tampering of samples cannot be ruled out. There was no reference of FSL form in the malkhana register. In Radha Kishan Vs. State, MANU/DE/1329/2000, it has been held thus, "It is the normal procedure that when the incriminating articles are seized and are required to be sent to the Central Forensic Science Laboratory those articles are immediately sealed and deposited in Malkhana at the Police Station till they are taken out and sent to the Laboratory. In the instant case this was not done. Contemporaneously with seizure and sealing

of such articles, impression of seal used on sealed articles is put on a form, commonly called, the CFSL form. This is so done because at the time of analysis of sealed packets in laboratory, the analyst concerned is able to tally seal impressions on sealed packets with those appearing on the CFSL form in order to rule out any possibility of tempering of seals on sealed packets after seizure anywhere or in transit till receipt in laboratory. The importance of the CFSL form thus cannot be over-emphasized because this document provides a valuable safeguard to an accused to ensure that no tampering has been done during intervening period. The CFSL form is a document or forwarding note accompanying a sample sent by the Police to the Forensic Science Laboratory, Such a form contains the nature of crime, list of samples being sent for examination, nature of examination required and specimen of the seal/seals affixed on the exhibit besides particulars of the Case/Police Station.” Accused was acquitted in absence of sufficient evidence regarding CFSL form having been deposited in Malkhana and sent to CFSL.

In Balban Singh Vs. State, MANU/DE/2534/2008, a learned Single Judge of this Court has held thus “ for the above reasons, it is held that in the instant case, non-compliance of the mandatory requirement for preparation

and dispatch of FSL form with the sample sent for testing was fatal to the case of the prosecution. In Ibrahim (Mohd.) Vs. State of NCT of Delhi, MANU/DE/6324/2012, also a similar view has been taken.

For the foregoing reasons, no case is made out by petitioner for the grant of leave to appeal against the acquittal of respondent.

Petition is dismissed.

A.K. PATHAK, J.

FEBRUARY 13, 2017/dk