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

+ CRL.L.P. 138/2017

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through : Mr. Amit Chadha, APP

versus

KULWANT SINGH & ANR. Respondents
Through

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

% **ORDER**
09.03.2017

Crl. M.A. No. 4063/2017 (condonation of delay)

Delay condoned. Application is disposed of.

Crl. M.A. No. 4064/2017 (Exemption)

Allowed, subject to all just exceptions. Application is disposed of.

CRL.L.P. No. 138/2017

Petitioner seeks leave to appeal against the judgment dated 15th September, 2016 passed by the Special Judge (NDPS), West District, Tis Hazari Courts, Delhi, whereby respondents have been acquitted of the charges under Sections 15(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the Act", for short). Respondent no. 1 has also been

acquitted of the charges under Section 25 of the Act. Trial court has meticulously examined the evidence adduced by the prosecution and has concluded that prosecution had failed to prove its case beyond the shadow of reasonable doubts and respondents were entitled to benefit of doubt. Various reasons have been given in detail to conclude that prosecution case was suspicious. One of the grounds is non-compliance of FSL form. Trial court has noted that FSL Form was not produced. No cogent evidence was led to show that FSL Form was filled, deposited in the Malkhana and later sent to the FSL along with the case property and thereafter, was received back from the FSL.

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.” In the said case 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.

Lack of evidence regarding the FSL Form having filled at the spot, deposited in the Malkhana and later on, sent to the FSL along with the case property creates a doubt that makes tampering of the case property possible.

It may further be noted that trial court has also noted, while evidence was being recorded, that seals were not intact. There were cracks in the seal. It has been further noted that even the pullanda itself was partially in a torned condition.

For the foregoing reasons, in my view, trial court has rightly extended the benefit of doubt to the respondents and acquitted them. The view taken by the trial court is a possible view and does not suffer from any perversity. No ground is made out for the grant of leave to appeal to petitioner.

Petition is dismissed.

A.K. PATHAK, J.

MARCH 09, 2017

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