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

RESERVED ON : APRIL 27, 2017

DECIDED ON : JULY 26, 2017

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CRL.A. 782/2014

MOHD JAVED

..... Appellant

Through : Mr.Rahul K.Singh and Mr.Pradeep Anand,
Advocates.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P GARG, J.

1. Aggrieved by a judgment dated 01.05.2014 of learned Special Judge, NDPS in Sessions Case No.39/11 arising out of FIR No. 100/11 registered under Section 21 NDPS Act at Police Station Crime Branch by which the appellant Mohd. Javed was held guilty for committing offence punishable under Section 21(C) NDPS Act, the instant appeal has been preferred by him. By an order dated 06.05.2014, the appellant was sentenced to undergo Rigorous Imprisonment for eleven years with fine of ₹1,00,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that on 14.04.2011 at around 11.00 a.m. on a pavement near

Temple, Roshnara Bagh, the appellant was found in conscious possession of 270 gms of heroin.

3. On 14.04.2011, at about 9.00 am. PW-4 (SI Paramjeet Singh) was present at Narcotics Cell, Crime Branch. A secret informer came and disclosed that Javed resident of Sadar Bazaar involving in illegal trade of smack would arrive at 10.30 to 11.00 a.m. at Roshnara Bagh near Mandir for supply of smack to someone. The secret information was verified and PW-4 (SI Paramjeet Singh) produced the secret informer before Inspector Vivek Pathak who himself verified the information and informed the ACP Beer Singh on phone. PW-4 was instructed to conduct raid. Thereafter, DD entry No.6 (Ex.PW-4/A) was recorded and placed before the concerned SHO for further action under Section 42 NDPS Act. The raiding team consisting of PW-4 SI Paramjeet Singh, PW-8 HC Subhash and PW-7 HC Sanjeev Kumar went to the spot in a private vehicle bearing No.DL-4C-S 9884 driven by HC Harinder. At around 10.55 a.m., the appellant was seen carrying a black colour polythene bag in his left hand coming from Roshnara road side on foot, he was identified by the secret informer. At 11.00 a.m., he was apprehended and informed of the secret information. Notice under Section 50 NDPS Act (Ex.PW4/C) was served upon him. On search of the bag, heroin weighing 270 gms. was recovered. Necessary proceedings were conducted at the spot. Rukka (Ex.PW-4/F) was prepared. The investigation was subsequently taken over by SI Satyawar (PW-10). The appellant was arrested and statements of witnesses conversant with the facts were recorded. Exhibits were sent to Forensic Science Laboratory for examination. Upon completion of

investigation, a charge-sheet was filed against the appellant. In order to establish its case the prosecution examined ten witnesses in all. In 313 statement, the appellant denied his complicity in the crime and pleaded false implication. The trial resulted in 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.

5. At the outset it may be mentioned that the appellant's conviction is solely based upon the testimonies of the police officials. No independent public witness was associated at any stage of the investigation. The secret information was received at around 9.00 a.m. on 14.4.2011 and the police team remained at the spot till 6.45 p.m. Curious enough, during the whole period, the investigating agency was unable to join any independent public witness at any stage. The explanation offered by the Investigating Officer and the other police officials that request was made to certain passersby to join the investigation, inspires no confidence. It is a routine response given in almost all such cases by the investigating agency. No name of any such individual to whom request was made at various stages has emerged on record. It is surprising as to why only passersby were asked to join the investigation when other witnesses from fix places i.e. residences/shops were easily available. It has come on record that even at the place of recovery, there were certain jhuggies/temple/shops and the public persons were available there. No plausible explanation has been offered by the prosecution witnesses as to why no such individual was requested to join the investigation. Offences under Narcotics are

serious and stringent punishment is provided for. It is obligatory on the part of the prosecution to ensure that investigation is above suspicion and all sincere efforts were made to ensure that the independent public witnesses are joined. Ensuring the presence of independent public witnesses is not a mere formality.

6. I do agree that evidence of the police officials cannot be rejected *per se* merely because independent public witnesses were not associated. However, it puts the court on guard to scrutinize their testimonies with great care and caution.

7. In the instant case, the secret information was received at around 9.00 a.m. and DD No.6 (Ex.PW-4/A) came into existence. This information was recorded on a plain paper having no serial number etc. It is unclear as to why the important information was not recorded in proper register duly maintained in the office. Possibility of such an entry to be manipulated or fabricated at any time cannot be ruled out. No authenticity, as such, can be placed on such a loose sheet of paper. As per the secret information, the appellant was to arrive in between 10.30 a.m. to 11.00 a.m. at the main gate of Roshnara Bagh to supply smack to someone. However, no individual came at the spot to get the supply of the contraband from the appellant. The secret informer did not disclose as to what quantity of contraband was in the appellant's possession and how he would arrive at the spot. The description of the appellant was not mentioned in the DD entry. The secret information apparently did not prove true as none came to collect the contraband from the appellant, as informed by the secret informer.

8. The police had come to know from the alleged secret informer that the appellant was a resident of Sadar Bazar, Delhi. However DD entry does not disclose the residential address where the appellant lived at Sadar Bazar. The investigating agency did not deem it fit to raid the appellant's residence at Sadar Bazar to find out availability of narcotics at his residence. Even after the appellant's apprehension at the spot, the appellant's residence was not visited and no surveillance, whatsoever, was mounted. No efforts were made to obtain search warrant to search any incriminating material (contraband) in his house. The investigating agency did not collect any document to show if the appellant was the resident of a specific house at Sadar Bazar. The investigating agency was unable to ascertain/find out during investigation as to from where the heroin was procured, and if so, by whom and when. It was also not enquired as to when and from where the appellant had got possession of the contraband to be delivered to some unknown individual at Roshnara Road.

9. The other salient feature of the case is that the investigating agency was unable to disclose as to, to whom the contraband was to be delivered and for what consideration. Apparently, none had come at the spot to get its delivery from the appellant. Nothing has come on record to show if the appellant was found indulging in the supply of smack prior to the occurrence. No Call Detail Records were collected and produced by the investigating agency. Nothing has come on record to show if the appellant was in touch with any individual for supply of the contraband any time. In the Personal Search memo of the appellant conducted vide memo (Ex.PW4/H), a paltry sum of ₹217/- was

recovered. The individual dealing with heroin weighing 270 gms., having substantial value, is not expected to have the meager amount of ₹217/- in his possession.

10. The investigating team had arrived the spot from a long distance and the appellant happened to arrive there between 10.30 a.m. to 11.00 a.m. exactly, as disclosed by the secret informer. The investigating agency did not inform the local police and no assistance, whatsoever, was taken. They were not informed about the appellant's arrest at the spot. It has not been explained as to why the secret informer opted to contact PW-4 (SI Paramjeet Singh) directly at Narcotics Cell, Crime Branch and why he did not contact the concerned SHO or duty officer. All the members of the raiding party of Narcotics Cell, Crime Branch have given minute details in unison which otherwise seems not possible. Most of the documents are not in the handwriting of the investigating officer. When the case property was produced in the court, it was observed that the colour of sample heroin (Ex.P-2) was darker from the colour of the remaining heroin (Ex.P-3) i.e. one recovered from the appellant. It was further observed that the FIR number was not mentioned in any of the pullandas.

11. The appellant was not searched in the presence of Gazetted Officer or Magistrate. The investigating officer admitted that he was not aware as to who was the concerned Magistrate or Gazetted Officer before whom the appellant was to be taken if he so wished. PW-7 (HC Sanjiv Kumar) in the cross-examination disclosed that the investigating officer had not asked any public person to join the raiding party at the spot. The private car belonged to the IO's son. PW-7 admitted that the

secret information was in respect of the sale of the contraband i.e. seller and purchaser both were to reach at the spot. PW-7 (HC Sanjiv Kumar) and PW-8 (HC Subhash Singh) denied if the secret information was received in their presence.

12. Considering the deficiencies referred above, this Court is of the view that the prosecution has failed to establish its case beyond reasonable doubt. Benefit of doubt deserves to be given to the appellant.

13. The appeal is allowed. Conviction and sentence of the appellant are set aside. The appellant shall be released forthwith if not required to be detained in any other case.

14. Trial Court record (if any) be sent back forthwith along with the copy of the order. Intimation be also sent to the Superintendent Jail.

JULY 26, 2017/sa

**S.P.GARG
(JUDGE)**

भारतमेव जयते