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IN THE HIGH COURT OF DELHI AT NEWDELHI

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CRL.A. 997/2011

Judgment reserved on 07.09.2017

Judgment pronounced on 09.10.2017

IRWIN BIN HASSIM

..... Appellant

Through: Mr. Pramod Kumar Dubey with Ms.
Namita Wali, Advocates.

Versus

ANIL KUMAR, AIR CUSTOMS OFFICER, IGI AIRPORT

...Respondent

Through: Mr. Amish Aggarwala with Mr.
Satish Aggarwala, Advocates.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present appeal has been instituted under Section 36B of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 374(2) of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') against the judgment and order dated 26.02.11 and 11.03.11 by which the appellant has been convicted for the offence under Section 20 (b)(ii)(C) & Section 28 read with Section 23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS'). The present appellant has been sentenced to undergo rigorous imprisonment for a period of ten years with fine of Rs.2,00,000 /-(Cumulatively).

2. The case of the prosecution is that on 04.03.2008 accused namely Irwan Bin Hassim holder of Singapore passport No. S-7801707 D issued on 25.08.2004 was travelling to Rotterdam via Amsterdam by KLM Flight No. KL-872 on 04.03.2008 while he was proceeding for security check, his movement was found to be suspicious, hence the complainant decided to examine him and his baggage. The accused possessed with one checked in

baggage bearing tag No. 0074 KL 175559 and one small white and green colour rexine bag tied on his waist. Notices U/s.102 of Customs Act and U/s 50 of NDPS Act were served upon the accused in the presence of two independent witnesses that he and his baggage were to be examined, and if he so desired, the same could be conducted in the presence of a Magistrate or a Gazetted Officer of Customs. The accused gave his consent for the search by any custom officer and made endorsement to this effect on both the notices. The checked-in baggage of the accused, make "Diplomat" bearing tag No. 0074 KL 175559, on opening was found to be containing personal effects of the accused and even the waist bag did not contain anything objectionable. On further search, the contents of the suitcase were taken out and the upper and lower covers of the suitcase were removed, which was found containing black colour fiber sheets which contained some adhesive material on the top and upper portion of the suitcase wrapped in light brown colour adhesive tape. Both the packets were taken out and opened which contained a black colour substance weighing 7.090 kgs. It was found to be '*Hashish*' after the substance was tested on the Field Drug Test Kit and resultantly was then seized under NDPS Act. Further, three samples each of 30 grams were taken out in three different samples with the slip bearing the signatures of the witnesses, the accused and the complainant, the remaining substance was kept in a transparent polythene bag and sealed with custom seal No.6. The documents of the accused were seized and his statement was also recorded u/s 67 of NDPS Act, whereby he gave his family history. He also stated that during his visit to Delhi, he was handed over the alleged baggage by Mr. Nima who asked him that on delivering the same to Rotterdam he would be paid 3500 Euros and he had accepted this

offer as he was in need of money to settle his debts. He also confessed that on earlier occasions he had delivered baggages containing drugs six times on the offer given by Mr Nima.

3. On the basis of the material placed on record, the charges u/s 20(b)(ii)(c) and u/s 28 read with 23(c) of NDPS Act were framed against the appellant. The prosecution examined 8 witnesses, in all. Statement of the appellant was recorded under Section 313 of Cr.P.C. wherein he denied all the allegations and even said that his suitcase was not opened in his presence and that he had not made any statement under Section 67 NDPS Act. He further stated that his signatures were taken on many blank slips by the custom officers.

4. On acknowledgement of the evidences and considering the contentions of the parties, the learned Special Judge found that the recovery and possession of 7090 grams of Charas from the appellant was fully established and that he was attempting to illegally export the same outside India, the learned Special Judge held the appellant guilty for offences under Section 20 (b)(ii)(C) and 28 read with Section 23(c) NDPS Act and convicted him to rigorous imprisonment for 10 years with fine of Rs. 2,00,000/- cumulatively. Feeling aggrieved the appellant has preferred the present appeal.

5. Mr. Pramod Kumar Dubey, learned counsel for the appellant contended that there are numerous and inherent discrepancies in the case of the appellant and even the ownership of the alleged suitcase containing contraband is under question; that the suitcase did not belong to the appellant and there is probability that it could have been inadvertently exchanged by some other baggage; that prosecution is silent on the aspect

that what steps were taken against the person/Mr. Nima who handed over the alleged suitcase to the appellant. The main contention raised by the counsel for the petitioner was that the psychotropic substance in Charas (Hashish) is primarily THC (Tetra hydro cannibinol), which is active ingredient and as per the Central Revenues Control Laboratory (hereinafter referred to as 'CRCL') report the quantity of THC should be taken into account in order to determine whether the quantity of the drug shall be treated as 'Commercial' or 'Semi-Commercial'. In support of this contention, the counsel placed reliance upon the judgment passed by the Apex Court in **E. Michael Raj v/s Intelligence Officer, Narcotics Control, Bureau'** case reported in **(2008) SCC 161** and further added that in the aforesaid ruling the rationale that has been applied to heroin should beyond doubt be applied to Hashish (Charas) and other such THC derivatives, as it is THC that is the active ingredient and further relied on the case of **State through Intelligence Officer Narcotics Control Bureau v. Mushtaq Ahmad Etc.** reported in **(2016)ISCC315** and **Dilip vs State 2011** reported in **2011CriLJ334**.

6. The counsel for the appellant further argued that the procedure under Section 50 NDPS Act has not been complied with as the accused was not apprised of his right to be searched in front of a Gazetted officer or a Magistrate, rather he was only told to choose the desired person in front of whom he wanted to be searched; there are even discrepancies in the colour of the recovered substance which makes the investigation of the case doubtful; that DR No. 29470 does not mention the fact relating to the keys of the suitcase. He also contended that the alleged briefcase from which the contraband was recovered was empty and the prosecution failed to connect

the briefcase with appellant. He further contended that PW-8, Anil Kumar (ACO) complainant is not credible as the witness admitted that he did not weigh the substance of both the packets; that he did not mention in his testimony about fiber sheets.

7. Mr. Amish Aggarwala, learned counsel for the Respondent, submits that the appellant was intercepted on the ground of suspicion at IGI Airport carrying 7.090 kgs of Charas; that three representative samples of 30 grams each which were sent to the CRCL, clearly shows that the substance was charas; that all prosecution witnesses have consistently proved the recovery of charas from the appellant; that the testimony of witnesses cannot merely be discarded on the ground that they have not corroborated with regard to the colour of the substance recovered; that all the articles which were sealed and seized at the spot bearing paper slips with the signatures of accused and the others. Ld. Counsel further contended that the issue of purity percentage is squarely covered by the Judgment of Mushtaq Ahmad (supra) and as per the Judgment, the entire quantity of the contraband irrespective of purity percentage will be considered.

8. I have heard learned counsel for the parties and have also perused the material available on record.

9. At this stage in the present case, it is relevant to examine the statements of PW1 Asstt. Supervisor Grade-1 Wang Kuan Chon, PW3 Insp. Central Excise Ranjeet Kumar, PW2 Superintendent Bishan Chand and PW8 Insp. ICD Anil Kumar.

10. PW1 Wang Kuan Chon testified as under:

“On 03.03.2008 I was posted as Custom Service Executive in Delhi Airport Service for KLM Airlines, in departure Hall if IGI

Airport New Delhi. In the present case Sh. Anil Kumar ACO called me at departure hall to witness the proceedings of the present case. He was standing at custom counter. The passenger named Irwan Bin Hasim was intercepted by Sh Anil Kumar at the custom counter. The passenger was departing Delhi-Amsterdam-London by KLM Airlines, by flight No. KL-872. The passenger was the accused present in the Court (correctly identified). Sh Anil Kumar Sharma ACO served two notices, one U/s 102 Customs Act and U/s 50 NDPS Act in my presence. The notices were regarding search of the accused and baggages before Magistrate or a Gazetted Officer. The accused had replied in writing on the notices itself that he has no problem if any custom officer conduct his search. The accused was asked to open his baggage and the same was opened by him by the key which he was carrying with him. On opening of baggage it was found to contain some clothes and personal effects of the accused. After removing inner lining of the bag it was found one black cover. On removing of the black fibre cover it was found to contain one polythene bag which was secured with brown colour adhesive tape in the bottom of the bag. In the similar fashion the upper size of the bag was also checked, it was also found to contain one polythene bag secured with the cello tape. Inside the polythene bags there was black colour substance in solid form. The black colour substance recovered from both polythene bags were thereafter mixed homogeneously and weighed. It was found to be 7.090 kgs in weight. Three representative samples of 30 grams each were taken out from the substance and kept in polythene pouch and thereafter further kept in brown colour envelopes. Thereafter the envelopes were sealed with custom seal No.6. Remaining recovered substance was kept in a polythene bag and kept in a tin box wrapped in a white colour cloth and sealed with custom seal No. 6. In the similar fashion one paper slip was attached on the parcel which was signed by me, another witness, Mr. Anil Kumar and the accused. After completion of recovery proceedings on 04.03.2008 panchnama Ex. PW 1/C was

prepared before 6am as all the proceedings had concluded by 6am. The panchnama is bearing my signatures at point A.”

11. PW8 Sh Anil Kumar Inspt. ICD Tughlakabad testified as under:

“On the intervening night of 03/04.03.2008 I was posted at IGI Airport as ACO. At about 1:30 am I was present in the departure hall when one passenger whose name lateron I came to know as Irwin Bin Hassim crossed the custom area. He was stopped by me as his movements were appearing to be suspicious. On enquiry from him I came to know that his income was too meagre to be a frequent flier. I served notice U/s. 102 of the Customs Act upon him. He was informed that his search was to be conducted and if he desired that the same could be conducted in the presence of a Magistrate or a Gazetted Officer. At this, he told that I could conduct his personal search as well as the search of his baggage. This was written by that passenger on the notice U/s 102 itself. The notice u/s 102 Customs Act is already exhibited as Ex PW 1/B bearing my signature at point D and the endorsement made by the passenger at point E to E. thereafter another notice U/s 50 NDPS Act already exhibited as Ex PW 1/A bearing my signature at point D was served upon the passenger. Thereafter two panch witness namely Mr Wang and Mr Deepak were called and I gave my introduction to them and also disclosed to them that the passenger was intercepted on suspicion and the search of his person and baggage to be conducted. The passenger opened the suitcase with the key which he was possessing. The suitcase was found to contain the personal effects of the passenger and nothing incriminating was found apparently. When the suitcase was found to be abnormally heavy the bottom of the suit from inside was opened with the help of screw driver and some polythene was spotted there, as such the entire bottom of the suit case was opened and it was found containing a big polythene wrapped with brown colour adhesive tape. The polythene was transparent in colour and I could see that it was containing some brown colour substance. The upper portion of the suitcase was opened and it was also found containing a big polythene wrapped with brown colour adhesive

tape. The polythene was transparent in colour and I could see that it was also containing some brown colour substance. Thereafter the adhesive tape was removed from both the polythene to the extent it was possible and then both the transparent polythenes were found containing brown colour sticky substance. The same was weighed on the weighing scale and the same was found to be 7090 grams without polythenes. Thereafter 3 representative samples of 30 grams each were taken out from the recovered substance. The samples were kept in three small polythene pouches and then kept in three brown colour envelopes and were sealed with custom seal No. 6. The remaining substance was put in a polythene and was kept in a steel container and was converted in a white pulanda which was stitched around the container and was sealed with custom seal No. 6. Vol. paper was affixed on each of the sample envelope and the cloth pulanda which was signed by me, the panch witnesses and the passenger. The panchnama was drawn at the spot which I signed and also obtained the signatures of both the panch witnesses and the passenger. I had sent the sample Mark A-1 alongwith duplicate test memo to the CRCL through Sh Ranjeet Gupta ACO on 04.03.2008 itself.”

12. PW3 Sh Ranjeet Kumar Gupta Inspt. Central Excise testified as under:

“On 04.03.2008 I was posted as ACO Customs at IGI Airport, New Delhi and was on day shift. I was handed over by the Sh Bishan Chand ACS on sealed packet of sample Mark A-1, the following letter already Ex PW 2/B which bears my signature at point B and test memos in duplicate and I was directed to deposit the sample to CRCL. I deposited the sample alongwith forwarding letter and test memos at CRCL and obtained a receipt with respect to the same. The said receipt is Ex. PW 3/A. I do not remember the time at which I had deposited the sample in CRCL. Thereafter I handed over the receipt Ex PW 3/A of CRCL to Sh Bishan Chand ACS.”

13. PW2 Sh Bishan Chand Superintendent testified as under:

“on 04.03.2008 I was posted as ACS (Preventive) IGI Airport, New Delhi. I had signed the test memos in triplicate on the said date on being produced before me by the IO of the case Sh Anil Kumar ACO, as one the test memos was to be sent to CRCL for examining the sample. The test memo is Ex PW 2/A bearing my signature at point A, again said, test memo in duplicate was sent to CRCL. On the same day I had also issued a forwarding letter to CRCL whereby I authorised Mr. Ranjeet Gupta ACO to take the sample Mark A alongwith the test memos to CRCL. The forwarding letter is Ex PW 2/B bearing my signature at point A and of Sh Ranjeet Gupta ACO at point B. There were three sample which were drawn in the present case. It is correct that in the test memo the substance is described as dark brown colour substance suspected to be Hashish, whereas in the DR Ex.PW 2/C-1 it is described as black substance. The case property was also sealed in my presence. The sealing was done in the presence of accused, panch witnesses and myself by the IO. It is wrong to suggest that alleged recovered substance was planted upon the accused or that I am deposing falsely.”

14. On perusal of the aforesaid testimonies, it is apparent on record that PW-8 intercepted the appellant as his movements were suspicious. On examining the passport of the appellant PW-8 decided to search the appellant in accordance with the procedure envisaged under the Customs Act and NDPS Act. The notice under Section 102 Customs Act (Ex. PW-1/13) and notice u/s 50 NDPS Act (Ex. Pw-1/A) was served on the Appellant. Procedure of search was conducted in presence of panch witnesses (PW-1) and Deepak (not examined). On search of the appellant two polythene bags were recovered from top and bottom of the suitcase and the substance on being tested from Field Drug Test Kit was found positive with Hashish. Samples were taken and sealed. The statement of PW-1, PW-2

and PW-3 corroborates the version of PW-8 and proved the documents, Ex. PW-2/A (Test memo), PW-2/B (sealed packet of sample mark A-1), and Ex. PW 1/C (Panchnama).

15. Ld. Counsel for the appellant argued that trial Court erred in not taking into consideration the fact that the suitcase did not belong to the appellant and the suitcase could not have, in all probabilities been switched by baggage handlers.

It is trite law that to bring the appellant within the ambit of Section 20 of the Act, the possession has to be conscious possession. However, the initial burden of proof of possession lies on the prosecution and once the same has been discharged, the burden would shift on the accused. Once possession is established by the prosecution, the Court can presume that the accused had the necessary culpable mental state and has committed the offence. In **State of Punjab Vs. Hari Singh and Ors.** Reported in **AIR 2009 SC 1996**, the Apex Court observed as under:

“11. Section 15 makes possession of contraband articles an offence. Section 15 appears in chapter IV of the act which relates to offence for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession. Section 15 deals with punishment for contravention in relation to poppy straw.

12. It is highlighted that unless the possession was coupled with requisite mental element, i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 15 is not attracted.

13. The expression 'possession' is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Superintendent & Remembrancer of Legal Affairs, West CRL.A. 254/2011 Page 14 of 18 Bengal v.

Anil Kumar Bhunja and Ors.: 1979CriLJ1390 , to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes

14. The word 'conscious' means awareness about a particular fact. It is a state of mind which is deliberate or intended.

15. As noted in Gunwantlal v. The State of M.P.: 1972CriLJ1187 possession in a given case need not be physical possession but can be constructive, having power and control over the article in case in question, while the persons whom physical possession is given holds it subject to that power or control.

16. The word 'possession' means the legal right to possession (See Health v. Drown (1972) (2) All ER 561 (HL). In an interesting case it was observed that where a person keeps his fire arm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness 1976 (1) All ER 844 (QBD).

17. Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles. This position was highlighted in MadanLal and Anr. v. State of Himachal Pradesh: 2003CriLJ3868..

16. It has emerged from perusal of Ex-PW 8/C which is a disclosure/ confession statement that he was aware of substance contained in the bag and had earlier delivered the drugs six times. Moreover the testimonies of PW-8, PW-1 and PW-2 are consistent to the fact that the recovery of contraband articles was made from the appellant.

17. It was contended by the counsel for the appellant that the notice under Section 50 of the NDPS Act was not served upon the accused but as

per the testimony of PW8, it is clear that the appellant was appraised of his right to be searched in the presence of a Magistrate or a Gazetted Officer but he refused to exercise his right. In the present case, the recovery was effected from the checked in baggage and not from his person, this issue has been already dealt with by the Hon'ble Supreme Court in the case of **Ajmer Singh Vs State of Haryana** reported in **2010(1) LRC 278 (SC)** which reads as:

13. "Question of compliance or non-compliance of Sec.50 of NDPS Act is relevant only where search of a person is involved. Search and recovery from a bag, briefcase, container etc., does not come within the ambit of Sec.50 of the Act- Contraband recovered from a bag carried by appellant on his shoulder- Search does not amount to a personal search so as to attract Sec.50 of the Act."

18. Further, on perusal of the statement of the witnesses who recovered and deposited the sample to the CRCL, it is clear that out of the recovered charas, three samples of 30 grams each were taken and placed in small polythene wrapped with tape and kept in three brown colour paper envelopes marked as 'A-1', 'A-2' and 'A-3'. The remaining substance was kept in a transparent polythene bag and then packed in a tin box which was converted into cloth pulanda and sealed with custom seal No.6. The sealed material including the suitcase were seized under NDPS Act, the documents of the appellant were also seized and his statement was recorded under Section 67 NDPS Act.

19. As far as the contention of the learned counsel for appellant, regarding quantity of THC being taken into account to determine the quantity of charas as commercial or semi commercial is concerned. It is relevant to peruse the CRCL report which is recapitulated as under:-

“The sample is in the form of dark brown coloured sticky mass. On the basis of chemical and chromatographic examinations, it is concluded that the samples under reference is CHARAS. Gross weight of the remnant sample, returned herewith are as under:

LAB No	Marked as	THC content	Gross wt w plastic pouch
CLD-44(N)	A-2	9.3%	23 gm

20. The issue of whether the quantity of drug shall be treated as ‘commercial’ or ‘semi-commercial’ has been dealt in the case of ***E.Micheal Raj vs Intelligence Officer, Narcotic Control Bureau, 2008 5 SCC161.*** In E. Micheal Raj (supra) case the court accepted the submission that purity of heroine was 1.4% and 1.6%, respectively and treated it as a small quantity and held as under:-

16. On going through Amarsingh case (supra), we do not find that the Court was considering the question of mixture of a narcotic drug or psychotropic substance with one or more neutral substance/s. In fact that was not the issue before the Court. The black-coloured liquid substance was taken as an opium derivative and the FSL report to the effect that it contained 2.8% anhydride morphine was considered only for the purposes of bringing the substance within the sweep of [Section 2\(xvi\)\(e\)](#) as ‘opium derivative which requires a minimum 0.2% morphine. The content found of 2.8% anhydride morphine was not at all considered for the purposes of deciding whether the substance recovered was a small or commercial quantity and the Court took into consideration the entire substance as an opium derivative which was not mixed with one or more neutral substance/s. Thus, Amarsingh case (supra) cannot be taken to be an authority for advancing the proposition made by the learned

counsel for the respondent that the entire substance recovered and seized irrespective of the content of the narcotic drug or psychotropic substance in it would be considered for application of [Section 21](#) of the NDPS Act for the purpose of imposition of punishment. We are of the view that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance/s, for the purpose of imposition of punishment it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration.

17. In the present case, the narcotic drug which was found in possession of the appellant as per the Analysts report is 60 gms. which is more than 5 gms., i.e. small quantity, but less than 250 gms., i.e. commercial quantity. The quantity of 60 gms. is lesser than the commercial quantity, but greater than the small quantity and, thus, the appellant would be punishable under [Section 21\(b\)](#) of the NDPS Act. Further, it is evident that the appellant is merely a carrier and is not a kingpin.

21. The dicta laid down by the Apex Court in E. Micheal Raj (supra) case has also been dealt in **Harjit Singh vs State of Punjab (2011) 4 SCC 441.** The apex court distinguished the case of E. Michael Raj (supra) and observed as under:

23. The judgment in E. Micheal Raj (Supra) has dealt with heroin i.e., Diacetylmorphine which is an "Opium Derivative" within the meaning of the term as defined in [Section 2\(xvi\)](#) of the NDPS Act and therefore, a 'manufactured drug' within the meaning of [Section 2\(xi\)\(a\)](#) of the NDPS Act. As such the ratio of the said judgment is not relevant to the adjudication of the present case.

25. The Notification applicable herein specifies small and commercial quantities of various narcotic drugs and psychotropic substances for each contraband material. Entry 56 deals with Heroin, Entry 77 deals with Morphine, Entry 92 deals with Opium, Entry 93 deals with Opium Derivatives and so on and so forth. Therefore, the Notification also makes a distinction not only between Opium and Morphine but also between Opium and Opium Derivatives. Undoubtedly, Morphine is one of the derivatives of the Opium. Thus, the requirement under the law is first to identify and classify the recovered substance and then to

find out under what entry it is required to be dealt with. If it is Opium as defined in clause (a) of [Section 2\(xv\)](#) then the percentage of Morphine contents would be totally irrelevant. It is only if the offending substance is found in the form of a mixture as specified in clause (b) of [Section 2\(xv\)](#) of NDPS Act, that the quantify of morphine contents become relevant.

22. Thereafter, Supreme Court, in case of **State through Intelligence Officer, Narcotics Control Bureau Vs. Mushtaq Ahmad and others (2016) 1 SCC 315** while dealing with the validity of percentage of THC in seized contraband accepted the law laid down in the case of *Harjit Singh* (supra) case and observed as under:

“26. In the present case, the contraband article that has been seized is “charas” and the dictionary clause clearly states that it can be crude or purified obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish. The definition also indicates that any mixture with or without any neutral material of any of the cannabis or any drink prepared therefrom. The reference in [Section 2\(iii\)\(c\)](#) refers to any mixture which has a further reference to charas, which states crude or purified. The chemical name for charas and hashish is “extracts and tinctures of cannabis”. It finds mention at Entry No.23 of the Notification. Serial No.150 of the Notification deals with “tetrahydrocannabinol” having a long list.”

23. The similar issue has also been dealt in the case of **Dilip vs State** reported in **2011CriLJ334** , where it has been held by the Division Bench of this court that:

“once the contraband has been determined to indicate cannabis, whether in the form of charas or in the form of ganja or as a mixture containing either of the two, with or without other neutral substance, the entire weight of the contraband would have to be considered for determining whether the recovery was of a small quantity, intermediate quantity or a commercial

quantity.”

21. “therefore, our answer to the question is that the percentage of THC in a sample of charas by itself cannot be determinative of the purity of the sample. Furthermore, a test resulting in the quantification of the percentage content of THC is neither relevant nor necessary for the purpose of considering the grant of bail or of awarding sentence under the NDPS Act.....”

The Division Bench of this Court in the aforementioned case observed that cannabis contains over 400 chemicals, of which more than 60 are chemically unique and are collectively referred to as cannabinoids, therefore, the percentage of THC cannot only be taken into account to determine the quantity and purity of charas as commercial or semi-commercial. It is stated in the bulletin on Narcotics, 2006 that THC degrades over time, so the age of the sample and the conditions under which it was stored are highly relevant.

24. The last contention raised by the learned counsel for the appellant pertaining to the keys of the suitcase, it is true that PW8 Sh Anil Kumar ACO did not mention in the DR No 29470 about deposit of the keys alongwith the suitcase since the keys were inside the suitcase, however, this does not effect the case of the prosecution adversely nor this is fatal to the present case.

25. After perusal of the law laid down by the Apex Court as well as this Court and after considering the entire material placed on record, I hold that the prosecution evidence is completely reliable and trustworthy. The aforementioned events clearly depict that the arguments advanced by the learned counsel for the appellant are without merits and on mere conjectures and surmises and hence are rejected.

26. The impugned judgment of the learned Special Judge, NDPS for convicting the appellant under Section 20 (b)(ii)(C) and Section 28 read with Section 23(c) of NDPS Act for ten years rigorous imprisonment together with a fine of Rs. two lakhs (cumulatively) cannot be interfered with. I find no merit in the appeal and the same is dismissed.

27. The appellant be informed of the order through the Superintendent Jail.

28. The Trial Court record be sent back forthwith along with a copy of this judgment

SANGITA DHINGRA SEHGAL, J.

OCTOBER 09, 2017

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