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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1260/2011**

Judgment reserved on 17th July, 2017
Judgment pronounced on 11th August, 2017

SIKANDER KUMAR Appellant
Through: Ms. Saahila Lamba, Advocate.

versus

STATE Respondent
Through: Ms. Anita Abraham, APP for the State

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL
SANGITA DHINGRA SEHGAL, J.

1. The present appeal has been instituted under Section 374 of the Code of Criminal Procedure against the impugned judgment dated 03.09.2011 and order on sentence dated 20.09.2011 by which the appellant has been convicted for the offence under Section 20(b) (ii)(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. One lakh, in default thereof further undergo rigorous imprisonment for a period of one year.

2. The case of the prosecution, as observed by the Special Judge, NDPS is as under:

"2. The case of the prosecution is that secret information was received by ASI Paramjeet Singh to the effect that one person namely Sikander would come under foot over bridge, ISBT to sell charas and on this basis the raiding party was constituted consisting

of, ASI Paramjeet Singh, HC Sanjeev and HC Mahesh. Prior to this, secret informer was produced before Inspector M.L. Sharma who in turn informed to ACP and instructions for raid were obtained. The secret information was reduced into writing and was transmitted to the seniors u/s 42 NDPS Act. The raiding party left the police station in Gypsy No. DL1CJ-3481 vide DD no. 5 and proceeded to the spot. On the way, they requested some passers-by to join the proceedings but no one came forward. Police party even after reaching at the iron bridge, requested public to join but they declined. The raiding party took positions and at about 8.20 a.m., one boy was seen coming from Mori Gate having one black colour bag on his left shoulder. The secret informer pointed out towards him, who was accused, Sikander and was apprehended. The secret information was shared with the accused and introduction of raiding party was given. Notice u/s 50 NDPS Act was served upon the accused which he refused vide his reply. Thereafter on search, the bag of the accused was found containing black colour material which was found charas on field testing kit. On weighing, the same came out to be 1 Kg 50 grams and out of the same, two samples of 50 grams each were taken out. The main charas as well as samples were sealed and seized and FSL form was filled up. The FIR was registered and accused was arrested. After completion of investigation and other proceedings, chargesheet was filed against the accused.

iii. On 14.01.2010, as amended on 01.09.2011, the charge against the accused was framed for the offence punishable u/s 20(b)(ii)(C) NDPS Act 1985, to which he pleaded not guilty and claimed trial.”

3. The prosecution has examined 11 witnesses, in all. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein the appellant denied all allegations and asserted that on 20.12.2008 he was lifted by ASI Paramjeet on the behest of the police informer Zakir, but the colony people got him released from the police party and in the said process, one Jagdish sustained head injuries. He

further stated that on 04.07.2009, he had come for the check up of his niece to St. Stephen hospital but was lifted by ASI Paramjeet Singh and falsely implicated in the case. To prove his innocence, he had examined six witnesses.

4. On appreciation of the evidence and after considering the rival contentions of the parties, the learned Special Judge found that the recovery of 1 Kg 50 Gms of Charas from the appellant was fully established and thus, held the appellant guilty for the offence punishable u/s 20(b)(ii)(C) of the NDPS Act and convicted him to rigorous imprisonment for a period of ten years with fine.

5. Ms. Saahila Lamba, learned counsel for the appellant contended that no sincere efforts were made by the raiding party to join independent witnesses which vitiates the entire case of the prosecution; that the raiding team in fact had a grudge against the appellant thereby falsely implicating him in the present case; that the appellant was illegally picked up by the police officials on 04.07.2009 from St. Stephens Hospital and not apprehended from ISBT, Kashmere Gate; that the learned Trial Court failed to take into account that there was evident delay in sending the sample of the seized material to the FSL thereby suggesting tampering with the seized material; that the quantity of Charas recovered from the appellant was less than the commercial quantity as on 05.11.2009, 100gms of recovered amount of charas was sent to Central Revenues Control Laboratory (hereinafter referred to as 'CRCL') for analysis, the report of which shows the gross weight of charas as 91.5 gm, thereby indicating a deficiency of 8.5%. 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.

6. Ms Anita Abraham, learned APP for the State, on the other hand submits that the appellant was apprehended by the raiding party near ISBT, Kashmere Gate carrying 1 kg 50gm of Charas; that the sample of 50gm which was sent to the FSL, Rohini 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 police witnesses cannot be discarded merely on the ground that no independent witnesses corroborated the same.

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

8. At this stage, it is relevant to examine the statements of PW11 ASI Paramjeet Singh, PW2 HC Sanjeev Kumar, PW6 HC Mahesh Kumar.

9. PW11 ASI Paramjeet Singh testified as under:

“On 04.07.2009, I was posted as ASI at PS Narcotics Cell, Sakar Pur, Delhi. On that day at about 6.30am secret informer came to me and informed that one person in the name of Sikander r/s Jhuggi, Sadar Bazar used to sell charas and he would come between 8.00am to 9.00am under iron foot over bridge ISBT, Kashmere Gate. On satisfying myself I produced secret informer before Inspector M.L. Sharma and he made inquiry from secret informer about the information and Inspector informed to ACP through telephone at his residence. ACP instructed to raid immediately. I recorded DD No. 4 in daily dairy register in respect of the information and same was given to Inspector M.L. Sharma for necessary action u/s 42 NDPS Act. I organized raiding party as per directions of Inspector. The raiding party constituting of myself, HC Sanjeev Kumar, HC Mahesh Kumar. Then I made departure entry vide DD No 5 at 7.20am and left the police station along with the secret informer in a government

gypsy no. DL-1CJ-3481. I was having my bag containing field testing kit, electronic weighing machine and we reached at about 7.50am under iron bridge, ISBT, Kashmere Gate. On the way we requested five passers by to join the proceedings but none of them agreed. On reaching at the iron gate again I requested five/six passers to join the proceedings but all of them declined. I briefed my staff in detail. Gipsy was parked at the out gate of ISBT. We laid naka-bandhi there by taking positions myself, HC Sanjeev and secret informer near the stairs and HC Mahesh was directed to take position in opposite side. At about 8.20am, one boy was seen while coming from the side of Mori Gate who was having a bag of black color on his left shoulder. The secret informer identified him as Sikander and he left the spot. That boy came there and stopped and started waiting for someone. When he just tried to go back we immediately apprehended him. I introduced myself and other police members to the said boy whose name on disclosing came as Sikander, accused present in the court. The government vehicle was called. Accused was told about the secret information of having charas with him and if he wanted to be reach before any gazetted officer or Magistrate which was his legal right. Accused was also offered to take search of the police personnels before his search if he wanted but he declined. Then I issued a notice to him u/s 50 NDPS act, Ex PW2/A bearing my signature at point Y and reply of the accused is Ex.PW2/B bearing my signature at point Y. The reply of the accused was written by me as he was illiterate as per his dictation. Before further proceeding which I has to conduct, further the persons gathered there were again requested to join the proceedings but they refused. The raxine bag of the accused was checked, in the front of the bag Dolphin was written in golden color. One transparent polythene was taken out which contained the black colored material which was tied with rubber band, the same was untied. The black colored material was checked with the help of testing kit and charas was found therein. The transparent polythene having charas was weight and came as 1Kg and 50 gms, out of which two samples of 50gms each were taken out and same were kept into small polythenes and both samples were converted into a

pulanda and given mark A and B. The remaining charas was kept into the said bag and tied the same with rubber band and same was converted into separate pulanda and given mark C

10. PW2 HC Sanjeev Kumar testified as under:

“At about 08.20 am one boy wearing tracksuit lower and carrying one black bag on his left shoulder was seen coming from the side of Mori Gate. From a distance of about 20 steps the secret informer identified that boy as Sikander, the accused person in court. Thereafter, secret informer went away. Accused came under the bridge and started waiting for someone.

After about 10 minutes when the accused was about to return at about 8.30am, we overpowered him. IO called the official vehicle to the spot. IO introduced himself and the raiding party to the accused, who identified himself.

IO shared the secret information with the accused and apprised him of his legal right to be searched in the presence of gazetted officer or magistrate. In this regard, notice under section 50 NDPS Act also was served on the accused. The said notice is in my handwriting and bears my signatures. The notice is Ex. PW2/A bearing my signature at portion X. Since accused was illiterate, notice was read over and explained to him. Meaning of gazetted officer and magistrate also was explained to the accused. Accused was also asked as to if he wanted to take search of official vehicle also. But accused refused to exercise his legal right. Refusal of accused was written by the IO on his dictation and the same is Ex. PW2/B bearing my signature at portion X. The reply also was read over and explained to the accused before he signed the same.

Thereafter the IO requested 4-5 public persons of the crowd to join further proceedings but they refused and the crowd dispersed.

Thereafter, the IO took search of the accused. The black bag that the accused was carrying was taken by the IO and opened. It was a black raxene bag with plastic handle and one hanging strip and buckle flaps. On opening the bag, it was found to have two zipped portions. From front portion of the bag one polythene was recovered. The said polythene tied with rubber band containing black moist

pencil shaped bars. On being tested with the field testing kit the recovered material was found to be charas. On being weighed with the polythene, the charas was found to be 1kg 50 grams.”

11. PW6 HC Mahesh Kumar testified as under:

“At about 08.20am one person was seen coming from the side of Mori Gate, who was identified by the secret informer from the distance of 20-25 steps as the accused Sikander, present in the court. Accused was wearing black track suit lower and was carrying one black raxene bag on his left shoulder. Accused came and stated waiting under the staircase of iron bridge. Secret informer went away after identifying the accused.

At about 08.30am when the accused returned to leave the spot, he was apprehended by us. The IO called the vehicle to the spot. The accused introduced himself as Sikander and IO shared the secret information with him after introducing the members of the raiding party. The IO apprised the accused of his legal right to get himself searched in the presence of some gazetted officer or a magistrate and to take search of the vehicle and members of the raiding party. But the accused refused to exercise his right. The IO served on the accused a carbon copy of notice under Section 50 NDPS Act and read over and explained the contents thereof. Accused being illiterate, his reply to the notice was written by the IO on his instructions and he signed the same. Notice and reply are already on record as Ex.PW2/A&B which bear my signature at portion Y.

Thereafter, the IO again requested 5-7 public persons of the crowd gathered to join further proceedings but all of them went away expressing their personal difficulty.

IO took the bag carried by the accused and opened the same. The said bag is black in color and beard the word DOLPHIN and bears on handle and two way zip.

On being opened, the front portion of the bag of the accused was found to contain a transparent polythene bag tied with rubber band containing black pencil shaped substance. On being tested with field

testing kit, the black substance was found to be charas and being weighed with polythene, the charas was found to be 1kg 50 gms.”

12. A careful scrutiny of the testimonies shows that on 04.07.2009, PW7 Inspector ML Sharma was posted as an Incharge Narcotics Cell Crime Branch, Delhi. At about 6.40 am, ASI Paramjeet Singh alongwith secret informer, came to the office of PW7 and told him that the appellant, dealing with charas would come near the iron bridge, ISBT between 8.00 am and 9.00 am to handover charas to someone. He thus directed ASI Paramjeet to raid the spot. At about 8.20 am, one boy was seen coming from Mori Gate along with a black bag on his left shoulder. The secret informer pointed out towards him, who was the appellant and thus he was apprehended. Notice under Section 50 of the NDPS Act was served upon the appellant, however he refused to avail his rights.

13. On checking the raxine bag of the appellant, one transparent polythene was taken out that contained black coloured material. Upon testing the same with the kit, carried by the raiding party, the material was found to be charas. Quantity was checked and weighed. From the possession of the appellant 1 kg and 50 gms charas was recovered. Sample was drawn and the requisite documentation was done at the spot.

14. Two samples of 50 gms each were taken out and same were kept into small polythenes. Both samples were converted into a pulanda and given mark `A` and `B`. The remaining charas was kept in a separate pulanda and given mark `C`. The sample was sent to the FSL, the

relevant portion of the report reads as under:

**“DESCRIPTION OF ARTICLES CONTAINED IN THE
PARCEL(S)/EXHIBIT(S)**

Parcel- ‘A’ : One (01) cloth parcel, sealed with the seals of ‘AK’ (01) & ‘PS’ (01). It was found to contain exhibit ‘A’, kept in a transparent polythene.

Exhibit- ‘A’ : Dark greenish-brown coloured, solid type tubular shaped material, stated to be Charas, weight (approx..) 50g with polythene.

RESULTS OF EXAMINATION

The sample(s) ‘A’ was examined by microscopic, chemical tests, chromatography and instrumental methods.

On examination, the exhibit(s) ‘A’ gave characteristic odour of cannabis. Microscopy revealed the presence of characteristic cystolithic hair, glandular hair, resin glands of cannabis plant.

Solvent extraction showed resin. Chemical tests and chromatographic analysis gave positive results for cannabinoids including Tetrahydrocannabinol in exhibit ‘A’.

On the basis of the above examinations exhibit(s) ‘A’ was confirmed to be Charas.”

15. Remnant pullanda Mark ‘C’ sealed with the seals of ‘PS’ and ‘AK’ was opened in the Trial court in presence of both sides and 100 gms sample of the recovered contraband was taken out to be sent to CRCL’ with directions to chemically analyse the same and also give opinion as regards the percentage of tetrahydrocannabinol which was earlier not shown in the FSL report. The relevant portion of the report reads as under:

“CRCL REPORT

The sample is in the form of greenish brown colored rod like sticks. 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 with plastic pouch
CLD-979 N	X	5.2%	91.5 gm

16. From the analysis of the above reports, it is clear that the black coloured material carried in the bag by the appellant was confirmed to be charas.

17. Perusal of the testimonies further indicates that the prosecution witnesses requested some passers-by to join the proceedings but no one came forward. The police party even after reaching at the iron bridge, requested public to join but they declined. Thus, efforts were made by the police officials to join the independent witnesses in the proceedings, however there are times when the public persons are reluctant to join the same. Additionally, it is settled position of law that the mere fact of non-joining of a public witness, would not ipso- facto make the evidence of the police witnesses unreliable or untrustworthy. In this context, reference has been made to the case titled **State of U.P. v. Anil Singh: 1988 Supp. (2) SCR 611**, wherein the Court has held that the prosecution case cannot be doubted for not examining the witnesses after taking note of the fact that the public are generally reluctant to come forward to depose before the Court. In **Hiralal Pandey and Ors. Vs. State of U.P. (Criminal Appeal No. 65 of 2008) decided on 17.04.2012**, it was held that the prosecution version could be believed even though the independent witnesses have not been examined. In view of the aforesaid, the contention that no sincere efforts were made by the raiding party to join

independent witnesses vitiated the entire case of the prosecution is rejected.

18. It was contended by the counsel for the appellant that the material was seized on 04.07.2009, the permission was obtained on 08.07.2009 from DCP to send the same to FSL but the sample was sent to FSL only on 22.07.2009 showing a delay of 14 days in sending the sample and hence suggesting tampering of the seized material. On perusal of the statement of the witnesses who recovered and deposited the sample to the FSL, it is clear that out of the recovered charas, two samples of 50 grams each were drawn and placed in two small polythene pouches tied with rubber band and converted into cloth pullandas with mark 'A' and 'B'. The remnant charas in polythene was tied with rubber band and placed back in the black bag and converted into cloth pullanda with mark 'C'. PW5 Chand Ram on 04.07.09 was posted as MHC(M) in PS Crime Branch, Nehru Place, Delhi. On that day he was called by SHO/Inspector Akshay Kumar to his room. SHO handed over to him three pullandas mark A, B & C with FSL form and carbon copy of seizure memo, all bearing signatures of SHO and FIR number. After making entry No.337 in Register no.19, he deposited the articles in malkhana on the same day itself. On 22.07.2009, sample mark 'A' along with FSL form was handed over to PW3 Ct. Narender who took the said pullanda and FSL form from PW5 Chand Ram alongwith other papers and proceeded to FSL Rohini. He deposited the pullanda mark 'A', FSL Form and other papers in FSL Rohini at 11.15 am and obtained the receipt. He had taken the pullanda to FSL on the verbal permission of Inspector, Narcotics Cell.

19. Therefore, so far as the contention of learned counsel for the appellant pertaining to tampering of the seized articles is concerned, there is no doubt that there has been a delay of 14 days in sending the sample to FSL, however the fact remains that the recovered samples were kept in the malkhana on the same day of seizure and were in proper custody, thereby ruling out the possibility of the same being tampered.

20. It was contended by the counsel for the appellant that the sample sent to CRCL was weighed 100 gms and the CRCL report dated 12.11.2009 states the gross weight of remnant sample with the plastic pouch returned is 91.5 gm indicating the deficiency of 8.5 gms.

21. It was further contended that the deficiency of 8.5 gm in the gross weight as mentioned in the CRCL report, if applied to the whole quantity, would make the quantity recovered from the appellant less than the commercial quantity. At this juncture, it is appropriate to mention that it was the remnant sample which was sent for quantification of percentage content of THC and when the sample was received in CRCL, New Delhi, it was properly sealed and in intact condition. The impression of each seal was affixed on sample packet tallied with the facsimile of seal as given on Court's letter. It is evident from the testimonies, FSL report and the CRCL report that there is nothing on record to suggest the tampering of the charas recovered from the appellant, thus the discrepancy in the weight of Charas of 8.5 gm had probably occurred due to passage of time as the charas got dried resulting in reduction of its weight.

22. The contention of the counsel for the appellant that the appellant was in fact illegally picked up by the police officials on 04.07.2009 from St. Stephens hospital has no force. I am in consonance with the view of

the Special Judge in this regard as the record of St. Stephen hospital EX. DW4/C (colly.) does not substantiate the version of the appellant.

23. After going through the entire record, I hold that the prosecution evidence is reliable and trustworthy. The narration of the above events would go to show that the arguments advanced by the learned counsel for the appellant that the sample parcels were tampered with, are based on mere conjectures and surmises. Thus, the arguments are without any merit and hence are rejected.

24. The impugned judgment of the learned Special Judge, NDPS for imposition of minimum punishment prescribed under Section 20 (b)(ii)(C) of NDPS Act for ten years rigorous imprisonment together with a fine of Rs. one lakh cannot be interfered with. I find no merit in the appeal and the same is dismissed.

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

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

SANGITA DHINGRA SEHGAL, J.

AUGUST 11, 2017

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