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

RESERVED ON : MARCH 21, 2017

**DECIDED ON : MAY 31, 2017**

+ **CRL.A. 1340/2013 & CrI.M.B.7881/2015**

EKRAM ANSARI

..... Appellant

Through : Mr.M.L.Yadav, Advocate.

versus

STATE & ORS

..... Respondents

Through : Mr.Amit Gupta, APP.

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. The appellant–Ekram Ansari impugns a judgment dated 12.08.2013 of learned Addl. Sessions Judge in Sessions Case No. 25A/10 arising out of FIR No. 302/10 at Police Station Govind Puri by which he was held guilty for committing offence punishable under Section 20 (b) (ii) (c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'NDPS Act'). By an order dated 17.08.2013, he was sentenced to undergo Rigorous Imprisonment for ten years with fine ₹1,00,000/-; default sentence being Simple Imprisonment for three months.

2. Briefly stated, the prosecution case in nutshell, was that on 05.09.2010 at around 04.45 P.M an information was received by SI Balbir Singh, while he was on patrolling duty along with HC Ram Kishore and Ct. Ramkesh. It was intimated that an individual involved in supply of Charas would be coming from the side of petrol pump, Baba Fateh Singh Marg would go towards slum quarters DDA, Kalkaji. The information was reduced in writing vide DD No. 17A. The information was communicated by SI Balbir Singh to his senior officers and he was directed to conduct the raid. SI Balbir Singh constituted a raid team and reached the spot at about 04.15 P.M. Some public persons were requested to join the proceedings but they declined. At 4:45 P.M, the appellant was seen coming from the side of Maa Anandmai Marg. On the pointing out of the secret informer, the appellant was apprehended and was informed of his legal right. Notice (Ex.PW-2/D) under Section 50 NDPS Act served upon him. The appellant was carrying a black colour cloth bag on his left shoulder. Upon search, he was found in possession of 4 kgs of charas without licence or permit. Two samples of 100 grams each were taken out. FSL form and seizure memo was prepared. Rukka (Ex.PW-4/A) was prepared and FIR was lodged. Subsequent investigation was taken over by PW-8 (ASI Hari Ram). The appellant was arrested. Statements of the witnesses conversant with the facts were recorded. Exhibits collected during investigation were sent to Forensic Science Laboratory for examination. Upon completion of investigation, a charge-sheet was filed for commission of offence under Section 20 of NDPS Act. In order to establish its case, the prosecution examined nine witnesses. In 313 Cr.P.C. statement, the appellant denied his involvement in the crime

and pleaded false implication. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeal has been preferred.

3. I have heard the learned counsel for the parties and have examined the file.

4. Appellant's Counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. Mandatory provisions of Sections 42 and 50 were not complied. Delay of 17 days in sending the sealed samples to FSL has remained unexplained. The prosecution did not explain as to how the quantity received by FSL was below 100 gms. The Counsel further urged that the statements of police officials in the absence of independent public witness cannot be given prominence. Learned Additional Public Prosecutor urged that all the mandatory provisions were complied with. Since the recovery was effected from the handbag, issuance of notice under Section 50 of NDPS Act was not mandatory.

5. Material testimony to infer the appellant's guilt is that of PW-4 (SI Balbir Singh). He deposed that on 05.09.2010, he alongwith HC Ram Kishore (PW-2) and Ct. Ramkesh (PW-6) were on patrolling at Baba Fateh Singh Marg, Govindpuri. At about 04.00 P.M, a secrete informer informed him that a person would come from the side of Maa Anandmai Marg to go towards DDA Flats, Kalkaji at about 04.45 P.M and he was in possession of 'Charas'. The information was conveyed by him to Duty Officer, SHO and ACP on telephone and they directed him to conduct the raid. He further informed that after constituting raiding team, 4/5 passers-by were asked to join the proceedings but they declined to do so. At about 04.45 p.m. on the pointing of secret informer, the appellant was apprehended. He was apprised

of the secret information and was told about his legal right. Notice under Section 50 NDPS Act (Ex. PW-2/D) was served upon him. The appellant being an illiterate was unable to read its contents. Notice under Section 50 NDPS Act (Ex.PW-2/D) was read over to him. He further testified that the appellant was carrying a black colour zipper bag on his shoulder. On search, it was found to contain 4 packets wrapped in white colour polythene/panni and yellow colour tape thereon. On removing the tape the contents were taken out of the polythene and it were found to be sticks of black colour. On smelling black colour substance, it was identified as 'charas'. The total quantity came to be 4 kgs. Two samples of 100 gms each were prepared which were kept in two separate cloth pullandas. Necessary proceedings were conducted and FSL form filled by him was seized vide seizure memo Ex. PW2/A. In the meantime, SHO Veer Singh arrived at the spot and enquired about the appellant. He prepared Rukka Ex.PW4/A and handed over it to Ct. Ramkesh for lodging FIR. Subsequent investigation was taken over by PW-8 (Hari Singh) who conducted necessary proceedings.

6. In the cross-examination, the witness reiterated that the secret information conveyed to the SHO and ACP was that a 'boy' would come with charas at around 4.45 p.m. He further deposed that they had left the Police Station for patrolling duty at around 3.45 p.m. vide DD No.15A. Notice under Section 50 of NDPS Act was given to the appellant at around 5.00 p.m. The SHO had reached the spot at around 7.00 p.m. They all were in uniform. He denied the suggestion that the appellant was falsely implicated in this case.

7. On scanning the testimony of the witness, it reveals that despite searching cross-examination, no material infirmity could be extracted to discard his statement. Material facts proved by him in the examination-in-chief remained unchallenged and uncontroverted in the cross-examination. The appellant did not deny his presence and apprehension at the spot. Nothing was suggested to him as to from where he had arrived at the spot and what was his purpose. No ulterior motive was attributed to the witness for making false statement against the appellant with whom he had no prior acquaintance.

8. PW-2 (Head Constable Ram Kishore) and PW-6 (Constable Ramkesh) have also supported PW-4's version in its entirety. Their statements are consistent. Lengthy cross-examination did not yield any discrepancy to suspect their versions.

9. The prosecution witnesses have categorically deposed that at different stages of investigation various public individuals were requested to join the investigation but for reasons peculiar to them, they did not opt to join the investigation. Since the case of the prosecution is based upon the testimonies of police officials, their statements are to be perused with great caution. However, it does not provide any reason to the appellant to ask for rejection of their statements in toto. There is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect. Generally the public at large are reluctant to come forward to depose before the court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses.

10. The question whether the failure to join public witnesses before effecting the recovery of the contraband would be fatal to the prosecution or

not came to be considered by apex court in *Ajmer Singh Vs. State of Haryana* (2010) 3 SCC 746 it was contended that the evidence of the official witness cannot be relied upon as their testimony had not been corroborated by any independent witness. The Hon'ble Supreme Court, rejecting the contention, held as under:

*“The minimum sentence prescribed under the Act is imprisonment of 10 years and fine. In this situation, it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule. Therefore, in the peculiar circumstances of this case, we are satisfied that it would be travesty of justice, if the appellant is acquitted merely because no independent witness has been produced. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.”*

11. Rejecting a similar contention in *Kashmiri Lal Vs. State of Haryana* (2013) 6 SCC 595, the Hon'ble Supreme Court inter alia observed as under:

*“ ....it is evincible from the evidence on record that the police officials had requested the people present in the 'dhaba; to be witnesses, but they declined to cooperate and, in fact, did not make themselves available. That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should*

*always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinising the evidence the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle of quality of the evidence weighs over the quantity of evidence. These aspects have been highlighted in State of U.P. v. Anil Singh 1988 Supp SCC 686 and Ramjee Rai and others v. State of Bihar (2006) 13 SCC 229.”*

12. In the instant case, the appellant was the resident of Village Dhoom Nagar, PS Narkatia, District West Champaran, Bihar. The police officials did not have any familiarity with him. In the absence of any prior animosity or ill-will, the police officials present on their patrolling duty in Delhi, as usual, were not accepted to falsely implicate the individual who was a resident of place far away from Delhi. The appellant did not offer plausible explanation as to for what specific purpose he had come to visit Delhi. In the cross-examination, nothing was suggested to PW-4 (SI Balbir Singh) as to when the appellant had departed from his native place to come to Delhi for any definite purpose. Subsequently, the appellant came up with the plea that he had come to Delhi to consult a travel agent in connection with visa for Canada. He, however, did not reveal as to who was the travel agent to whom he was to consult. No such documents regarding consultation for visa were recovered from his possession. No such defence was put in the cross-examination of PW-4 (SI Balbir Singh). The appellant did not examine any witness in his defence from his family to prove if the

purpose of his visit was to consult a travel agent. The defence seems afterthought and cannot be believed.

13. Other prosecution witnesses have also supported the statements given by the members of the raiding team. Minor inconsistencies and lapses on the part of investigation pointed out by the appellant's counsel are not fatal to the prosecution case. No cross-examination was conducted from the material prosecution witnesses regarding minor deficiency in the weight of the samples received by FSL. Since there was a delay of seventeen days, possibility of deficiency for various reasons cannot be ruled out. No prejudice is shown to have been caused to the appellant in sending the sample after seventeen days.

The Trial Court has discussed all the relevant aspects in the impugned judgment. Well reasoned judgment based upon fair appreciation of evidence deserves no intervention.

14. The appeal is without any substance and is dismissed. Trial Court record (if any) be sent back forthwith along with the copy of the order. Copy of this order be sent to the concerned Jail Superintendent for information.

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

**MAY 31, 2017/sa**