

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

% *Date of decision: 8th June, 2017*

+ **CRL.A. 1378/2012**

RAJ KUMAR Appellant
Through Ms.Rakhi Dubey, DHCLSC Panel
Advocate
versus

STATE Respondent
Through Ms.Meenakshi Chauhan, Addl.
Public Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

In this appeal, appellant challenges impugned judgment of 21st January 2012 vide which he has been held guilty of committing offence punishable under Section 20 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (hereinafter referred to as the "NDPS Act") as he was found in illegal possession of 32.560 kgs. of Ganja. Vide impugned order on sentence of even date, appellant has been sentenced to rigorous imprisonment for ten years with fine of ₹1,00,000/- and in default of payment of fine, trial court has directed that appellant shall serve sentence of rigorous imprisonment for nine months. The factual background of this case, as noted in the impugned judgment is as under:-

*"It is the case of prosecution that on 03.04.2010
Inspector Narender Tyagi posted at PS Hazrat*

Nizamuddin Railway Station was on patrolling duty vide DD no.12-A. At about 3.20 pm, he reached Cumsome Restaurant, where Ct. Alok Kumar met him. Thereafter, they both reached DFMD Gate, Cumsome Restaurant side and started checking the passengers on its left side. It is case of the prosecution that at about 3.40 p.m. Raj Kumar was found coming from the side of platform no.2-3 towards DFMD gate. He was wearing black pant and grey t-shirt and carrying one brief-case having in his right hand, another brief-case in his left hand and one black thaila on his left shoulder. At that time Ct. Alok Kumar observed that one person behind Raj Kumar moved fast through DFMD Gate and lost in the crowd. Raj Kumar accused was stopped for his checking and asked to produce keys of the brief-cases. It is also case of the prosecution that when the brief-case of black cover was checked, it was found to contain two packets. On smelling those packets were found containing Ganja. The other brief-case of green colour cover was checked. It was also found containing two packets wrapped in newspaper. Their contents were Ganja. The thaila, which Raj Kumar was carrying, was found to contain clothes. Inspector Narender Tyagi recorded information and sent Ct. Alok Kumar to hand over the same to the SHO. The constable was also instructed to bring IO kit at the spot. The Inspector requested 4-5 passengers to join the investigation, but none accepted. A notice under section 50 of the Act was given to Raj Kumar, but he refused to avail the offer. His refusal was recorded. Nothing more was recovered on his search."

In this case of chance recovery, the crux of evidence led is tabulated by trial court in paragraph No.5 of the judgment. Suffice to

note that the patrolling team was headed by Inspector Narender Tyagi (PW-10). The precise stand of appellant before trial court as reproduced in the impugned judgment is as under:-

"On that date of incident I had come to Delhi from Jamshedpur for work. I was apprehended by the police outside railway station and not on the platform. I was only carrying one shoulder bag which contained my clothes. There was no briefcase in my possession. Neither any Ganja was recovered from my possession. No senior police officer came. I was straight away taken to the police station from the spot."

Trial court, while discarding the aforesaid noted stand of appellant and by relying upon the prosecution evidence, has convicted and sentenced the appellant as noted hereinabove.

Appellant is present in Court in pursuance to Production Warrant issued against him.

The challenge to impugned conviction and sentence awarded to appellant by learned counsel for appellant is on the ground that the case property of this case has been tampered with. To submit so, it is pointed out by appellant's counsel that Inspector Preet Singh (PW-1) as well as Ct. Alok Kumar (PW-4) reached the police station at the same time and the sample seals were handed over to Ct. Alok Kumar (PW-4) by Inspector Narender Tyagi (PW-10) after sealing the case property and the samples. So it is submitted that the possibility of tampering of the case property/samples cannot be ruled out.

It is further submitted by appellant's counsel that as per the deposition of Inspector Preet Singh (*PW-1*) and Inspector Narender Tyagi (*PW-10*), the briefcase which the appellant was carrying was of light blue colour whereas case property produced before the trial court clearly shows that the briefcase was of dark navy blue colour and so, on this account, benefit of doubt accrues to appellant. It is pointed out by appellant's counsel that there is a variation in the weight of the sample as received in the FSL Laboratory. It is asserted by appellant's counsel that the weight of two samples received in the FSL Laboratory was of 447 grams each, third sample was of 444 grams and fourth one was of 449 grams, whereas the four samples taken at the spot were of 500 grams each. Thus, it is submitted that this variation goes to root of the matter and demolishes the prosecution case set up against appellant. It is pointed out by appellant's counsel that as per prosecution case, after testing, the samples were returned back with the seal of '*FSL*' but when the returned samples were opened before the trial court, they were found to be not having any seal of FSL. Thus, it is submitted by learned counsel for appellant that aforementioned infirmities go to root of the case and entitles the appellant to benefit of doubt. In alternative, it is submitted by appellant's counsel that appellant is a poor person who has already undergone sentence of more than seven years and is unable to pay heavy fine of ₹1,00,000/- and so the sentence of fine and the period in default thereof, deserves to be reduced.

On the other hand, learned Additional Public Prosecutor for the respondent-State supports the prosecution case and order on sentence and

submits that the colour of the briefcase was sky blue only but it had a dark blue cover. It is pointed out by learned Additional Public Prosecutor for respondent-State that variation in the colour of the briefcase by itself cannot be said to be detrimental to the case of prosecution as human perception differs from person to person. Regarding discrepancy in weight of samples, it is submitted by learned Additional Public Prosecutor for respondent-State that difference in the weight is quite possible as the weighing machine used by Investigating Officer was not of the same quality, which was used by the FSL Laboratory and so on this ground, no benefit accrues to appellant.

To dispel the apprehension of samples/case property being tampered with, attention of this Court is drawn by learned Additional Public Prosecutor to the deposition of Inspector Preet Singh (*PW-1*), to point out that the case property shown to this witness clearly indicates that the sample was having the seal of FSL, Delhi. Regarding the sentence of fine, it is submitted by learned Additional Public Prosecutor that in view of the heavy recovery effected, quantum of fine imposed is just and proper.

After having heard both the sides at length and on perusal of impugned judgment, order on sentence and the evidence on record, I find that to dislodge the prosecution case, the stand taken by appellant is of case property of this case being tampered with. Merely because Inspector Preet Singh (*PW-1*) and Ct. Alok Kumar (*PW-4*) had reached the police station at the same time and because Inspector Narender Tyagi (*PW-10*)

had handed over the specimen seal to Ct. Alok Kumar (*PW-4*), would not give rise to an inference that the case property of this case is tampered with. It is so said because the FSL report on record clearly indicates that the samples/case property were intact. The variation in the weight of the samples can be reasonably explained away as the weighing scale of FSL Laboratory is quite advanced, whereas the weighing scale of the investigating agency is not expected to be so refined. In any case, the variation in weight of the samples is of few grams only and it would not be material for the reason that the quantity of contraband recovered would still remain commercial.

On perusal of deposition of Inspector Preet Singh (*PW-1*), it becomes clear that when the samples were produced before trial court, it bore the seal of FSL, Delhi. So, it cannot be said that the seal of FSL was not on the samples when they were produced before the court. Regarding the colour of brief case, in which the contraband was carried, would not by itself justify an inference of tampering with the case property because in a case of this nature, one is not expected to particularly observe the colour of brief case. Whether the briefcase was of sky blue colour or navy blue colour, would not be consequential in the facts of the instant case. In the considered opinion of this Court, the so called infirmities pointed out in the prosecution case are not sufficient to demolish the prosecution version as the substratum of the prosecution case stands firmly established. Mere denial of prosecution case by appellant-accused does not justify his acquittal in this case. Such a view is taken because of substantial quantity of the contraband recovered in the instant case. No

reason is forthcoming as to why appellant would be falsely implicated in this case.

Consequently, the conviction of appellant for the offence in question and the substantive sentence awarded is confirmed as I find that the recovered contraband i.e. *Ganja* is of commercial quantity. Therefore, amount of fine cannot be reduced as the offence in question is punishable with minimum fine of ₹1,00,000/-. However, the sentence in default of payment of fine, is reduced from rigorous imprisonment of nine months to simple imprisonment for six months.

With aforesaid modification, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JUNE 08, 2017
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