

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

% Decided on: 20th April, 2018

+ **CRL.L.P.374/2016**

DIRECTORATE OF REVENUE INTELLIGENCE Petitioner
Represented by: Mr. Satish Aggarwala, Advocate.

versus

SAMSON ONGERA OMORO Respondent
Represented by: Mr. Yogesh Saxena, Ms. Priya
Saxena and Mr. Sikander Azam
Khan, Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

1. By this petition the petitioner seeks leave to appeal against the judgment dated 4th June, 2016 acquitting the respondent for offence punishable under Section 21 (c) of NDPS Act.
2. Case of the prosecution is that an information was received by Shri Surjeet Kumar, Senior Intelligence Officer, DRI (PW-6) on 29th July, 2010 that a person of African origin, aged about 40 years would be standing at the bus stand, Nirankari Sarover, Burari crossing and would be in possession of narcotic drug. The information was reduced in writing vide Ex.PW-2A and placed before Shri Atul Handa, Deputy Director who instructed Shri R. Roy, Intelligence Officer (PW-2) to take necessary action. A team was constituted and a seal was obtained. Two panch witnesses namely Raju and Rakesh were also joined from near ITO at around 8.00 PM. After they reached the crossing at Burari red light at around 10.00 PM the officials noticed a person who matched the description given in the information carrying a black shoulder bag

and waiting at the spot. After about 10-15 minutes when nobody approached him, he got suspicious of a surveillance and started walking towards Nirankari Colony. Thus the officials gave a signal to stop but he started running. After a brief scuffle resulting in injury on or around the respondent's right eye, he was apprehended and he disclosed his identity as Samson Ongera Omoro. Respondent was informed of his right to be searched before a Magistrate or Gazetted Officer. Section 50 NDPS Notice was given and he was taken to DRI office along with the bag where search was conducted. In the personal search of the respondent, a driving license was recovered and from the bag ten polythene packets were recovered. On detailed examination of the three packets each packet was found to contain a heat sealed transparent polythene packet containing white colour bag with a rubber stamp. The sealed plastic packets contained off white granule powdery substance emanating a pungent smell. The stamped packets were marked A-1 to A-10 for the purpose of identification. Small quantities of samples were taken from each of the ten packets and on testing gave positive of heroin. Total weight of the heroin was found to be 10.43 kgs and the net weight was found to be 10.204 kgs. Samples of 5 gms each were drawn and paper seals were affixed. Panchnama was also prepared and the facsimile of the seal was affixed on the test memos. Panchnama was duly signed by panch witnesses and PW-8.

3. Statement of respondent was recorded under Section 67 of NDPS Act who disclosed that one of his friends was lodged in Patiala Jail, whom he met sometime back in Jail and thereafter he met a person Amrit Singh who proposed him to carry the narcotics to Delhi, where somebody will collect the same and he would be paid ₹25,000/- plus traveling expenses. The narcotic drug was handed over by Amrit Singh at Patiala on 29th July, 2010 at about

9.00 AM which was recovered. Search of the tenanted residential premises was taken however, nothing incriminating was found except ₹33,600/- and US\$ 964 which was handed over to the friend of the respondent. Statements of the panch witnesses were also recorded.

4. On a complaint being filed, witnesses were examined. Respondent in his statement under Section 313 Cr.P.C. claimed that he had been falsely implicated. He stated that he was standing outside his house with his Honda Activa on 29th July, 2010, when some persons in plain clothes came to him and forcibly took him to the office where he was threatened, pressurized and beaten and his family history was obtained. No public person was present at the office of DRI. When he was taken to the hospital he was threatened not to disclose anything to the doctor and despite advice of admission by the doctor, DRI officials managed his discharge. He also led defence evidence examining Assistant Manager, State Bank of India, Vijay Nagar to show that he visited his bank and deposited a sum of ₹25,000/- in cash in his account on 29th July, 2010. DW-1 also exhibited the deposit slip Ex. D1/A thereby falsifying the claim of the prosecution that respondent collected the narcotic drug from Punjab on 29th July, 2010 and came to Delhi in the evening. Respondent also examined Raghuvir, Assistant Superintendent, Central Jail, Patiala as DW-2 with record of the visitors from 15th June, 2010 to 29th June, 2010 showing that the respondent had never visited the jail to meet convict Kefa as noted in the statement under Section 67 of NDPS Act by the prosecution.

5. With the permission of the Court Respondent examined himself as DW-4 under Section 315 Cr.P.C. wherein he reiterated his statement under Section 313 Cr.P.C. and also placed on record details of public witnesses Raju and Rakesh from S.P. Darbhanga, Bihar along with reply under the RTI Act.

6. During the course of trial, prosecution did not examine Raju and Rakesh, the two panch witnesses and they were dropped by the prosecution on 18th August, 2011 and 31st October, 2011 respectively, for the reason, Raju's address was not complete and Rakesh was not found residing at the given address. Respondent placed on record certified copies of judgment in case of DRI vs. Samson Chukwundi, SC 47A/09 contending that Raju is fictitious person and no such person exists. Signatures of the public witness Ashok Kumar in case of 'DRI vs. Samson Chukwundi and Ors.', and of Raju in the present case were sent for comparison and as per the report submitted by Dr. Jiju PV (CW-3), the signatures of the two were same. Respondent also placed on record certified copy of the FSL report filed by Dr. Jiju P.V. in the case 'DRI vs. Samson Chukwundi and Ors.'

7. Learned Trial Court also noted that R.Roy, the complainant as well as the seizing officer made no efforts were made to ascertain the identity of this witness. R.Roy deposed that the Panch witnesses were brought by one of his colleagues but he did not remember the name of the colleague. He also did not remember whether the colleague was made a witness or not. He also admitted that he did not check the identification documents of Ranju-Panch witness. The address of Ashok Kumar as Panch witness in DRI vs. Samson Chukwundi and Ors. and that of Raju as panch witness in the present case are same. During the course of cross-examination of R. Roy, learned Trial Court summoned the case file of 'DRI vs. Samson Chukwundi and Ors.' seeing which he admitted the address to be the same. Further the Court noted that the statement of Raju Ex.PW-2/R and Ashok Kumar Ex.PW-2/DA under Section 67 NDPS Act were in the handwriting of the same person which can be seen from the naked eye. The learned Trial Court also noted that summons were

sent to the panch witness Raju at C-56, Mandawali Fazalpur, Delhi for 19th July, 2011 and the report received was that there are about nine shops in C-56/A and in none of these shops any person with the name Raju resided. Next time when summons were sent to Raju, report received was that the address was incomplete.

8. In respect of issuance of summons to Raju learned Trial Court noted that in the cross-examination the credibility of R. Roy is shaken and observed as under:

“The credibility of Sh. R. Roy (PW-2) is shaken from the fact that during his examination, he had stated, “I have not received any summon from this Court for serving the same to the panch witnesses of this case as IO of the case. It has never been to my knowledge that the public witnesses of this case are not traceable at the given address. I have even no knowledge whether they had appeared in this case or not for their examination. I am not aware as to who had taken their summons for service.”

This statement of Sh. R. Roy (PW-2) is apparently a false statement. His endorsement on the summons of PW-Raju, which were directed to be served through IO, falsify his statement. (This report on summons and endorsement of Sh. R. Roy on same is now being marked as ‘CX’ for the purpose of identification.”

9. Learned Trial Court also noted that for every important aspect pertaining to recovery of the contraband from the possession of the respondent, case of the prosecution was that the recovery was effected in the presence of PW-8 who was a gazetted officer who has not been able to explain his presence in the office at 11.30 PM on the night of 29th July, 2010. Learned Trial Court also noted that the second panch witness Rakesh was not also available at the given address. The Court also noted that though the statement

of accused under Section 67 of NDPS Act was admissible however, the credibility of the said statement was shaken in view of the defence evidence led by the respondent and held that the statement Ex.PW-2/G under Section 67 NDPS Act cannot be held to be voluntary for the reason admittedly the respondent suffered injuries. Learned Trial Court noted that as per the discharge summary of the respondent Ex.PW-2/K the doctor had advised admission however, the respondent was admitted on 30th July, 2010 at 9.45 PM and discharged at 10.00 PM. Learned Trial Court noted that the signatures on the depository slip at point 'A' and the mobile phone was of the accused and he compared those signatures with that of the signatures on the statement (Ex. PW-2/G) of respondent under Section 67 NDPS Act which was similar. Further the version in statement of respondent (Ex.PW-2/G) was also belied by the fact that he had never visited convict Kefa in Patiala Jail, Punjab.

10. Considering the facts noted above, this Court finds that the view expressed by the learned Trial Court on the evidence before resulting in acquittal of the respondent cannot be said to be illegal or perverse warranting interference.

11. Leave to appeal petition is declined.

12. Petition is dismissed.

13. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

APRIL 20, 2018

'vn'