

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

% *Decided on: 7th May, 2019*

+ **CRL.L.P. 16/2016**

DIRECTORATE OF REVENUE INTELLIGENCE

.... Petitioner

Represented by: Mr. Satish Aggarwala, Sr. Standing
Counsel with Mr. Vineet Sharma,
Adv. DRI.

Versus

KULBIR SINGH & ANR

..... Respondents

Represented by: Mr. Niti Rai Sharma, Adv. for R-1.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition the petitioner/ Directorate of Revenue Intelligence (in short DRI) seeks leave to appeal against the impugned judgment dated 10th September, 2015 whereby the two respondents Kulbir Singh and Gurbaaj Singh @ Baaj Singh were acquitted.

2. During the pendency of the present leave to appeal petition respondent No.2/ Gurbaaj Singh @ Baaj Singh died and thus vide order dated 16th February, 2018 this Court held that the leave to appeal petition qua respondent No.2 stood abated. Thus, leave to appeal petition is now confined only qua respondent No.1/ Kulbir Singh.

3. Case of the petitioner is that an information was received on 8th March, 2008 at 6.00 AM that one Hyundai Santro car bearing registration

No. PB 02 AG 6882 was parked in the parking lot of New Delhi Railway Station, Pahar Ganj side and the said car contained narcotic drugs concealed in a bag. A raiding team was constituted which reached the spot and a discreet watch was kept on the car from a distance. At around 7.40 AM two persons were seen approaching the car, one of them tried to open the lock of the car with a key and the other one tried to get into the front passenger seat of the car. At that stage the two persons were intercepted and the DRI officers introduced themselves by showing their identity cards. Names of the two persons were revealed as Kulbir Singh and Gurbaaj Singh @ Baaj Singh. Two persons associated with the raids were also introduced to the accused. On being asked whether they were carrying any narcotic drug on their person or in their car, the answer was in the negative.

4. It is the case of the petitioner that two separate notices under Section 50 of the NDPS Act were drawn exhibited as Ex.PW-2/B and Ex.PW-2/C respectively during trial and the respondents were explained that they had a right to get their person searched by a Magistrate or a Gazetted Officer, but they replied in their own hand-writing in the negative. They also refused to get themselves searched before a Gazetted Officer or a Magistrate and thus the search of Santro Car was made. A black colour zipper bag with a sticker of 'Binny Bag' was recovered which was found containing 14 cloth bags and each cloth bag contained some off-white colour powder. Three documents i.e. one receipt of District Transport Officer, Amritsar, documents relating to transfer of Santro Car and one insurance proposal of the said car were also recovered from the car besides the pollution certificate. The black colour zipper bag with 14 cloth bags and both the accused with the public witnesses were taken to the 7th floor office of the

petitioner for detailed examination and further proceedings.

5. As per the prosecution case thereafter all necessary requirements of the NDPS Act were followed and on weighing the 14 packets, the weight was 14.396 Kg and net weight of heroin was found to be 14.088 Kg. The parking ticket of the vehicle was also seized vide Ex.PW-2/A. Representative samples of 5 gms each were drawn from each of the packets and separately packed and numbered. As per the petitioner both the respondents got their voluntary statement recorded. Gurbaaj Singh in his statement stated that on 6th March 2008 when he called Kulbir Singh seeking for a job, he asked him to quickly come in front of Amritsar Bus Stand as he was going to Delhi for some urgent work. When he reached outside the bus stand he was told by Kulbir Singh that narcotic drugs were to be taken to Delhi and if he accompanied him he would give him some money. He agreed to the above proposal. They left Amritsar in Kulbir Singh's Santro car bearing No. PB-02-AZ-6882 at about 6:00 P.M. and reached Delhi at around 3:00 A.M. They parked the car at New Delhi Railway Station and rested there. They took turns to guard the car. At night Kulbir Singh informed him that someone would come to collect the drugs from them at 7:30-8:00 A.M. When they sat in the car awaiting the person, few police officers from DRI approached them and asked them if they had any narcotic drugs with them. When they denied having any narcotic drugs the DRI officials stated that they would like to search the car. Since the area was very crowded, the DRI officials requested them to conduct the search at their office. On reaching the office, notice under Section 50 NDPS was served upon them and they were explained of their right to be searched in front of a Magistrate or a Gazetted Officer. On search of the vehicle, they recovered a

bag containing 14 packets of heroin.

6. The respondents examined defence witnesses taking the plea that they were falsely implicated and the location of their call details did not match and they were not present at the spot as alleged. As per the mobile call details of Mobile No. 9878406882, as deposed by DW-1, the same was in use on 7th March, 2008 and 8th March, 2008 and the last call on this mobile was at 7:10:59 AM on 8th March, 2008 when the location was within the range of tower No. 1171 installed at Hotel Sher-e-Punjab, Til Mandi, Krishan Gali, Pahar Ganj. Cell location chart of 7th March, 2008 of the number showed that the tower was installed at House No. 83, village and post-Nangli, Delhi, thus proving that Kulbir Singh was in Delhi on 7th March, 2008.

7. The learned Trial Court noted that even assuming that this mobile number was not used by Kulbir Singh but by somebody else, the investigation of DRI should have reflected who the other person was, who was involved with the two respondents. Further, the learned Trial Court noted that at the time of apprehension Kulbir Singh had the mobile phone with him which fact has not been noted by the officers of the DRI in the personal search memo or the panchnama Ex. PW-2/D.

8. DW-2 produced by the respondent was with respect to the stay at Hotel Shanti Guest House on 7th March, 2008 who supported the version of the respondents.

9. The main reason why the learned Trial Court acquitted the respondent was that the claim of the prosecution that the statement of the accused Gurbaaz Singh under Section 67 NDPS Act was in his own handwriting and duly signed was disproved by the FSL report. During the course of trial to

meet the defences of the respondents, the prosecution moved an application to send the signatures of Kulbir Singh appearing on various documents on Section 50 Notice, Panchnama and other documents along with the admitted signatures available to the FSL report. As per the FSL report the signatures under Section 50 Section notice and the panchnama tallied with the signatures at the guest register at Shantii Guest House Ex.DW-2 where the presence of Kulbir Singh along with one more person was established. Signatures of Gurbaaj Singh on the Section 50 notice, panchnama, parking street etc. were also sent to the FSL and the report of handwriting expert who was examined as CW-1 was that it did not tally with the admitted signatures of Gurbaaj Singh. Thus, the learned Trial Court came to the conclusion that the signatures purported to be that of Gurbaaj Singh at panchnama, notice under Section 50 NDPS, test memo, arrest memo and the reply given to Section 50 notice were not of Gurbaaj Singh.

10. From the evidence led by the prosecution and defence, and on examining the Court witnesses i.e. handwriting expert, the learned Trial Court came to the conclusion that it was doubtful that the two accused were apprehended at 7.40 AM in the parking lot of New Delhi Railway Station when there is evidence that accused Kulbir Singh along with co-accused had checked out at 9.00 AM from the Hotel Shanti Guest House, Pahar Ganj. Evidence of the prosecution being found not credible, learned Trial Court granted them benefit of doubt.

11. Learned counsel for the petitioner states that a letter was written by deceased Gurbaaj Singh to the Court while in judicial custody admitting his guilt. The said letter has not been placed on record nor was exhibited during the course of trial. Thus, this Court cannot assume that the same was written

by Gurbaaj Singh and even if written it was voluntarily written when he was in judicial custody. The said document which does not form part of record cannot be looked into. Further the said document has no relevance to Kulbir Singh, being not his confessional statement admissible in evidence.

12. For the facts noted above and from the evidence of Court witness it is clear that the documents i.e. notice under Section 50, panchnama, reply to the notice, test memo, etc., were not signed by Gurbaaj Singh and the presence of Kulbir Singh till 9.00 AM on 8th March, 2008 was proved at Shanti Guest House with his signatures tallying in the register, thus the apprehension of the two at 7.40 AM on 8th March, 2008 is highly doubtful and credibility of the proceedings carried out is also in doubt. Thus, the view expressed by the learned Trial Court on the evidence adduced before it is a plausible view and this Court finds no ground to grant leave to appeal to the petitioner.

13. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MAY 07, 2019
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