

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.11.2020

+ **CRL.A. 59/2017 and CRL.M. (BAIL) 819/2019**

ISHWAR LAL

.....Appellant

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Neha Kapoor, Advocate.

or the Respondent : Mr Ravi Nayak, APP for State.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal challenging the judgment dated 17.09.2016 passed by the ASJ-02 (East), Special Judge, NDPS, Karkardooma Courts, whereby the appellant was convicted under Section 21(c) of the Narcotics and Psychotropic Substances Act, 1985 (hereafter the 'NDPS Act') for possessing 1100 grams of heroin. The appellant also impugns the order on sentence dated 19.09.2016, whereby he was sentenced to undergo rigorous imprisonment for a period of ten years along with a fine of ₹1 lakh and in default of the payment of the fine, to undergo one year of rigorous imprisonment.

2. It is the prosecution's case that on 04.03.2014, SI Sunil Jain had received information from a secret informer that two persons named Raju Pathidar and Ishwar – who are residents of Pratap Garh, Rajasthan – would come at Ganesh Nagar Bus Stand near Mother Dairy, Patparganj, Delhi between 09:30 am to 10:00 am to supply heroin in huge quantity to someone. The informer had informed him that the said persons procure heroin from Madhya Pradesh and Rajasthan and supply the same in Delhi and Haryana. SI Sunil Jain had, after complying with the necessary procedures, obtained authorization from the concerned officers. Thereafter, he constituted a raiding team, which had proceeded to the spot near Ganesh Nagar Bus Stand and apprehended the appellant. He was informed about his legal rights of being searched before a Magistrate or a Gazetted Officer. But he did not desire to be searched in the presence of a Magistrate or a Gazetted Officer and, therefore, was searched at the spot. At the material time, he was carrying a red and black coloured bag and on checking the same, it was found to contain one khaki coloured trouser and a polythene tied with the rubber band containing *maitla* coloured substance. The said substance weighed 1.1 kilogram. The substance was tested on a Field Testing Kit, which indicated that the substance was heroin. Two samples of five grams each were drawn from the said substance. The said samples were sent to FSL and the chemical analysis of the same confirmed that the said substance was Diacetylmorphine, 6-Monoacetyl morphine, Paracetamol and Acetyl Codeine. Accordingly, the charge-sheet was filed accusing the appellant for committing an offence under Section 21(c) of the NDPS

Act. Thereafter, charges were framed. The appellant pleaded not guilty and the matter was set down for trial.

3. To establish its case the prosecution has examined eleven witnesses. The learned Special Judge evaluated the testimony and the evidence led by the prosecution and found that the charge against the appellant was proved. Accordingly, the appellant was convicted by the impugned judgment.

Evidence

4. Before proceeding further, it is necessary to briefly note the evidence led by the prosecution.

5. HC Yogesh Kumar was examined as PW1. He deposed that on 04.03.2014, he was posted as HC at Narcotics Cell Shakarpur, PS Crime Branch. On that day at about 08:55 am, SI Sunil Jain had called him and HC Rajesh Kumar and prepared a raiding team consisting of the three of them. He told them that he had received secret information that two persons namely Raju Patedar and Ishwar (the appellant) were involved in the supply of heroin. The informer had told him that they bring heroin from Rajasthan and MP and supply it in Delhi and Haryana. And, the appellant was likely to bring huge quantity of heroin between 09:30 am to 10:00 am at Ganesh Nagar Bus stop near Mother Dairy Patparganj Delhi to supply it to someone. He deposed that SI Sunil Jain collected the IO bag, field testing kit and electronic weighing scale. They, along with the secret informer, went to Ganesh Nagar Bus Stop near Mother Dairy Patparganj Delhi in a Government

vehicle bearing No. DL1CH-9804 driven by ASI Raghuvir. IO recorded DD No. 10 (Ex. PW1/A) at about 09:00 am regarding the information and left the Narcotic Cell Shakarpur. He deposed that on the way, SI Sunil Jain requested four public persons at Ramesh Park bus stop and five persons at the turn towards Mother Dairy and five passengers at Ganesh Nagar Bus Stop, to join the raiding team but all refused and left without disclosing their identities. SI Sunil Jain (IO) parked the official government vehicle at a distance of fifty meters from the spot and SI Sunil Jain briefed them. SI Sunil Jain took position with the informer at Ganesh Nagar bus Stop. PW1, along with HC Rajesh, took the position in front of *kudaghar* near the bus stop and waited for the accused. At about 09:40 am, the secret informer pointed towards a person, who was wearing a khaki jacket and carrying a red and black coloured bag in his left hand. He was coming from the direction of the Mother Dairy and was going towards the Ganesh Nagar Bus Stand. He was on foot and the informer disclosed his name as Ishwar (the appellant). PW1 also identified the appellant in Court. The secret informer left the spot after pointing out the accused. The accused stopped on the footpath near the bus stop before *kudaghar* and started waiting for someone. After three-four minutes, the accused returned towards Mother Dairy and at that time (which was about 09:45 am) he was overpowered by SI Sunil Jain near the Ganesh Nagar Bus Stop. On inquiry, he disclosed his name as Ishwar. IO disclosed his identity and that of the raiding team to the accused. IO informed him regarding the secret information received by him and further told him that if he so desired he could be searched

in the presence of a Gazetted Officer or a Magistrate. IO prepared a notice under Section 50 of the NDPS Act (Ex. PW 1/B), which bore PW1's signatures and those of the accused. PW1 deposed that a copy of the notice was served upon the accused and the IO explained the meaning of Gazetted officer and Magistrate to the accused. The accused told the IO to not call a Gazetted Officer or a Magistrate and he did not want to be reached in their presence. The IO endorsed his reply on the original notice (Ex. PW 1/C). IO requested 7-8 persons who had gathered there to join the investigation but all them went away after giving reasonable excuses. SI Sunil Jain searched the red and black coloured bag, which had two zips. He stated that PUMA was written on the bag along with the logo of the said brand. Both the zips were opened and from the main pocket, one used khaki pant and underneath the same a transparent polythene bag, was found. The polythene bag was tied with a rubber band and was filled with the *matiyala* coloured powder. The polythene bag was opened. The substance was checked with the help of the field-testing kit by the IO and it was found to be heroin. The recovered polythene packet containing heroin was weighed with the help of electronic weighing scale and was found to weigh 1100 grams. IO drew two samples of the substance of five grams each. He kept it in two transparent polythene packets and tied it with the help of rubber bands. He converted them into cloth *pullandas*, which marked them as Mark A and B. The remaining heroin and the khaki pants were kept in the black and red coloured bag and were converted into a cloth *pullanda*, which was marked as Mark C. He deposed that all three *pullandas* were sealed by

the IO and seized vide memo (Ex. PW 1/D). Thereafter, the IO prepared a *rukka* and handed over the *rukka*, the sealed *pullandas*, FSL form, and carbon copy of the seizure memo to him with the direction to hand over the *rukka* to the DO and the remaining articles to the SHO Crime Branch. PW1 deposed that he went to the PS Crime Branch and handed over the *rukka* to the DO. He handed over the three sealed *pullandas*, FSL form and carbon copy of the seizure memo to Inspector Virender Singh (SHO). Virender Singh wrote the FIR Number on all the three sealed *pullandas*, FSL form and the carbon copy of the seizure memo and affixed the seal of VSS. Thereafter, Inspector Virender Singh called the MHCM to the room and handed over the sealed *pullandas*, form FSL and copy of the seizure memos to him. MHCM entered the particulars of the case property in Register No. 19 and deposited the same in the *malkhana*. PW1 stated that after collecting the copy of the FIR and the original *rukka* from the DO, he went to the Narcotics Cell Shakar Pur and handed over the same to ASI Rani Reddy for further investigation of the case. She left for the spot in the same government vehicle.

6. In his cross-examination, PW1 stated that the secret information was not given by the informer in his presence. He stated that the IO had written the reply of the accused since the accused had stated that he could not read or write.

7. HC Shambunath deposed as PW2. He deposed that on 04.03.2014, at about 01:45 pm, HC Yogesh gave him a *rukka* endorsed by SI Sunil Jain for registration of the FIR. On the basis of

the contents of the *rukka*, he had caused the FIR (Ex. PW 2/A) to be registered. He stated that the FIR was entered vide DD No. 15 dated 04.03.2014 (Ex. PW 2/C) and the FIR was completed Vide DD No. 17 (Ex PW 2/D) and thereafter the FIR and the *rukka* were handed over to HC Yogesh with a direction to hand over the same to W ASI Rani Reddy to whom the investigation was marked. He deposed that the SHO/Inspector Virender Singh had recorded DD No. 16 in his handwriting.

8. Inspector Virender Singh was examined as PW10. He deposed that on 04.03.2014, HC Yogesh came to his office and produced three sealed *pullandas*, one FSL form, carbon copy of seizure memo of heroin. He stated that all the three *pullandas* and Form FSL were bearing the seal of '3C PSNB Delhi'. After enquiry, he put his seal of 'VSS' on all three *pullandas* and the FSL form. He stated that after enquiring of the FIR number from the Duty Officer HC Shambunath, he noted down the FIR No. 23/14 on the abovementioned items. Thereafter, he called MHCM HC Chand Ram, along with Register 19, who then came to his office. PW 10 stated that he handed over the sealed parcels along with the documents to him who made relevant entries in Register 19 and he signed the same. A copy of the Register No. 19 was exhibited as Ex PW 10/A. He stated that he lodged DD No. 16 in this regard, which was already exhibited as PW 2/E.

9. ASI Chand Ram was examined as PW7. He stated that on 04.03.2014, he was on duty as MHCM at PS Crime Branch Malviya Nagar. On that day, at around 02:40 pm, the SHO Inspector Virender

Singh had called him in his office along with Register 19. He had produced three cloth *pullandas* marked A, B and C in a sealed condition with the seal of 3CPS NB Delhi and VSS, FSL form and carbon copy of the seizure memo for the depositing in the *malkhana*. PW7 had deposited the above said articles in the *malkhana* vide no. 1929 in Register No. 19 (Ex. PW 7/A). PW7 deposed that on the same day at about 07:45 pm, ASI Rani Reddy came to the PS Crime Branch and produced personal search items of the accused Ishwar Lal for depositing the same in the *malkhana*. He stated that he deposited the personal search articles in the *malkhana* vide serial no. 1930 in Register No. 19. In his cross examination he stated that HC Yogesh was present at that time when he went to the SHO's office. The SHO had handed over the *pullandas* to him at 02:05 pm.

10. HC Rajesh Kumar was examined as PW5. He was one of the officers of the raiding party. His testimony with regard to the raid conduct was consistent with the testimony of PW1. Further, he stated that at about 04:30 pm., W/ASI Rani Reddy had reached the spot. SI Sunil Jain had produced the accused before W/ASI Rani Reddy and has also handed over the documents as prepared by him to AS Rani Reddy. SI Sunil Jain narrated the facts and on his pointing out, ASI Rani Reddy prepared the site plan. ASI Rani Reddy recorded the statement of PW 5. She made inquiries from the accused and thereafter arrested him at about 06:15 pm vide arrest memo (Ex. PW5/A). He stated that the personal search of the accused was conducted vide memo Ex.PW 5/B. One carbon copy of the notice

under Section 50 of the NDPS Act and the currency amount of ₹1100/- was found on the accused on his personal search. The accused was thoroughly interrogated and his disclosure statement was recorded. PW 5 stated that thereafter, he along with SI Sunil Jain, W/ASI Rani Reddy and the accused Ishwar Lal left the spot (in the same official vehicle driven by ASI Raghuvir) at about 06:45 pm and reached PS Crime Branch, Malviya Nagar at about 07:45 pm. He deposed that W ASI Rani Reddy deposited the personal search articles in the *malkhana*.

11. Ct. Om Prakash was examined as PW3 and he had proved the two reports under Section 57 of the NDPS Act. He deposed that on 04.03.2014, he was working as a Reader to ACP, N & CP. On that day he received DD No. 9 from Inspector Narcotic Cell vide diary register serial No. 567 dated 04.03.2014. The said DD was put before ACP Zile Singh who endorsed the same. He deposed that on 05.03.2014, two reports under Section 57 of the NDPS Act were received in the office of ACP N & CP vide diary no 576 and 577 (Ex. PW 3/E and F respectively) and the same were produced before ACP N and CP Zile Singh who had endorsed the same. He proved the two reports (Ex. PW 3/B and Ex. PW 3/C) and the handwriting of CP Sh. Zile Singh.

12. HC Jag Narain was examined as PW4. He deposed that on 10.03.2014, on the direction of Inspector Virender Singh, he handed over one sealed parcel bearing Mark A duly sealed with the seal of 3CPSNB Delhi and VSS alongwith FSL form bearing the same seal and copy of seizure memo to HC Mahesh Kumar vide RC No. 71/14

for depositing the same at FSL Rohini. After depositing the exhibits and documents as mentioned above, HC Mahesh Kumar returned back to the PS Crime Branch Malviya Nagar and handed over the receipt/acknowledgment regarding the deposition of the case property to him. He deposed that the case property remained intact in his possession.

13. HC Mahesh Kumar was examined as PW6 and he had deposited the articles with FSL Rohini. He testified that on 10.03.2014, on the directions of SHO PS Crime Branch Virender Singh, he had taken the sample *pullanda* marked A and FSL form duly sealed with the seal of '3 CPS NB Delhi' and 'VSS' from MHCM Jag Narain vide RC No. 71/14 and deposited the same at FSL Rohini. He stated that during his possession, the seals on the *pullanda* were intact. After depositing the *pullanda* and the FSL Form, he returned back to the PS Crime Branch and had handed over the acknowledgement to MHCM.

14. Inspector Vivek Pathak deposed as PW8. He stated that on 04.03.2014, at about 08:30 am, SI Sunil Jain, along with an informer came to his office and informed him that one Raju Patedar and Ishwar, residents of Pratapgarh, Rajasthan are engaged in sale and supply of a huge quantity of heroin after procuring the same from Rajasthan and MP. It was further informed that on that day, Ishwar would come to the Ganesh Nagar Bus Stand near Mother Dairy, Patparganj, between 09:30-10:00 am to deliver a consignment of heroin. PW8 stated that he made inquiries from the accused and telephonically informed ACP Sh. Zile Singh at his residence about the secret information. The ACP

ordered him to conduct a raid and take legal action on the basis of the said information. Thereafter, SI Sunil Jain lodged DD No. 9 at 08:45 am regarding the secret information and the same was produced as Ex. PW 3/A which also bore his signatures. The same was forwarded to the ACP for further necessary action. On his direction, SI Sunil Jain constituted a raiding party comprising of himself, HC Yogesh and HC Rajesh. The IO took the IO bag, Field Testing Kit, electronic weighing machine and left for the spot in a Government vehicle (No. DL1CH-9804) driven by ASI Raghubir Singh, along with the secret informer. On that day, at about 09:45 am, W ASI Rani Reddy had produced the accused before him in his office Shakarpur, Delhi. PW8's statement was recorded under Section 161 of the Cr.PC through HC Yogesh by Rani Reddy, IO of the case, between 10:15 am-10:45 pm. On the next day, i.e. 05.03.2014, SI Sunil Jain produced a special report under Section 57 of the NDPS Act regarding the seizure of 1kg and 100 grams of heroin to him, which he had forwarded to the ACP (Ex. PW 3/B). On 05.03.2014, WASI Rani Reddy had produced a special report under Section 57 of the NDPS Act regarding the arrest of the accused, which she forwarded to the ACP concerned.

15. ASI M Rani Reddy was examined as PW9. She deposed that on 04.03.2010, she was posted in the Narcotics Cell, Shakarpur. On that day, at about 04:15 pm, HC Yogesh came into the office of the Narcotics Cell and handed over the FIR and the *rukka* in the present case as the investigation was entrusted to her. She then proceeded to the spot at Ganesh Nagar Bus Stand in a Government Qualis bearing

No. DL1C-H-9804 with driver ASI Raghubir Singh vide DD No. 23 (Ex.PW 9/A). She deposed that SI Sunil Jain, HC Rajesh and accused Ishwar Lal met her at the spot. SI Sunil Jain handed over the documents, i.e., seizure memo and notice under Section 50 of the NDPS Act, along with the accused to her. She prepared the site plan (Ex.PW 9/B) at the instance of SI Sunil Jain and recorded the statement of HC Rajesh under Section 161 of the Cr.PC. She interrogated the accused and arrested him vide arrest memo (Ex.PW5/A). She conducted his personal search vide memo (Ex.PW5/B) and found ₹1100/- on him and a carbon copy of the notice under Section 50 of the NDPS Act. The accused was brought back to the PS Crime Branch, Malviya Nagar along with the staff in the Government vehicle. The articles of personal search were deposited in the *malkhana*. She also recorded the statements of SHO Inspector Virender Singh, PS Crime Branch and MHCM. Thereafter, she along with the accused, staff and driver ASI Raghubir went in the Government vehicle to the Narcotics Office Cell Shakarpur. Inspector Vivek Pathak interrogated the accused and found his arrest to be genuine. She stated that she recorded the statements of Inspector Vivek Pathak, SI Sunil Jain, HC Yogesh and HC Rajesh. She prepared the special report under Section 57 of the NDPS Act regarding arrest of the accused and the same was produced before Inspector Vivek Pathak who forwarded the same to the ACP. She deposed that SI Sunil Jain also submitted a special report under Section 57 of the NDPS Act regarding the seizure of heroin before Inspector Vivek Pathak which was also forwarded to the ACP. SI Sunil Jain obtained the police

remand of the accused and took him to his village in Rajasthan. After his return, the accused was produced in Court and remanded to judicial custody. She deposed that on 10.03.2014, the duly sealed samples and Form FSL were sent to the FSL. Thereafter, she collected the report and placed the same in the file and prepared the charge-sheet. The FSL result was exhibited as Ex.PW9/D.

16. Inspector Sunil Jain deposed as PW11. He stated that on 04.03.2013, at about 08:15 am, a secret informer came to him and informed him that two persons namely Raju Pathidar and Ishwar are involved in the supply of heroin in the areas of Delhi and Haryana after procuring it from Rajasthan and MP. On that day, Ishwar (appellant) would come near Ganesh Nagar bus stop Delhi in between 09:30 am to 10:00 am, to supply heroin to someone. After having satisfied himself regarding the information, PW11 produced the informer before Inspector Vivek Pathak. He deposed that Inspector Vivek Pathak also interrogated him and informed the ACP Zile Singh regarding the information. ACP Zile Singh directed him to conduct the raid and take the necessary action. PW11 recorded the secret information in roznamcha vide DD No. 9 at about 08:45 am (Ex.PW 3/A). The said DD was produced before Inspector Vivek Pathak who forwarded the same to the ACP concerned. Thereafter, he constituted the raiding party and DD No. 10 was lodged regarding their departure (Ex. PW 1/A). They left in a government vehicle bearing No. DL-1CH-9804, which was driven by ASI Raghuveer. PW11's testimony regarding the manner in which the appellant was apprehended and

searched is similar to the testimony of PW1 and PW5. PW11, additionally mentioned that the reply given by the accused to the notice under Section 50 of the NDPS Act, was written by him in verbatim since the accused was illiterate and could not read or write. He also stated that on 05.03.2014, he prepared the special report under Section 57 of the NDPS Act, regarding the seizure of 1kg and 100 grams of heroin and the same was produced before Inspector Vivek Pathak, who forwarded the same to the ACP concerned.

17. In his cross-examination, PW 11 stated that he had told the IO ASI Rani Reddy about the position of the raiding team members at the spot but the same was not shown in the site plan.

18. Dr. Lingaraj Sahoo, Senior Scientific Officer, was examined as PW12. He made and proved the FSL report (Ex.PW 9/D). He stated that on 10.03.2014, one sealed parcel was received in their office and was marked to him for chemical examination. The parcel marked as A was properly sealed as per the specimen provided. On opening the parcel, it was found to contain light brown coloured powdery material which weighed approximately 5.53 grams with polythene and rubber band. On Chemical examination, Exhibit 'A' was found to contain 4.5% of Diacetylmorphine (heroin) and the remnants of the exhibits was sent back.

Submissions

19. Ms Kapoor, learned counsel appearing for the appellant had assailed the impugned judgment on several fronts. First, she submitted that Section 50 of the NDPS Act was not complied with. She

contended that the signatures of the appellant appearing on the said notice is *ex facie* forged and the same is evident if the signatures of the appellant are compared with the signatures appearing in Ex.PW1/B, Ex.PW1/C, Ex.PW1/D, Ex.PW5/A, Ex.PW5/B and Ex.PW5/C. She stated that the appellant in his statement recorded under Section 313 of Cr.PC had denied signing the documents and, therefore, the onus to prove that the provisions of Section 50 were complied with was required to be discharged by the prosecution. However, since the prosecution has failed to establish that the signatures appearing on the notice is that of the appellant, the prosecution has failed to establish its case.

20. Second, she stated that the prosecution had not joined any independent witnesses even though, they had ample time to find independent witnesses. She stated that according to the prosecution, the appellant was apprehended at 09:45 am. However, the arrest memo indicates that he was arrested at 06:15 pm. Thus, the prosecution had over eight hours to join independent witnesses. She contended that the failure on the part of the prosecution to do so clearly raises serious doubts and the testimony of all police witnesses could not be accepted at their face value.

21. Third, she stated that there are also doubts as to the recoveries effected. She pointed out that there were three recovery witnesses, namely, HC Yogesh (PW1), HC Rajesh (PW5) and IO Inspector Sunil Jain (PW11). While HC Yogesh (PW1) had testified that the *pullandas* containing the case property – the two samples marked as A

and B and the remaining substance as well as trousers marked as C – were signed by the IO (SI Sunil Kumar – PW11) and the SHO but he did not testify that the same was also signed by him or by HC Rajesh (PW5). However, HC Rajesh in his examination testified that the *pullandas* were signed by SI Sunil Jain (PW11), HC Yogesh (PW1), the SHO, as well as by him. Further, she stated that Ex.PW2/E (DD No. 16 dated 04.03.2014 made by the SHO) does not record that the *pullandas* were signed by the four officials. However, in his cross-examination, the SHO stated that he as well as PW11, PW5 and PW1 had signed the *pullandas*. She submitted that the FSL Report (Ex.PW9/D) also mentions that the sealed *pullanda* was received with the specimen seal but does not mention about the signatures of any person on the parcel. She contended that the only inference that can be drawn is that *pullanda* sent to the FSL was not the one that was made at the spot on the date of the incident. She stated that although the acknowledgement form (Ex.PW4/B) mentions that the FSL had received the sample seal and the FSL Form but the witnesses (PW4, PW6 and PW7) did not mention anything about handing over sample seal to the FSL. She further contended that even the entries made in the Register No. 19 do not show that the sample seal was deposited in the Malkhana and was sent to FSL.

22. Fourth, she submitted that PW11 had stated that after sealing the said *pullandas* and preparing the FSL Form, he had given the seal to HC Rajesh. He had received the seal on 11.03.2020 after the *pullandas* were deposited with the FSL. She contended that there was

no explanation as to the whereabouts of the seal from 04.03.2014 to 11.03.2014. She stated that if the seal remained with PW5 then there was a serious possibility of the *pullandas* being tampered with.

23. Fifth, she submitted that there was an inordinate delay in sending the sample to FSL, which was sent after a period of seven days. She stated that as per the Standing Order 1/88, samples are required to be dispatched to the laboratory within a period of seventy-two hours but in this case, it was done after seven days and the prosecution had not provided any explanation for the delay in sending these samples to FSL. Sixth, she contended that there is confusion as to how the investigation was transferred to ASI Rani Reddy (PW9) from SI Sunil Jain (PW11). She submitted that there is no document brought on record for transfer of the investigation to PW9. She further stated that even after the investigation was allegedly transferred to her, SI Sunil Jain had applied for police remand. She contended that there was no reason for him to do so if he was not the investigating officer. She further stated that although SI Sunil Jain (PW11) had moved the application for PC remand and had allegedly taken the appellant to Rajasthan, he was not the investigating officer. PW9 (who was the investigating officer at the material time) had not accompanied him. Moreover, PW11 had also not mentioned anything about taking the petitioner to Rajasthan while on PC remand. Seventh, she submitted that ASI Raghubir who had allegedly driven the vehicle of the raiding team had not been examined and thus, the prosecution had failed to examine the relevant witnesses.

24. Lastly, she submitted that the local police station, in whose jurisdiction the arrest was made, was not informed about the arrest of the appellant and recovery of any contraband.

Reasons and Conclusion

25. The first and foremost contention to be addressed is whether the provisions of Section 50 of the NDPS Act were complied with. According to Ms Kapoor, the said provisions were not complied with and the same is evident from the fact that the signatures of the appellant appearing on the notice under Section 50 of the NDPS Act did not match with his other signatures. She had pointed out that whereas the signatures appearing on the notice read as 'Iswar', the signatures of the appellant appearing on other documents reads as 'Ishwar'. She referred to his signatures appearing on the statements recorded under Section 313 of Cr.PC, which reads as 'Ishwar'.

26. It is necessary to bear in mind that Section 50 of the NDPS Act does not require any written notice to be served to the accused. However, in this case a written notice under section 50 of the NDPS Act was served on the appellant. As noticed above, PW1 had testified that a notice under Section 50 of the NDPS Act was served on the accused. He had also identified his signatures as well as the signatures of the accused on the same. He further testified that the IO had also made the appellant understand the meaning of a Gazetted Officer and a Magistrate and his response was noted down (endorsed) by the IO on the original notice. SI Sunil Jain (PW11) testified that he had informed

the accused that he had information that he had come to supply heroin to someone, and his search was required to be taken. He testified that he had informed the appellant that it was his legal right to be searched in presence of a Gazetted Officer or a Magistrate and if he so desired, arrangements for the same could be made. Further, he stated that the appellant understood the meaning of the Gazetted Officer or a Magistrate as the same was explained to him. He had then prepared a notice under Section 50 of the NDPS Act and the carbon copy of the same was served on the appellant. He had signed the original, which was retained by the IO. PW11 testified that he had thereafter written his reply on the original notice as dictated by the accused. At that stage, the appellant has told him that he was illiterate and could not write and he only knew how to read and sign. The testimony of PW5 in this regard is also consistent with the testimony of PW1 and PW11.

27. The contention that the notice was fabricated and the signatures appearing on the said notice are not that of the appellant is unpersuasive. It is seen that the signatures appearing on the said notice are similar to those appearing on other documents placed on record including the appellant's arrest memo (Ex.PW5/A). In those documents, his signatures read as 'Iswar'. However, in his statement recorded under Section 313 of Cr.PC his signature reads as 'Ishwar'. It is, thus, evident that the appellant has used one signature on other documents and a different one to endorse his statement recorded under Section 313 Cr.PC.

28. It was specifically put to the appellant that it is in evidence against him that he was informed of his rights to be searched in presence of a Gazetted Officer or a Magistrate and arrangements for the same could be made. He had responded by stating that the same was incorrect. It was further put to him that it is in evidence that he was explained the meaning of a Gazetted Officer and a Magistrate and a notice under Section 50 of the NDPS Act was prepared and it bears his signatures. He stated that it was incorrect. It is relevant to note that he did not specifically state that the signatures on the said notices were not his or had been fabricated. It is also material to note that the appellant did not lead any evidence to show that the signature appearing on the notice under Section 50 of the NDPS Act was not his.

29. Ms Kapoor contended that the onus to prove that the appellant's signature on the notice rested on the prosecution and it had failed to discharge the same. The said contention is unpersuasive as the witnesses did testify that the appellant had signed on the said notice and, therefore, the prosecution had discharged the burden of proof. It was upto the appellant to lead evidence to rebut the same. However, the appellant did not lead any evidence in defence. The suggestions made to witnesses in the cross-examination regarding notice under Section 50 of the NDPS Act had been denied by the concerned witnesses. Thus, the appellant cannot draw any benefit on account of merely putting suggestions to the witnesses.

30. The next question to be addressed is whether there is any doubt that the sample had been tampered with. It was earnestly contended on behalf of the appellant that there is some discrepancy in the evidence led as to whether the *pullandas* were signed by the four police officials. Ms Kapoor had also pointed out that the FSL form had not been produced and there is no evidence on record as to the sample seals forwarded to the FSL.

31. The contention that there are inconsistencies in the evidence led regarding the signature of the officials on the *pullandas*, is unmerited. The said contention is premised on the basis that the SHO (Virender Singh) had not recorded in DD No.16 dated 04.03.2014 that the *pullandas* in question were signed by him and the three other officials. However, a close examination of Ex.PW2/E (DD No.16 dated 04.03.2014) indicates that he (SHO) had received three *pullandas* duly sealed with the seal of '3CPSNB Delhi', and the FSL Form. He had put his seal 'VSS' on all the *pullandas* and FSL form. It is recorded that he enquired the FIR number from the Duty Officer and noted down the same on all the *pullandas*. It is also recorded that he had called MHM(M), who came to his office along with Register No.19. The SHO had handed over the sealed *pullandas* and all documents to him and he had made an entry in Register No.19. The said DD entry does not record that any police official had put his signatures on the *pullandas*. This is not the subject matter of the said DD entry. There is no ambiguity in the description on the *pullandas* and it is not mandatory to have recorded that the *pullandas* bore the

signatures of the said officials. The contention that there are doubts as to the prosecution's case in view of the testimony of Inspector Virender Kumar (who was examined as PW10) that the *pullandas* bore the signature of the IO and two witnesses is also unmerited. He did not mention that he had also signed on the *pullandas* but that creates no doubt whatsoever because the said statement was made by him in his cross-examination and pertains to the manner in which the *pullandas* were received. Clearly, when he received the *pullandas*, they did not bear his signatures. He has affirmed his signatures after receiving the *pullandas*.

32. The seizure memo (Ex.PW1/D) was prepared by SI Sunil. He had recorded the manner in which the recovery was made. He had stated that the substance recovered from the appellant weighed 1100 grams. He had drawn two samples and prepared *pullandas* of the said samples after packing them in a polythene, which was tied with the rubber band. The balance material was kept back in the same bag from which it was recovered along with the other belongings of the appellant, and the same was also sealed in a *pullandas* marked as Mark C. He had also stated that he had sealed the said *pullandas* with the seal bearing '3CPSNB Delhi'. The said seizure memo does not mention that the *pullandas* were signed by any of the police officials. This Court is of the view that it is neither mandatory nor necessary for the seizure memo to have recorded that fact. The seizure memo clearly recorded the manner in which the samples were recovered and the manner in which the *pullandas* were prepared and sealed. Admittedly,

when the *pullandas* were produced in Court, they bore the signatures of the SHO (Inspector Virender Singh); SI Sunil Jain (PW11), HC Yogesh (PW1) and HC Rajesh (PW5). The same does not in any manner indicate that the seizure memo is erroneous or that the seizure as recorded therein was not effected.

33. The next aspect required to be examined is whether there is any doubt as to the integrity of the sample on account of the prosecution failing to produce the FSL forms. It was contended by Ms Kapoor that although the FSL acknowledgment indicates that the seals were intact, however, there is be no way of knowing which seals had been used in order to verify whether the said seals were, in fact, intact. She contended that the *pullandas* could be opened and tampered with and then resealed with another seal. Although the said seal may remain intact, but there would be no way of verifying whether the seals on the *pullandas* were the same seals that were used at the time of recovery of the substance.

34. Undeniably, it would have been apposite for the prosecution to bring the FSL forms and the sample seals on record. However, this Court is of the view that failure on the prosecution to do so does not in any manner raise any doubt that the seals on the samples deposited with FSL were not intact. There is ample evidence on record to indicate that the *pullandas* were sealed by SI Sunil (PW11) with the seal of '3CPSNB Delhi'. PW11 has testified to the aforesaid effect and so did PW5 (HC Rajesh Kumar) and PW1 (HC Yogesh Kumar). PW10 (Inspector Virender Singh), who was the SHO at the material

time, had also testified that he had received three *pullandas* and along with FSL forms bearing the seal of 3CPS-NB Delhi. He had further testified that he had placed his seal of 'VSS' on all the three *pullandas* as well as on the FSL form. DD No.16 dated 04.03.2014 (Ex.PW2/E) also records the aforesaid fact. He had then called MHC(M) along with Register No.19 to his office and he had handed over the sealed *pullandas* and all documents to him and had also made an entry in Register No.19. The relevant entry in the Register (Ex.PW7/A) also clearly reflects that *pullandas*, sealed with the seal of 3CPS NB Delhi and VSS along with the FSL forms were deposited in the *malkhana*. And, the same were also sent to FSL, Rohini through RC No.71/21 dated 10.03.2014. The said Road Certificate (Ex.PW4/A) has also been brought as evidence. HC Jag Narain (PW4) had testified that on 10.03.2014, he had on the directions of the SHO Inspector Virender Singh, handed over the sealed parcel marked 'A' duly sealed with the seal of '3CPSNB Delhi' and 'VSS' along with the FSL form bearing the same seal as well as the copy of the seizure memo to HC Mahesh Kumar for depositing the same with FSL, Rohini. HC Mahesh Kumar had done so and on his return handed over the receipt/acknowledgment from FSL. He had also testified that the case property remained intact while in his possession. The acknowledgment slip issued by FSL Rohini (Ex.PW4/B) also indicates that it had received one sealed cloth parcel along with the FSL form, copy of the FIR, seizure memo, samples seal and RC.

35. The acknowledgment slip does not indicate that the *pullanda* received were sealed with the seal of 'VSS' and '3CPSNB Delhi'. However, the Road Certificate clearly indicates the same. More importantly, the examination report submitted by FSL (Ex.PW9/D) clearly indicates that the parcel received at FSL was sealed with one seal of 'VSS' and one seal of '3CPSNB Delhi'. The said seals were found intact and were tallied with the specimen seals. The specimen seals (sealed impressions) were stated to be on the FSL form. As stated above, the same has not been produced but the *Malkhana* Register and the RC clearly indicate that the *pullandas* were sealed with the seal of 'VSS' and '3CPSNB Delhi'. This coupled with the fact that the FSL Examination Report also indicates that the seals of 'VSS' and '3CPSNB Delhi' on the *pullandas* were intact, leaves no room to entertain any doubt that the seals were tampered with. This Court is unable to accept that there is any doubt that the sample drawn from the substance recovered by the appellant had not been deposited with FSL with its seals intact.

36. PW11 (SI Sunil Kumar) had testified that after sealing the *pullandas* and the FSL form with the seal of '3CPSNB Delhi', he handed it over the seal to HC Rajesh. This was also confirmed by HC Rajesh (PW5). The testimony of the SHO Inspector Virender Singh (PW10) as well as the *malkhana* register clearly indicate that the said *pullanda* sealed with the said seal and the seal of VSS, was deposited in the *malkhana*. HC Jag Narain(PW4) had also testified that the said *pullandas* were intact while in his custody and his testimony remained

unchallenged as he was not cross-examined despite opportunity. In his cross-examination, PW11 testified that the said seal was returned to him on 11.03.2014, that is, after the sample had been deposited with the FSL. Given the evidence in this case, the contention that there is a doubt as to the integrity of the samples because there is no further evidence as to what HC Rajesh Kumar had done with the seal, is insubstantial.

37. Ms Kapoor had also contended that no independent witnesses had been joined in the proceedings. While, it would have been apposite for the concerned police officials to have joined independent witnesses, however, the fact that they were not joined does not in any manner raise any doubts in the facts of the present case. This is because the evidence led by the police officials is consistent and leaves little room for any doubt. There is no reason why the police officials would have falsely implicated the appellant. The appellant has led no evidence to even remotely suggest that there was any animosity between the concerned police officials or that he even knew them in advance.

38. Even in his statement, under Section 313 of Cr.PC, the appellant did not indicate any reason why he would have been falsely indicated. He was specifically asked, why is this case instituted against him and he responded by simply stating that 'it is a false case'. The testimonies of official witnesses cannot be ignored merely on the ground that they are official witnesses. In **Kalpna Rai v. State: AIR 1998 SC 201**, the Supreme Court had observed as under:

“There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during the raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined.”

39. In the present case, this Court has examined the evidence of the police officials with greater scrutiny and this Court finds no reason to doubt the same.

40. Although there is a delay in sending the sample to FSL, the same does not raise any doubts that it was tampered with. The delay is not significant enough to be fatal to the case of the prosecution.

41. The contention that there are doubts as to the prosecution's case because ASI Raghuvir Singh, Driver was not examined, is also unmerited. ASI Raghuvir was a part of the raiding team and had driven officials to the spot. The other members of the raiding team, namely, PW1, PW5 and PW11 were examined for the prosecution. Their testimonies with regard to the events of the said day are comprehensive and there was no necessity for examining ASI Raghuvir.

42. In view of the above, this Court finds no reason to interfere with the impugned judgment. The appeal is, accordingly, dismissed.

43. All the pending applications are also disposed of.

VIBHU BAKHRU, J

NOVEMBER 04, 2020

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