



2024:DHC:10056



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

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*Reserved on: 30th August, 2024
Pronounced on: 24th December, 2024*

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CRL.A. 1200/2010

RAJINDER KUMAR

.....Appellant

S/o Late Mool Raj
R/o 29/9, X Block,
Gali No. 15, Braham Puri,
Delhi - 110 053.

Through: Mr. Yogesh Saxena, Ms. Priya
Saxena & Mr. Vidit Anand,
Advocates.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

DZU, R.K. Puram, New Delhi
Through Sh. Mangal Dass, I.O.

Through: Mr. Shashwat Bansal, Advocate.

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CRL.A. 1294/2010

SYED ABU ALA

.....Appellant

S/o Late Sh. Syed All Hilal
R/o A-263, New Friends Colony,
New Delhi

Through: Mr. Yogesh Saxena, Ms. Priya
Saxena & Mr. Vidit Anand,
Advocates.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

DZU, R.K. Puram, New Delhi
Through Sh. Mangal Dass, I.O.

Through: Mr. Shashwat Bansal, Advocate.

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CRL.A. 1381/2010

MOHD. ALTAF

.....Appellant

Signature Not Verified

Digitally Signed By: NIKAS
ARORA

Signing Date: 24.12.2024
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CRL.A. 1200/2010, 1294/2010 & 1381/2010

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S/o Suleiman
R/o 995, Mohalla Kishanganj
Teliwara, Azad Market,
Delhi

Through: Mr. Yogesh Saxena, Ms. Priya
Saxena & Mr. Vidit Anand,
Advocates.

versus

NARCOTICS CONTROL BUREAU
DZU, R.K. Puram, New Delhi
Through Sh. Mangal Dass, I.O.

.....Respondent

Through: Mr. Shashwat Bansal, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The *Appeal in CRL.A.1200/2010* has been filed against the Judgment dated 25.08.2010 and Order on Sentence dated 03.09.2010 in S.C. No. 125/2008 titled NCB vs. Syed Abu Ala & Ors. *vide* which the Appellant, Rajinder Kumar, has been convicted and sentenced to undergo imprisonment for 2½ years and to pay a fine of Rs. 25,000/- , in default S.I. for 6 months, for offence punishable under section 29 r/w 25A of the Narcotics Drugs and Psychotropic Substances Act, 1985 (*hereinafter 'NDPS Act'*).
2. The *Appeal in CRL.A.1294/2010* has been filed against the Judgment dated 25.08.2010 and Order on Sentence dated 03.09.2010 in S.C. No. 125/2008 titled NCB vs. & Ors. *vide* the Appellant/Syed Abu Ala has been convicted *vide* Judgment dated 25.08.2010 and sentenced to undergo R.I. for 11½ years and to pay a fine of Rs. 2,00,000/- for offences punishable under



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section 29 r/w section 21(c) of NDPS in default S.I. for 1 year and also sentenced to undergo R.I. for 5 years and to pay fine of Rs. 50,000/- for an offence punishable under section 29 r/w section 25A of NDPS Act.

3. The *Appeal in CRL.A.1381/2010* has been filed against the Judgment dated 25.08.2010 and Order on Sentence dated 03.09.2010 in S.C. No. 125/2008 titled NCB vs. Syed Abu Ala & Ors. *vide* the Appellant, has been convicted and sentenced to undergo R.I. for 10 years and to pay a fine of Rs. 1,00,000/- for offences punishable under section 29 r/w section 21(c) of NDPS in default S.I. for 1 year.

4. The aforesaid three Appeals have been preferred under section 374 of the Code of Criminal Procedure, 1973 (CrPC) by the Appellants, Syed Abu Ala, Rajinder Kumar and Mohd. Altaf, to challenge their conviction under the Provisions of NDPS Act *vide* Judgment dated 25.08.2010 and Order on Sentence dated 03.09.2010.

5. *Briefly stated*, the case of the prosecution in its Complaint presented through its Intelligence Officer SI Mangal Dass (I.O.), is that on 29.11.1999 DDG (co-ordination) NCB received the information from the Zonal Director, Chennai Unit that one Sayed Abu Ala, resident of New Friends Colony has been arrested by the Officers at Bangalore with 18 Kg of heroin. He has a shop in the name of Zenith Pharma at 1702/3, Bhagirath Palace, Delhi. Two teams, one headed by N.K. Dhaka I.O and other by K.L. Gauba I.O, were constituted which went to the resident of Syed Abu Ala at New Friends Colony and to his shop at Bhagirath Palace, respectively. Nothing incriminating was recovered from the two places.

6. However, Abu Sualeh son of Sayed Abu Ala revealed that they have an old house at 995, Kishanganj Mohalla, Teliwara, Delhi where they used to



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manufacture the medicines. Se Mangal Dass (IO) was authorized to conduct a search at the premises of Teliwara. He reached the premises where N.K. Dhaka, I.O along with his team and Syed Abu Sualeh also reached. Two independent witnesses Om Prakash and Sanjay were joined in the search of the premises. Syed Abu Sualeh knocked the door which was opened by Mohd. Altaf, servant of Abu Sualeh's family. The Notice under Section 50 NDPS Act was served upon Mohd. Altaf and Syed Abu Sualeh and gave them an option to get the search conducted in the presence of Gazetted Officer or a Magistrate, which was declined by them. The Officers also offered them personal search, which was also declined.

7. During the search at the Ground Floor, nothing incriminating was found. The Second-Floor premises was opened with the help of a key which Abu Sualeh had brought with him from his house at New Friends Colony. On search, Officers recovered some brown substance kept in 19 transparent polythene bags in three suitcases behind a double bed.

8. I.O Mangal Dass took out some powder from each bag which on testing gave positive for heroin. All the packets were given Sl. No.1 to 19. They were weighed separately, and the net weight came of 32.205 Kgs. Two samples of 5 grams each were taken from all the packets and given mark A-1, A-II to T-1, T-II respectively. The remaining material was kept in the suitcases in the same manner and given mark A, B and C.

9. 28 bottles of Acetic Anhydride were also recovered from a carton out of which 2 bottles were taken as sample and given mark ABI and ABII. 79 white powder bags suspected to be Sodium Carbonate total weighing 400 Kg, were also recovered from which 2 samples of 25 grams each were taken and given mark AC-I and AC-II. 19 bottles of Citric Acid Hydrate were



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recovered out of which 2 bottles were taken as sample and given mark AD-I & II. 404 grams of charcoal activated was also recovered from which 2 samples of 5 grams each were taken and given mark AE-I and AE-II. 16 bottles of F.09 Idocol tartrazine were recovered. 2 bottles were separated as sample and given mark AF-I and II. 16 bottles of F.09 Idocol Tartrazine were recovered. 2 bottles were separated as sample and given mark AF-I and II. 18 bottles of Acetone GR (500 ml.) were also recovered out of which 2 bottles were separated as sample and given mark AG-I and AG-II. Some material and equipments as detailed at Serial No.6 to 15 of annexure B were also recovered which were kept in two gunny bags and given mark AH/1 and 2. Four aluminium “*patilas*” were seized and given mark AI-1 to AI-IV. The case property and samples were sealed with the seal of NARCOTIC CONTROL BUREAU-DZU 5 using paper slips. Test memo forms in triplicate were prepared on which same seal impression was appended. Apart from the contraband, some incriminating documents were also recovered from the said premises as per the details given in Annexure C. The panchnama was drawn.

10. Summons under Section 67 NDPS Act were given to Mohd. Altaf, Syed Abu Sualeh and the panch witnesses to appear in the NCB office.

11. Pursuant to the summons Mohd. Altaf appeared on 30.11.1999 and his statement was recorded by N. Mohanta (IO), wherein he stated that the premises belong to Syed Abu Ala whom he had been assisting in manufacturing of heroin. The key to the premises remained with Syed Abu Ala and in his absence the keys remained with Mrs. Tahira and Syed Abu Sualeh i.e. the wife and the son. He further disclosed that one Rajender Kumar used to supply chemicals for manufacture of heroin. On 01.12.1999,



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he gave another statement disclosing the whereabouts of Rajender Kumar and the mode of supply.

12. Syed Abu Sualeh in his statement admitted the factum of recovery and stated that the premises at Teliwara were in the name of his mother. Both the accused were arrested. Statement of panch witnesses was recorded.

13. On the basis of information given by Mohd. Altaf, N. Mohanta I.O informed the Superintendent about the accused Rajender Kumar and his involvement in the supply of Acetic Anhydride, a controlled substance used in manufacture of heroin. N.K. Dhaka searched the premises of Rajender Kumar at Braham Puri, but nothing incriminating was recovered. Summons under Section 67 NDPS Act was served on Rajender Kumar who gave his statement to Madan Singh IO, wherein he admitting supply of chemicals to Syed Abu Ala after procuring the same from Sanjay Kakkar Proprietor of Shiv Chemicals, Shop No.XV/7355-58, Ram Nagar, Qutub Road. He was also arrested.

14. I.O Madan Singh on the basis of statement given by *Rajender Kumar* conducted a search at the premises of Shiv Chemicals in the presence of panch witnesses, Harish Adjhikari and Pannalal. 55 kgs (61 ltrs.) of Acetic Anhydride was recovered in four bottles out of which two samples each were drawn and given mark A1, A2 to D1, D2. The remaining material was kept back in the same manner and given mark A to D. The case property and samples were sealed with the seal of NARCOTIC CONTROL BUREAU-DZU 2 using the paper slips. The Test memo was prepared. A panchnama was drawn.

15. Summons under Section 67 NDPS Act were given to Sanjay Kakkar and the panch witnesses. The case property was deposited in the malkhana.



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16. *Sanjay Kakkar* in his statement stated that *Jagbir Singh* resident of Azadpur used to supply Acetic Anhydride in jerrycans which he used to transfer in bottles. He used to supply Acetic Anhydride to *Pawan Kumar* resident of Nangloi. A search was also conducted at the premises of *Sanjay Kakkar* at *Priyadarshini Vihar* and *Rana Pratap Bagh*, but nothing incriminating was recovered.

17. On the basis of this information, raid was conducted at the house of *Pawan Kumar* which led to the recovery of Acetic Anhydride, but *Pawan Kumar* could not be apprehended.

18. Summons were issued to *Anil Kakkar*, brother of *Sanjay Kakkar* who gave his statement and also an affidavit that the premises at Ram Nagar, Qutub Road belongs to *Sanjay Kakkar*. His car DL 1CD 6524 in which he used to supply Acetic Anhydride was seized and he was arrested.

19. On the basis of information received on 02.12.1999, a search team was constituted by I.O Mangal Dass and *Jagbir Singh* was apprehended and 70 Kg of Acetic Anhydride in two black plastic cans of 35 litres. each along with some incriminating documents was seized from his Santro Car. Two independent witnesses namely *Shiv Kumar Sharma* and *Ajay Kumar*, were joined during the apprehension of *Jagbir Singh* and the recoveries.

20. Two samples of 25 ml. each were taken from both the cans and given mark A-I, A-2 and B-I, B-2. The samples along with the remaining material were sealed with the seal of NARCOTIC CONTROL BUREAU-DZU 4 using paper slips. Test memo in triplicate was prepared and the same seal impression was appended. The panchanama was drawn.

21. Pursuant to the summons under Section 67 NDPS Act, *Jagbir Singh* tendered his statement on 03.12.199 to Jyotimon I.O, wherein he admitted



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the recovery and that he used to supply Acetic Anhydride to Sanjay Kakkar. He used to get the supply from *Ghanshyam Gupta* who had a shop of motor spare parts at Libaspur. Jagbir Singh was arrested. His residence was searched, but nothing incriminating could be recovered.

22. On 03.12.1999 Sandeep Wangdi IO on the basis of information received from Jyotimon I.O conducted the search of the shop of *Ghanshyam* in the name of Krishna automobiles at Libaspur, but nothing incriminating was recovered. Statement of Ghanshyam after giving summons under Section 67 NDPS Act was recorded, wherein he admitted supply of acetic anhydride to Jagbir Singh. He was arrested.

23. Jyhotimon, I.O on the basis of the statement of Syed Abu Sualeh had reason to believe that his wife *Tahira Sayed* had been permitting her house to be used for manufacture of narcotic drugs. After giving Notice to her under Section 67 NDPS Act, her statement was recorded wherein she admitted that her house at Teliwara which was in her name was being used for manufacture of heroin by Syed Abu Ala and Mohd. Altaf. She was arrested by the I.O.

24. The case of NCB from the investigations conducted therein that the main culprit in manufacture of heroin was Syed Abu Ala, whose statement was recorded by the NCB team in Bangalore, wherein he admitted manufacture of heroin at Teliwara and of its trafficking from Delhi to Bangalore. The various samples were sent to CRCL, which gave its Report. The complaint under Section 8(c), 9A, 21, 22, 25, 25A, 28, 29, 30, 60, 62 and 63 of NDPS Act was filed in the Court.

25. ***Charges under Section 29 read with Section 21/22 and Section 25(A) read with Section 9(A) of NDPS Act was framed against all the accused***



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persons. *Separate charge under Section 21 NDPS Act was also framed against accused Sayed Abu Suleh and Mohd. Altaf.* Separate charge under **Section 25 NDPS Act was also framed against accused Tahira Sayed.**

26. All the accused plead not guilty and claimed trial. During the trial accused Jagbir Singh expired and the proceedings against him, stood abated.

27. ***The Prosecution in support of its case examined 23 witnesses.*** The most material being *PW1-SI Mangal Dass I.O, PW2-Sh. Trilok Singh I.O, PW9-Karan Singh I.O, PW14 Jyhotimon PW15-N.K. Dhaka, PW16-Pradeep Kumar I.O.* The other witness was *PW3-Sh. K.L. Gauba* who led the team to Zenith Pharma for search and was also member of Search Team which searched the premises at Teliwara. He also went to Lusa Tower, Azadpur from where Jagbir Sing had been apprehended. *PW4-Sh. V.B. Chaurasia* was the Assistant Chemical Examiner. *PW5-Jagdish Ram, Daftri* had taken the samples and memos to CRCL on 02.12.1999. *PW6-Bina Jasrotia* had given a statement before Mangal Dass I.O on 30.11.1999. *PW7-C.B. Singh* was the Superintendent who on the directions of Asstt. Director had issued search authorization in favour of NCB Officers. *PW8-M.S. Bawa* had conducted search of M/s Shiv Chemicals in the presence of panch witnesses. *PW10-Darshan Singh* was the witness to the search conducted at Rana Pratap Bagh and Priyadarshani Vihar. *PW11-Atik Ahmed* was the driver of Sayed Abu Ala. *PW12-Khalid Parvej* was the Manager in Zenith Pharma. *PW13-Abrar Ahmed* was the Zonal Director who had been apprised of the entire investigations carried out by the I.Os from time to time. *PW17-N.S. Ahlawat, Asst. Director* had received information from DDG (Co-ordination) NCB and had formed two teams led by K.L. Gauba I.O and N.K. Dhaka I.O. *PW18-Sandip Wangdi* conducted the search at shop, Libaspur, GT Karnal



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Road. *PW19-Panna Lal* was the panch witness to the recovery of acetic anhydrite from the shop of Sanjay Kakkar, though he failed to support the case of the prosecution. *PW20-Deepak Kakkar* brother of Sanjay Kakkar deposed that Sanjay Kakkar used to do the business of chemicals from his shop. *PW21-Madan Singh* was the member of raiding team at Teliwara. *PW22-N. Mehanta* was present when Mohd. Altaf gave his statement to I.O Karan Singh. *PW23-Narender Kumar* was the Chemical Examiner, CRCL, who proved his Reports as Ex.PW23/1 to PW23/7.

28. The **Statements of the accused persons were recorded under Section 313 Cr.P.C**, wherein they denied the entire evidence and the alleged recoveries from them.

29. **Accused Syed Abu Ala** in his defence had stated that he had given the premises at Second Floor, Teliwara on rent to Asghar Khan on 27.07.1999 for carrying out the business of manufacturing of pharmaceuticals and medical products and was in his exclusive possession. He denied that he was having the keys of Teliwara. He also denied knowing Rajender Kmar, Sanjay Kakkar, Jagbir Singh and Ghanshyam.

30. **Accused Mohd. Altaf** in his defence stated that he had been living at the Ground Floor of the premises at Teliwara from where he was taken to NCB Office. He also stated that the Second Floor was in the tenancy of Asghar Khan since July 1999. He denied knowing Rajender Kumar.

31. **Accused Rajender Kumar** in his defence stated that he does not know Mohd. Altaf; neither he had ever met him nor supplied any chemical. He claimed that he had been taken from Delhi Scientific Works to NCB office, where he was brutally beaten. He denied knowing Sanjay Kakkar, Abu Sualeh and Ghanshyam Gupta.



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32. The accused persons examined **DW-1 Sh. K.C. Jain, Notary Public** who had notarised the Rent Agreement Ex.PW1/DA in regard to the Second Floor of the premises in Teliwara.

33. **DW2 Mohd. Farooq** deposed that he knows Sayed Abu Ala since childhood and that he resided in Teliwara till 1998 and thereafter shifted to New Friends Colony.

34. **DW3 Syed Umar Farooq**, elder brother of Sayed Abu Ala deposed that the Teliwara premises were rented out by Syed Abu Ala to Asgar Khan on 26/27.07.1999 vide Rent Agreement Ex.DW1/DA.

35. The **learned ASJ considered the entire evidence** and held the accused Syed Abu Ala guilty of the offence punishable under Section 29 read with Section 21(C) & 29 read with 25A NDPS Act, accused Mohd. Altaf was held guilty of the offence under Section 29 read with 21(C) NDPS Act, accused Rajender Kumar was held guilty of the offence under Section 29 read with 25A NDPS Act.

36. The Appellants were sentenced *vide* Order dated 03.09.2010 as under:-

(i) **Convict Syed Abu Ala** was sentenced to undergo rigorous imprisonment for a period of 11½ years and to pay a fine of Rs.2,00,000/- for the offence punishable under *Section 29 read with Section 21(C)* and in default thereof to undergo Simple Imprisonment for a period of one year. He was also sentenced to undergo rigorous imprisonment for a period of 5 years and to pay fine of Rs. 50,000/- for offence punishable u/s 29 r/w 25A NDPS Act in default thereof to undergo simple imprisonment for a period of six months.

(ii) **Convict Mohd Altaf** is sentenced to undergo rigorous



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imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- in default to undergo simple imprisonment for a period of one year for the offence punishable u/s. 29 r/w 21(C) NDPS Act.

(iii) **Convict Rajender Kumar** is sentenced to undergo rigorous imprisonment for a period of 2½ years and to pay fine of Rs. 25,000/- in default to undergo simple imprisonment for a period of six months for the offence punishable u/s. 29 r/w 25A NDPS Act.

37. The three convicts have filed their respective Appeals as mentioned above.

38. It is **submitted by the Appellants** that the impugned judgment of conviction and the Order of sentence is illegal, erroneous, based upon conjectures, surmises and assumptions made without reading and appreciating the evidence on record, facts and legal principles. It is also submitted that the Prosecution has failed to establish any cogent and admissible evidence.

39. It is submitted that there is non-compliance of Section 42(2) of the NDPS Act as the information received by the DDG was not reduced in writing. The information received by Sh. N.K. Dhaka, the IO, at A-263, New Friends Colony, was also not reduced in writing by him. The Ld. Trial Court held that there is no information qua the premises at Teliwara, and the Trial Court wrongly relied on the statement of PW-14/N.K. Dhaka and PW-15/Jyothimon, who have admitted that they did not reduce the information received in writing and their oral evidence cannot be the basis for compliance of Section 42 of NDPS Act.



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40. That the Ld. Trial Court observed that the second information was communicated to PW-17/N.S. Ahlawat from New Friends Colony who allegedly reduced the same in writing, but the same was not proved by him. Thus, the only inference which could be drawn is that no such information was gathered. It is submitted that the Appellant has specifically argued this before the Ld. Trial Court and relied upon the judgments of the Supreme Court in Union of India vs. Balmukund, 2009 (2) Crimes 171 SC, State of Punjab vs. Baldev Singh, JT 1999 (4) SC 595, State of Punjab vs. Balbir Singh, 1994 (3) SCC 299, and the Ld. Trial Court glossed away the submissions.

41. The compliance of Section 42 of the NDPS Act is mandatory, and its non-compliance is fatal to the case of prosecution and the Appellant is entitled to be acquitted in view of DRI vs. Mohd. Nisar Holia, 2008 (1) JCC Narcotics 1 and Baldev Singh (supra). Reliance has also been placed on The State of Punjab vs. Baldev Singh, JT 1999 (4) SC 595 to further argue that the learned Special Judge has failed to appreciate that *there is non-compliance of Section 42 and 55 of the NDPS Act*.

42. Further, it is submitted that the Ld. Trial Court has failed to appreciate that the statements under section 67 of the NDPS Act are a weak piece of evidence and are not sufficient in their individual characteristics to record conviction. In this regard, reliance has been placed on Noor Aga vs. State of Punjab & Anr., 2008 (3) JCC Narcotics 135, which has been reiterated by the Supreme Court in Vinod Solanki vs. Union of India & Anr., JT 2009 (1) SC 1, Bal Mukund (supra), Raju Premji vs. Custom, 2009 (3) Crimes 109 SC.



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43. The Ld. Trial Court failed to appreciate Charan Kurmi vs. State of Bihar, AIR (1964) SC 1184 wherein it has been held that the confession of co-accused cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the other evidence in the case. It is submitted that the Ld. Trial Court failed to appreciate that the Statement of Appellants were obtained under pressure, threat and coercion, and they were not warned that they are not bound to make any statement.

44. It is further argued that none of the Prosecution witnesses have deposed as to the contents of statement of Appellant under section 67 of the NDPS Act, for which reliance has been placed on Shiva Karam Payaswami Tewari vs. State of Maharashtra, JT 2009 SC 625 wherein it has been held that the witness who records confession of an accused in evidence must clearly state the words spoken by the accused in his confession, but in the present case, the prosecution has only exhibited the alleged confessional statement.

45. It is submitted that the alleged statement of the accused is not an admissible piece of evidence, for the same being a confession recorded after the termination of conspiracy and thus, not being covered by section 10 of the Evidence Act.

46. It is submitted that the Ld. Trial Court failed to appreciate the judgments of the Supreme Court in the case of Ravindran @ John vs. The Superintendent of Custom, 2007 (2) JCC Narcotics 89, Monish H. Bhalia Vs. Satya Prakash Behl, 2005 CrL. L.J. 1827, Union of India Vs. Balmukund, 2009 (2) Crimes 171 SC and NCB Vs. Aziz Ahmed, 2010 (1) JCC Narcotics 6



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wherein it has been held that the statement recorded under section 67 of the NDS Act may bind the maker and not the accused. It has also been held that these statements cannot be used U/s 10 and 30 of the Evidence Act. If these statements are taken out, then there is no other evidence against the appellant.

47. The statement made by the Appellant was not voluntary and was made after he had been illegally kept for two days. The statement was retracted at the very first opportunity and so, the burden to prove that the statement was made voluntarily was on the prosecution, which they failed to prove beyond reasonable doubt.

48. It is submitted that the Ld. Trial Court failed to appreciate that there is no evidence except retracted confession of co-accused, which cannot be used to infer conspiracy. The trial court further failed to appreciate that the Appellant was residing on the ground floor and the recoveries were effected from second floor. It is submitted that there is no material or evidence to prove that the Appellant was helping Sayed Abu Ala in manufacturing Heroin.

49. It is further submitted that the Appellant is only convicted for conspiracy, which cannot be inferred on the basis of a retracted statement. It is asserted that the Ld. Trial Court has failed to appreciate that the statutory presumption under Section 35 and 54 of the NDPS Act cannot be invoked against the Appellant as the initial burden is on the prosecution and only thereafter, the presumption can be invoked; in the present case, the prosecution has not been able to prove the ingredients of an offence beyond reasonable doubt against the Appellant and therefore, the statutory presumption cannot be invoked. It is submitted that on the same facts, the



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Ld. Trial Court has acquitted Syed Abu Sualeh and Ms. Tahira Syed. The case of the Appellant is on a better footing, and he has been acquitted for the Charges under section 25A of the NDPS Act.

50. It is submitted that the Appellant Mohd Altaf was found on the ground floor and he did not lead to the recovery of the contraband on the second floor. The second floor was under the tenancy of Ashgar Khan. There is no case proved against him.

51. On behalf of the **Appellant, Rajinder Kumar**, it is submitted that the Ld. Trial Court convicted the Appellant merely for supplying Acetic Anhydride to the accused Syed Abu Ala, while noting that there is no material on record to infer that the Appellant has conspired with Abu Ala for manufacture of Heroin. The Ld. Trial Court has convicted the Appellant because of the deliberate effort of the NCB of keeping the link between Abu Ala and Sanjay Kakkar open and giving them safe passage.

52. It is submitted that the Ld. Trial Court failed to appreciate that the allegations are merely based on the disclosure statement of co-accused that the Appellant used to supply the Acetic Anhydride to Abu Ala after procuring from another accused Sanjay Kakkar. The disclosure statement of the Appellant and co-accused, Mohd. Altaf was taken under the threat and after use of third degree, which is evident from the complaint.

53. It is submitted that the whole story is concocted and fabricated. There is no recovery effected from the Appellant and the allegations levelled are entirely false. It is further submitted that the Ld. Trial Court failed to appreciate that the Acetic Anhydride supplied by the Appellant could also be used for medicine, leather, and dying purposes, and not just manufacture of



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Heroin. In any case, the Appellant was not aware as to what was it being used for by the accused, Abu Ala.

54. The Ld. Trial Court failed to appreciate that the Appellant was kept in illegal custody from day one, i.e. 01.12.1999, when he was taken from Delhi Scientific Works, even though he was shown in official custody on 04.12.1999. It is submitted that to make the statements recorded of the Appellant seem believable and voluntary, they were concluded with the request that he wished to go home on one or the other pretext.

55. It is further submitted that the Ld. Trial Court has failed to appreciate that in the statement of the Appellant recorded under section 67 of the NDPS Act, the word “Nasila Padarth” has been written in a different handwriting.

56. While sentencing the Appellant, the trial court failed to appreciate that the Appellant is 65 year old man with no criminal antecedents and is the sole bread earner of his family looking after 4 family members of his deceased son and his wife, a heart patient having nearly 90% blockage. In any case the Appellant has undergone 22 months of imprisonment.

57. Thus, it is prayed that the order dated 25.08.2010, in respect of the Appellant, be set aside and the Appellant be acquitted and the order of sentence dated 03.09.2010 be modified.

58. **The learned counsel for the NCB** has vehemently opposed the Appeal on the ground that the offence involves commercial quantity of Heroin and there is conspiracy involved for manufacturing of the said drug.

59. The learned counsel has further submitted that all statutory prescriptions and requirements have been scrupulously and duly observed in the present case, in accordance with law, and that the requirement of Section 50 of the NDPS Act, for the suspect to be searched only before a Gazetted



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Officer or Magistrate, even though the suspect waives that requisition, after categorically being apprised of his right to be so searched, is not the stipulation of the provision. It is further submitted that the applicant/accused was served with notice to be searched under Section 50 of the NDPS Act, whilst simultaneously being informed of his statutory right to be searched before a Gazetted Officer or Magistrate, in response to which the applicant/accused decided to waive the right by reposing faith in the empowered officer to conduct his search; in complete accord with the stipulated and statutory requirements mandated by the provision of Section 50 of the NDPS Act.

60. The learned counsel has further argued that the statements recorded under section 67 were voluntarily made and that the Id. Trial Court has rightly given a finding to the same effect and accordingly placed reliance on the same to convict the accused persons.

61. On the aspect of modification of sentence, the learned Counsel has argued that the nature of the offence committed and the quantity of the drugs recovered, the Appellants should not be given any benefit of the same.

62. It is submitted that the as per the Nominal Roll of the Appellant, Mohd. Altaf, was admitted to Jail on 02.12.1999 and was released on bail on 21.12.2009, by the court of Ld. ASJ.

63. The Nominal Roll of the Appellant, Syed Abu Ala, indicates that he has already undergone 10 years and 11 days and is yet to undergo over 1 year 5 months. The Appellant, Rajinder Kumar, has already undergone 22 months of his sentence and is yet to undergo 8 months.

64. **Submissions heard and evidence as well as the record perused.**

In CRL.A.1200/2010 qua Convict Rajender Kumar: -



65. The allegations against the Appellant/Rajender Kumar were that he was the supplier of *Acetic Anhydride* to the other accused persons who were using the same for the manufacture of Heroin. He has been charged under Section 29 read with Section 25(A) of the NDPS Act.

66. Section 21 of NDPS Act provides that:

“21. Punishment for contravention in relation to manufactured drugs and preparations. —

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable, -

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees.

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees, but which may extend to two lakh rupee.”

67. Section 25(A) of the NDPS Act provides punishment for contravention of any Order made under Section 9A in regard to use to controlled substance in the production or manufacture of any Narcotic Drugs. The same is produced as under: -



“25A. Punishment for contravention of orders made under section 9A.— If any person contravenes an order made under section 9A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding one lakh rupees.”

68. Section 29 provides for punishment for abatement and criminal conspiracy. The same is produced as under: -

“29. Punishment for abetment and criminal conspiracy. —

(1) Whoever abets or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

69. The involvement of the Appellant/Rajender Kumar was first revealed from the statement of co-accused, Mohd. Altaf, recorded as Ex.PW1/DA and Ex.PW9/1 on the basis of which information Ex. PW7/5 was sent to



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Superintendent. PW-15/ N.K. Dhaka had deposed that upon getting the search authorization, Ex.PW7/1, he conducted the search of the house of Rajinder Kumar in Brahmpuri, but nothing incriminating was recovered.

70. Rajinder Kumar in his three statements Ex. PW21/5 to 8 admitted supplying Acetic Anhydride to accused Syed Abu Ala. He stated that he had met accused Syed Abu ala near Lahori Gate about 1½ years ago, who asked him for supply of the chemicals. On the asking of Accused, Syed Abu Ala, he went to his house where he was asked to supply *Acetone, Citric Acid and Sodium Carbonate*, which he supplied. Syed Abu Ala requested him to supply *Acetic Anhydride*, which he initially refused to arrange but when it was insisted upon by Syed Abu Ala, he contacted co-accused/Sanjay Kakkar at his shop who told him that he could make the same available. Rajender Kumar procured Acetic Anhydride from Sanjay Kakkar and supplied it to Syed Abu Ala. He again supplied Acetic Anhydride after about 15-20 days to Syed Abu Ala, after procuring the same from Sanjay Kakkar.

71. He also admitted that he knew that Acetic Anhydride is a controlled substance. He, however, stated that he was not aware of the use of Acetic Anhydride except that it is utilized for making the drugs. When he went to the house of Abu ala to supply Acetic Anhydride, he was told by Abu Ala that he is in the business of dying clothes.

72. The learned ASJ observed that even though Rajender had subsequently retracted his statement, but there was no material to show that he was subjected to third degree or that his statement was no voluntary. *Therefore, his statement was held to be voluntary and reliable.*

73. The statement of *Rajinder Kumar* stood further corroborated by the recovery of 4 bottles containing 61 litres Acetic Anhydride from his shop in



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the name of Shiv Chemicals at Ram Nagar, Qutab Road, which had been duly seized by the Police. The samples had been taken and forwarded to the CRCL, wherein the chemical found to be Acetic Anhydride, as per the Reports as Ex.PW23/1 to PW23/7.

74. The statement of *Sanjay Kakkar* Ex.PW1/R, Ex.PW1/S and Ex.PW1/T were also recorded wherein he admitted supplying the Acetic Anhydride to Rajender Kumar after getting the supply from Jagbir Singh. He was also aware that Acetic Anhydride was a controlled substance and used in making Heroin. He also used to supply Acetic Anhydride to Pawan Kumar.

75. The raid was also conducted at the house of Pawan Kumar which resulted in recovery of Acetic Anhydride. Further, coming to know about the involvement of Jagbir Singh, he was apprehended on the basis of information disclosed by Sanjay Kakkar on 02.12.1999 and 17 bottles of Acetic Anhydride were recovered from his car vide Panchnama Ex.PW3/5 from where the samples were taken. The Report of CRCL Ex.PW23/8 also confirmed the recovered chemical to be Acetic Anhydride.

76. From this evidence against Rajinder Kumar it has been established beyond reasonable doubt that he used to supply Acetic Anhydride to Syed Abu Ala. It has also been established from his statement that he was not aware that the same was being used for manufacture of Heroin by Syed Abu Ala. According to his statement, when he made a query from Syed Abu Ala, he was informed that the same was being used to dye clothes. In the circumstances, it has been proved that though he was supplying Acetic Anhydride. Despite knowing that it is a controlled substance used for making Drugs (medicines), he was not aware of its utilization for manufacture of Heroin. ***The Appellant has rightly been held guilty for the offence under***



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Section 29 read with Section 21(C) NDPS Act and for the offence u/s 29 r/w 25A NDPS Act for dealing in controlled substances without license.

The learned ASJ has rightly appreciated the entire evidence to convict the Appellant Rajender Kumar. There is no infirmity in the findings of the learned ASJ. He has been sentenced to undergo imprisonment for a period of 2½ years and to pay fine of Rs. 25,000/- in default to undergo S.I. for a period of 6 months for the offence punishable under section 29 r/w 25A of the NDPS Act.

77. Learned counsel on behalf of the Appellant had submitted that the Appellant was 65 years old at the time of conviction in 2010 and that he has already undergone sentence of 22 months. He has been facing trial since 1999. It is, therefore, prayed that the sentence may be reduced to the period already undergone by the Appellant.

78. Considering all these facts and circumstances of the case and in the interest of justice, keeping in mind the peculiar facts of this case, the Order ***on Sentence is modified and the sentence under Section 29 r/w 25A NDPS Act, is reduced to the period already undergone.***

In CRL.A.1294/2010 & 1381/2010 qua Syed Abu Ala and Mohd. Altaf: -

79. The charges against the Appellants, Syed Abu Ala and Mohd. Altaf, were that they, along with their servant and family members, had been manufacturing and storing Heroin by procuring the supply of raw materials, chemicals including Acetic Anhydride from the co-accused Rajender Kumar, Sanjay Kakkar, Jagbir and Ghanshyam.

80. The entire chain of events has been proved by the prosecution witnesses. It has been deposed that the Asstt. Director, NCB DDG received information Ex.PW14/A on 29.11.1999 from DDG (Co-ordination) NCB



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Head Quarters about arrest of one Syed Abu Ala at Bangalore along with 18 Kg of heroin. He was resident of New Friends Colony and had a Medicine Shop at Bhagirath Place. On the basis of this information, two teams were constituted; one was headed by N.K. Dhaka, I.O and the other by K.L. Gauba, I.O. The respective teams went to New Friends Colony and Bhagirath Place respectively, but nothing incriminating could be recovered.

81. However, Syed Abu Suleh in his statement to PW-14/Jyothimon and PW-15/N.K. Dhaka disclosed that he had one more house at Teliwara, where he was manufacturing medicines. This information was conveyed to PW17/Shri N.S. Ahlawat, who directed PW7 Sh. C.B. Singh to immediately conduct the raid.

82. An objection was taken on behalf of the accused persons that there was no compliance of Section 42 of NDPS which provides that wherever reasonable information is received, that such person is required to reduce the same to writing and to forward it to immediate superior. The learned ASJ observed that in the instant case, first information was received on telephone and second information was communicated to PW7/Sh. C.B. Singh on telephone from New Friends Colony by PW15/N.K. Dhaka. The situation was emergent and if there was a delay in raid, it would result in removal of contraband from the premises of Teliwara. No prejudice was shown to have been caused to the Appellants on account of the information not being reduced to writing by PW15/N.K. Dhaka. The record reflects that the information given by PW15/N.K. Dhaka on phone was immediately recorded by PW17/Shri N.S. Ahlawat, who thereafter got the raid conducted through PW7.

83. In the case of Karnail Singh vs. State of Haryana, (2009) 8 SCC 539



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the Apex Court has held that whether there is substantial compliance of Section 42 or not, would have to be decided on the facts of each case. In the present case, there is substantial compliance of Section 42 of the NDPS Act. The argument on behalf of the Appellants that there was no compliance of Section 42 is, therefore, no tenable.

84. The raiding team who went to Teliwara on 29.11.1999 was headed by PW1/I.O. Mangal Dass who deposed that he, on the directions of PW17/Shri N.S. Ahlawat reached Teliwara, where PW7/ Sh. C.B. Singh and PW17/Shri N.S. Ahlawat were present. Two independent witnesses were joined in the search. In the interim PW15/N.K Dhaka along with his team and accused Syed Abu Sualeh also reached there. They all went to House No.995, Teliwara, where Syed Abu Sualeh knocked the door, opened by Mohd. Altaf. After being given Notices under Section 50 NDPS Act Ex.PW1/B and Ex.PW1/C, they both declined to get the search conducted in the presence of Gazetted Officer of Magistrate of even to conduct the personal search of the members of the raiding team.

85. Thereafter, they all went to Second Floor and recovered a suitcase containing nineteen packets weighting 32.555 Kg which were filled with brown powder, which on testing found positive for heroin. In addition, 28 bottles each containing 2.5 litres, Acetic Anhydride, 79 bags of Sodium Carbonate weighing 400 Kg, 19 bottles of Citric Acid Hydrate, 404 grams of activated charcoal, 16 bottles of F.09 Idocol Tartrazine, 18 bottles of Acetone GR, some machines and equipments, four aluminium patilas and some documents were recovered, which were seized. The details of each were mentioned in the panchnama Ex.PW1/8. The samples were duly taken. Test Memos were prepared and the case property was sealed with the seal of



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NARCOTIC CONTROL BUREAU-DZU 5 and deposited in the malkhana. The case property has been duly identified by PW1/I.O Mangal Dass as Ex.P1 to Ex.P286. *All the recovery witnesses were consistent and there was no material contradiction to discredit their testimony.*

86. The link witness PW5/Shri Jagdish Ram who had taken the samples, Test memos and forwarding letter to CRCL. PW4 had received the samples and PW3 had analyzed the samples. Their testimony revealed that the case properties have been received by CRCL in duly sealed condition, which were found intact and there was no tampering in the samples that were seized and sealed on the spot and forwarded to CRCL.

87. The contention had been raised on behalf of the Appellant that the Notice under Section 50 of the NDPS Act was defective as they were not explained of their legal rights for getting the search conducted before the Gazetted Officer or the Magistrate.

88. The Notice, Ex.PW1/B and Ex.PW1/C revealed that both accused Syed Abu Sualah and Mohd. Altaf had been informed by PW1/I.O Mangal Dass that they have a reasonable belief that there are certain Narcotics in their possession or concealed in their bag or in residential premises and that the personal search as well as of their baggage/residential premises was required to be conducted. It was also recorded that they were asked if they required the presence of any Gazetted Officer or Magistrate during the search, but they declined.

89. In the case of State of Punjab vs. Baldev Singh JT 1999 (4) SC 595 it has been held that search in the presence of Gazetted or Magistrate is extremely valuable right which the legislature has given to the suspects/accused in regard to the grave consequences that may entail in case



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they are found in possession of illicit articles under NDPS Act. However, so long as the prosecution is able to establish from the evidence on record that the empowered Officer had conveyed the information of their rights to the accused persons at the time of intended search, it would be sufficient compliance of Section 50 of the NDPS Act.

90. In the present case, the testimony of the prosecution witnesses was consistent in stating that due information about the rights of the accused under Section 50 of the Act had been conveyed to them, but they had refused, which was recorded in the Notices. Substantial compliance of Section 50 of the NDPS Act had been made and *the learned ASJ had rightly concluded that there was due compliance of the procedures and the protections provided in the Act to the accused persons.*

91. As per the prosecution witnesses PW1/Mangal Dass, PW15/N.K. Dhaka and PW17/Shri N.S. Ahlawat at the time when the search was conducted, the Second-Floor premises was opened by the keys Syed Abu Sualeh. The Ground Floor of the premises was admittedly in possession of Mohd. Altaf, who in his statement had stated that Syed Abu Sualeh manufactured heroin on the Second Floor. In the statements of Syed Abu Sualeh, Mohd. Altaf and Tahira recorded on 30.11.1999, they never alleged that the premises had been let out to Asgar Khan in July 1999. PW1/I.O. Mangal Dass in his cross-examination denied the suggestions that the premises i.e. the Second Floor in Teliwara were locked or that they entered the premises after breaking the lock. In fact, he has deposed that the key was Syed Abu Sualeh who used it to open the door. The incriminating substances, contraband and other articles had been recovered from the premises.



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92. The defence taken by Syed Abu Sualeh was that he had rented out the premises to one Ashgar Khan since July 1999 *vide* Rent Agreement dated 27.07.1999, with which he had no concern. Though the document may have been created, but from the overwhelming evidence led by the prosecution witnesses and also from the voluntary statement of Syed Abu Sualeh recorded after giving Notice under *Section 67 of the NDPS Act*, amply established that the physical possession was with Syed Abu Sualeh. The assertions that the property was rented out was totally falsified from the cogent evidence that had been led on behalf of the prosecution. The testimony of all the prosecution witnesses on these aspects have been consistent and minor contradictions here and there cannot take away the truthfulness of their testimonies.

93. The learned ASJ also observed that some contradictions of inconsequence cannot take away the truthfulness of the statements of the witnesses. Syed Abu Sualeh in his statement Ex.PW14/6 recorded by PW14 had stated that he sat at the shop at Bhagirath Place. Earlier they used to live at 995, Mohalla Kishanganj, Teliwara which was in the name of his mother. He further stated that the keys of the First and Second Floor had been handed over to him by his father while he was going out of station. He opened the premises with the keys which resulted in the recovery. He further stated that he had kept servant Mohd. Altaf who used to help him in manufacturing heroin. Mohd. Altaf also in his statement under Section 67 NDPS Act Ex.PW9/A and Ex.PW1/DA revealed that he was living on the Ground Floor of the Teliwara premises as a caretaker of the house. He used to assist Syed Abu Ala in manufacture of heroin on the Second Floor. The keys of the First Floor and Second Floor remained with Sayed Abu Ala. When he went out,



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he would give the keys to Syed Abu Sualeh. He further stated that Syed Abu Ala had shifted to New Friends Colony with his family, but he continued to have the keys of the First and the Second Floor which was being used by him for manufacturing of heroin. In his absence, his wife Tahira Syed and son Syed Abu Sualeh used to come and supervise the manufacturing operation. The statement of Tahira was also recorded who corroborated the statements of Mohd. Altaf and Syed Abu Ala.

94. Tahira Sayed in her statements dated 30.11.199, Ex. PW1/1 and 13.12.1999, Ex. PW6/3, gave her family history and stated that her husband has been doing this business of preparation of Heroin in a room on Second Floor. She also stated that he sometimes took assistance of Mohd. Altaf, who has been in employment for last 5 years. After preparation, he used to go out of Delhi for a week or so to dispose it off. She also stated that although they had moved to New Friends Colony but her husband used the Teliwara property to store Heroin. She has further stated that she never interfered in the activities of her Husband and that he used to discourage her from going to the second floor.

95. Mohd. Altaf in his statement stated that he had given some personal information. He stated that he lives at the ground floor at Teliwara and is the care taker of the house and assisted the accused Syed Abu Ala in manufacturing Heroin. He stated that the second floor remains with Abu Ala and that he gives the key to Abu Sualeh when he goes out of Delhi. He stated that Abu Ala had gone out of Delhi to sell Heroin and the lock of the second floor was opened by Abu Sualeh with the key he brought with himself.

96. Syed Abu Sualeh tendered his statement, Ex. PW14/6, before PW14 wherein he had stated that he used to sit at the shop in Bhagirath Palace and



that earlier they used to live at the Teliwara property which is in the name of his mother. He also stated that he had accompanied the NCB officials at Teliwara property and took the keys to first and second floor of the house with him, which were given to him by his father when he went out of station. He stated that Mohd Altaf had told in front of NCB officers that the opium was brought by Salim and Mama from Bhiwani Mandi. He stated that his father knows from where the chemicals came from. He stated that he does not know the associates of his father but a person owing a firm Capital Scientific at Sadar Bazar used to come at his house.

97. The Appellants have been convicted on the basis of statements recorded under Section 67 of the NDPS Act.

98. The Supreme Court in Sahoo v. State of Uttar Pradesh, AIR 1966 SC 40 defined ‘confession’ to mean an admission by the accused in a criminal case admitting his guilt. The word ‘confession’ appears for the first time in section 24 of the Indian Evidence Act. This section says that:

“24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”

99. In Sahoo (supra) it was held by the Supreme Court that there is clear distinction between the admissibility of evidence and the weight to be



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attached to it. The Court must apply a double test: (1) *whether the confession was perfectly voluntary*; (2) *if so, whether it is true and trustworthy*. The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If the confession appears to be probable catalogue of event and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be relied on.

100. Further, as held in Shivappa v. State of Karnataka, (1995) 2 SCC 76, a confession, if voluntary and truthfully made is an “efficacious proof of guilt”. It is an important piece of evidence and therefore, it would be necessary to examine whether or not the confession made by the appellant was voluntary, true and trustworthy.

101. From the evidence against the Appellants, it has been established beyond reasonable doubt that the Appellant Syed Abu Ala was actively involved in the manufacture of Heroin from the second floor of his Teliwara premises. It has also been established from the statements that with the activity of manufacturing Heroin were being conducted by Syed Abu Ala with the help of his servant Mohd. Altaf, who was aware as to where the raw material was being procured from, for manufacturing Heroin. Even though the accused Syed Abu Ala was acquitted in the Bangalore case, but the Id. ASJ has noted that there is enough direct and documentary evidence against Syed Abu Ala to prove his complicity.

102. *The Appellant/Syed Abu Ala has rightly been held guilty for the offence under Section 29 read with Section 21(C) NDPS Act and for the offence u/s 29 r/w 25A NDPS Act for dealing in controlled substances without license.* The learned ASJ has rightly appreciated the entire evidence



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to convict the Appellant Syed Abu Ala. There is no infirmity in the findings of the learned ASJ. He has been sentenced to undergo rigorous imprisonment for 11½ years and to pay a fine of Rs.2,00,000/- for the offence punishable under Section 29 r/w Section 21(C) and in default thereof to undergo SI for one year. He was also sentenced to undergo rigorous imprisonment for a period of 5 years and to pay fine of Rs. 50,000/- for offence punishable u/s 29 r/w 25A NDPS Act in default thereof to undergo simple imprisonment for a period of six months.

103. In view of the facts and circumstances, considering the advanced age the ***Appellant/Syed Abu Ala*** who is now about **77** years old and has been facing trial for about 20 years. Also, the Appellant has already undergone major portion of his sentence i.e. about 10 years, the order on Sentence is modified and the sentence of the Appellant under Section 29 r/w 21(c) and 29 r/w 25A of the NDPS Act ***is reduced to the period already undergone.***

104. The ***Appellant/Mohd. Altaf***, ***has rightly been held guilty for the offence under section 29 r/w section 21(c) of NDPS Act and sentenced to undergo R.I. for 10 years and to pay a fine of Rs. 1,00,000/- in default S.I. for 1 year.*** The learned ASJ has rightly appreciated the entire evidence to convict the Appellant Mohd. Altaf. There is no infirmity in the findings of the learned ASJ.

105. Considering all these facts and circumstances of the case and in view of the fact that the ***Appellant/Mohd. Altaf*** is aged about 56 years and has been facing trial for about 20 years. He has already undergone the entire period of sentence awarded to him as per the nominal role, the Order on Sentence is modified and the sentence of the Appellant under Section 29 r/w 21(c) of NDPS Act, ***is reduced to the period already undergone.***



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**Conclusion: -**

106. In **CRL. A. 1200/2010**, the Appeal of Convict **Rajinder Kumar** is partly allowed. Conviction under S. 29 r/w 25A is upheld but Order on Sentence is modified to period already undergone.

107. In **CRL. A. 1294/2010**, the Appeal of Convict **Syed Abu Ala** is partly allowed. Conviction under S. 29 r/w 21(c) and 25A is upheld. However, Order on Sentence is modified to period already undergone.

108. In **CRL. A. 1381/2010**, the Appeal of Convict **Mohd. Altaf** is partly allowed. Conviction under S. 29 r/w 21(c) is upheld. However, Order on Sentence is modified to period already undergone.

109. The Copy of the Order be provided to the Appellants. Copy be also sent to Jail Superintendent for Compliance.

110. The Appeals are accordingly, decided and disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 24, 2024
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