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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 02nd February, 2024

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CRL.L.P. 526/2015**STATE (NCT OF DELHI)****..... Petitioner****Through: Mr. Yudhvair Singh Chauhan, APP for
State with ASI Ashok Kumar, P.S. Crime Branch.****versus****SHIV PRASAD****..... Respondent****Through: None.****CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition has been filed under Section 378(3) Cr.P.C. for grant of leave to appeal against judgment dated 18.11.2014 passed by Additional Sessions Judge (NDPS), (West) Delhi/Tis Hazari Courts, whereby the Accused/Respondent herein was acquitted in case FIR No. 155/2011 under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered at PS: Crime Branch, Delhi. State contends that the Trial Court has erred in ignoring the evidence on record and has erroneously acquitted the Accused, laying overemphasis on minor discrepancies in the testimonies of the prosecution witnesses and State has a good case on merits and thus, leave to appeal be granted.



2. It is the case of the prosecution that on 07.06.2011, a secret information was received at about 06:10 PM in the office of Anti Auto Theft Squad that Shiv Prasad Jaiswal (Accused), native of District Motihari, Bihar will arrive at Peeragarhi Metro Station at about 08:00 PM for supply of *charas* to some persons. This information was reduced into writing vide DD No. 11 (Ex. PW-6/A). On directions of the ACP concerned, raiding party comprising of ASI Narender (PW-10), Head Constable Jai Prakash (PW-12), Constable Rajender Singh (PW-5) was constituted under close supervision of Inspector Anil Dureja (PW-11). Trap was laid near Peeragarhi Metro Station and at about 08:20 PM, Accused came carrying a black colour bag and was apprehended at the spot on being pointed out by the secret informer. Notice under Section 50 of NDPS Act (Ex. PW-8/F) was served on the Accused. Black bag was checked and 07 packets wrapped with yellow tape were recovered containing a black substance, later confirmed as *charas* after testing with the help of Field Testing Kit. Packets were opened and each packet contained 02 small packets of *charas*, each of which were weighed separately. Total weight of *charas* was found to be 3.460 kgs. Total 14 samples were taken from each of the small packet weighing 25 gm each and samples were marked as serial Nos. S1 to S14. These samples were sealed with the seal of CPM and remaining packets were marked as serial Nos. 1 to 14 and kept in a *pullanda*. FSL forms were filled and all 14 samples' *pullandas* and the remaining *charas* were taken into possession vide seizure memo (Ex. PW-1/C). PW-6 SI Chandra Prakash prepared the *rukka* (Ex. PW-6/C), which was sent to the Police Station through Const. Rajender Singh (PW-5). Present FIR No. 155/2011 (Ex. PW-1/A) was registered and investigation was entrusted to SI Devender Kumar (PW-8).



3. As per direction, Inspector Anil Dureja (PW-11) reached the spot at 11:45 PM, where SI Chandra Prakash (PW-6) was present with the staff, who handed over notice under Section 50 of NDPS Act, seizure memo and carbon copy of *tehrir* to PW-8 and also produced the Accused. SI Devender Kumar interrogated the Accused and prepared the site plan (Ex. PW-6/D). Accused was arrested at 02:45 AM. PW-8 SI Devender Kumar reported to the Police Station at 04:30 AM and produced the Accused before PW-11, who examined the Accused and satisfied himself with the recoveries. FSL result (Ex.PW-8/E) shows that Ex.S1 to S14 were found to be *charas*.

4. Charge was framed against the Accused on 29.11.2011 under Section 20 of NDPS Act. Prosecution examined 12 witnesses in its support. Material witnesses were PW-4, PW-5, PW-6, PW-8, PW-9, PW-10, PW-11 and PW-12. PW-4 had affixed his seal of CRM on all 16 *pullandas* as well as on the FSL form and had deposited the case property with MHC(M). PW-5 was one of the members of the raiding party and had taken the *rukka* along with copy of seizure memo, *pullandas*, FSL forms etc. to the Police Station for registration of the FIR and was also one of the recovery witnesses. PW-6 was the initial IO, who had received the secret information and proved various documents during the course of investigation. PW-8 also proved documents prepared during investigation. PW-9 was Staff Officer, Assistant Commissioner, Anti Auto Theft Squad, Crime Branch and proved original report under Section 57 of NDPS Act regarding seizure of *charas* from the Accused. PW-10 was one of the recovery witnesses while PW-11 was the Officer, who first received the secret information from PW-6 and had conveyed the same to the ACP telephonically, whereafter direction was issued for conducting a raid. PW-12 was one of the members of the



raiding party. Remaining witnesses pertained to record or were formal witnesses.

5. Statement of the Accused was recorded under Section 313 Cr.P.C., wherein he denied the case of the prosecution and stated that he had been falsely implicated. He further stated that no notice was served upon him; the handwriting on the reply was not his, though the signatures were accepted; he did not know how to write except to sign; nothing was recovered from him or from his possession; he did not make any disclosure statement; his signatures were obtained on some blank/semi-printed/written documents in the Police Station; witnesses were official persons, who made false statements and were interested witnesses and the contraband was planted on him as he was not carrying any bag at the time when he was arrested by the Police.

6. Trial Court extensively examined the evidence and respective contentions of the Accused and separately dealt with various issues arising in the matter and finally came to a conclusion that there were material contradictions in the testimonies of the prosecution witnesses and prosecution had failed to prove its case against the accused, beyond reasonable doubt. Based on the evidence and respective contentions and arguments of the parties, the Trial Court acquitted the Accused, granting him the benefit of doubt. Trial Court has rendered separate findings under separate heads and I may refer to them as follows:-

“Position of Raiding Party

8. PW-6 Sub Inspector Chandra Prakash has deposed that he alongwith secret informer remained in the vehicle, however, other members of the raiding party took their position outside on his (PW-6) direction. Assistant Sub Inspector Narender Singh (PW-10) was on Peera Garhi side at a distance of about 20 yards. All the members were within the radius of 20



yards from the vehicle. PW-10 Assistant Sub Inspector Narender Singh has deposed that Sub Inspector Chandra Prakash (PW-6) and the informer were in the Santro car. He (PW-10) was on the pavement behind Santro car. They were scattered within the radius of 15 - 20 yards from the Santro car. PW-10 has also deposed that he was on the pavement behind Santro car.

9. PW-12 Head Constable Jai Prakash has deposed that the secret informer alongwith PW-12 remained sitting in the Santro car and other members of the raiding party took position in different directions. PW-5 Constable Rajender Singh has deposed that he (PW-5) was positioned near Peera Garhi Chowk when one go towards Nangloi. He has also deposed that all the members of the raiding party including the secret informer had alighted from Santro car and positioned at different points. From this it is clear that his version regarding all the members of raiding party including secret informer had alighted from the car and positioned at different points is contradictory to PW-6 Sub Inspector Chandra Prakash, PW-10 Assistant Sub Inspector Narender Singh and PW-12 Head Constable Jai Prakash. It is a material contradiction.”

7. Observing that there were contradictions in respect of the colour of the recovered substance, Trial Court observed as under:-

“Colour of Contraband

10. There is contradiction in respect of colour of the recovered substance. As per the testimony of PW-6 Sub Inspector Chandra Prakash and PW-10 Assistant Sub Inspector Narender Singh all the bags were containing some black colour substance which was tested by the field testing kit and found as CHARAS. However, PW-5 Constable Rajender Singh has deposed that it was of dull white colour. Even for the colour of contraband, there is contradiction in testimony of PW-5.”

8. Examining the testimonies of PW-5, PW-6, PW-10, and PW-12, Trial Court observed that there was doubt about the presence of members of the raiding party at the spot and relevant paragraphs are as follows:-

“Time of Leaving the Spot

11. PW-6 Sub Inspector Chandra Prakash has deposed that he left the spot at about 01:00 AM on 08.06.2011 by motorcycle of Sub Inspector Devender Kumar (PW-8) and went to his office directly from the spot. He do not remember the time when other members of the team returned to the



office. It was late night. He cannot tell as to the period they reached the office after his (PW-6) return to the office.

12. PW-10 Assistant Sub Inspector Narender Singh has deposed that they left the spot at about 03:30 AM. He has also deposed that during his stay at the spot, Sub Inspector Devender Kumar (PW-8) alone reached the spot at about 12 night /12:15 AM by his (PW-10) own bike.

13. PW-12 Head Constable Jai Prakash has deposed that Constable Rajender (PW-5) left the spot at about 11:00 PM in Santro car and came back at about 02:30 AM. He has also deposed that all the proceedings qua the accused were conducted by Sub Inspector Devender Kumar (PW-8) between 02:30 AM to 03:00 AM after arrival of Constable Rajender. He has also deposed that they have left the spot at about 03:30 PM. He has also deposed that Sub Inspector Chandra Prakash left the spot at 01:00 AM on the motorcycle of Sub Inspector Devender Kumar. PW-8 Sub Inspector Devender Kumar, he reached at the spot at 12 midnight on 08.06.2011 and they left the spot at about 03:30 AM.

14. PW-5 Constable Rajender Singh has deposed that after registration of the FIR he came to the spot alongwith copy of the FIR where he met the members of raiding party as well as Sub Inspector Devender Kumar. He returned to the spot at about 02:30 AM by the Santro car. From the spot they returned to the Police Station at about 04:30 AM. It is Not clear that as per the testimony of other witnesses PW-6 Sub Inspector Chandra Prakash and PW-12 Head Constable Jai Prakash, that they had left the spot at 01:00 AM and as per PW-10 Assistant Sub Inspector Narender Singh all of them left at 03:30 AM then how PW-5 met members of the raiding party as well as Sub Inspector Devender Kumar (PW-8) at 02:30 AM. He returned to the spot after registration of the FIR. Moreover, as per testimony of PW-10 Assistant Sub Inspector Narender Singh all of them left together at 03:30 AM, however, as per PW-5 from the spot they returned to the Police Station at about 04:30 AM. It raises doubt about presence of members of raiding party at the spot.”

9. Trial Court noted that there were material contradictions between the testimony of PW-6 and other witnesses PW-5, PW-8 and PW-10, with respect to the time of return of PW-5 Const. Rajender Singh. There was a variation of about 2 hours in the time and this was material, especially because PW-6 was the initial IO who had received secret information and prepared the *rukka* and sent PW-5 along with the *rukka*. Relevant



observations are as follows:-

“Time of Return of PW-5

15. PW-6 Sub Inspector Chandra Prakash has deposed that Constable Rajender Singh (PW-5) returned to the spot alongwith copy of FIR at about 12:40 AM, however, as per the testimony of PW-10 Assistant Sub Inspector Narender Singh, Constable Rajender Singh returned to the spot at about 02:30 AM. PW-5 has deposed that he returned at the spot at 02:30 AM. PW-8 Sub Inspector Devender Kumar has deposed that Constable Rajender Singh returned the spot at 02:35 AM. There is variation of about two hours of time in testimony of PW-6 and other witnesses. It is a material contradiction especially when PW-6 Sub Inspector Chandra Prakash is the initial Investigating Officer who had received the secret information. He is the main recovery witness, he has prepared the rukka and sent Constable Rajender Singh alongwith rukka.”

10. On the aspect of writing of crucial documents such as notice under Section 50 of NDPS Act, seizure memo etc., Trial Court found contradictions in the testimonies of PW-5, PW-6, PW-10 and PW-12, as follows:-

“Writing of Documents

16. PW-6 Sub Inspector Chandra Prakash has deposed that he has served notice under section 50 NDPS Act at about 08:45 PM. It was scribed by Head Constable Jai Prakash (PW-12) on his (PW-6) dictation. He has further deposed that rukka and notice under section 50 NDPS Act were scribed by Head Constable Jai Prakash (PW-12) on his (PW-6) dictation and seizure memo was prepared by PW-6 himself. On the other hand PW-10 Assistant Sub Inspector Narender Singh has deposed that the documents including notice under section 50 NDPS Act, seizure memo, personal search etc. were prepared at the pavement after apprehension of the accused at that very time. These documents were scribed by Sub Inspector Chandra Prakash (PW-6).

17. PW-12 Head Constable Jai Prakash has deposed that notice under section 50 NDPS Act was scribed by PW-12 himself. He has further deposed that the seizure memo was scribed by Sub Inspector Chandra Prakash (PW-6). Rukka was scribed by PW-12 on the dictation of PW-6.

18. PW-5 Constable Rajender Singh has deposed that Investigating Officer prepared notice under section 50 NDPS Act. He has further deposed that Investigating Officer prepared rukka. From this it is clear that there are



contradictions regarding preparation of these documents. As per PW-5 rukka and notice were prepared by the Investigating Officer, however, as per PW-12 Head Constable Jai Prakash these were prepared by him and as per PW-10 Assistant Sub Inspector Narender Singh these were prepared by the Investigating Officer."

11. There were several inconsistencies noticed by the Trial Court in the testimonies of PW-6 and PW-12 regarding positioning of the Accused on the spot, when he was allegedly identified by the secret informer. PW-12 deposed that when secret informer informed about arrival of the Accused, he was walking on the footpath; PW-6 testified that Accused was apprehended on the main road and taken to the service road, while PW-5 deposed that Accused was apprehended under Peeragarhi Metro Station on a footpath. PW-12 deposed that when secret informer informed about the arrival of the Accused, he was walking amongst the persons passing by, however, PW-6 stated that they had to wait for 10 minutes for the person to whom the Accused had to deliver the contraband. On the aspect of who apprehended the Accused, PW-6 stated that he apprehended the Accused while he was alighting from the vehicle but PW-12 testified that he along with PW-10 caught the Accused for the first time and PW-5 deposed that all Police personnel apprehended the Accused. Relevant paragraphs are as follows:-

"Position of the Accused"

19. PW-12 Head Constable Jai Prakash has deposed that when secret informer informed about arrival of the accused, accused was walking amongst the persons coming and going from there. However, PW-6 Sub Inspector Chandra Prakash has deposed that they had to wait for about ten minutes for the person to whom the accused has to deliver the contraband. They waited at the spot. They had observed that accused came and was waiting. They were waiting near their vehicle and was visible while they were sitting in the vehicle. The testimony of PW-12 Head Constable Jai Prakash and PW-6 Sub Inspector Chandra Prakash is contradictory on this aspect.



Place where Accused was spotted

20. PW-6 has deposed that accused was spotted from the front side of the vehicle. As per PW-10 he was apprehended after he had crossed the car. As per PW-12 he was apprehended before he could reach near the car of Sub Inspector Chandra Prakash (PW-6). Contradictory testimony of prosecution witnesses raises doubt.

Who Apprehended the Accused

21. PW-6 Sub Inspector Chandra Prakash has deposed that he has apprehended the accused first of all after alighting from the vehicle. PW-10 Assistant Sub Inspector Narender Singh has deposed that Sub Inspector Chandra Prakash has apprehended the accused first of all. PW-12 Head Constable Jai Prakash has deposed that, PW-12 alongwith PW-10 Assistant Sub Inspector Narender Singh caught hold the accused for the first time. PW-5 has deposed that all the police personnel have apprehended the accused. Hence, there is variation in testimony of PW-6, PW-10 and PW-12.

Spot of Apprehension

22. PW-6 Sub Inspector Chandra Prakash has deposed that accused was apprehended on the main road and thereafter he was taken to service road for further investigation. PW-10 Assistant Sub Inspector Narender Singh has deposed that accused was apprehended at the pavement. As per PW-12 Head Constable Jai Prakash at the time of apprehension of accused, accused was walking on the footpath. As per PW-5 Constable Rajender Singh accused was apprehended under Peera Garhi Metro Station and the spot of apprehension is footpath. Therefore, there is contradiction as to spot of apprehension as main road, pavement etc.

Position of Bag

23. As per PW-6 Sub Inspector Chandra Prakash accused was carrying black bag on his right shoulder. As per PW-10 Assistant Sub Inspector Narender Singh, Sub Inspector Chandra Prakash (PW-6) alone had carried search of the bag which accused was carrying on his right shoulder. PW-12 Head Constable Jai Prakash has deposed that before serving the notice under section 50 NDPS Act, the bag of accused was taken off from his shoulder by PW-6. PW-12 do not remember whether accused is left hander or right hander.”

12. Significantly, Trial Court also observed that testimonies of prosecution witnesses raised doubts on the Field Testing Kit and the weight of the contraband, which were crucial facets of the case. Observations in the



impugned judgment are as under:-

“Field Testing Kit

24. As per PW-6 Sub Inspector Chandra Prakash the field testing kit is small size plastic box which containing certain chemicals. PW-6 do not remember the nomenclature of those chemicals. He has further deposed that processing / use is mentioned in the field testing kit. He has further deposed that PW-10 Assistant Sub Inspector Narender Singh had assisted him while checking the contraband through field testing kit. PW-10 Assistant Sub Inspector Narender Singh even though the recovery witness has deposed that he do not remember the colour of the bag which was containing field testing kit and Investigating Officer was carrying the same. He has not seen what all was kept in the field testing kit. He has even admitted that IO kit was not opened in his presence, therefore, he cannot tell what all was contained in that kit.

25. PW-12 Head Constable Jai Prakash has deposed that Sub Inspector Chandra Prakash has tested the CHARAS with field testing kit available in IO bag. PW-12 do not remember the colour of that bag. He has deposed that IO bag was about 26 inches in size. He has deposed that Sub Inspector Chandra Prakash alongwith Assistant Sub Inspector Narender Singh had tested the contraband. PW-5 Constable Rajender Singh has deposed that recovered articles from the bag which the accused was carrying were checked by Sub Inspector Chandra Prakash with the help of field testing kit.

26. PW-6 Sub Inspector Chandra Prakash has deposed that it was small size plastic box which containing certain chemicals. PW-10 Assistant Sub Inspector Narender Singh is the recovery witness but he has deposed that he do not remember the colour of the bag and it was not opened in his presence. That shows test was not carried in his presence. PW-12 has deposed that IO bag was about 26 inches in size. It was racksene bag. PW-5 has deposed that he do not know whether anything was lying in the bag which accused was carrying. He has deposed that he do not remember the process of testing the contraband by Sub Inspector Chandra Prakash. Contradictory testimony of prosecution witnesses raises doubt.

Weight of Contraband

27. PW-6 Sub Inspector Chandra Prakash has deposed he do not weigh the contraband which was tested through field testing kit but approximately it was 5-6 grams in weight. He has further deposed that Assistant Sub Inspector Narender Singh (PW-10) was having more knowledge than PW-6 about field testing kit. The contraband was weighed alongwith transparent polythene in which contraband was kept. PW-8 Sub Inspector Devender Kumar has deposed that he has neither seen the case



property nor had verified its weight nor had he seen the pullandas / samples of the case property during the investigation.

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30. PW-5 Constable Rajender Singh, PW-8 Sub Inspector Devender Kumar and PW-12 Head Constable Jai Prakash have deposed that 3.460 kilograms CHARAS was recovered, however, PW-6 Sub Inspector Chandra Prakash has deposed that the CHARAS was weighed and it was found 3.810 kilogram in toto. He has further deposed that he took the bag of the accused from the hand of accused and upon checking the bag of accused, seven packets were recovered, out of them five packets were wrapped with brown plastic tape and two packets were wrapped with yellow plastic tape. All the seven packets were opened by removing the tapes. Two packets each from those seven packets were taken out and the same were also wrapped in polythenes. All the packets were containing some black colour substance which was tested by the field testing kit and found as CHARAS. The CHARAS was weighed and it was found 3 kg. 810 grams in toto. One sample each of 25 grams was taken out as sample from fourteen packets and remaining CHARAS was 3.460 Kilograms.

31. As per the testimony of PW-6 after drawing samples remaining weight of the CHARAS was 3.460 kilograms. PW-10 has also deposed that CHARAS was weighed and found 3.810 kilograms in toto. He has also deposed in consonance with PW-6 that one sample each of twenty five grams was taken out from fourteen packets and remaining CHARAS was 3.460 kilograms. Meaning thereby PW-6 and PW-10 have presented the case that 3.810 kilograms CHARAS was recovered from the accused and after drawing fourteen samples one each of twenty five grams, the balance CHARAS was 3.460 kilograms. It is pertinent to mention that seizure memo Ex. PW-1/C also mention 3.460 kilograms of CHARAS. The rukka Ex. PW-6/C too mentioned 3.460 kilograms of CHARAS. That shows that there is variation of even the quantity of / weight of CHARAS recovered from accused whether it was 3.810 kilograms or 3.460 kilograms.”

13. Material contradictions were found in depositions of PW-5, PW-6 and PW-12 on the aspect of search of the bag carried by the Accused on his shoulder as well as his personal search. The documents as per the Trial Court reflected discrepancies in recording information about arrest, time of arrest and signatures of PW-6 on the notice under Section 50 of NDPS Act. Trial Court rendered a finding that these inconsistencies raised doubts as to



whether notice under Section 50 of NDPS Act was ever scribed and/or served on the Accused. Importantly, according to the Trial Court, the prosecution even failed to prove the receipt of report under Section 57 of NDPS Act regarding seizure of *charas* from the Accused and doubts have also been raised on scribing of the seizure memo. Relevant observations from the judgment on these aspects are as follows:-

“32. A perusal of record further shows that DD No. 16 dated 07.08.2011 AATS, Crime Branch, Nehru Place, Delhi was recorded at 04:30 AM by Sub Inspector Devender Kumar wherein it has been mentioned that accused Shiv Prasad Jaiswal has not furnished his contact number so that information regarding his arrest be communicated to his family members. However, it is pertinent to mention that in arrest memo of accused Ex. PW-8/A at Sr. No. 9 it has been mentioned that his wife Ms. Anita was informed on telephone number 09955372249 and his time of arrest has been mentioned as 02:45 AM. Both these documents are contradictory. It is further pertinent to mention that DD No. 16 even though has not been proved on record, however, it was filed alongwith charge sheet. Therefore, as per the settled principle of law it can very well be read against the party who has filed the same i.e. State.

33. Another glaring discrepancy is in respect of signatures of PW-6 Sub Inspector Chandra Prakash on notice under section 50 NDPS Act Ex. PW-8/F as well as copy thereof Ex. PW-1/A. From the bare perusal of original notice under section 50 NDPS Act Ex. PW-8/F and carbon copy Ex. PW-1/A, it is clear that both these documents were signed by PW-6 Sub Inspector Chandra Prakash. On original notice under section 50 NDPS Act Ex. PW-8/F PW-6 has signed at point 'C' and on carbon copy Ex. PW-1/A he has signed at point 'B'. It is pertinent to mention that carbon copy of notice Ex. PW-1/A is having signatures of Sub Inspector Chandra Prakash also in carbon from which one can gather that since the signatures on carbon copy are also shown in carbon that signatures on notice under section 50 NDPS Act were only after keeping the carbon, however, the carbon copy shows that the points of signatures is bigger on carbon copy at point 'B' than on original notice at point 'C'.

34. From this doubt is being raised as to whether notice under section 50 NDPS Act was served to the accused. Doubt is also being raised in the same as there is variation in signatures on the original notice under section 50 NDPS Act as well as carbon copy Ex. PW-1/A, even though the signatures on carbon copy are in carbon only.



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36. PW-9 Head Constable Kirti Kumar is Staff Officer, Assistant Commissioner, Anti Auto Theft Squad, Crime Branch on 08.06.2011. His testimony was recorded on 09.12.2013, 27.01.2014 and 24.04.2014. On 09.12.2013 during the course of his cross examination, he has deposed that normally they maintain the despatch register in which the entries of entire dak received are made. He has further deposed that he had not brought the despatch register and his further cross examination was deferred for want of despatch register. On 27.01.2014 he had not brought the despatch register and deposed that it was not traceable now because of shifting of record and he can produce the same on the next date of hearing. His further cross examination was deferred for want of despatch register. On 24.04.2014 he has deposed that he could not trace the despatch register, therefore, he could not produce the same. Despite number of opportunities PW-9 could not produce the despatch register. His testimony is in respect of receipt of report under section 57 NDPS Act regarding seizure of CHARAS from the accused signed by Sub Inspector Chandra Prakash (PW-6) Ex. PW-9/A and regarding arrest of accused signed by Sub Inspector Chandra Prakash (PW-6) Ex. PW-9/B.

37. Non-production of diary / despatch register in order to prove entries regarding receipt of report under section 57 NDPS Act regarding seizure of CHARAS from the accused signed by Sub Inspector Chandra Prakash and regarding arrest of accused signed by Sub Inspector Chandra Prakash creates doubt for compliance of provisions of section 57 NDPS Act.

38. PW-8 Sub Inspector Devender Kumar has admitted that there is no mention regarding service of notice under section 50 NDPS Act to the accused and reply thereof in disclosure statement of the accused. It has also been argued that DD No. 13 dated 07.06.2011 Ex. PW-3/A was recorded at 10:50 PM. This DD nowhere mention that accused was carrying bag. This has mentioned about apprehension of accused with CHARAS. Similarly, the disclosure statement Ex. PW-8/C also do not mention about the fact that accused was carrying bag.”

14. Appearing on behalf of the State, Mr. Chauhan, learned APP submits that the learned Trial Court has come to a finding of acquittal on the basis of presumptions, conjectures and surmises and without appreciating that the quantity of contraband recovered from the Accused was 3.460 kg i.e. commercial quantity, which attracts penal provisions and the offence is



punishable with imprisonment upto 20 years with fine. Trial Court has relied heavily on minor contradictions or improvements in the testimonies of the witnesses, without appreciating the depositions holistically and in letter and spirit.

15. It is contended that Trial Court has not appreciated the testimony of PW-6, who stated that he received the secret information and thereafter served notice under Section 50 of NDPS Act on the Accused and that he was apprehended while alighting from the vehicle. PW-6 proved the seizure memo which was corroborated by PW-12. PW-6 proved that the recovered substance was tested with the help of testing kit and in the presence of PW-10. PW-5 confirmed that the IO had prepared notice under Section 50 of NDPS Act and PW-12 prepared the *rukka*. There may be minor contradictions in the testimonies but the Court overlooked the crucial facts that there was a secret information; Accused was apprehended with a bag in his possession; and there was recovery of *charas* and considering that the offence was grave and serious with its serious impact on the society, undue weightage should not have been given to the minor discrepancies, if any.

16. Heard learned APP for the State and perused the impugned judgment and the Trial Court record.

17. Before proceeding to examine the grounds of seeking leave to appeal, it would be pertinent to understand the powers of an Appellate Court to interfere in the judgment of acquittal of an Accused. There is no doubt that the Appellate Court has wide powers to re-appreciate the evidence in an appeal against acquittal and come to its own conclusion, both on facts and law, but it is equally settled that the power must be exercised with due care and caution because the presumption of innocence is strengthened by



acquittal of the Accused by a judicial order. The Supreme Court in ***Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450***, elucidated and crystallized the principles that the Courts are required to be follow as guidelines, while deciding an appeal against a judgment of the Trial Court acquitting the Accused and relevant passages from the said judgment are as under:-

“69. The following principles emerge from the cases above:

- 1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*
- 2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.*

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

- 1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.*

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;*
- (ii) The trial court's decision was based on an erroneous view of law;*
- (iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;*



(iv) *The entire approach of the trial court in dealing with the evidence was patently illegal;*

(v) *The trial court's judgment was manifestly unjust and unreasonable;*

(vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*

(vii) *This list is intended to be illustrative, not exhaustive.*

2. *The appellate court must always give proper weight and consideration to the findings of the trial court.*

3. *If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.*

71. *Had the well-settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."*

18. In ***Bannareddy and Others v. State of Karnataka and Others, 2018 SCC OnLine SC 289***, the Supreme Court observed as under:-

"10. Before we proceed further to peruse the finding of the High Court, it is relevant to discuss the power and jurisdiction of the High Court while interfering in an appeal against acquittal. It is well-settled principle of law that the High Court should not interfere in the well-reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself. This principle has further been elucidated in Sambhaji Hindurao Deshmukh v. State of Maharashtra, (2008) 11 SCC 186 : (2009) 2 SCC (Cri) 464, SCC para 13, wherein this Court observed that: (SCC pp. 190-91)

"13. ... The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the



guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt....”

11. *It is not in dispute that the presumption of innocence is further reinforced, reaffirmed and strengthened against the acquitted accused by the judgment in his favour. (Vide Dara Singh v. Union of India, (2011) 2 SCC 490 : (2011) 1 SCC (Cri) 706 (SCC in para 94.)”*

19. A Division Bench of this Court in ***State v. Kaishar Ali, 2019 SCC OnLine Del 9875***, observed as under:-

“12. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.”

20. It would be relevant and useful to allude to the observations of this Court in ***Niraj v. Ramesh Pratap Singh @ Raju Singh, 2012 SCC OnLine Del 3813***, which are extracted hereunder, for ready reference:-

“6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. In fact, the Supreme Court in Chandrappa v. State of Karnataka, (2007) 4 SCC 415 while referring to previous cases laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal: -

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to



curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7. The Supreme Court in a subsequent judgment in *Arulvelu v. State Represented by the Public Prosecutor*, (2009) 10 SCC 206 has held as under: -

"40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

21. Following the aforementioned observations of the Supreme Court and this Court and treading carefully and cautiously in dealing with the impugned judgment acquitting the Accused, this Court proceeds to look closely into the testimonies of the witnesses, since the judgment impugned in the present appeal is on a finding by the Trial Court that in view of material contradictions in the depositions of the witnesses, almost on all



crucial aspects, prosecution was unable to prove its case beyond reasonable doubt.

22. Record shows that the prosecution examined 12 witnesses, out of which PW-4, PW-5, PW-6, PW-8, PW-9, PW-10, PW-11 and PW-12 were material witnesses, while PW-1, PW-2, PW-3 and PW-7 were witnesses pertaining to record/formal witnesses.

23. On the aspect of positioning of the raiding party at the time of raid and arrest, PW-6 deposed that he remained in the vehicle with the secret informer, while other members of the raiding party took their positions on his direction. PW-10 was on Peeragarhi side at a distance of 20 yards from the Santro Car and all members were within the radius of 20 yards from the vehicle. PW-10, however, deposed that he was on the pavement behind the Santro Car and PW-12 deposed that the secret informer was sitting in the Santro Car along with PW-12 and other members took positions in different directions. PW-5, on the other hand, stated that he was positioned near Peeragarhi chowk in the direction of Nangloi and that the secret informer and all other members of the raiding party had alighted from the Santro Car and positioned at different points. There was thus contradiction with respect to how different members of the raiding party were positioned.

24. Colour of the recovered contraband is an important aspect at the stage of recovery, pertaining to an offence under NDPS Act. Trial Court found contradictions on this aspect as well. PW-6 and PW-10 deposed that colour of the contraband in the bag was black, while PW-5 stated that it was dull white. There are discrepancies in the testimonies of PW-5, PW-6, PW-10 and PW-12 with regard to the time of leaving the spot. PW-5 deposed that he returned to the spot by Santro Car and from the spot, they returned to the



Police Station at about 04:30 AM. PW-6 stated that he left the spot at 01:00AM on 08.06.2011 by motorcycle of PW-8 and went to his office directly from the spot. PW-10 deposed that they left the spot at about 03:30 AM and during his stay at the spot, PW-8 alone reached the spot at about 12-12:15 AM by his own bike. PW-12 stated that PW-5 left the spot at about 11:00 PM in Santro Car and came back at 02:30 AM. He also deposed that all proceedings *qua* the Accused were conducted by PW-8 between 02:30 AM to 03:00 AM, after arrival of PW-5. He also deposed that they left the spot at about 03:30 AM and PW-6 left the spot at 01:00 AM on the motorcycle of PW-8. PW-8 testified that he reached the spot at 12:00 midnight on 08.06.2011 and they left at 03:30 AM while PW-10 stated that all left the spot at 03:30 AM. As per the Trial Court, this discrepancy raised serious doubts on the presence of the members of the raiding party on the spot. Trial Court also noticed that it was not clear that if all of them left at 03:30 AM, then how PW-5 met the members of the raiding party as well as PW-8 at 02:30 AM, who returned to the spot after registration of the FIR. Again, PW-6 stated that PW-5 returned to the spot along with copy of the FIR at about 12:40 AM, however, PW-10 testified that PW-5 returned at 02:30 AM. PW-8 deposed that PW-5 returned at 02:35 AM. There is thus a variation of 2 hours and is a material contradiction since PW-6 was the IO, who had initially received the secret information and was the main witness to recovery and preparation of the *rukka*.

25. There are serious doubts on the scribing and preparation of notice under Section 50 of NDPS Act. The Supreme Court in the case of ***Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609***, observed that the object behind Section 50(1) of NDPS Act is to confer a safeguard on the



suspect so as to check misuse of power, avoid harm to innocent persons and minimize the allegations of planting or foisting false cases by law enforcement agencies and therefore, it would be imperative on the part of the empowered Officer to apprise the person intended to be searched, of his right to be searched before a Gazetted Officer or a Magistrate. Provisions of Section 50(1) of NDPS Act are, therefore, mandatory and require strict compliance and failure to comply would render the recovery of the illicit article suspect and vitiate the conviction. This position of law was re-stated and re-affirmed by the Supreme Court in *Arif Khan alias Agha Khan v. State of Uttarakhand*, (2018) 18 SCC 380. Trial Court found contradictions regarding preparation of the notice under Section 50 of NDPS Act as well as the seizure memo and the *rukka*. PW-6 deposed that PW-12 scribed the notice under Section 50 on his dictation whereas PW-12 stated that he was the one who has scribed the notice himself. Another glaring discrepancy is in respect of signatures of PW-6 on the Section 50 notice (Ex.PW-8/F) and copy thereof (Ex.PW-1/A). Trial Court found that the original notice and the carbon copy were both signed by PW-6 but on the original notice, PW-6 had signed at point C and on carbon copy he had signed at point B. Court observed that carbon copy was having the signature of PW-6 in the carbon form and therefore, it was strange that the signatures on the carbon copy was bigger at point B than the signature on the original at point C. For all these reasons, the Trial Court rendered a finding that there was doubt whether the notice under Section 50 of NDPS Act was ever scribed and/or served on the Accused, which needless to state, violated the mandate of Section 50 of NDPS Act.



26. There are inconsistencies with respect to the field testing kit also. PW-6 stated that field testing kit was a small size plastic box with some chemicals, whose nomenclature he did not remember. He stated that the processing/use was mentioned on the kit and PW-10 helped him in testing the contraband. PW-10 was the recovery witness and he deposed that he did not remember the colour of the bag containing the field testing kit and IO was carrying the same. He also stated that the kit was never opened in his presence and therefore, he could not comment on its contents. PW-12 deposed that PW-6 tested the contraband with field testing kit but did not remember the colour of the bag and further deposed that PW-10 ASI Narender had tested the contraband. Crucially, there was major contradiction in the weight of the contraband, which determines the category into which a contraband would be classified i.e. small, intermediary or commercial. In a given case this classification impacts the Court's decision on various aspects such as grant of bail, conviction, punishment, etc. PW-6 testified that he did not weigh the contraband, which was tested through field testing kit, but approximately it was 5 to 6 grams in weight. He further deposed that PW-10 was having more knowledge on this subject. He did admit that the contraband was weighed along with transparent polythene in which it was kept. PW-8 deposed that he neither saw the case property or verified its weight nor saw the *pullanda*/samples of the case property, during investigation. PW-5, PW-8 and PW-12 deposed that 3.460 kg *charas* was recovered but PW-6 deposed that it was 3.810 kg in total. PW-6 also deposed that the bag of the Accused, which he had taken, had 07 packets, out of which 05 were wrapped with brown plastic tape and 02 with yellow. All 07 packets were opened by removing the tapes and 02 packets each from



the 07 packets were taken out and wrapped in polythenes. One sample each of 25 gms was taken out as sample from 14 packets. He detailed that after drawing 14 samples, 01 each of 25 gms, the balance *charas* was 3.460 kgs. Interestingly, seizure memo and *rukka* mentioned the weight as 3.460 kgs. Trial Court thus found variation in the quantity/weight of the contraband recovered allegedly from the Accused.

27. Another glaring and important fallacy in the prosecution case, as rightly noted by the Trial Court, was the discrepancy in the signatures of PW-12 and non-production of important records. PW-12 deposed that *pullanda* containing 01 transparent polythene with 14 small transparent polythene bags of *charas* were marked and each small bag had serial nos. 1 to 14 [Ex.P-15 (colly)] with his signatures along with signatures of PW-10 and PW-6, however, PW-10 deposed that other members of the raiding party only helped PW-6 to seal the parcels and therefore, if PW-10 had not helped in sealing the parcels, there is a question mark on how his signatures appeared on Ex.P-15. Trial Court also noted that despite opportunities, diary/dispatch register could not be produced by PW-9 in order to prove entries regarding receipt of report under Section 57 of NDPS Act, in respect of seizure of *charas* from the Accused and his arrest and this created a doubt on compliance of Section 57 of NDPS Act. PW-8 was unable to prove the record of the seizure memo and stated that he could not recollect whether during investigation, he had seen the carbon copy of the same.

28. Therefore, seen holistically, there are material contradictions on almost every aspect, as noted by the Trial Court, starting from the position of the raiding party, colour of the contraband, timing of the raiding party members leaving the spot and returning back, scribing and service of notice



under Section 50 of NDPS Act, weight of the contraband, search of the bag as well as with respect to compliance of provisions of Section 57 of NDPS Act and noticeably, important documents such as diary/dispatch registers were not produced. It is settled that if testimonies of official witnesses are credible, they need not be doubted only because independent or public witnesses have not been associated with the proceedings. It is equally settled that minor discrepancies are not to be given undue emphasis and the test is whether the evidence given by witnesses inspires confidence in the mind of the Court. If the evidence is uncredible and cannot be accepted by test of prudence, then it may create a dent in the prosecution version, more so, when the discrepancy or omission or contradiction goes to the root of the matter. These are the observations of the Supreme Court in ***Yogesh Singh v. Mahabeer Singh and Others*, (2017) 11 SCC 195** and relevant passage is as follows:-

“29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi v. State of M.P., (1999) 8 SCC 649 : 2000 SCC (Cri) 26, Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222, Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186 : 2004 SCC (Cri) 1435, Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639, Sampath Kumar v. Inspector of Police, (2012) 4 SCC 124 : (2012) 2



SCC (Cri) 42, *Shyamal Ghosh v. State of W.B.*, (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685 and *Mritunjoy Biswas v. Pranab*, (2013) 12 SCC 796 : (2014) 4 SCC (Cri) 564.”

29. To the same effect are the observations of the Supreme Court in ***Shyamal Ghosh v. State of West Bengal*, (2012) 7 SCC 646** and the relevant paragraphs read as under:-

“68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.

69. Another settled rule of appreciation of evidence as already indicated is that the court should not draw any conclusion by picking up an isolated portion from the testimony of a witness without adverting to the statement as a whole. Sometimes it may be feasible that admission of a fact or circumstance by the witness is only to clarify his statement or what has been placed on record. Where it is a genuine attempt on the part of a witness to bring correct facts by clarification on record, such statement must be seen in a different light to a situation where the contradiction is of such a nature that it impairs his evidence in its entirety.”

30. In ***Om Prakash v. State*, Crl. Appeal No. 115/1989**, decided on 29.05.1991, this Court observed as under:-

“10. Minor contradictions in the statements of witnesses who have been examined after a considerable time after the incident is not sufficient to discard the statements of these witnesses who have not been alleged to be



inimical to the appellant. Venkatarama Ayyar, J. of the Supreme Court in Aher Raja Khima v. State of Saurashtra MANU/SC/0040/1955: A.I.R. 1956 S.C. 217 observed:-

"The presumption that a person acts honestly applies so much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds there-for. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration."

11. *It is settled principle of law that while appreciating the evidence of a witness approach must be whether the evidence of the witness read as a whole, appears to have a ring of truth. Once that impression is formed it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here and there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witnesses, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details."*

31. Taking a clue from the aforesaid observations, one finds that in the present case, that all witnesses were official witnesses and their testimonies are replete with contradictions on all material aspects and do not inspire confidence. These anomalies cannot be ignored since they also touch upon crucial aspects such as the colour and weight of the contraband, allegedly recovered. In ***Hannan v. State of NCT of Delhi, 2013 SCC OnLine Del 1416***, this Court emphasized on the contradictions with regard to colour of the polythene bags and the contraband recovered and that formed one of the



grounds for acquitting the Accused. We only need to remind ourselves that in criminal jurisprudence, the prosecution is required to prove its case beyond all reasonable doubts and more serious the offence, stricter would be the degree of proof. Exercising power as an Appellate Court within the contours, scope and ambit of the guidelines laid down by the Supreme Court and this Court, as aforementioned, this Court is of the view that the impugned judgment passed by the Trial Court acquitting the Accused, warrants no interference and the Trial Court has rightly held that the prosecution has failed to prove its case beyond reasonable doubt.

32. In view of the aforesaid, no ground is made out to grant leave to appeal to the State. Petition seeking leave to appeal is accordingly dismissed.

JYOTI SINGH, J

FEBRUARY 02, 2024/kks/shivam