

* **HIGH COURT OF DELHI : NEW DELHI**

Judgment reserved on : February 03, 2010
Judgment pronounced on : February 09, 2010

+ **Crl. A. No. 1037/2008**

% Govind Kumar Jha ... Appellant
Through: Ms. Rakhi Nigam, Advocate

versus

State (NCT) of Delhi ... Respondent
Through: Mr. Amit Sharma, Additional
Public Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
 2. To be referred to Reporter or not?
 3. Whether the judgment should be reported in the Digest?
- No.

SUNIL GAUR, J.

1. Appellant was prosecuted for being in unlawful possession of 45 kgs of 'ganja' and upon being convicted by the trial court under Section 20 of '*The Narcotic Drugs and Psychotropic Substances Act, 1985*', (hereinafter referred to as the 'NDPS Act') he had challenged his conviction as well as the sentence of rigorous imprisonment for ten years with fine of Rupees one lac, in

this appeal.

2. In the evening of 19th day of September, 2006, a secret information was received that a person was sitting near Road No.40, ahead of Sheetla Mata Mandir, Gulabi Bagh, Delhi with huge quantity of '*ganja*' which is a contraband narcotic drug. After informing the local SHO, concerned police officials had conducted a raid and Appellant was apprehended at the aforesaid place with three bags, i.e., two of black colour and third one is of blue colour. When weighed, each of these bags were found to be weighing 15 kgs and there were three packets of 4 kgs each and one packet of 3 kgs, in each of these three bags. A sample of one kg each was drawn out of these three bags and six separate parcels were prepared and were sent to FSL, where it was confirmed that the recovered substance was '*ganja*'.

3. Regarding this incident, FIR No. 374/06 under Section 20 of 'NDPS Act' was registered at Police Station Sarai Rohilla, Delhi and its investigation culminated into filing of charge sheet for the aforesaid offence. Since appellant/accused chose to contest the charge under Section 20 of the 'NDPS Act' framed against him by the trial court, trial followed.

4. The evidence recorded by the trial court consists of the deposition of the official witnesses and the material ones, whose deposition has been referred to, during the hearing of this appeal are ASI Raj Kumar (PW-8), who had conducted the raid and Constables Kalu Ram and Vijay Kumar were the members of the raiding party. The concerned SHO, (PW-7), and the Investigating Officer (PW-9) had deposed before the trial court about their respective roles in this case.

5. The precise stand of the appellant/accused before the trial court was of his going to Sadar Bazar for buying clothes and of his being apprehended from there. He claims false implication and asserts that he was forced to sign blank papers, which have been used against him. He had preferred not to lead any evidence in his defense before the trial court.

6. The trial of this case ended with the conviction of the appellant/accused and the sentence imposed upon him is assailed here in this appeal.

7. The contentions advanced by both the sides, have been thoughtfully deliberated upon and the evidence referred to, has been meticulously examined by this court.

8. The first contention advanced during the hearing of

this appeal, was that FIR Number was not written on the Notice (Ex.P-7) under Section 50 of the 'NDPS Act', when it was served upon the appellant/accused by ASI Raj Kumar, (PW-8), who admits it. It appears that the FIR number etc. was put upon Notice (Ex.P-7) subsequently. There is no suggestion to this witness (PW-8) about any tampering in the Notice (Ex.P-7). This notice was recovered from the appellant/accused by the Investigating Officer (PW-9) and in normal course, he is the one, who puts the FIR number, etc. on the Notice (Ex.P-7), after its recovery from the appellant/accused at the spot itself. Had there been any cross-examination of the Investigating Officer (PW-9) about it by the defence, this would have become clear. In any case, nothing turns on it, as neither there is any suggestion to the Investigating Officer (PW-9) that this Notice (Ex.P-7) has been tampered with nor it can be so inferred.

9. The next contention advanced is that there is a discrepancy in the prosecution case regarding sending of report under Section 57 of 'NDPS Act'. It is pointed out by learned counsel for the Appellant that ASI Raj Kumar (PW-8) claims that he had prepared it whereas, Investigating Officer (PW-9) asserts that he had prepared this report (Ex.PW-1/A) and had sent it. This is an innocuous

inconsistency which does not adversely reflect upon the prosecution case, for the reason that this report (Ex.PW-1/A), itself reveals that it was prepared by the Investigating Officer (PW-9) and not by ASI Raj Kumar (PW-8). In any case, this is not a material defect.

10. The third contention advanced revolves around the FSL Report (Ex. PW-9/C), which is a foundation of the prosecution case and it has been asserted on behalf of the appellant/accused that this vital document is inadmissible in evidence as the same has not been formally proved in evidence. This contention needs to be rejected straightaway for the reason that this FSL Report (Ex. PW-9/C & Ex. PW-9/D) is authored by Assistant Director of Forensic Science Laboratory and is per se admissible under Section 293 of the Code of Criminal Procedure. However, if the appellant/accused was not satisfied with the aforesaid FSL Report (Ex. PW-9/C), nothing stopped him from making a prayer for calling the expert witness, (who had given this report) to elicit as to how the recovered '*flowery vegetative material*' could be described as '*ganja*'.

11. Here only, the fourth contention raised needs to be dealt with and it pertains to the varying weight of the samples received in the FSL. It stands noted in the FSL

document/Report (Ex. PW-9/D) that the weight of the three samples was 1073 gms, 1101 gms and 939 gms, respectively. As per this document/FSL Report (Ex. PW-9/D), these three samples, when received, were sealed and had tallied with the specimen seal impression forwarded alongwith the FSL form. It is no doubt true that these three samples were of one kg each and they were weighed at the spot in a manual weighing scale and not in electronic weighing scale. Therefore, marginal inconsequential variation in the weight of these three samples does not even remotely suggest that there was any tampering in these three samples, especially so, when the FSL Report itself certifies that these samples were intact and their seal impressions were tallied with the specimen seal impression on the FSL form accompanying these samples. It is pertinent to note that there is no cross-examination of the Investigating Officer (PW-9) regarding the weight of the three samples drawn by him. Therefore, I do not find any ambiguity in the prosecution case on this aspect.

12. The fifth contention pertains to acknowledgement taken by Constable Kalu Ram (PW-4) regarding deposit of the samples from FSL, on the back of the FSL Form. What is asserted is that this means that two FSL Forms were

prepared. The best person to give an answer to it, is ASI Raj Kumar (PW-8), who had prepared it. He is not questioned about it. In fact, only one FSL Form is prepared in cases like the present one. Constable Kalu Ram (PW-4) had infact taken the acknowledgement regarding the deposit of the samples on the carbon copy of the '*Road Certificate*', whose attested copy is on record and it clearly bears the endorsement that the three samples of this case, in sealed conditions, have been retained in the Chemistry Division of the FSL. In this background, the aforesaid inadvertent omission, cannot by itself demolish the entire prosecution case.

13. Sixth and the last contention advanced on behalf of the appellant/accused is of Constable Vijay Kumar (PW-5) having taken the samples of this case with the copy of seizure memo from the spot to Police Station and had handed over the same to the SHO concerned. According to Appellant's counsel this shows that more than one copy of the Seizure Memo were prepared which shakes the credibility of the prosecution case. It is not so. It is a matter of record that carbon copy of the seizure memo was also prepared, as is the practice to do so and the carbon copy of the seizure memo was deposited with the MHC (M) - (PW-2), which was duly entered by him in his

register.

14. After a detailed scrutiny of the entire evidence on record, this court is of the considered opinion that the aforesaid contentions do not demolish the prosecution case, which has been rightly accepted by the trial court to convict the appellant/accused. The sentence imposed upon the appellant/accused is also the minimum provided under the law. There is no scope for any interference by this court, as the conviction of the appellant/accused is well founded and the sentence imposed upon him is in accordance with law.

15. This appeal lacks substance and needs to be dismissed. Accordingly, the appeal is dismissed. Appellant is in custody. He be apprised of this order through the Jail Superintendent.

16. The appeal and pending application, if any, stands disposed of accordingly.

Sunil Gaur, J.

February 09, 2010
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