

DIST. SOUTH 24 PARGANAS

IN THE LD. COURT OF LD. 4TH ADDITIONAL DISTRICT &

SESSION JUDGE AT ALIPORE.

St-3(1) 2018

STATE

Vs

1. HAZARAT ALI MOLLA

2. DINESH SARKAR

3. FAZAR ALI RAZI

U/Sec. 20(b)(ii)/(C)/ 29 of the NDPS Act.

Written Argument on behalf of the Prosecution: -

The brief fact of the case is that S.I. Debabrata Sikdar officer of ADRS/D/D/Lal Bazar officer received an information from credible source on 31st May 2017 at about 14:30 hrs. That three male persons charas seller/suppliers would to sale and supply in Taratala P.S. area in the afternoon, then S.I. Debabrata Sikdar immediately information was reduced to writing and was forwarded to his superior officer and a raiding team was formed and took permission from assistant commissioner of Police D/D Lal Bazar at about 15.00 hrs. to conduct a raid and at about 15:30 hrs left Lal Bazar for the spot along with raiding team source, weighing scale, testing kits, packing material and other accessories. At about 16.30 hrs they were reached near Hitech Centra, Hi Tech Logistics Limited on 1/1,

Taratala Road, under P.S. Taratala, Kolkata-700088, at about 17:00 hrs, source pointed out three male person who were coming along Taratala Road, from East to West direction. On being pointed out by the source they were immediately intercepted on the road in front of Hitech Centra,

Hi Tech Logistics Limited on 1 / 1, Taratala Road, under P.S. Taratala, Kolkata-700088.

The officer disclosed their identity to the detainees and also disclosed the purpose of the detention.

In the meantime, few people gathered there and he had requested all the persons to be witness to the search and seizure to which Molay Dolay and Biswajit Banerjee expressed their willingness to the witness to the search and seizure.

Thereafter on enquiry the all detainee expressed their names 1. HAZARAT ALI MOLLA, 2. DINESH SARKAR, 3. FAZAR ALI DARGI, as to the fact it is his legal right to be search in accordance with his own choice. All the detainees agreed to be search in presence of a Gazetted officer on spot. As such one Gazetted officer was arranged and while one officer in the rank of an Inspector subsequently came to the spot. He disclosed his identity the then Additional o/c of Taratala P.S. Inspector Tapan Kumar Mondal as a Gazetted Officer to perform the function of a Gazetted officer in presence of two independent, the said deteines search the seizing officer on spot and

being searched by the detainees nothing was recovered from the possession of seizing officer except his personal belongings.

Thereafter as per direction of the Gazetted officer, seizing officer S.I. Debabrata Sikdar started to search the three detainees one after another, started to search all the detainees 1. Hazarat Ali Molla, 2. Dinesh Sarkar, 3. Fazar Ali Dargi, on spot maintain all provision of Narcotic Act.

On being searched, recovered from accused no.1 Hazrat Ali Molla, from his exclusive possession one black colored polythene packet from his right hand and opened the same and found 5 pieces Solid materials of Cannabis resins as “charas” weighing about 356 gms and also found cash of Rs.110/- as P.P. in left hand side, chest pocket of his wearing T-Shirt, on being test with the help of testing kit and found it positive for charas. Thereafter seizing officer started to search no. 2 Dinesh Sarkar and found one black colored polythene packet in his right hand after opened the same, and found 9 pieces solid materials of Cannabis resins of charas weighing about 565 gms in all mention in seizure list dated 31.05.2017 and also found cash of Rs.120 as P.P. in left side chest pocket of his wearing T-shirt.

Thereafter seizing officer started to search the detainee no. 3 Fajar Ali Dargi and found one black colored polythene packet in his right hand and after opened the same was found 11 pieces solid materials of Cannabis resin of charas weighing about 351 gms in all and also found cash of Rs.150 as P.P. in left hand side chest pocket of his

wearing shirt. Thereafter some portion of the contraband and drug from each pocket with the help of testing kits and found all are positive for the presence of charas. Total 1 kg 272 gms of charas in their joint possession for which they could not give any satisfactory explanation and all the detainee were arrested on spot by the Officer of D/D Lal Bazar.

Thereafter S.I. Debabrata SIKdar went to the Taratala P.S. along with the arrested accused persons, raiding team members, seized items in sealed condition, seizure list and other relevant case documents which were prepared by the said officer, handed over the O/C Taratala P.S. with a request to prepare an inventory list under NDPS Act. Thereafter O/C Taratala P.S. endorse the case to S.I. Goutam Roy to register the case u/s 20(B)(ii)(c)/29 of NDPS Act of Taratala P.S. Case no. 100 dated 31.05.2017.

The seized items were send to the chemical examination and State Drug Control after examination submits a report by his chemical expert showing the items in charas and after completion investigation charge sheet was submitted by the I.O. against the accused persons u/s 20(B)(ii)(c)/29 of NDPS Act and charge was framed during trial against the accused which was read over and explained to the accused. They plead not guilty to the said charge and claimed to be tried.

As many of witnesses were examined and cross examination in details and the said accused persons were examined u/s 313 Cr.P.C..

Thereafter defense adduced in total 6 witnesses as a defense witnesses and taken alibi that on that day i.e.31.05.2017 Hazarat Ali Molla and Fajar Ali Dargi were taken to their house in the early morning to Lal Bazar P.S.. But in this regard they were could not filed any complaint anywhere nor filed any retraction petition before your Honour's Court till date.

They could not agitate at the time of bail petition filed before the Honourable High Court nor any petition filed Honourable Supreme Court at the time for bail application. Accordingly these two accused could not submitting before your Honour's Court at the time they were examine before your Honour's Court u/s 313 Cr.P.C. nor any question putting by the defense council to any witnesses in the cross examination at the time of evidence. This liability goes to the defense to proved by documentary evidence otherwise this alibi is baseless.

At the outset it is to be pointed out that 1 Kg 272 gms charas in total recovered from their exclusive possession one black colored polythene packet was carrying in their right hand. It is a joint possession was accordingly seized it is settled by various decision that giving notice in terms of Section 50 of NDPS was not attracted through they are the legal right to be search before the Gazetted officer and all detainees exercise the option in separate acceptance requirement of Section 50 has been found complied. This Chemical Examination Expert report is produced by the prosecution through

the I.O. PW5 S.I. Kalyan Biswas as evidence u/s. 293 Cr.P.C. with the consent of defense. This Chemical Examination Report is found positive of Charas is exhibited as Mark Ext.-23 before your Honour's Court as evidence so there is no contradiction that substance is Charas. PW1. S.I. Debabrata Sikdar took leading role amongst the officer to prove the result of the raid. This witnesses narrated the incident and recovery of charas in question from one black colored polythene packet which was carried by those accused, he proved the search and seizure and proved the entire proceeding of search and seizure.

He also proved the given option requisition was made for the appearance of the Gazetted officer in his presence was made when the plastic carry bag was search there was no personal search has been done by the seizing officer. Thus requirement of giving notice in terms of section 50 of NDPS act was not attracted.

This witness proved that how he sealed packet and labeled the seized contraband and PW-3 is the another witness who is asked to register a case on the basis of the written complaint seized by PW1 and a paper document were handed over to him and formal F.I.R. is Registered and recorded by this witness and endorse by the O/C Taratala P.S.

All alamat were also produced which were kept by him of the malkhana and he handed over the seized alamat and the accused persons to the SI Goutam Roy of Taratala P.S. who took up the

investigation of the case. PW 2 is the gazetted officer of Add. O/C Taratala P.S. Inspector Tapan Kr. Das whose requisition so that search could be made in his presence and in the presence of two public witnesses search was conducted by PW1 seizing officer and recovered 1 Kg 272 grm. of charas from three black coloured polythene packets from three detainees in their exclusive joint possession and seized articles were sealed packed and labeled as mark in his presence. This witness put his signature in all the paper documents as also seizure list and PW1 to PW5 witnesses were corroborated their evidence which was proved by the prosecution. He also proved the GD entry at the time of evidence. PW3 is the independent witness in his presence the entire search of the accused person was conducted and he also proved the search and seizure and also packing and sealing were also made in his presence. At the time of his evidence in dock he identified his signature in the labels of all packet and other documents. He also proved the written option and also proved desire to make their search and seizure was completed and the two no. 1, 3 accused persons are identified on dock.

He also proved the accused desire to make the search before the gazetted officer at the relevant point of time and after cross examination by the defense admitted the fact and circumstance.

PW5 is the investigation officer who took up investigation the case as per direction of his superior officer. He proved that how he taken up the charge of seized articles, case docket and accused

person from PW3, SI Goutam Roy of Taratala P.S. putting signature of GD Book malkhana registrar took up register from concern Police Station by submitting copy of the order of DD(SPL) with officer seal Exbt. Mark on 19 of SI Kalyan Biswas of N. Cell D/D Lal Bazar. One independent witness has been examined by the prosecution and after cross examination defense admitted that fact, place of occurrence, date of incident on spot search and seizure list. There is a clear evidence of chemical report that seals were intact when sample were received by his office and he tailed with the sample impression of seal which was identical and there is no contradiction that substance is charas admitted by the defense u/s. 293 Cr.P.C., Mark Exbt.-23 in cross examination.

All the documents and exhibits were proved by the prosecution deposit in malkhana register was proved therefore prosecution in all respect produced the best evidence by all reasonable doubt to establish the prosecution case.

From the conjoint reading see 35 to 54 of NDPS Act it is clear that if the accused is found to be in the possession of contraband articles it is presumed and established to have been committed of an offence under the provision of the said act until the contrary is proved.

It can also be held that once possession of the contraband materials is established the accused has to liable that how came in possession of the same as it is within their knowledge and for which

accused could not given and satisfactory explanation even at the time of his examination under section 313 Cr.P.C. that defence taken new alibi at the time of defence witness DW1 to DW6. This liability is gone to defense and burden of proved shifted to defence and two accused Hazarata Ali Molla and Fazar Ali Dorji is taken new alibi that this two accused on the said date taken to their own house in the early morning by the officer of Lal Bazar why they could not submitted before your Honour's Court at the time of their production on the first time before your Honour's Court even at the time of their examination U/Sec. 313 Cr.P.C. this two accused Hazarata Ali Molla and Fazar Ali Dorji why could not submitting at the time of their examination "that they are arrested by the officer of DD Lal Bazar on the said date in the early morning from their own house and they had taken to Lal bazaar and on that said date and their family members are meet them at Lal Bazar. There is no material contradiction in the evidence of the prosecution witness which an even raise a doubt is its all probability as the evidence of the prosecution witness are consistant reliable and without any established contradiction when the evidence of police officer is found trust worthy conviction based on their evidence not liable to be set aside as per the decision of Hon'ble Supreme Court Kasmiralal vs State of Harayana reported in 2013 Cr. L.J. Page 3036 and in another Hon'ble Supreme Court observed that nothing to show that evidence of Police witnesses was untrust worthy conviction on the basis of evidence of the police officer reading party members be faulted and

observance of safe guard provide by sec 50 of the NDPS Act required when seizure was made from the bag the person laid down in Ram Swaroop vs State of Delhi reported in 2013 Cr. L.J. Page 2997 and Section 42, 43 and 50 of NDPS Act required writing down information regarding narcotics substance and reason for belief for such information before conducting search and seizure U/sec. 42 of the NDPS Act applicable in case of conducting search public place U/Sec. 43 of NDPS Act are applicable which not contain any such provision of u/s. 42(2) of N.D.P.S. Act.

In present circumstance U/Sec. 43 is applicable on road and accused to be informed of his legal right of being searched before the magistrate or gazette officer U/Sec. 50 of NDPS Act. Such right being applicable in case of search of person of the accused and not any bag or other articles carrying by the accused it was reported in latest judgement in 2018(4) Cr L.J. (SC) Page 75 and another 3 bench judgement is published in 2019 Cr L.J. (SC) Page 407 (SC) (B) possession of charas, compliance of sec 50 accused informed about his legal right to be search in presence of either gazette officer or magistrate and chose to be search in presence of gazette officer search conducted not only of bag of the accused but form his persons also and 1.5 kg of chars and rs.2400/- recovered from him, mandatory requirement of compliance with sec. 50 of NDPS Act fulfilled conviction proper (para 11, 12)

In case search and seizur was made in presence of two independent witnesses out of which one independent witnesses was examined and

failed to identify accused 3 Dinesh Shankar but who was supported the entire prosecution case and corroborated the evidence of PW1, 2, 3, 4 and 5 witness and circumstance proved by the said witness and the defence Cross examined the said independent witnesses who has proved the said case without any doubt and found to be cogent conviction and reliable.

Therefore in the citation of CRL .L.J. 2007 Page 3414(Sc) section 50 and 42 search and seizure, independent witnesses are corroborating the entire case of the prosecution. It has been opined by the Honorable Supreme Court that when arrest and seizure is made at the Bus stand or any open place and not any building, conveyance or enclosed place the case is covered by section 43 of N.D.P.S. Act and not under section 42 of the NDPS Act is applicable it is also pertinent to mention here that plea of non compliance of section 42 of NDPS Act, by the prosecution is at acceptable and another judgement published in CRL L.J. 2010 Page 1859 Calcutta High Court that accused did not disown the bag before seizure, rather they demanded search in presence of gazetted officer, bag were search in presence of gazetted officer deposed the said extend samples were drawn and sent to chemical examination and it was proved to be contraband articles conviction of accused person is proper page 7, 10, 11.

In view of decision of the Honorable Apex Court in Mohanlal Vs State Rajasthan Cr.L.J 2015 page 770 if any search and seizure is done in a public place provision of section 43 of the act will apply and the question of application of sec.42(2) of the Act does not arise.

Therefore it is proved by the prosecution case that the accused persons are Hazarat Ali Molla, Dinesh Sarkar and Fajar Ali Dargi must be punished suitable as per provision of u/s. 20(b) (ii)(c)/29 of NDPS Act for possessing commercial quantity of contraband materials of 'CHARAS' for which they could not render any explanation. Thereafter Examination u/s. 313 Cr.P.C. defence given in total 6 witnesses as a defence witness and taken new alibi is that accused no.1 Hazrat Ali Molla and accused no. 3 Fajar Ali Dargi both the accused on the same day they had been arrested early in the morning in their house by the officer of D/D Lal Bazar. But in this alibi they have not lodged any written complaint anywhere in anytime nor they are not filed any application before your Honour's Court OR nor any application filed before the Honourable Calcutta High Court OR Honourable Supreme Court of India at the time of bail application.

This liabilities are Burden of proved shifted to the defence to proved documentary evidence.

Therefore the oral and documentary evidence and coroboration of PW1 to PW5 witnesses and circumstances evidence is sufficient to proved and established the prosecution case, no doubt the offence u/sec. NDPS Act is very serious in nature which is causing immense damage to the society, economy of the country and is also destroying the young generation who are future of this country and it requires to be dealt strictly and thus is very limited scope of showing any

leniency to such convict. The contraband substance involved in this case is 1 kg. 272 gram charas which is commercial quantity as formed in the act and sec. 20(b)(ii)/(C)/29 of the NDPS Act. Therefore the prosecution case is proved with all reasonable doubt and the offence for which the charge has been framed and fully established to hold the accused guilty of the offence U/s.20(b)(ii)/(C)/29 of the NDPS Act. to warrant conviction under the NDPS Act.

Submitted by

