

Narcotics Control Bureau vs.lee Wei Qi

Narcotics Control Bureau vs.lee Wei Qi

SooperKanoon Citation : sooperkanoon.com/1226832

Court : Delhi

Decided On : Nov-25-2019

Appellant : Narcotics Control Bureau

Respondent : Lee Wei Qi

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI % + CRL.A. 31/2016 Judgment delivered on:

25. 11.2019 NARCOTICS CONTROL BUREAU versus LEE WEI QIAppellant
..... Respondent Advocates who appeared in this case: For the

... Petitioner

For the Respondent : Mr Subhash Bansal, Standing Counsel, : NCB with Mr Shashwat Bansal, Advocate : for NCB. : Mr Maninder Singh, Mr Dinhar Takiar and : Mr Sarthak Garg, Advocates. CORAM HONBLE MR JUSTICE VIBHU BAKHRU JUDGMENT VIBHU BAKHRU, J The appellant has filed the present appeal impugning a 1. judgment dated 22.11.2014 passed by the learned Special Judge, Patiala House Courts, New Delhi acquitting the respondent in a complaint case filed under section 20(b)(ii)(C) and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter NDPS Act) for possession and attempt to export of 7 kg of Hashish recovered from check-in baggage of the respondent(accused).

2. The case set up by prosecution is as under: CRL.A. 916/2016 Page 1 of 22 The prosecution claims that on 01.05.2010 at about 2010 hours, 2.1 a secret information was received by I.O. NCB Sh. G.S. Bhinder that one Singapore national, namely Lee Wei Qui holding passport No.E14142747 age approximately 28 years, who was to depart from IGI airport for Zurich by Lufthansa Airlines No.LH763, would be carrying huge quantity of hashish in his baggage. The said secret information was recorded by Sh. Y. R. Yadav, Superintendent, NCB(PW-3) on the basis of which raiding team consisting of Intelligence Officer G S Bhinder; Intelligence Officer Vikash Kumar; Babu Lal Sepoy; and Sahib Singh Sepoy, proceeded to airport from NCB office at about 0415 hours and reached IGI airport at 0500 hours. 2.2 On reaching the airport, the IO and his team members met Lufthansa Airlines staff. Thereafter, two Lufthansa staff officials Sh. Sharanjeet Singh and Sh. Mahinder Singh Yadav agreed to witness the proceedings that were to be conducted by the NCB team. Thereafter, NCB team reached the check-in counter and found that the accused had checked in his baggage and was filling up some form at the check- in counter. On inquiry, the suspect revealed his name as Lee Wei Qi. The accused was identified on the basis of his passport and 2.3 boarding pass details. The accused was then served a notice under Section 50 of the NDPS Act and was briefed about his legal right that if he wants, his search can be conducted before a Gazetted Officer or a Magistrate. However, the accused refused to exercise the said right and informed that any NCB officer could conduct his search. Thereafter, the accused identified his luggage from the baggages lying CRL.A. 916/2016 Page 2 of 22 at the rear side of the check-in agents counter in the presence of independent witnesses and Lufthansa staff. 2.4 The black coloured stroller (baggage) of the accused with tag No.LH102692 was offloaded and thereafter, search of the was then conducted. On opening, some clothes were found un the bag and on a closer search, it was found that the bottom of the bag was stuffed with some suspicious substance. On cutting open the same, a rectangular shape sheet wrapped in brown tape was recovered. The tape was cut opened and it was found to conceal dark brown material. The said material on being tested with the help of field-testing kit, gave positive result for Hashish. The substance was weighed and was found to be 7 kg. Two samples of 25 gm each were then drawn out of the said substance in transparent polythene and further put

in white paper envelopes and given Mark A-1 and A-2. The remaining Hashish in brown tape was kept in a transparent polythene and converted into a parcel with the help of cloth and marked A. The packing material and stroller bag were taken into possession and were marked B. All the parcels and the samples were duly sealed and paper slips having dated signature of the IO, both the public witnesses and that of accused, were pasted on them. A test memo in triplicate and the panchnama were also prepared at the spot. Certain documents were also recovered from the accused and same were seized by the seizing officer GS Bhinder. 2.5 Summons were then issued to the accused and the independent witnesses under section 67 NDPS Act and in pursuance of the same, CRL.A. 916/2016 Page 3 of 22 their statements were recorded in the office of the NCB. Reports of arrest and seizure under Section 57 of the NDPS Act were submitted by the seizing officer Sh. G.S. Bhinder and arresting officer Sh. Vikash Kumar to Sh. Y.R. Yadav, Superintendent and the intimation of the arrest of the accused was also conveyed to Singapore Embassy through the Ministry of External Affairs. The case property along with samples and test memo was 2.6 deposited with the Malkhana Incharge and on 03.05.2010, the samples along with test memos were sent to the CRCL, New Delhi for testing and after receiving a positive report from CRCL, the complaint was filed with the Court of the Special Judge.

3. Based on the material on record, the trial court - by an order dated 04.02.2011 - framed charges against the accused for possessing 7 kg of charas and for attempting to export the same outside India and thereby, for having committed offences punishable under section 20(b)(ii)(C) and section 23 read with section 28 of the NDPS Act. The accused pleaded not guilty to the said charges and claimed trial. In order to substantiate the case, the prosecution examined

4. twelve witnesses, who exhibited documents on record. Accused Lee Wei Qi (respondent) recorded his statement under section 313 Cr.P.C. and pleaded his innocence. The respondent/accused also examined himself under section 315 Cr.P.C. in his defence. Impugned judgement CRL.A. 916/2016 Page 4 of 22 The trial court, after perusing the evidence, acquitted the

5. accused of the charges framed against him, as the court held that the same were not proved beyond reasonable doubt. The court held that prosecution failed to prove that the samples of Hashish were drawn at the airport. Following the decision of the Supreme Court in *Kuldeep Singh v State of Punjab*: (2010) 10 SCC219 the court held that drawing samples at the spot and the sealing of the case property at the spot are mandatory as per the provisions of the NDPS Act and failure to prove the same was fatal to its case. It was further held that the prosecution also failed to prove that the seized case property was deposited with the Malkhana Incharge as per procedure and the same was not tampered with in his custody. The trial court further held that the testimonies of PW9 (Vikash

6. Kumar) and PW11 (GS Bhinder) could not be accepted, as there were some inconsistencies in their testimonies. The Trial court observed that neither PW9 nor PW11 mentioned that the Superintendent Y.R. Yadav had also followed the NCB officials to the airport. Both in the complaint and in the examination in chief of PW9 and PW11, the only statement which has been made about the NCB officials who had gone to the airport, is that a team constituting of G.S. Bhinder, Vikash Kumar and two Sepoys had left the NCB office for the airport and had conducted the proceedings at the airport and there is no mention in the entire complaint that the Superintendent Y.R. Yadav had followed the NCB team to the airport. But the Superintendent had deposed that he had reached the airport at about in his cross examination, CRL.A. 916/2016 Page 5 of 22 05.15 AM and that in his presence, only the baggage of the accused was identified and he was served a notice under Section 50 of the NDPS Act. Further, PW11 in his cross-examination had deposed that Sh. Y.R. Yadav had reached the spot only after the trolley bag of the accused had already been opened and further that the samples were not put into pullandas but into envelopes and the same were not hot sealed. However, the trial court noted that PW9, Sh Vikash Kumar, neither took a stand regarding the presence of YR Yadav at the airport during the proceedings nor regarding the procedure of sampling done at the airport. He had deposed that he does not remember whether the samples were taken from one, two or more places and how were they packed. In view of the contradictory statements made by the aforesaid

7. witnesses, the trial court held that the same could not be relied upon to reach the conclusion that the sampling procedure was done at the airport in the manner as described in the panchnama. The trial court further held the said inconsistencies/contradictions in the depositions of the aforesaid witnesses could not be termed as minor, as the testing of the contraband, drawing out of sample therefrom, weighing the contraband, preparing pullandas are all very essential steps in the proceedings conducted in a case registered under the provisions of the NDPS Act and the members of the raiding team are expected to remember the details thereof.

8. that The appellant challenges the finding that it had failed to prove the samples of the contraband were drawn at the spot, as CRL.A. 916/2016 Page 6 of 22 the prosecution had not proved that erroneous. It also contends that that the trial court has erred in holding that the case property was deposited in the malkhana in accordance with the established procedure or that it had failed to prove that the samples were not tampered with. Evidence Before proceeding further, it is relevant to briefly examine the

9. evidence led by various witnesses:

9. 1 Sh. Sanjay Rawat was examined as PW1. He deposed that on 02.05.2010, the accused Lee Wei Qui (respondent) was arrested by PW9 Vikash Kumar, IO and in his presence, personal search of accused was conducted. He further deposed that the information of arrest was sent to Singapore Embassy through proper channel. The arrest cum jamatalashi and the information of arrest was exhibited as ExPW1/A and ExPW1/B. 9.2 Dr. Suresh Chand Surana was examined as PW2. He deposed that samples were received in sealed condition with no sign of any kind of tampering. In his cross examination, he denied any overwriting over test memos. 9.3 Dr. Y R Yadav, Superintendent, NCB, DZU was examined as PW3. He stated that secret information put up by PW11 (IO GS Bhinder) was received by him, in pursuance of which directions were given by him for the constitution of the raiding team. He also deposed CRL.A. 916/2016 Page 7 of 22 that the NCB seal was handed over by him to the main IO. The relevant page of the Seal Movement Register was exhibited as Ex.PW3/B. He further

testified that accused was served with a formal notice (Ex.PW3/C) under Section 50 of the NDPS Act but he had declined to be searched in the presence of a Magistrate or a Gazetted Officer; he allowed the raiding team to search his baggage. He further deposed that PW11 (GS Bhinder) had requested the Manager of the Airlines to provide him independent witnesses. Thereafter, the check- in baggage was verified from the tags pasted on the ticket as well as on the bag and accused also himself had identified his bag, which was opened by him in the presence of the witness. Nothing incriminating was recovered from the personal search of the accused. On opening the bag by tearing the bottom cloth of the bag, brown coloured substance was recovered, which was wrapped in brown coloured tape. He stated that GS Bhinder had tested the substance using the Field- Testing Kit and he had informed that the substance had tested positive for Hashish. GS Bhinder had seized the substance as per the procedure and it weighed 7 kg. He further confirmed that panchnama (Ex.PW3/D), seizure memo and test memo were prepared at the spot in the presence of panch witnesses and the officers and the accused at the spot. He further deposed that the summons was given to accused under section 67 of the NDPS Act (Ex.PW1C) and the accused had tendered his statement before PW9 Sh. Vikash (Ex.PW9/A). PW3 has stated that test memo, samples and case property were deposited in the Malkhana. He has further deposed that on 03.05.2010, he had CRL.A. 916/2016 Page 8 of 22 forwarded the samples and test memo to CRCL and also sent a letter to Ministry of External Affairs regarding arrest of the accused. 9.4 In his cross examination, he has deposed that accused was neither informed that PW3 and PW11 were gazetted officers nor was informed by PW11 of the availability of gazetted custom officer and the right accused can avail of getting his luggage checked in their presence. He positively confirmed that sample was taken as per the procedure and mandatory guidelines, which was not hot sealed in the pouch it was taken but case property and the sample were put in a cloth pullanda, which was then hot sealed in the presence of public witnesses. 9.5 Sh. Babu Lal, Sepoy who was examined as PW4. He deposed that on 02.05.2010, he took the raiding party to the IGI airport at about 4:15 AM and had dropped the raiding team at that place and had thereafter remained with the vehicle. After completing the proceedings at about 9:30 AM, they had left the spot along with accused. He

further deposed that on 03.05.2010, on the directions of PW3, he went to CRCL New Delhi and deposited the properly sealed sample along with duplicate test memo forms and forwarded the letter to PW7 Dr. Raj Kumar, Assistant Chemical Examiner, Ex.PW3/G against receipt Ex.PW3/H issued by CRCL. He also identified the accused and stated that he had brought the accused to the NCB office. In his cross examination, he stated that samples handed over to Raj Kumar (PW7) were in sealed condition but the test memos were in open condition. However, he denied any kind of tampering with the same. CRL.A. 916/2016 Page 9 of 22 Sh. Saranjeet Singh (one of the independent witness) was 9.6 examined as PW5. He deposed that he had affixed baggage tag over the baggage brought by the accused. He further stated that certain NCB officers came carrying the information that one suspected passenger is carrying narcotics. Thereafter, accused was identified by seeing photo in computer. He further testified that the accused had himself identified his baggage by verifying his name on the tag affixed on the boarding pass and thereafter opened the lock on baggage. He also testified that notice under section 50 of the NDPS Act was served on the accused and that he can identify the letter given to him containing the refusal of the accused to be searched in presence of a Magistrate or a Gazetted Officer. He stated that on opening the baggage, a small portion of the substance was taken and after smelling the same, informed that the same was charas. The same was weighed by the NCB officer and was found to be 7 kg. He deposed that thereafter, the same was checked by some machines. Thereafter, the accused as well as the substance was taken to NCB office, where documents were prepared and his signatures were obtained. He stated that samples were drawn from charas and seal was affixed on the envelope, in which it was wrapped. Signature of PW5 was also obtained on the sealed samples. He has also deposed that in pursuance of the summons served upon him, he had appeared in the office of the NCB and had tendered his statement Ex.PW5/G. He submits that this was the same baggage which was recovered from the accused in his presence. The baggage is now Exp4. CRL.A. 916/2016 Page 10 of 22 Leading questions were put to the witness by the Ld. SPP and 9.7 he stated the signature was obtained on recovery memo at the NCB Office but he does not recollect whether the same were prepared at the airport or at the NCB office. In his cross examination by defence, he deposed that

samples 9.8 were drawn and sealed and recovery memo was prepared at NCB office. However, he has not denied that baggage was of the accused from which contraband was recovered. 9.9 Rajkumar, who was working as the Assistant Chemical Examiner, Central Revenue Control Laboratory at the material time, was examined as PW7. He stated that the samples handed over to him for analysis were properly sealed and could not be opened without breaking the seal. He also stated that test memos were in open condition when handed over him. 9.10 Sh Sanjeev Narula, who was working as a supervisor with Lufthansa Airlines at the material time, was examined as PW8. He deposed that GS Bhinder had approached him on 02.05.2010 and had introduced himself and enquired about the accused. He testified that he checked the list of passengers and confirmed that the accused had checked in and had been issued the boarding card. He stated that GS. Bhinder had requested him that he requires two persons to join the proceedings as witnesses and he had instructed Sh Sharanjeet and one other person to join the proceedings. He then accompanied GS Bhinder to the check-in counter where his colleague Ms Sweety Brar, CRL.A. 916/2016 Page 11 of 22 check-in agent was present. She identified the person in question and his luggage, as the same was lying near the check-in counter. 9.11 In his cross examination, he stated that he did not ask the permission of the accused to handover his luggage to GS Bhinder. 9.12 Ms Sweety Brar deposed as PW-6. She stated that a sikh gentleman had approached her with another person and asked her whether the man who was accompanying him had booked the baggage. 9.13 With the permission of the court, leading questions were put to her by the learned SPP. In response to the said questions, she confirmed that the passenger in question had identified his luggage. 9.14 Ms Brar was cross examined by the learned counsel for the accused. In her cross examination, she stated that no other person other than the passenger had accompanied the Narcotic Official (Sikh Gentleman), when he came to her in the morning to make the enquiries as deposed by her. 9.15 Sh. A.K. Mishra was examined as PW12. He deposed that on 02.05.2010, he was working as Intelligence Officer Malkhana Incharge in NCB, DZU, R.K. Puram and that in the present case, the entire case property, test memo in triplicate were deposited with him in the Malkhana and he had made an entry to this effect in the Malkhana register. He has also deposed that on 03.05.2010, sample marked A-I

was sent to CRCL and that the remnant sample along with CRL.A. 916/2016 Page 12 of 22 report were deposited back with him in the malkhana on test 21.5.2010. According to this witness, he had made relevant entries in the register. The relevant pages of the malkhana register containing the said entries has been exhibited as ExPW1 1/FI, Ex.PW12/A1 and ExPW12/A2. 9.16 In his cross examination, he categorically stated that he was the malkhana incharge in year 2010 and he had received the case property and test memos (which were not in sealed condition) but denied any kind of tampering with the sample and the case property, when they were received. 9.17 Sh. G.S. Bhinder deposed as PW11. He testified that he had constituted a raiding team consisting of himself, intelligence officer Sh. Vikash Kumar, Driver Babu Lal and Saheb Singh. He stated that they reached the airport at about 05:00 a.m. on 02.05.2010. He stated that on reaching the airport, he and Vikash Kumar approached Mr Sanjeev Narula (Supervisor, Lufthansa Airlines) and asked him to verify whether the accused, Lee Wei Qi was leaving by the said flight. He had requested him to provide two independent witnesses to be present with NCB team during the proceedings. He stated that two persons, namely, Mahinder and Saranjeet voluntarily agreed to join the NCB team for proceedings. He stated that he, Sh. Vikash, independent witnesses and Sh. Narula reached the check-in counter, where Ms Sweety Brar, check-in agent was checking the passengers. She informed them that the baggage belonging to the accused was still in holding, as the conveyor belt was not in operation. She identified CRL.A. 916/2016 Page 13 of 22 the accused as the person to whom the baggage was belonging. He was standing near the counter filling some form. He stated that he approached the accused and inquired about his identity. The accused produced his passport, ticket and boarding pass. PW1 testified that he verified the luggage from the luggage tag pasted on the bag of the boarding pass with the bag identified by Ms Sweety Barar. Thereafter, the accused was also asked to identify the baggage, which he identified. He stated that thereafter, notice under Section 50 of the NDPS Act was issued and the accused was briefed of his legal rights. The accused was asked to open his luggage stroller bag, which was locked and the same was opened by the accused in presence of the independent witnesses. He testified that the bag contained few clothes and after removing the same, suspicious substance, that is, Hashish was found. It was wrapped in brown

tape. The consignment was taken out of the baggage and was weighed with the help of a weighing machine. It was found that the weight of the consignment was 7 kg. Thereafter, two samples of 25 grams each was drawn and placed inside the plastic pouch. The white paper slips signed by the witnesses, accused and him were pasted on the samples. The said samples were sealed. The remaining baggage material and stroller bag were taken into possession and also sealed with the paper slip containing signature of witnesses, accused and himself. The pullanda was prepared and the same was sealed. Panchnama and test memo were also prepared on the spot and documents recovered from the accused were taken into possession. He stated that thereafter, summons were issued to the accused and airlines staff. He also stated CRL.A. 916/2016 Page 14 of 22 that after he reaching the NCB office, he deposited the property with the Malkhana incharge and the seal with the Superintendent (Sh. Y.R. Yadav). He stated that on 14.07.2010, he again recorded the statement of the accused in Tihar Jail after taking permission from the Court. He also testified regarding recording of the statements of incharge of Yak Hotel (Gigme) and the voluntary statements of Mahinder Singh and Saranjeet Singh (the independent witnesses). 9.18 It is noteworthy that in his examination-in-chief, PW11 did not refer to the presence of Mr. Yadav. 9.19 PW11 was, thereafter, cross-examined. However, in his cross-examination, he stated that the sampling process was conducted under the supervision of Mr Y.R. Yadav, who had arrived after the bag in question had been opened. 9.20 The stroller bag did not have any baggage slip, with which the bag was identified as that belonging to the accused. 9.21 PW1 was recalled for re-examination and he deposed that he had removed the baggage slip and the same was attached with the e- ticket. He stated that the said stub had details of the said ticket in printed form, which has since disappeared due to passage of time. 9.22 It is relevant to note that the Trial Court had disbelieved the said statement, as the baggage slip was not found attached. 9.23 Sh. Vikash Kumar was examined as PW9. He also testified that he was a part of the raiding team that had reached the airport at about CRL.A. 916/2016 Page 15 of 22 05:00 a.m. on 02.05.2010. He also testified regarding issuance of notice under Section 50 of the NDPS Act. He also deposed that the consignment of 7 kg Hashish was found in the bag of the accused and Sh. G.S. Bhinder had taken out two samples of 25 grams each. It is

noteworthy that in his examination, he did not refer or mention of the presence of Sh. Yadav at the airport. 9.24 He was cross-examined. He stated that he did not remember whether the bag was locked or open or he also did not remember the colour of the bag. He stated that there was a false cavity at the bottom of the bag and the contraband was kept on the lower side of the said cavity. He did not remember whether the samples were taken from one or two places. He also could not recollect the weight of the packing samples or the details of the packing material. He stated that he was assisting Mr Bhinder at the spot and Mr Bhinder could not explain the other details (minutes of the case). It is relevant to note that he did not mention about the sampling process being undertaken under the supervision of Sh. Yadav. Reasons and Conclusion 10. At the outset, it is relevant to note that the learned counsel appearing for the appellant (NCB) did not dispute that drawing of samples at the spot is mandatory and any failure in this regard would be fatal to the prosecutions case. However, he submitted that in the present case, it was beyond reasonable doubt that the samples of seized substance were drawn on the spot and were sealed. In view of CRL.A. 916/2016 Page 16 of 22 the above, the principal controversy that needs to be addressed is whether the illicit substance had been drawn at the spot as claimed.

11. PW5(Sharanjeet) had deposed that he was working as a Loader on 02.05.2010 and was sitting at the counter of the Lufthansa Airlines and a passenger, who looked like a Chinese or a Nepali, brought two pieces of baggage. He stated that he affixed a tag over the baggage brought by the passenger and kept it aside. He stated that thereafter, certain officers from NCB came and informed him that one passenger travelling by Lufthansa flight was carrying narcotics with him. He confirmed that they had asked for a specific person from the duty manager Sanjiv Narula and Ms Sweety Brar, who was operating the check-in counter. He stated that all of them (i.e. Sh Narula, Sweety Brar and him) assembled there and informed the NCB official that the passenger had already checked in and the baggage belonging to him was lying behind the belt. He deposed that the Narcotic Officer immediately rushed towards the immigration counter and brought the accused back to the counter. Thereafter, they informed the accused that they had to search the baggage. It is stated that the accused identified his baggage by verifying his name on the tag affixed on the boarding

pass. The lock affixed on the baggage was opened by the accused and on opening, it was found that there were some clothes. After removing the clothes, the bottom of the suitcase was found to contain Hashish in wrapped brown tape. He stated that the NCB officers took out a small portion of Hashish and after smelling the same informed that the same is charas. He stated that the said CRL.A. 916/2016 Page 17 of 22 Hashish was weighed by the NCB officer and its weight was found to be 7 kg. He stated that thereafter, the same was checked by some machines and they took the bag as well as the accused. He stated that before leaving, the NCB officers told Sh Narula that they want him as a witness and sought his permission to take him as a witness to the office. He deposed that thereafter, the accused was brought to the NCB office and documents were prepared.

12. It is apparent from his deposition that the samples were drawn at NCB office. Any ambiguity as to where the samples were drawn was resolved as in his cross-examination, he clearly stated that at the office of NBC samples were drawn and sealed and recovery memo was prepared. In his cross-examination, he deposed that the baggage containing the substances was weighed at the belt itself which is used by us for weighing baggage. This also raises a doubt as to whether the raiding team had carried any weighing machine or used the same for weighing the substances. Clearly, if they had done so, there was no requirement for them to weigh the substances on the belt, used by the Airlines.

13. Mr G.S. Bhinder, who was examined as PW11, deposed that the total consignment was taken out from the baggage and was weighed with the help of weighing machine and the same weighed 7 kg. He stated that thereafter, two samples of 25 grams each were drawn and placed inside the plastic pack and further kept in a white envelope. In his cross-examination, he described the weighing machine used by him as an electronic machine. CRL.A. 916/2016 Page 18 of 22 14. He also testified that the sampling process was supervised by the Superintendent DZU (PW3 -Y.R. Yadav) and the said proceedings were carried out near the conveyer belt of the Lufthansa Airlines. However, in his cross-examination, he also deposed that he did not know at what time Sh Yadav (Superintendent DZU) had reached the spot. He stated that there were only two

officers in the raiding team and both remained present inside the airport during the proceedings and the process. It is relevant to note that although PW11 had deposed that the 15. sampling proceedings were conducted under the supervision of Sh Y.R. Yadav, admittedly, his signatures do not appear on the slips attached to the samples.

16. The trial court had noted that the complaint did not mention that samples were drawn in the presence of YR Yadav. Further, neither GS Bhinder (PW11) nor Vikash Kumar (PW9) had deposed in their examination in chief that Sh Yadav was also present at the spot. According to Shri YR Yadav, he had arrived at the airport at 5.15 AM. Shri GS Bhinder had stated that he had intercepted the accused between 5.15 AM and 5.30 AM; yet, none of the independent witnesses, Sh Sanjiv Narula, Ms Sweety Brar or Mr Saranjeet had mentioned the presence of Shri Yadav at the spot. Shri GS Bhinder had stated that Shri Yadav had arrived after the bag was opened. This is also not consistent with the timeline, as the accused was intercepted after 5.15 AM and Shri Yadav had stated that he had arrived at the airport at 5.15 AM. In view of the above, there is a doubt as to CRL.A. 916/2016 Page 19 of 22 whether the sampling proceedings were conducted at the airport in his presence.

17. It is important to note that the Duty Manager (Sanjiv Narula - PW8 had deposed that Sh Bhinder (PW11 had requested him that he requires two persons to join the proceedings as witness and he had instructed two loading officials to join the said proceedings.

18. PW11 has also deposed that two persons, namely, Mahinder and Saranjeet had agreed to join the NCB team in the proceedings. He stated that he along with his team (i.e. Sh Vikash, independent witnesses, and Sh Narula) had reached the check in counter wherein Ms Sweety, check in agent, was checkin-in the passengers. Thus, apart from Saranjeet independent witness (Mahinder); however, Mahinder has not been examined by the prosecution. The statement of the PW-5 that he, Vikash and Sh Narula, along with independent witnesses, had reached the check-in counter is also inconsistent with the statement made by Ms Sweety that only one person (whom she referred as a Sikh Gentleman) had come

to the counter along with the passenger in question. there was another (PW5, 19. It is also relevant to note that PW-5 was not a hostile witness; he had supported the case of the prosecution in other aspects. He is also an independent witness and has no other involvement in the matter. Thus, his testimony must be accepted. CRL.A. 916/2016 Page 20 of 22 The trial court evaluated the evidence obtaining in this case and 20. had concluded that the sampling procedure had not taken place at the spot. This Court finds no reason to differ with the said conclusion.

21. There is also material inconsistency in the testimony of PW-11 and PW12 with regard to depositing of the seized property. PW-11 had deposed that he had deposited the property with Sh Sanjay Rawat, however PW12 (Sh A.K. Mishra) deposed that the PW11 had handed over sealed parcels (cloth parcel Marked-A, one black stroller bag Mark-B, two samples marked A-1 and A-2; and test memos (in triplicate) to him and he had made relevant entries in the Malkhana Register.

22. The learned counsel for the respondent also relied on the decision in Hannan Vs State of Delhi: CLR. A. 773/2010, decided on 11th April 2012 and submitted that no one had deposed that the samples were not tampered with in the Malkhana.

23. As stated earlier, the conclusion that the sampling procedure was not carried out at the airport, warrants no interference. It is not disputed that not following the procedure at the spot is fatal to the prosecutions case. It is a well settled that in cases of acquittal, the threshold to 24. justify interference by the Appellate Court is much higher. The Apex Court in Chandrappa and Ors v. State of Karnataka: (2007) 4 SCC415 held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the CRL.A. 916/2016 Page 21 of 22 finding of the acquittal recorded by the Trial Court. The Apex Court in Ghurey Law v. State of U.P.: (2008) 10 SCC450 held that though the Appellate Court can review the Trial Courts conclusion with respect to facts and law, it is not enough for the High Court to take a different view on evidence. There must be substantial and compelling reasons for holding that the Trial Court was wrong. A Division Bench in State v. Kaishar Ali: CRL.LP. 188/2018, while of this Court reiterating the principles enunciated in Ghurey Lals case (supra) and

Chandrappas case (supra), held that though the Appellate Court has wide powers to review and come to its own conclusion, any acquittal order cannot be lightly interfered with since the presumption of innocence is bolstered in the favour of the accused by the order of (Also see: Niraj vs. Ramesh Pratap Singh: (2012) SCC acquittal. OnLine Del 3813; Arulvelu & Anr. vs. State Represented by the Public Prosecutor & Anr.: (2009) 10 SCC206 Dilwar Singh & Ors v. State of Haryana:

2015. (1) SCC737 Jayaswamy v. State of Karnataka: Crl Appeal No.1022 of 2011) In this view, this Court does not find any compelling reasons to 25. interfere in the impugned judgment.

26. The appeal is, accordingly, dismissed. NOVEMBER25 2019 pkv/RK VIBHU BAKHRU, J CRL.A. 916/2016 Page 22 of 22

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