

Narcotics Control Bureau Vs. Chen Ching Sung

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Court : Delhi

Decided On : Nov-28-2014

Judge : S. Muralidhar

Appellant : Narcotics Control Bureau

Respondent : Chen Ching Sung

Advocate for Def. : Ms. Nikita Sharma

Advocate for Pet/Ap. : Mr. Subhash Bansal, Mr. Shashwat

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.1267 of 2014
Reserved on:

20. h November 2014 Decision on:

28. h November 2014 NARCOTICS CONTROL BUREAU Appellant Through:
Mr. Subhash Bansal with Mr. Shashwat, Advocates. versus CHEN CHING SUNG
..... Respondent Through: Ms. Nikita Sharma, Advocate with Respondent in
person. CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

2811.2014 1. This appeal by Narcotics Control Bureau (NCB) is directed against the judgment dated 31st May 2012 passed by the learned Special Judge, NDPS in

SC No.8 of 2009 acquitting the Respondent of the offence under Sections 22 and 23 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (NDPS Act). The case of the prosecution 2. The case of the prosecution is that Mr. R.R. Kumar (PW-7) Superintendent, NCB, received a secret information on 11 th October 2008 that the Respondent, a Taiwanese national, was likely to board a Malaysian Airlines for Kuala Lumpur that very night with a huge quantity of Methamphetamine (Meth). The information was discussed with Zonal Director, NCB. Thereafter PW-7 issued search warrant in favour of Mr. H.S. Gill (PW-11) Intelligence Officer, NCB. PW-11 along with Mr. Y.R. Yadav left for the Indira Gandhi Airport at around 9.30 pm and reached Terminal-II at around 10 pm, on the same day. Two public witnesses, Mr. Ravinder Singh (PW-9) and Mr. Brijesh Kumar joined them.

3. The Respondent was identified with the help of the immigration authorities and with the help of his passport and boarding pass. His checked in baggage was retrieved from the Malaysian Airlines with the help of Mr. Manoj Gupta, a Ground Duty Official of Universal Aviation Pvt. Ltd. According to PW-11, the Respondent identified his baggage. They tallied the baggage tag with the counterfoil affixed on the ticket. The Respondent was taken to the city side area CISF control room. He was served notice under Section 50 NDPS Act and informed of his right to have his personal search as well as search of the baggage conducted in the presence of a Gazetted Officer or a Magistrate. The Respondent, who could not speak English, supposedly communicated by body language that his search could be conducted by any officer. The response of the Respondent was noted by PW-11 on the copy of the notice under Section 50 of the NDPS Act (Ex. PW9/A) and his thumb impression was taken. Both PW-9 and Mr. Brijesh Kumar signed the said notice.

4. Upon search of the checked in black colour trolley bag, one Sony DVD player was found. It was dismantled with the help of the panch witness Ravinder Singh (PW-9). It was found to contain white transparent polythene packet having a white crystalline substance. A small quantity was taken and tested with the help of field testing kit and it gave positive result for Meth. The total quantity was found to be weighing 1 kg. Two samples of 5 grams each were taken from the substance and

were kept in small polythene pouches and were further put in white paper envelope and were given the markings A-1 and A-2. The remaining substance was wrapped and stitched in white cloth and was given the Mark-A. On the rear side of the trolley bag, another packet containing 1 kg of Meth was also found. Two samples of 5 grams each were taken from the said packet as well and were marked B-1 and B-2. The remaining substance was given the Mark B. The DVD Player was wrapped in cloth and was given the Mark C. Further search of the trolley bag revealed one laptop of Dell make which was also wrapped and stitched in a cloth and was given the Mark D. The personal effects of the Respondent were placed in the same trolley bag and which was given the mark E.

5. The Respondent was carrying one hand bag and one rucksack bag. Nothing incriminating was found in the said bags. The travel documents and mobile phones of the Respondent were taken into possession and a recovery memo (Ex. PW9/B) was prepared which was signed by PW-9 and the other witness Mr. Brijesh Kumar. A facsimile of NCB seal was affixed on the recovery memo and the test memo (Ex.PW-7/E). The recovery proceedings which commenced at around 10.15 pm on 11th October 2008 were completed at around 4 am on 12th October 2008.

6. PW-9 tendered his statement (Ex. PW-9/B) pursuant to the notice issued to him under Section 67 of the NDPS Act. PW-11 deposited the case property in the malkhana and returned the seal to the Superintendent. He also submitted a seizure report (Ex.PW-7/D) under Section 57 of the NDPS Act to the superior officer. The Respondent was arrested and subsequently a charge sheet was filed. He was charged with the aforementioned offences and he pleaded not guilty.

7. The prosecution examined twelve witnesses. With the help of an interpreter, the evidence was explained to the Respondent. It may be noted that a certificate was appended by the trial judge at the end of the transcript of the deposition of each of the prosecution witnesses to the effect that "explained the contents of the deposition to the accused through interpreter in the language known to the accused and which is duly certified by the interpreter."

The statement of the Respondent under Section 313 Cr PC8 The evidence of the prosecution was put to the Respondent under Section 313 of the Code of Criminal Procedure (Cr PC) and his response, as conveyed by the interpreter, was noted by the trial Judge. The Respondent admitted that he had been stopped by some officials in the immigration counter. However, as regards the retrieval of the baggage he stated that It is incorrect that my baggage was retrieved from the Airlines. I was not carrying any check-in baggage. I cannot say how the particulars on the baggage tag affixed on my boarding pass tallied with the particulars on the counterfoil of the baggage retrieved by the officials. I had not given any baggage to the concerned Airlines for checking in. (emphasis supplied) 9. The Respondent further claimed that his thumb impressions were forcibly taken on many documents. As regards the Meth recovered from the black trolley bag, he stated that A black trolley bag was opened in my presence and I saw that it contained womens cloth, one DVD and a Laptop but neither the cloths nor the DVD nor the Laptop nor the black trolley bag belonged to me. He further claimed that the DVD player was not dismantled in his presence and no drug was recovered in his presence. He stated that he was falsely arrested in the case and the 10,000 Taiwanese currency that he was carrying was also seized by the officials. He further stated that he was innocent and has been falsely implicated.

10. The Respondent stated that he came to India as a tourist. He was a divorcee and used to earn his livelihood in Taiwan by driving private vehicles. He claimed that no drug had been retrieved from any baggage belonging to him. He could not understand either English or Hindi and was not able to communicate anything to anyone till an interpreter was provided to him. He had informed the interpreter that the baggage did not belong to him. At the end of the Section 313 statement, the learned trial Court noted:

I have explained the entire incriminating evidence to the accused through interpreter Sh. Prabhat Kumar in the language known to the accused and the interpreter has then given the answers and has explained the defence of the accused after understanding the same from him. These proceedings are also duly certified by the interpreter.

11. Further a certificate was appended by the interpreter stating that the incriminating evidence had been explained to the Respondent and as per the answers given by him, the interpreter had explained the Respondents defence to the Court. No witnesses were examined for the Respondent. The judgment of the trial Court 12. By the impugned judgment, the learned trial Court granted benefit of doubt to the Respondent for the following reasons: (i) Although Inspector Manoj Kumar (PW-4) stated that the statement of the Respondent under Section 67 of the NDPS Act could not be recorded because he was not able to understand English or Hindi or even gestures", both PW-7 and PW-11 deposed that the Respondent had understood the contents of the notice under Section 50 of the NDPS Act, as well as the search authorisation warrants, both of which were in English. Even during the court proceedings he was unable to apprehend what was happening till the same was translated to him by an interpreter appointed by Court. Therefore the testimony of PW-11 that he was able to make the Respondent understand the contents of the notice under Section 50 of the NDPS Act by gesturing was absolutely incorrect and false. (ii) The grounds of arrest were not explained to the Respondent. The NCB Superintendent ought to have made efforts to join a person who understood the language of the accused in the proceedings to lend credibility to the proceedings. (iii) The notice under Section 50 was perhaps not necessary since there was no personal search of the Respondent. Nevertheless, the issue was of credibility of the prosecution evidence. Further, the narration in the panchnama showed that the Respondent was only given an option of his search and not informed of his legal right to be searched in front of a Magistrate or Gazette Officer. Therefore, the statement of PW-11 that Section 50 was complied with was false. (iv) The test memo was not signed by PW-9 in whose presence the search and seizure proceedings were conducted. The mere testimony of PW-11 that the test memo was prepared at the spot cannot be believed to be the gospel truth. Further PW-11 admitted that he did not mix the substance recovered from the two packets, and took the sample from one place and not from the four corners. He also did not seal the samples as per the NCB guidelines. (v) The failure to produce Manoj Gupta, the ground duty official who retrieved the checked-in baggage of the Respondent, meant that this circumstance could be proved only by PW-11 and PW-7. In the testimonies of PW-

9 and PW-7 there were inconsistencies as to where the counterfoil of the baggage tag was affixed; whether on the boarding pass or on the ticket. (vi) No written request was made to the Malaysian Airlines to retrieve the checked-in baggage. Neither PW-7 nor PW-11 was able to tell whether the checked-in baggage was locked or not. When the suitcase was produced in the Court it did not have the baggage tag and there was no explanation whether it had been removed by the IO or any other NCB official. In fact there was nothing which satisfactorily proved that the baggage checked in by the Respondent was the same from which contraband was recovered. (vii) There was discrepancy as to the date on which the samples were sent to Central Revenue Control Laboratory (CRCL) for analysis. Shiv Rattan (PW-2) stated that he had taken the samples on 13 th August 2008 and deposited it with the CRCL. The date in the malkhana register also appeared to be corrected from 13th August 2008 to 13th October 2008. The forwarding letter Ex. PW19/D written by PW-7 to CRCL also mentioned the date as 13th August 2008. However, the case of the prosecution was that the samples were sent to CRCL on 13th October 2008. PW-2 was not recalled to explain this discrepancy. Thus, it could not be ruled out that what was recovered from the accused was never sent for analysis.

13. This Court has heard the submissions of Mr. Subhash Bansal, learned counsel for the Appellant and Ms. Nikita Sharma, learned counsel for the Respondent. The Respondent was also present throughout the hearing along with an interpreter. Connecting the checked-in baggage with the Respondent 14. The Court would first like to deal with the issue whether the Respondent had at all checked in any baggage. To recall his statement under Section 313 Cr PC, the categorical stand taken by the Respondent was that he did not check in any baggage. However, the firm case of the NCB is that he had checked in the black trolley bag from which the psychotropic substance Meth was retrieved with the help of the ground staff.

15. The trial Court record contains the disembarkation card and the customs declaration form (Exs. PW-9/A2 and PW-9/B-B) which were seized by the NCB from the Respondent. There is also a baggage tag (Ex. PW-9/B2) which undoubtedly is computer generated. No part of it is written by hand. It bears the name of the Respondent, the two flight numbers (as it was checked to its ultimate

destination Cebu). The tag bears the number 0232440668 which tallies with the counterfoil of the baggage tag (Ex. PW9/B-5) which was affixed either on the boarding pass or the ticket with the Respondent.

16. It is also not in dispute that when a passenger, boarding an international flight presents a ticket at the airlines counter, his baggage is weighed and a baggage tag is issued which is then affixed either on the ticket or on the boarding pass. The passenger has to physically present himself at the counter with the baggage he wishes to check in. In many airports the baggage is also x-rayed before it is checked in. The passenger's details are verified by examining his or her passport and then making sure that the baggage he wishes to check in is within the permissible weight. The baggage tag and its counterfoil is generated on computer with the name of the passenger, the weight of the baggage and the flight details printed on it. The tag is affixed on the baggage and the counterfoil either on the ticket or the boarding pass. It is well-nigh impossible for a computer-generated baggage tag to be got issued in the name of a passenger who is not himself carrying the baggage.

17. In the circumstances, it is inconceivable that some other person got a baggage checked in or got a baggage tag in the name of the Respondent and got its counterfoil affixed on the Respondent's boarding pass or ticket which he somehow did not notice. The baggage tag and its counterfoil constitute evidence of conscious possession of the baggage by the Respondent and therefore, assume significance. Under Section 54 (a) of the NDPS Act, when a person fails to account satisfactorily for being in possession of a narcotic or psychotropic substance, a presumption can be drawn, unless the contrary is proved, that he has committed an offence under the NDPS Act in respect of such substance.

18. If indeed he did not check in any baggage as claimed by him then it is for the Respondent to explain how he was found with the counterfoil of the baggage tag affixed to his ticket or boarding pass. It is also inconceivable that unknown to the Respondent a baggage tag had somehow been generated by the Malaysian Airlines staff in connivance with the NCB officials. There is absolutely no reason for the Malaysian Airlines staff to falsely book a luggage in the name of the

Respondent, an international passenger, and affix the counterfoil of the baggage tag on his ticket or boarding pass. The Respondent is clearly not a firsttime traveller. Even if he was unable to speak English, he was not unaware of the procedure for boarding an international flight. At international airports language is really not a barrier to obtaining a boarding card and checking in a baggage. Millions of passengers, unfamiliar with the English language or the language of the country where they are boarding flights do this on daily basis. A valid explanation was therefore required to be given by the Respondent as to how he was found in possession of the counterfoil of the tag of the baggage checked in on his ticket. Instead, the Respondent took a conscious stand that he did not check in any baggage at all.

19. That the Respondent was in conscious possession of the checked in baggage is perhaps the most crucial aspect of the case. In this connection, it is also necessary to examine what is the position on the genuineness of documents that recovered from the possession of the Respondent. In the instant case, the counterfoil of the computer generated baggage tag affixed on the ticket/boarding pass was one such document. Section 66 (i) read with 66 (b) and (c) of the NDPS Act states that where any document "has been seized from the custody or control of any person under this Act", and such document is tendered in evidence by the prosecution against him, the Court shall "admit the document in evidence, notwithstanding that it was not duly stamped " and shall "also presume, unless the contrary is proved, the truth of the contents of such document."

The computer generated baggage tag and its counterfoil qualify as documents that are admissible in evidence and the truth of their contents have to be presumed. The presumption is no doubt rebuttable but the burden to show that they are not genuine shifts to the Respondent.

20. The trial Court has overlooked the above peculiar features of the issuance of baggage tag by an airline for an international flight. It has discussed at some length the discrepancy as regards where the counterfoil of the baggage tag was affixed. Likewise it has given undue emphasis to the baggage tag not being still affixed to the trolley suitcase when it was produced in Court. When affixed to the

Respondent's ticket or boarding pass was the counterfoil of the baggage tag, which also contained his name and flight details, it did not matter that the baggage tag was detached from the suitcase during the examination of its contents but preserved nevertheless. This was not a discrepancy which was material enough to doubt the entire evidence regarding the retrieval of the checked-in baggage. The trial Court therefore erred in holding that there was no evidence to show that baggage checked in was the same from which the contraband was recovered.

21. Ms. Nikita Sharma, learned counsel for the Respondent, referred to the decision in *Alamelu v. State* 2011 (1) JCC239 to urge that the mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. The said decision was rendered in a case where the offence was under Section 376 IPC. The discussion was in regard to Section 35 of the Evidence Act concerning a public document. As far as the NDPS Act is concerned, the issue of possession of a narcotic or psychotropic substance is governed by Section 66 (i) read with clauses (b) and (c) thereof which requires the Court to presume the truth of the contents of the documents unless contrary is proved. The said decision is therefore, of no assistance to the Respondent.

22. On the other hand, Mr. Subhash Bansal, learned counsel for the NCB referred to the decision in *Gian Chand v. State of Haryana* (2013) 14 SCC420 where, in the context of the NDPS Act, the Supreme Court emphasised that once possession is established, the burden shifts to the person found to be in possession to prove that he was not in conscious possession. In para 19 it was observed as under:

From the conjoint reading of the provisions of Sections 35 and 54 of the Act, it becomes clear that if the accused is found to be in possession of the contraband article, he is presumed to have committed the offence under the relevant provisions of the Act unless the contrary is proved. According to Section 35 of the Act, the court shall presume the existence of mental state for the commission of an offence and it is for the accused to prove otherwise.

The non-examination of Manoj Gupta 23. The trial Court has drawn an adverse inference against the prosecution on account of the non-examination of Mr. Manoj Gupta, the ground duty official who helped to retrieve the baggage. The

proceedings of the trial Court show that the summons were issued to Manoj Gupta by an order dated 16th September 2010. The proceedings dated 19th November 2010 records that summons on Manoj Gupta were not served "because he was not found living on the mentioned address. The summons were again sent to him for the hearings on 16 th March, 25th May, 28th July, 9th August and 6th September 2011. Summons were also sent to him through the IO. On 6 th September 2011, the Court noted as under:

Counsel for NCB submits that only one witness Mr. Manoj Gupta remains to be produced by prosecution but despite various efforts this witness could not be traced out as he has left his previous employment and address. Report in this regard has been filed. In view of the aforesaid submissions PE stand closed.

24. It is, therefore, apparent that despite persistent efforts, Manoj Gupta could not be made to appear as a witness. The trial Court ought not to have drawn an adverse inference on this ground, particularly when, as will be noticed presently, there was the evidence of PW-9, fully corroborated by PWs 7 and 11. Also, while it is true that Manoj Gupta of Universal Aviation Pvt. Ltd. was not examined but his statement under Section 67 of the NDPS Act was recorded (Ex. PW10/B) and it was proved by Inspector Vikas Kumar (PW-10). There is no discussion in the impugned judgment as to why this evidence of PW-10 should not be taken into consideration. The evidence of PW-9 25. The trial Court proceeded incorrectly on the basis that with Manoj Gupta not being examined, the prosecution had to fall back only on the evidence of PW-7 and PW-11 as regards retrieval of the checked-in baggage. In the process, the trial Court failed to notice that PW-9, an independent panch witness, also spoke of the retrieval of the baggage which happened in his presence.

26. PW-9 stated in his cross examination that The luggage of the accused i.e the trolley bag had already gone in for checking. Vol. The said bag was retrieved by the staff of Universal whose name I do not remember. Airline staff had checked the baggage tag with the baggage stubs affixed on the air ticket.

27. In the presence of PW-9 the black trolley bag was opened in the Court. The relevant portion of the deposition of PW-9 in this regard reads as under:

At this stage, one Black trolley bag is produced. The same is tied by a Blue plastic thread. There is a paper slip bearing some signatures which is stuck inside the thread. Both the thread and the paper slip are bearing a seal Narcotics Control Bureau, DZU-5. There is also a sticker on the bag bearing the No.45/08 written on it by a Blue sketch pen. The bag is found to be cut from three sides. According to the witness, this is the bag which was found from the possession of the accused and on being examined was found to contain the DVD Player, the Laptop along with accessories and the packet Ex. P10. The trolley bag is now exhibited as Ex. P17, the paper slip is exhibited as Ex. P18. The thread is now opened and the bag is found to contain some cloths and personal belongings.

28. If the clothes and personal belongings found in the bag were womens clothing as stated by the Respondent in reply to question No.8 in his statement under Section 313 Cr PC, clearly the defence counsel would have noticed it and got a question recorded in that regard in the cross-examination of the witness. However, he did not do the same.

29. The evidence of PW-9 shows that he was unable to be shaken in his cross-examination. The trial Court has not adequately dealt with the testimony of PW-9. It appears that during the cross-examination of PW-9 a doubt was raised by counsel for the Respondent whether the packet which was recovered from the DVD player could in fact have been fitted into it at all. PW-9 was a Senior Technician having done a course of Electrical Training from ITI, Aligarh. He stated that he could dismantle a computer and was aware how a computer and a laptop worked. The transcript of his cross-examination recorded on 28th July 2011 reads as under:

The Ld. Defence Counsel at this stage has submitted that the bag which is alleged to have been recovered from the DVD Player is so bulky that it could not have been concealed inside the DVD Player. He therefore requests that the witness who asserts himself to be a technician and had allegedly helped the NCB officials to dismantle the same be directed to re-mantle the DVD along with the allegedly concealed recovered substance. The witness on the direction of his (sic.) court has tried to fit the Ex.P7 in the DVD Player and has been able to do so. The DVD

Player has however not been reassembled again completely as there were not sufficient screws. It is incorrect to suggest that the substance was not recovered from the DVD Player and it was planted by NCB officials against the accused.

There is no discussion in the impugned judgment on this aspect of the evidence of PW-9.

30. The evidence of PW-9 also becomes important for understanding what transpired at the airport. He clarified that the Malaysian Airlines staff had checked the baggage tag with its stub affixed on the air ticket. He also clarified that the trolley bag was unlocked. In his examination-in-chief, PW-9 clarified that "the officers told the accused through body language as he could not speak Hindi or English regarding the possession of some narcotic substance."

31. This Court is not able to find anything elicited from PW-9 in his cross-examination that renders him an unreliable or untruthful witness. This is perhaps one of those cases where the NCB has been able to associate an independent public witness in the search and get him to depose in the Court. His presence at the spot was unable to be doubted. His signatures figured in the Section 50 notice (Ex. PW-9/A), the recovery memo (Ex. PW-9/B), the boarding passes, the baggage tag, its counterfoil, the e-ticket etc (Ex. PW-9/B-2 to B-11). PW-9 gave a statement under Section 67 and confirmed it in Court. He asserted in cross-examination: "I had written my statement of my own regarding the seizure of contraband."

32. The evidence of PW-9 is trustworthy and consistent and has been corroborated by PW-11, the IO. The difference in the time of completion of proceedings as spoken by PW-9 (till 12 midnight) and PW-11 (till 4 am.) cannot by itself be taken to have diluted the credibility of their testimonies.

33. Consequently, the Court holds that the trial Court committed a manifest error in disbelieving the prosecution evidence, and also overlooking critical pieces of the evidence of the prosecution in concluding that it had not been able to prove the Respondent's conscious possession of the psychotropic substance. In the considered view of the Court, the prosecution evidence proves that fact beyond

reasonable doubt. The notice under Section 50 34. On the question of the notice under Section 50 of the NDPS Act, it has been held repeatedly by the Supreme Court that non compliance of Section 50 would not be fatal to the prosecution case if the contraband is recovered not from the person but from a suit case or conveyance. Illustratively, the decisions in *Ajmer Singh v. State of Haryana* (2010) 3 SCC746 *State of Punjab v. Baldev Singh* AIR 1999 SC2378 and *Kalema Tumba v. State of Maharashtra* (1999) 8 SCC257 are relevant in this regard.

35. Consequently, even if in the present case the NCB officials were not in a position to explain to the Respondent the contents of the notice under Section 50 NDPS, on account of his inability to understand English and the inability to arrange for an interpreter at the airport, an adverse inference ought not to be drawn against the NCB since the contraband was not found from the person but from his checked-in luggage. The evidence on record does not persuade the Court to conclude, as the trial Court has done, that the officers had deposed falsely in that regard. Such a conclusion was not warranted in the facts and circumstances of the case. Sending the samples to the CRCL for testing 36. Much has been said in the trial Court judgment with regard to the date on which the samples were sent to the CRCL for analysis. Even if the witnesses may have been inaccurate as to the dates, the documents spoke for themselves. In the first place this Court would like to refer to the test memo (Ex. PW-1/C) prepared by PW-11 which notes the date of drawl and dispatch of sample as 11th October 2008. The date of receipt of the sample in the CRCL is noted as 13th October 2008. Then we have the endorsement of the CRCL on the reverse of the said document (Ex. PW-1/B), clearly mentioning date of receipt of sample in the laboratory 13th October 2008. A separate receipt issued by CRCL (Ex. PW-1/A) shows the date of receipt as 13th October 2008. This receipt mentions that the samples were received along with the forwarding letter dated 13th August 2008. Indeed the forwarding letter (Ex. PW-1/D) written by Mr. R.R. Kumar (PW-7) bears the date of 13th August 2008. However, he has clarified in his deposition in the Court that this was a typographical error. When seen with all other documents, it is apparent that the date mentioned in the said letter was a mistake.

37. Apart from other documents which show that the sample was received by the CRCL on 13th October 2008, there is the evidence of Mr. Bhuvan Ram, Chemical Examiner, CRCL (PW-1) who states that he received two sample packets from Shiv Ratan (PW-2) on 13th October 2008. He has not been cross examined on this statement. If indeed the samples were recovered on 11th October 2008 and despatched soon thereafter and received by the CRCL on 13 th October 2008, the change in the date of the entry in malkhana register was correctly rectified to be read as 13th October 2008 instead of 13th August 2008.

38. There is no evidence whatsoever regarding the tampering of the parcels or the samples sent for testing. There is nothing to show that the procedure for preserving and sending the samples for testing was not complied with. On the question of mixing of the substance, the trial Court appears to have overlooked the specific answer given by PW-11 in his cross-examination on 6th September 2011 I had mixed the substance using my hand and then had taken out the sample. It is correct that I took out the sample from one place and not from the four corners.

39. The Court holds that the trial Court erred in concluding that the substance was recovered from the Respondent was not sent for analysis. Conclusion 40. This Court concludes that the prosecution has been able to prove beyond reasonable doubt that it was the Respondent who had checked in his black trolley bag from which the psychotropic substance was recovered and that he was in conscious possession thereof. The prosecution has been able to prove that what was being carried by the Respondent by way of export from India to place outside India was a commercial quantity of a prohibited psychotropic substance, thus clearly attracting the offences under Sections 22 and 23 of the NDPS Act.

41. The Court accordingly sets aside the impugned judgment of the trial Court and convicts the Respondent for the offences under Sections 22 (c) and 23 (c) of the NDPS Act. Sentence 42. The nominal roll dated 24th November 2014 of the Respondent shows that during the period of trial he has undergone three years, seven months and twenty days of imprisonment. He was handed over to the FRRO, R.K. Puram on 1st June 2012. On 14th March 2013 this Court was informed that he was with the Taiwan Embassy. On the next date, i.e., 3rd April

2013 he was stated to be staying with his friend one Mr. Stone. The passport of the Respondent is with the FRRO. He subsequently furnished his personal bond and a surety bond on 25 th November 2013.

43. Under Section 22 (c) NDPS Act, the minimum sentence for a person who is found in possession of a commercial quantity of a psychotropic substance (in this case Meth) is ten years rigorous imprisonment (RI) with fine not less than Rs.1 lakh. It is likewise for the offence under Section 23 (c) NDPS Act. Consequently, for each of the offences under Sections 22(c) and 23(c) of the NDPS Act, this Court sentences the Respondent to undergo ten years RI with a fine of Rs.1 lakh and in default to undergo simple imprisonment for three months. Both the sentences shall run concurrently.

44. The Appeal is allowed in the above terms. The bail bond of the Respondent is cancelled. The Respondent will be taken into custody forthwith to serve the remaining sentence. { 45. A certified copy of this order along with trial court record be sent back forthwith. S. MURALIDHAR, J NOVEMBER28 2014/mg

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