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Rapheal Vs. Devender Singh (Intelligence officer) (Director of

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Court : Delhi

Decided On : May-27-2015

Judge : Sunita Gupta

Appellant : Rapheal

Respondent : Devender Singh (Intelligence officer) (Director of

Advocate for Def. : Mr. Satish Agarwala, Ms. Pooja Bhaskar

Advocate for Pet/Ap. : Mr. Rajender Chhabra, Mr. Hemendra Jaitiya

Judgement :

\$ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

**27. h May, 2015 + CRL.A.1394/2013 & CrI.M.B.No.11130/2014 RAPHEAL
Through: Appellant Mr. Rajender Chhabra , Advocate (DHCLSC) and Mr.
Hemendra Jaitiya, Advocate versus DEVENDER SINGH (INTELLIGENCE
OFFICER)(DIRECTOR OF REVENUE INTELLEGENGE) Respondent
Through: Mr. Satish Agarwala and Ms. Pooja Bhaskar, Advocates CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA**

JUDGMENT

: SUNITA GUPTA, J.

1. Prosecution case, as detailed in judgment dated 09.05.2013 passed by learned Special Judge - NDPS/South District, Saket Court, Delhi, is as follows: On 22.09.2005 at about 4.00 PM PW1 - Raman Mishra, Intelligence Officer of DRI, DZU, gathered an intelligence through some reliable source that a person of African origin carrying around 10 kg of narcotic drugs would be coming at bus stop, opposite Hotel Shipra, Shakar Pur, Delhi at about 9.30 PM on that day. The above information was immediately reduced into writing by him as Ex. PW1/A and the same was put up before PW10 - Mr Amitesh Bharat Singh, who was working as a Deputy Director in the office of DRI. PW10 called PW2 - Mr K K Dhasmana, Senior Intelligence Officer, and directed him to immediately constitute a team and to act upon the above information by mounting surveillance in the vicinity of the spot. The aforesaid information was also brought to the notice of the Senior Officers of DRI.

2. It is further alleged that two public witnesses were called at about 7.00 PM on the same day and they were told about the intelligence. A team of the DRI Officers, accompanied by the two public witnesses, left the office of DRI at about 7.30 PM and reached the above spot at about 8.30 PM. Surveillance was kept at the spot. At about 9.15 PM, one person of African origin, carrying a black zipper bag, came at the above spot and when the DRI Officers started approaching him, the said person tried to flee away from the spot and started running towards the Karkardooma Court on the sub-lane of ITO and Karkardooma Court Road. However, the members of the DRI team intercepted that person with the above black zipper bag. They disclosed their identities to the said person. The public witnesses were also introduced to him. The identity of the above person on enquiry was revealed to be the accused - Rapheal, a permanent resident and native of the State of Nigeria residing at 254, Munirka Village, Near Anupam Restaurant, New Delhi. On enquiry, the accused admitted that he was carrying six packets containing about 7 KG of heroin in his above black zipper bag.

3. It is also alleged that a crowd gathered at the spot and PCR van was called to control and to disperse the mob. The complainant/IO - Devender Singh also served a notice U/s 50 of the NDPS Act Ex. PW9/A upon the accused and the accused replied in writing on the said notice itself that he did not require the

presence of any Gazetted Officer or a Magistrate of DRI and his search and the search of his bag can be conducted by any officer of DRI. He also requested DRI Officers that his search may not be carried out at the above crowded place and the same may be taken in the DRI Office. As the mob still had not dispersed and the above place was not considered safe for carrying out the detailed search and other proceedings, the accused was taken by the DRI Officers to their office, alongwith the above black zipper bag. In the personal search of the accused conducted there, one wrist watch of Kawa make, one Indian 50 rupee note, one yellow metallic ring and a paper slip bearing telephone call details dated 22.09.2005 pertaining to phone numbers 094173840608, 09417384060 and 01884265273 was recovered. The above black zipper bag of the accused was having a stitched sticker of 'TM-ROW-JEANS' written on it and in the search of the above bag, six packets were found therein which were wrapped in brown adhesive tapes. On removing these brown tapes and on further examination, the above packets were further found to contain a transparent polythene packet each, which were heat sealed and the above packets were marked from A to F for the purposes of identification. On cutting open, the said polythene packets were further found to contain light brown powder/granules and a pinch of the said powder/granules from all the packets was tested with the help of a UNO Field Drug Test Kit and the same gave positive result for heroin. The gross weight of the above six packets was found to be 7.094 KG and the net weight of the contraband substance contained therein to be 7.006 KG, as mentioned in detail in Ex.PW9/C to the panchnama Ex. PW9/B drawn at the spot. The complainant/IO seized the above contraband substance and its packing material and the above bag etc for violation of the provisions of the NDPS Act. He also drew three representative samples of 5 gms each from the contraband substance of the above packets and the samples were correspondingly marked A1-A3 to F1-F3. The above samples were kept in separate transparent polythene pouches and the same were stapled and were further kept in separate paper envelopes sealed with the DRI seal over a paper slip pasted on each of the envelopes which were signed by the accused, the complainant/IO as well as the panch witnesses. The remaining contraband substance of the above packets was put back in the same polythenes and these polythenes were further put in separate paper envelopes, which were also similarly

sealed and signed by the above signatories over similar paper slips pasted thereon. The packing material, i.e. brown adhesive tapes were separately sealed in an envelope in the similar manner and then these sealed packets of the remaining case property and all the packing material, alongwith the above black zipper bag, were further put in a steel trunk and the same was locked, wrapped and stitched in a white cloth and then sealed in the similar manner. The IO/complainant also prepared a site plan Ex. PW9/D of the place of the interception of the accused, a detailed panchnama Ex. PW9/C regarding the above proceedings and also the test memos in triplicate, including the test memos Ex. PW9/H & PW9/J to N. The facsimile of the above DRI seal was also affixed on the above panchnama and test memos.

4. It is further alleged that in pursuance to the summons dated 23.09.2005 Ex. PW9/E served upon the accused, the accused tendered his voluntary statement dated 23.09.2005 itself Ex. PW9/F U/s 67 of the NDPS Act wherein, apart from disclosing his personal and family details, he admitted his apprehension by the DRI Officers from the above said place and in the above said manner and the recovery of the above contraband substance from the above black zipper bag carried by him and also the subsequent proceedings conducted with regard to the same in the DRI office. However, he refused to disclose anything or to give any statement with regard to the person to whom the above seized heroin was to be delivered or its further use or consumption etc. Since the accused appeared to have committed an offence punishable U/s 21 of the NDPS Act, he was arrested in this case vide arrest-cum-jamatlashi memo Ex. PW9/G and after his medical examination vide MLC Mark B, he was produced in the court and remanded to Judicial Custody. The intimations regarding his arrest were subsequently given to the Ministry of External Affairs and the High Commission of Nigeria vide letters Ex. PW10/A and PW10/B by PW10 Sh Amitesh Bharat Singh. The complainant/IO also submitted one report U/s 57 of the NDPS Act Ex. PW3/A to his Senior Officer Sh N. D. Azad/PW3. The six sealed sample parcels of this case were sent for deposit with CRCL, alongwith duplicate test memos and forwarding letter Ex. PW3/B, on 23.09.2005 by PW3 Sh N. D. Azad in intact condition and the sealed parcels of the case property were also deposited by the complainant/IO himself in the Valuable Godown of the New Customs House on the same day, i.e.

23.09.2005.

5. It is further alleged that the above local address of the accused in Delhi was not found to be existing near Anupam Restaurant but one household bearing the same number was located at some distance of the said restaurant and the wife of its owner was enquired and she disclosed that no foreign national by the name of Rapheal ever lived in their above premises. It is also on record that in his above statement Ex. PW9/F, the accused disclosed that his mobile number is 9899875764 and some enquiries were also conducted regarding the ownership of the above SIM/number and it was found that the said SIM was registered in the name of one Sh Ram Murti Joshi, a resident of Laxmi Nagar, Delhi and the statement U/s 67 of the NDPS Act of the above person was also recorded and it was disclosed by him that he never subscribed to the above SIM and he did not know any Nigerian National by the name of Rapheal nor did any such person ever lived in his premises. Some enquiries were also conducted regarding the above land-line number 01884265273 and the mobile numbers 094173840608 and 09417384060 shown in the above paper slip found in possession of the accused and it was found that the above land-line number of BSNL was installed in the name of one Gogna Balraj Kamal, a resident of District Hoshiyar Pur, Punjab and the above mobile number 09417384060 was in the name of Sh Jaswant Rai, also a resident of Hoshiyar Pur, Punjab and it was further revealed that the SIM containing the above mobile number was given for use by Sh Jaswant Rai to one Sh Vikas Gogna, who was his friend and the son of the above Sh Gogna Balraj Kamal in whose name the above landline number was found installed. However, in their statements made U/s 67 of the NDPS Act, none of the above persons claimed or was found known to accused - Rapheal. The accused is also alleged to have subsequently retracted his above statement U/s 67 of the NDPS Act vide his retraction application filed in the Court in October, 2005. In the CRCL test report Ex. AD4 to Ex. AD9, the above six samples were subsequently found to contain diacetylmorphine (heroin) and ultimately a complaint was filed against the accused for commission of the offence punishable U/s 21 of the NDPS Act.

6. A total of 18 witnesses were examined by the prosecution - DRI in order to substantiate its case. Six reports of the samples were tendered in evidence under

Section 292 Cr,PC. The letters / documents Ex.PW10/F2, Ex.PW3/E1 and Ex.PW3/E2 and statement under Section 67 of NDPS Act of witnesses Jaswant Rai, Davender and Balraj regarding the telephone / mobile numbers were admitted by counsel for the appellant/accused who had given his no objection for considering the documents and the statement during evidence. All the incriminating evidence was put to the accused by recording his statement under Section 313 Cr.PC wherein he denied the case of prosecution and claimed himself to be innocent and that he has been falsely implicated in this case being a Nigerian national after having been picked up from his above house in Munirka. He denied the recovery of any contraband substance from his possession. He has also submitted that his above statement U/s 67 of the NDPS Act was not made by him voluntarily and the same was recorded under coercion, pressure and after giving beatings to him and, therefore, he retracted the same subsequently. He has further claimed that the case property was tampered with. Vide judgment dated 09.05.2013, the appellant was convicted for offence punishable under Section 21 (c) of NDPS Act and vide order on sentence dated 15.05.2013, he was sentenced to undergo rigorous imprisonment for a period of ten years and fine of Rs.1 lac; in default of payment of fine, he was to undergo simple imprisonment for a period of six months. He was also granted the benefit of Section 428 Cr.P.C.

7. Feeling aggrieved from the conviction and sentence awarded to him, the appellant is before this Court by way of this appeal.

8. The learned counsel for the appellant, who has also filed written synopsis on his behalf, assailed the conviction of the appellant primarily on the following grounds: (i) Despite the fact that two panch witnesses, namely, Santosh Kumar and Ravi Kumar were allegedly joined at the time of recovery, none of these witnesses have been examined and thus non-joining of public witnesses throws doubt upon the prosecution case. (ii) Recovery of contraband is highly doubtful. (iii) Tampering with the case property cannot be ruled out. (iv) Statement of accused/appellant under Section 67 of the NDPS Act cannot be relied upon as it was not a voluntary statement which was subsequently retracted. (v) 9. The investigation is unfair, biased and tainted. Learned counsel for the appellant urged that the two panch witnesses, who are stated to have joined investigation at the time of alleged

recovery, namely, Santosh Kumar and Ravi Kumar, have not been examined which is a serious lacuna and renders the entire proceedings doubtful. Moreover, no effort was made on behalf of the respondent - DRI to join any public person from the area from where the appellant/accused was alleged to have been arrested. Reliance was placed on Ritesh Chakaravorti vs. State of M.P., (2006) 12 SCC321 and Ratan Lal vs. State, 1987 (2) Crimes 29.

10. As regards joining of two panch witnesses at the time of recovery, it has come in the statement of PW2 - Mr K.K. Dhasmana that he was informed by PW9 - Mr Devender Singh, the Investigating Officer of the case, that a team of DRI officials, along with two independent witnesses is ready. PW9 - Devender Singh also deposed that two public witnesses were called by him from the nearby area of CGO Complex, Lodhi Road, New Delhi and they were briefed by the intelligence. PW13 - Mr P.S. Gulati also states that a team of DRI officers, included two public witnesses who were called by Devender Singh. In view of the consistent testimony of these witnesses, there is no doubt that two public persons were joined in the raiding party which finds further corroboration from various documents viz. panchnama Ex.PW9/B, statement under Section 67 of NDPS Act of the appellant/accused Ex.PW9/F, arrest memo of accused Ex.PW9/G, his personal search memo Ex. PW9/G, which bear their signatures.

11. However, both these witnesses could not be examined by prosecution as their summons were received back unserved with the report that they were not available at the given address as such they had to be dropped by prosecution. The joining of these two public witnesses, as stated above, stands proved from the corroborative testimony of all the prosecution witnesses, coupled with the contemporaneous documents prepared at the spot. If the public witnesses did not disclose their correct address to the DRI officials, no fault can be found with DRI for not producing them in the Court. Substantially similar plea was taken in Sumit Tomar vs. The State of Punjab, (2013) 1 SCC395 which was also a case under Narcotic Drugs and Psychotropic Substances Act, 1985 where one Kaur Singh was joined by the prosecution, but was not examined. It was held by the Honble Supreme Court that signatures of Kaur Singh appended on all memos show that he was present at the time of recovery. It was further held that it was true that the

prosecution could have examined him but it was the stand of prosecution that in spite of necessary steps taken by issuing summons, he did not appear and for that reason prosecution case cannot be thrown out. If the statements of police officials are reliable and no animosity is established against them by the accused then the conviction based on their statements cannot be found faulted with.

12. Sucha Singh @ Kala vs. State of Punjab, 2015 SCC Online P&H15 again was a case under Narcotic Drugs and Psychotropic Substances Act, 1985, where the independent witness was given up as having been won-over by the accused. Similar plea was taken that on the uncorroborated statements of official witnesses, conviction cannot be based. Repelling the contentions, it was observed by Punjab and Haryana High Court that rule of prudence demands that there should be some corroboration through independent source of the statements of the official witnesses, but if the independent witness though joined by the prosecution, had been given up as having been won over by the accused, that would not be fatal for the prosecution case and the conviction can well be based on the testimony of official witnesses if the same inspire confidence in the mind of the Court regarding guilt of accused. The testimony of official witnesses are at par with the testimony of the non-official witnesses.

13. Again Brijesh Kumar Gupta vs. Narcotics Control Bureau 2014 CrI. L.J.

4203, was a case under Narcotic Drug and Psychotropic Substances Act, where two public witnesses were joined in the proceedings, but could not be produced since it was reported that no such person was residing at the given address. Similar plea was taken that non-examination of independent witness is fatal. Repelling the contentions, it was held that 13...If the public witnesses chose not to disclose their correct address to the NCB officials, NCB cannot be faulted for not producing them in the Court. It is quite possible that though the aforesaid witnesses did agree to join the proceedings on being persuaded by NCB officials, they gave wrong address to NCB officials so that they do not have to visit the Court for the purpose of giving evidence during trial. The other possibility in this regard is that the witnesses had left the place where they were residing at the time of seizure of the drug, without conveying their fresh address to NCB. ...

Presuming, however, that no public witness was joined before seizing drug from the appellant, that by itself cannot be a good ground to reject the testimony of NCB officials, who, on receipt of an information, which was duly reduced in writing and brought to the notice of the superior officer, went to the spot and apprehended the appellant, on his being identified by the informer and seized the narcotic drug from him. The appellant does not claim any previous enmity or ill-will between him and the NCB officials. Therefore, they had no reason to depose falsely against him and implicate him in a false case of recovery of narcotic drugs.

Under the circumstances, merely because the panch witnesses could not be produced in the witness box on account of their non-availability at the given address, prosecution case cannot be thrown out.

14. In Ritesh Chakravarti (supra) relied upon by learned counsel for the appellant, the appellant was acquitted because of the reasons that the Inspector, Central Bureau of Narcotics, who had received the information was not examined, similarly, Inspector who was incharge of the office of Superintendent of Police of the Bureau was not examined; the two search witnesses of the search were declared hostile and the prosecution case rested on the testimony of one Sub Inspector alone, in those circumstances, the appellant was granted benefit of doubt and was acquitted. Similarly in Ratan Lal (supra), non-involvement of the public witnesses was not the only ground for acquittal of accused/appellant, but there was non-compliance of provisions of Section 57 of the NDPS Act and, therefore, the accused was acquitted. As such both these judgments relied upon by the counsel for the appellant does not help the appellant.

15. It is further submitted by learned counsel for the appellant that the recovery of contraband from the possession of the appellant is highly doubtful inasmuch as in six CRCL reports, the date and place of seizure has been mentioned earlier as Hotel Solitare which has been scored off and in its place the place of arrest is mentioned as Hotel Shipra, Shakar Pur, Delhi. This shows that the respondent - DRI was not aware about the exact place of incident from where the appellant/accused was alleged to have been apprehended. None of the proceedings were conducted at the spot. It is alleged by the respondent that the

appellant himself had requested officials of DRI to conduct proceedings at the office of DRI, however, the appellant himself is a foreign national and, therefore, was not knowing about the office of DRI and hence it is a manipulated statement given at the behest of the respondent. Moreover, according to the respondent - DRI, even PCR had reached the spot and, therefore, nothing stopped them from conducting the proceedings at the spot itself or they could have gone to nearby Police Station. This shows that the investigation has been manipulated and fabricated later on. This submission is again devoid of any merit. PW2 - Sh K K Dhasmana, Senior Intelligence Officer and PW13 - Mr P.S. Gulati were members of the raiding party and all these witnesses have deposed regarding their arrival at bus stop, opposite Hotel Shipra, Shakarpur, Delhi pursuant to the secret information alongwith two panch witnesses. They have further deposed that they saw the accused at around 9.15 pm carrying a black colour bag with him and approaching towards the bus stand and he tried to escape from the spot but was apprehended. Thereafter, he was served with a notice under section 50 of the NDPS Act Ex.PW9A apprising him of his right to be searched before a Magistrate or a Gazetted officer. They have also deposed that at the time of apprehension of accused, a mob had gathered at the spot which had to be dispersed by the PCR officials, who was called at the spot by making a call at 100 number. During the course of inquiry conducted at the spot, accused disclosed that he was carrying six packets containing 7 kg of heroin in his bag and, therefore, since it was not considered to be safe for conducting further proceedings due to gathering of mob and accused also requested so, therefore, he was taken to the office of DRI and subsequent proceedings were conducted there. As regards, the submissions that there are manipulations in the test memo, a perusal of the same goes to show that PW9 has initialled in column no.7 of the test memo as such there is no question of manipulation in the test memo. Moreover, no suggestion to this effect was given to the witness. Further apprehension of accused/appellant from the bus stand has been even admitted by him in his statement under Section 67 of the NDPS Act. The mere fact that instead of conducting proceedings at the spot, it was done in the office of DRI, the same does not in any manner reflect that the proceedings were in any way manipulated or fabricated later on.

16. It is also submitted that there was tampering with the case property inasmuch as according to PW7 - Sanjay Kumar, seal of DRI was given to PW9 - Davender Singh, Investigating Officer of the case, but according to him he himself had not given the seal to the Investigating Officer but only recorded an entry to this effect. It is not clear as to who had given seal to Investigating Officer. Furthermore, Davender Singh has deposed that he had handed over seal to PW3 but PW3 is silent as to whether he had received any seal from the Investigating Officer. Moreover, PW3 has deposed that he has sent the sample parcel to CRCL through Gopal Singh on 23.09.2005, however, Gopal Singh has not been examined and, therefore, an important link is missing in the entire process as such tampering of the case property cannot be ruled out. Moreover, seal after use was not handed over to any independent witness, which confirms the fact that no independent witness was joined.

17. Regarding safe custody and the sample parcel being intact, from the testimony of PW3, PW6, PW9 and PW13, it is proved that the sample parcels were sealed at the time of panch proceedings conducted in the intervening night of 22/23.09.2005 in the office of DRI. PW3 - Sh N. D. Azad has deposed that he had authorized PW18 - Sh Bhopal Singh, Havildar (not Gopal Singh) to deposit the sample parcel with CRCL vide authority letter Ex.PW3/B, which is duly signed by him and proved on record. Another letter requesting CRCL to examine the samples and to give report in due course was written by PW13 - Mr P. S. Gulati and the same is duly proved as Ex.PW13/A. PW3 - Mr N. D. Azad has also stated that the sample parcels were handed over to Bhopal Singh in his presence by Davender Singh. PW18 - Mr Bhopal Singh, Havildar has deposed that on 23.09.2005, he had carried the above parcels, alongwith test memo, in duplicate, and the forwarding letter Ex.PW3/B to CRCL and deposited the same with the office of CRCL against acknowledgment Ex.PW5/A issued in this regard. He further deposed that all the samples taken by him to CRCL were sealed and in intact condition and same were received by the officers of CRCL after verifying the intact condition of the seals. PW5 Mr - S. K. Mittal, Assistant Chemical Examiner of CRCL has corroborated the testimony of PW18 regarding deposit of sealed sample parcels with him alongwith test memo and the forwarding letter in intact condition. He further deposed that a total of six sealed parcels were brought for depositing by Hawaldar Bhopal Singh

of DRI and the impression of DRI seals affixed on the sample parcels were intact and seals affixed on the sample parcels were tallying with the impression seals affixed on the said parcels. Thus, it is clear that the sample parcels were sent to CFCL on the same day on which the panchnama proceedings were conducted i.e. on 23.09.2005. That being so, there was hardly any occasion for keeping the sample seals with any other person or authority in safe custody. Moreover, no suggestion was given to PW5 that the seals affixed on the sample parcels were not in intact condition at the time of their receipt in CRCL office or the same were found tampered with at that time. The envelopes containing the remnants of the samples tested in CRCL and the second set of samples were found to be in intact condition when the same were produced in the court for identification by the witnesses during trial. When the chemical examiner examined the samples and gave his report Ex.AD4 to AD9, it was mentioned that the samples were in intact condition when the testing was commenced by the chemical examiner. According to this witness, the seals were also bearing the signatures not only of the officers of DRI but also of the accused and the independent witnesses. Under the circumstances, there was no evidence of tampering of sample parcels at any stage.

18. Even regarding the parcels of the remaining case property, the oral as well as documentary evidence ruled out the possibility of tampering with the case property. The parcels of the case property were deposited in the valuable godown by PW9 - Mr Devender Singh, the Investigating Officer of the case, on the same day. The inventory / deposit memo regarding deposit of the case property was duly proved as Ex.PW3/C which memo was countersigned by PW3 - Mr N. D. Azad. The sealed parcels of the case property were deposited by PW9 in intact condition with PW6 - Mr R. S. Kashyap in charge of valuable godown. The mere fact that the valuable godown register regarding deposit of the case property is not produced, is not sufficient to discard the testimony of the prosecution witnesses and no inference of tampering with the case property can be drawn.

19. It is the submission of learned counsel for the appellant that statement of accused recorded under Section 67 of NDPS Act is not voluntary statement since the same has been retracted by him. However, the averments made in the

statement reflects that the same has been dictated to the accused as many words like panchnama as mentioned in the statement, cannot be said to be in the language of accused. Further, the accused has not told anything about the source or as to whom the said contraband was to be delivered. No police remand was taken by DRI officials to further investigate and to find out the source of contraband and also to find out the recipient of the contraband. This lacklustre attitude of DRI confirms the fact that this contraband in fact had been planted on the accused, who had no knowledge about its source or to whom it was to be given. Moreover, no notice was recovered from the jamatalashi of accused.

20. On the other hand, learned counsel for the respondent - DRI submits that accused has tendered his voluntary statement under Section 67 of the NDPS Act wherein he has admitted his involvement in the offence. His statement is admissible in evidence and conviction can be based only on the basis of statement tendered under Section 67 of the NDPS Act. However, in the instant case, besides statement of accused under Section 67 of NDPS Act, there is also the factum of recovery, seizure, panchnama, signed by accused. The witnesses had no reason to falsely implicate the accused in this case as they have no animosity or grudge against him. As regards the retraction filed subsequently before the Court, it is submitted that the same is a waste piece of paper as the same was filed subsequently on the basis of legal advice which is not in the hand of accused and is not even signed by him. Mere retraction is of no consequence. The accused has to establish by way of evidence that he was forced to make the said statement.

21. It is trite that a statement under Section 67 of the NDPS Act is admissible in evidence and can be considered by the Court against the accused. It is also settled law that if the same is found to be made voluntarily, then the same can even be made the sole basis of conviction of accused. However, if the same is subsequently retracted by the accused then such a statement cannot be made the sole basis of conviction of accused and independent corroboration is required. A perusal of statement under Section 67 of the NDPS Act Ex.PW9/F of the accused reveals that it has been written by the appellant / accused himself in his own handwriting and this statement not only contains personal and family details of the appellant/accused but also there is an admission regarding his apprehension from

the aforesaid place with the bag containing the contraband substance and sealing etc. conducted in regard to the same. The personal details, as disclosed in the statement, were within the knowledge of the accused and there is no challenge to the personal details as disclosed in the statement. Furthermore, the appellant/accused had closed his statement at his own will while saying that he does not want to say anything further. Besides personal details, he has also disclosed regarding some raid being conducted by CBI in his hotel and his confinement in jail in a case under Section 420 IPC, which fact was verified during investigation vide reply letter Ex.PW10/F1 received from the SP, CBI, which was written in response to the letter Ex.PW10/F of DRI that the accused was arrested by the CBI in Case No.RC S19 2002 E0001 and even his passport was found seized in that case, as disclosed by the appellant/accused in his statement and the said case was still pending. This fact proves the voluntariness of the statement of the appellant/accused as the same could have never been in the knowledge of DRI officials. As regards the submissions that the words like panchnama etc. find mentioned in the statement, it has come in the statement of the Investigating Officer that pursuant to some of the questions put by him to the appellant/accused, answers were written by him in narrative form. That being so, the word panchnama etc. must have been put by the Investigating Officer during the questions which finds mention in the statement, but that does not show that the statement was the result of dictation by the Investigating Officer of the case.

22. As far as the retraction of the appellant/accused is concerned, the same reflects that it is neither written in the hand of accused nor is signed by him as the writing in the retraction statement is entirely different from the writing of his admitted statement Ex.PW9/F. Moreover, it is simply mentioned in the retraction application that he was forced by the DRI officials to sign on many blank papers under torture and beatings and there is no averment that he was made to write any such statement by putting force or by giving beatings. Moreover, the effect of retraction of confessional statement at best is that conviction should not be based only on the basis of confessional statement. However, in the instant case, besides the confessional statement of the appellant, the case stood established from the testimony of DRI official. The appellant/accused is a foreign national. No animosity has been alleged against any of the officials for which reason such a heavy

quantity of contraband would be planted upon him.

23. For the reasons stated herein above, I find no ground for interference in conviction of the appellant, which is accordingly confirmed.

24. The sentence awarded to the appellant being the minimum sentence prescribed under Section 21(c) of the NDPS Act, there is no scope of reduction of the sentence. However, the default sentence on account of nonpayment of fine is modified / reduced to simple imprisonment for three months as against six months, as awarded by the learned Trial Court. The appeal stands disposed off accordingly. The pending application also stand disposed of. Trial Court record be sent back immediately along with a copy of this judgment. A copy of this judgment be also sent to Jail Superintendent for intimation to the appellant. (SUNITA GUPTA) JUDGE MAY27 2015 rd

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