

**State Vs. Manna @ Maina and anr**

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**SooperKanoon Citation :** [sooperkanoon.com/924641](http://sooperkanoon.com/924641)

**Court :** Delhi

**Decided On :** Jan-17-2012

**Appellant :** State

**Respondent :** Manna @ Maina and anr

**Judgement :**

§~3 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 526/2011 %  
Judgment delivered on: 17th January, 2012 STATE ..... Petitioner Through : Ms. Rajdipa, APP versus MANNA @ MAINA and ANR ..... Respondent Through : None. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J. (Oral) Crl. M. A. 17452/2011 (Delay) For the reasons stated in the application, the delay in filing the petition is condoned. The application is disposed of. CRL.L.P. 526/2011.

1. By the instant petition, the State has assailed the impugned judgment dated 04.07.2011 whereby the learned Special Judge, NDPS has acquitted both the accused/respondents..

2. Briefly, the facts of the case are that on 07.08.2010, SI Ajay Karan Sharma of PS Mangol Puri was on routine patrolling duty along with other CRL.L.P. 526/2011  
*Page 1 of 6* police staff. At about 10:00 pm, they reached near L-Block, Water Tank, Mangol Puri and saw one Maruti Car bearing No. DL-3C-AW-5381 coming from R-Block, Mangol Puri side. Two persons i.e. the respondents No.

1. and 2 alighted down from the said Maruti Car. Both were carrying one plastic theili bag each. SI Ajay Karan identified the lady as BC (Bad Character) of the area. Moreover, they both were found behaving suspiciously noticing the police party. Both were stopped and the plastic theilis were checked which were found containing charas and ganja..

3. Notice under Section 50 of the NDPS Act was served upon respondents/accused, however, they refused to avail their legal rights. Quantity was checked and weighed. From the possession of respondent no.2, Rahul, 1 Kg 20 gram charas and 1 Kg 50 gram ganja was recovered. From respondent No.1, Manna @ Maina, 1 Kg 50 gram charas and 1 Kg ganja was recovered. Samples were drawn and requisite documentation was done at the spot. Since the possession was illicit and illegal, in these circumstances, both the respondents No.

1. and 2 were arrested and charge-sheeted..

4. The prosecution has examined, to prove its case, as many as 11 witnesses. Both the respondents in their respective statements recorded under Section 313 Cr.P.C. pleaded innocence and claimed that they had been falsely implicated. To prove their innocence, they examined DW1 Chander Shekhar in their defence..

5. The Trial Judge has recorded that PW1 Lady Constable Asha deposed that she left police post SGM Hospital for patrolling along with ASI Ramesh, SI Ajay Karan and Constable Nav Rang..

6. Learned Trial Judge was of the opinion that this seemed to be little bit astonishing and puzzling as normally, lady police officer does not join night CRL.L.P. 526/2011 Page 2 of 6 patrolling. In cross-examination of PW1, she categorically admitted that the lady police is called at the spot when some lady accused is there. She further supplemented that she was also called for the same. If her such version is to be believed, then she had been called later after arrest of accused person, whereas prosecution has come up with very specific case that she was member of the raiding party right from the beginning..

7. The Trial Judge has also recorded in its judgment that PW1 has failed to give requisite details in her examination-in-chief. She deposed nothing about the FSL form. She failed to make a whisper even regarding affixation of seal. She did not know the weight of contraband. She did not know whether the second Investigating Officer had also reached the spot. She did not choose to speak anything regarding preparation of documents in her examination-in-chief..

8. Even PW2 Constable Nav Rang has faltered on one material aspect of the case. He failed to mention that the seal was put by SI Ajay Karan on FSL form and therefore prosecution sought permission of the court to cross-examine the witness on this material aspect of the case and then he corrected himself and claimed that the seal of AKS was also put on FSL form. He also gave wrong number of the Maruti Car and therefore, he corrected himself in this regard when cross-examined by the prosecution..

9. According to him, the contraband was weighed at the spot and when accused Manna was to be searched for personal search, she was taken in a bathroom of a house situated near the spot and such personal search was taken by Lady constable Asha. This is again beyond belief as lady constable did not utter even a single word in this regard. Moreover, other two spot witnesses have outrightly denied that accused Manna was taken to any house for the purpose of personal search..

10. PW2 Constable did not know the sequence of preparation of documents. Learned Trial Judge came to the conclusion that even PW2 Constable Nav Rang was not present at the spot or else that the entire story was cooked up..

11. PW8, ASI Ramesh Kumar is stated to be a spot witness. He has given all the details in his examination-in-chief but with respect to shape and type of charas, he had faltered and had deposed that the charas recovered from both the accused was battinuma (shape of candle) and in pieces. As already noticed, the charas allegedly recovered from the possession of accused Manna/respondent no.1, was in the shape of slab. However, Constable Nav Rang PW2 has stated that the alleged recovery from the possession of accused Rahul, was in the shape of stick, but charas recovered from Manna was in the shape of slab..

12. Learned Trial Judge has also prepared a chart; two samples of 50 gram, were drawn and sent to FSL and the recovery made is as under: "22 It would be worthwhile to mention that as per case of prosecution, two samples of 50 grams each were drawn and were sent to FSL. Recovery is as under: Rahul Charas Ganja 1020 grams 1000 grams (Two samples of 50 grams drawn) (Two samples of 50 grams drawn) Balance charas 920 grams Balance 900 grams Manna 1050 grams 1000 grams (Two samples of 50 grams drawn) (Two samples of 50 grams drawn) Balance charas 950 grams Balance 900 grams CRL.L.P. 526/2011 *Page 4 of 6* 23 When the contraband was produced before the Court during trial, it was weighed with the help of electronic machine on 17.03.2011 and balance quantity, after drawing samples, was found different. These were recorded as under: (i) Quantity recovered from accused Rahul: (a) Charas 752.5 grams. (b) Ganja 877 grams. (ii) Quantity recovered from accused Manna: (a) Charas 953.2 grams. (b) Ganja 890.5 grams.

24. In the case of SURESH CHANDRA VS. STATE OF RAJASTHAN 2002(2) RCR (CRIMINAL) RAJASTHAN, weight of the contraband of the sample pullanda was 30 grams but when sample pullanda was sent to FSL, weight was found to be 50 grams and it was held that tampering with the sample cannot be ruled out. In the case of RAM PHAL VS. STATE OF HARYANA 1996 (2) RCR (CRL.) 522 P and H, variation in the weight of sample was found and it was observed that such variation spoke volumes against the prosecution and the only inference that could be drawn was that either the sample was tampered with or that the sample sent to the FSL was not the same which had been allegedly recovered from the accused. Reference be also made to Rajesh Jagdamba Avasthi v. State of Goa AIR 2005 SUPREME COURT 1389".

13. The quantity of the charas recovered from the possession of the accused Rahul/respondent No.2, which was found to be reduced by 170 grams. This is very huge variation which cannot be brush aside in a casual manner. Commercial quantity of charas is from 1 Kg onwards but the said weight noted during trial rather reflects that the quantity recovered from Rahul was not at all commercial. Even the spot witnesses were not corroborating to each with respect to shape of charas. There is found to be huge variation in weight as well. For want of

corroboration from neutral CRL.L.P. 526/2011 *Page 5 of 6* corner, it would be highly unsafe to brush aside the said anomaly and to hold the accused guilty..

14. I find no discrepancy in the impugned judgment passed by the leaned Trial Judge. He has discussed each and every witness. The witnesses - Ct.Asha/PW1, Constable Nav Rang/PW2 and ASI Ramesh Kumar/PW8 do not support the prosecution fully. The offence under NDPS Act is a very serious offence. Prosecution has to prove the case beyond reasonable doubt. In the instant case, the witnesses are full of doubt..

15. Keeping the above discussion and settled law into view, I am not inclined to interfere with the judgment passed by the Trial Judge..

16. Therefore, Crl.L.P. 526/2011 is dismissed..

17. No order as to costs. SURESH KAIT, J JANUARY 17, 2012 'raj' CRL.L.P. 526/2011 Page 6 of 6

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