



NCB Vs. Piotr Krzysztof Obrebski

**IN THE COURT OF SH. SUDESH KUMAR II : SPECIAL JUDGE NDPS:
PATIALA HOUSE COURTS: NEW DELHI**

SC No. 8426/2016
ID No. 02403R0136582014

Narcotics Control Bureau
Through: Shri Sanjay Mehta
Intelligence Officer,
Narcotics Control Bureau, New Delhi

Versus

Piotr Krzysztof Obrebski
S/o Tadeusz Obrebski
R/O Glogowska 71/7
Poznan, Poland

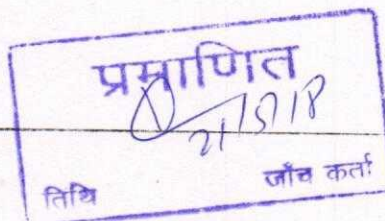
Date of Institution : 21.08.2014
Judgment reserved on : 24.04.2018
Date of pronouncement : 28.04.2018

JUDGMENT

1. The Narcotics Control Bureau (herein after referred to as NCB) through its Intelligence officer (IO) Sh. Sanjay Mehta has filed the present complaint against the aforementioned accused u/s 20, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act (herein after referred to as NDPS Act).
2. Briefly stated, the facts that can be culled out from the assertions made in the complaint and the documents filed therewith are as follows :
 - (a) On 23/2/2014 Sh. Sanjay Mehta, Intelligence Officer, received an information from Sonauli Checkpost that one foreigner namely Piotr whose LOC was opened through NCB on 15/12/2006 was trying to go to Nepal has been stopped.

SC No. 8426/16

Page No. 1 of 24





NCB Vs. Piotr Krzysztof Obrebski

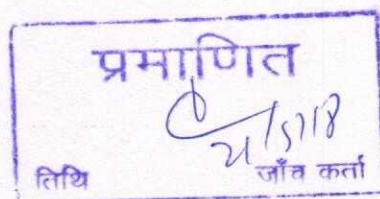
(b) Immediately after receiving the said information, Sh. Sanjay Mehta, IO came to the office and checked the concerned file and after checking the same, it was observed that the said foreigner is a Polish national and his complete name is Piotr Krzysztof Obrebski and his LOC was opened in connection to the seizure of 8.5 kg. of hashish from IGI airport on 10/12/2006 and his name has been mentioned by the accused Lee Ah Keow who was the accused in that case.

(c) Sh. Sanjay Mehta, IO discussed the said information with the senior officials of the NCB DZU and it was decided that since the distance between Delhi and Sanoli is quite long therefore a blank summon u/s 67 of the NDPS Act was sent through FAX to NCB, Lucknow Zonal Unit to be served upon accused Piotr Krzysztof Obrebski at Sanoli Border.

(d) Accordingly accused Piotr was served summons through Lucknow Zonal Unit and directed to appear forthwith at NCB DZU and in pursuance to the said summons, accused voluntarily accompanied the officials of NCB, Lucknow Zonal Unit to Delhi on the intervening night of 26/27 February, 2014 and gave his voluntary statement stating therein that he knew accused Lee Ah Keow and he arranged and provided all the travelling tickets to accused Lee Ah Keow for drug trafficking. He also admitted that he had sent drugs 3-4 times from India to other countries.

(e) During investigation it was also revealed that accused Piotr was arrested in Singapore and was in prison for four years from March, 2007 to March, 2011 in connection with trafficking of cannabis.

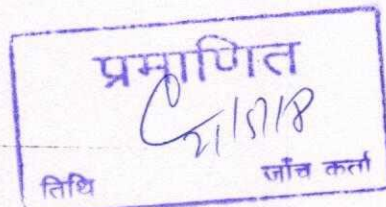
(f) Report under Section 57 NDPS Act with respect to the arrest of the accused was submitted by IO to the Superintendent.





NCB Vs. Piotr Krzysztof Obrebski

- (g) During the course of investigation, statements of various witnesses were recorded and details of arrival and departure of accused Piotr was obtained and the present complaint was filed.
3. On the basis of the material on record, vide order dated 09.03.2015, charge was framed by my Ld. Predecessor against the accused u/s 20 (b) (ii) (C) r.w.s. 29 and also 23 r.w.s. 28 and 29 and 27A of the NDPS Act to which the accused pleaded not guilty and claimed trial.
 4. The prosecution in order to prove its case has examined 12 witnesses.
 5. **PW1 Sh. D.S. Mehar** has deposed before the court that he was not working in the hotel in the year 2005-2006 and has never seen the accused in this case. He also stated that he has never talked to any NCB officer of this case. He was declared hostile by Ld. SPP for the NCB and in his cross examination by Ld. SPP, he has admitted that he was working in Hotel Arihant, Karol Bagh as a receptionist and in the month of May 2014 an official from NCB came along with summon of Manager of the hotel. Since the manager was not available in the hotel at that time, the summon ExPW1/A was received by him.
 6. **PW2 Sh. Pushpender Singh Negi** is the manager of the hotel. He inter alia deposed that accused Obrebski checked in their hotel on 3/12/2006 at about 3:00 p.m. from Singapore. Initially he provided him room no. 106 in hotel Arihant, Karol Bagh where he was working as a Manager. Since there was some problem in the said room he was shifted to room no. 102. According to this witness on the same day in the evening at about 6:30 p.m. one of his friend named Shamsheer Bahadur came and started living in the same room. On 6/12/2006 one another friend of the accused namely Lee also checked in the said hotel who was Singapore national. He also shared the room no. 102 along

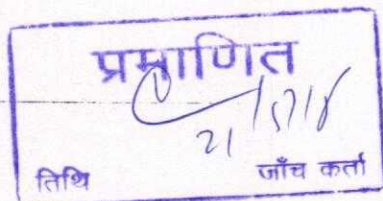




NCB Vs. Piotr Krzysztof Obrebski

with above two persons. Shamsher Bahadur checked out from the hotel at about 5:00 p.m. on 8/12/2006. During the intervening night of 9/10 December, 2006 at about 1:00 a.m. they both went to IGI airport New Delhi. Accused came back alone at about 4:30 a.m. and he was very afraid and immediately thereafter he checked out at about 5:00 a.m. On the same day at about 8:00-9:00 a.m. police came and took photostat copies of C form, bill book, entry register, copy of passport etc. He has proved his statement ExPW2/A and provided photocopy of bill book ExPW2/B, entry copies of the hotel pertaining to December, 2006 ExPW2/C, ExPW2/C1 and ExPW2/C2.

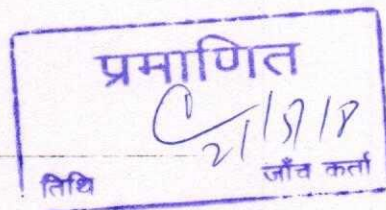
7. In his cross-examination by Ld. Defence counsel he admitted that the date written at point X on Ex.PW2/B is 10.12.2000 however voluntarily he stated that the guest arrived on 03.12.2006 as per the contents of the bill Ex.PW2/B and as such how it was possible that the date was 10.12.2000. He further admitted that the documents Ex.PW2/C in column no. 11a of entry no. 620 there is overwriting at point Y. where no. 106 was converted into 102. He admitted that the correction does not bear the signature of any official of the hotel. He further admitted that in column no. 7A of continuing entry no. 620 at point Z1 there is overwriting on the said date which has been changed to 06/Dec on the date earlier written thereon. He could not say whether any date was written below the overwriting date 06/Dec at point Z1. He further admitted that in his statement u/s 67 NDPS Act, he has never stated that there was some problem in the said room of the accused therefore he was shifted to room no. 102 from room no. 106 of the hotel. He also stated that he does not remember the exact problem in room no. 106 which made him to shift in room no. 102. He further stated that he was not on duty on the said date when the documents were taken by the officials and they had taken these documents





NCB Vs. Piotr Krzysztof Obrebski

- from one Devender Singh Gosain. He further admitted that no enquiry was made from him in the year 2006 by any of the agency till the year 2014.
8. **PW3 Sh. Bankey Ram, IO** has inter alia deposed that on 28/2/2014 he had written a letter ExPW3/A to CMO S.J. Hospital for conducting medical check up of the accused Piotr and was got medically examined. This witness has proved the medical report of the accused as Ex.PW3/B.
 9. **PW4 Sh. Jaiveer Singh**, Lab Assistant Chemical Examiner has inter alia deposed that the sample mark A1, test memo in duplicate and forwarding letter were deposited with Sh. R.P. Meena, ACE and on his instructions, he issued acknowledgment receipt regarding the same to Hawaldar Jagdish. Photocopy of the receipt has been exhibited as ExPW4/A.
 10. **PW5 Sh. Sanjay Mehta**, IO of the case has deposed more or less the assertions made in the charge sheet. He deposed that he had recorded the statement of accused u/s 67 of NDPS Act and proved the same as ExPW5/A. He further deposed that the accused was arrested vide memo ExPW5/B and that report u/s 57 of NDPS Act was submitted by him and proved the same as ExPW5/D. The summons issued by the IO to the witnesses and their statements u/s 67 of NDPS Act have also been proved by this witness. The case property and the samples were also produced before the court and were duly exhibited during the deposition of the aforementioned witness.
 11. **PW6 Inspector Prem Chand Khandhuri**, IO has inter alia deposed that in December, 2006 he was working as Intelligence Officer Malkhana Incharge in NCB, DZU, R.K. Puram and that in the present case, the entire case property and 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

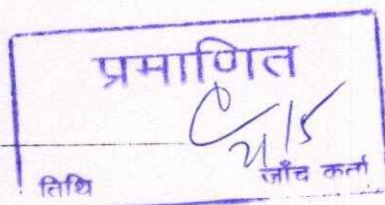




NCB Vs. Piotr Krzysztof Obrebski

that he had recorded the statement of Lee Ah Keow. This witness has further deposed that on 11/12/2016 sample mark A1 was sent to CRCL. This witness has proved the relevant page of the malkhana register containing the said entries as Ex.PW6/1.

12. **PW7 Sh. Akhilesh Kumar Mishra** was the IO of the case in which Lee Ah Keow was arrested. He has narrated the events of that case.
13. **PW8 Inspector Manoj Kumar** has deposed that he had recorded statement of accused Lee Ah Keow on the request of Sh. P.C. Khanduri, IO and has proved the certified copy of the said statement as ExPW6/2.
14. **PW9 Vikas Kumar, IO** has deposed that he had recorded the statement of accused Lee Ah Keow on the request of Sh. P.C. Khanduri, IO..
15. **PW10 Sh. Jai Kishan**, Superintendent has deposed that on 23/2/2014 he had received the information from control room that someone has been detained at Sanoli Boarder on which he informed IO Sanjay Mehta about the said detention.
16. **PW11 Sh. Ravi Shankar**, Assistant Section Officer, Bureau of Immigration has submitted that as per the directions of the court and the request letter sent by NCB DZU, LOC was issued against the accused by Ministry of Home Affairs and later on the same was closed/deleted as per the request of NCB. This witness has proved the copy of request dated 23.06.2014 for the deletion of LOC against the accused alongwith covering letter as Ex.PW11/1 (colly).
17. **PW12 Sh. Vijay Bahadur**, IO NCB, Lucknow has deposed that on receiving the summons u/s 67 NDPS Act issued from NCB Delhi to be served upon the accused who had been detained at Sonauli Border, he alongwith other officials had gone to Sonauli Border and served the summons upon the accused and had

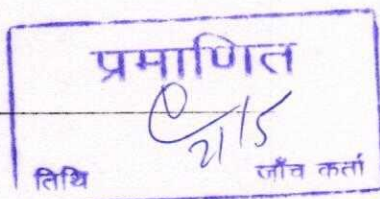




NCB Vs. Piotr Krzysztof Obrebski

brought him to NCB DZU and handed over him to Sanjay Mehta, IO NCB. This witness has proved the said summons as Ex.PW12/1.

18. After the conclusion of prosecution evidence, statement of accused u/s 313 Cr.PC was recorded in which the accused denied all the allegations raised against him and examined himself in his defence on an application filed u/s 315 Cr.PC.
19. In his statement u/s 315 Cr.PC, the accused has deposed that on 24.04.2014, while he was going to Nepal through Sonauli Border, he was stopped by some persons who made enquiries from him and after sometime told him about a drug case in which he was wanted. He further deposed that thereafter he was brought to Delhi where he was forced and tortured to write a dictated statement which he had retracted later on. Accused has further deposed that he does not know anything about the present case and he does not know any person by the name of 'Lee' and that he did not stay in hotel Arihant. He has further deposed that he was not convicted for possession of drug in Singapore or in India. Accused has proved his retraction statement as Ex.DW1/A. In his cross-examination he admitted that he has visited India many times and also in the year 2006. He could not remember whether he had arrived in India on 22.06.2006, 22.11.2006 and 03.12.2006. He denied that he had stayed in hotel Arihant on 03.12.2006 to 10.12.2006. He submitted that whenever he has travelled to India he has come on valid visa. He denied his signatures on hotel register Ex.PW2/C. He stated that he does not know Shyam Bahadur or Lee Ah Keow. He denied that he had arranged the tickets for Lee from Singapore when he had come to India. He denied that he has given a suitcase containing 8.5 kg of hashish to Lee for taking it to Copenhagen. He denied that the entire trip of Lee including his residence in India was financed by him. He submitted



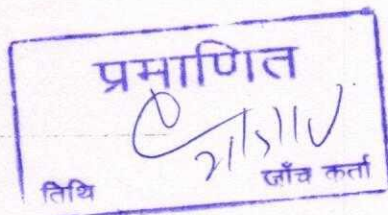


NCB Vs. Piotr Krzysztof Obrebski

that he was intercepted on 24.02.2014 and was brought to Delhi on 27.02.2014.

He denied that his statement Ex.PW5/A was made voluntarily.

20. Final arguments were heard on behalf of both the parties. Written synopsis were also filed on behalf of both the parties. Ld. SPP has vehemently contended that the accused was actively involved in dealing with illicit trafficking of narcotic drugs by engaging Lee Ah Keow for transport, concealment, import/export from India. He submitted that the hashish recovered from accused Lee was handed over to him by the accused Piotr and that he was financing accused Lee directly and indirectly for the aforesaid activities. That the IO has collected details of arrival and departure of accused from 01.01.2006 to 26.02.2014 and thereafter on the basis of documents only, the present complaint was filed against him. That the accused has also been charged u/s 27A NDPS Act for indulging in financing the activities of Lee who was found in possession of 8.5 kg of hashish on 10.12.2006 while attempting to export the same from New Delhi to Copenhagen. Prosecution has examined 12 witnesses to prove its case. It is submitted that the CRCL report dated 18.01.2007 already Ex.PW2/3 in SC No. N168/08 was admitted by the counsel for the accused and in view of his admission only the witnesses at serial no. 14, 16 and 18 were not examined. That the accused in his statement u/s 313 Cr.PC has himself admitted that he was detained at Sonauli border on the basis of issuance of LOC against him. In his statement u/s 313 Cr.PC, he stated that he came to India in the year 2006 however he did not tell the duration of his visit. He has deliberately concealed his stay in India from 03.12.2006 to 10.12.2006 despite having admitted that when he visited Delhi he stayed in a hotel. The accused has not specifically denied that the hotel register Ex.PW2/C at point X/DW1 does not bear his signature. He only stated that the same does not





NCB Vs. Piotr Krzysztof Obrebski

seem to be written by him. In regard to signatures at point Y/DW1 also he stated that they were not his. The accused has also not disclosed in his statement recorded u/s 313 Cr.PC as to in which hotel and at what place he stayed in 2006 when he visited Delhi. This clearly proves the case of the prosecution that he stayed in hotel Arihant from 03.12.2006 to 10.12.2006 and the record pertaining to the same i.e. the register Ex.PW2/C proves the same.

21. Ld. SPP has further contended that the accused admitted that the statement u/s 67 NDPS Act Ex.PW5/A was bearing his handwriting and signatures however he denied that the same was made voluntarily. The accused however has also admitted that he was taken to Safdarjung Hospital by the NCB officials before he was produced in the court after his arrest. It is contended by Ld. SPP that there are no injury marks in the MLC of accused already placed on record as Ex.PW3/B.

22. It is further contended that PW2 Pushpender Singh has identified the accused in his deposition in the court and also proved that the accused stayed along with Sam Bahadur and Lee and he also proved his statement given by him u/s 67 NDPS Act as ex.PW2/A. He proved the bill book as Ex.PW2/B and entries in the register of the hotel as Ex.PW2/C, PW2/C1 and PW2/C2 and the deposition of this witness corroborates the record of the hotel and the documents referred hereinabove. The accused has not been able to put any major contradictions in the deposition of PW5 Sanjay Mehta, PW6 P.C. Khanduri, PW7 Sh. Akhilesh Mishra, PW8 Manoj Kumar Aggarwal and PW9 Vikas Kumar and as such the prosecution has been able to prove by way of reliable and cogent evidence the recovery of 8.5 kg of hashish from the possession of Lee Ah Keow and that the accused Piotr has arranged the said contraband for export from India to Copenhagen and also harbouring and





NCB Vs. Piotr Krzysztof Obrebski

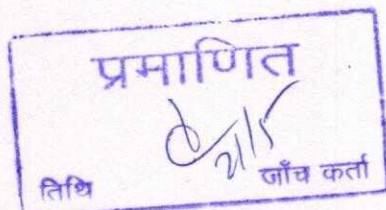
financing Lee Ah Keow for trafficking of narcotic drugs from India to abroad. That by virtue of documents and the depositions of witnesses the prosecution has been able to prove its case beyond reasonable doubt.

23. It has also been submitted that the plea raised on behalf of the accused that the prosecution cannot start on the basis of confessional statement of a co-accused has no basis. The judgments relied on behalf of accused **Haricharan Kurmi and Jogi Hajjam Vs. State of Bihar AIR 1964 SC 1184** and **Indra Dalal Vs. State of Haryana 2015 VII AD (SC) 156** and **NCB Vs. Aziz Ahmad Crl.L.P. 107/2007 dated 04.12.2009** were not applicable to the present case. Ld. SPP in this regard relied upon the judgment passed in **Mohd. Khalid Vs. State of Bengal JT 2002 (6) SC 486** and also on **State of Gujarat Vs. Mohd. Atik and Ors. AIR 1988 SC 1686** wherein it was observed that :

"7. When there is no statutory inhibition for using such confession on the premise that it was not recorded during the investigation of the particular offence which is under trial there is no need or reason for the Court to introduce a further fetter against the admissibility of the confessional statement. It often happens that a confessor would disclose very many acts and events including different facets of his involvement in the preparation attempt and commission of crimes including the acts of his co-participants therein. But to expel every other incriminating disclosures than those under investigation of a particular crime from the ambit of admissibility is not mandated by any provision of law.

8. We have, therefore, absolutely no doubt that a confession, if usable under Section 15 of the TADAA, would not become unusable merely because the case is different or the crime is different. If the confession covers that different crime in which that crime is under trial and it would then become admissible in the case."

SC No. 8426/16



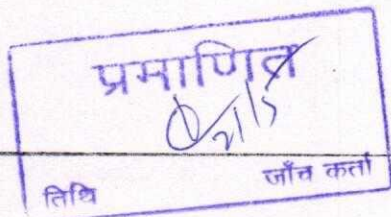
Page No. 10 of 24



NCB Vs. Piotr Krzysztof Obrebski

24. Ld. Defence counsel on the other hand has also contested the arguments advanced by Ld. SPP by filing written arguments. It has been contended that after the arrest of accused Lee in SC No. N168/08 and after his disclosure statement that it was accused Piotr who was his conspirator and who stayed with him in room no. 102 at Hotel Arihant at Karol Bagh, the NCB officers never took accused Lee to said hotel for pointing out the place of stay and accused Piotr was not arrayed as a co-accused in the complaint filed against Lee in the year 2006 in SC No. N168/08. The NCB has failed to explain as to why no investigation qua the accused about his stay in the said hotel alongwith accused Lee was conducted in the year 2006. It is further contended that neither any record from the hotel was seized nor any official of the hotel was examined as a witness.

25. It has been vehemently contended on behalf of defence counsel that on the perusal of the document bearing file no. 6/SIC/2006 (12)-V dated 15.12.2006 the document on the basis of which LOC of the applicant was got opened by NCB on the instance that the applicant was convicted in case bearing file no. VIII/62/DZU/06 which is the file number of the investigation pertaining to arrested accused Lee against whom separate complaint bearing SC No. N168/08 was filed before this court. It has been submitted that the LOC of the applicant was got opened by misrepresentation of facts as it is evident from the abovesaid document that the accused Piotr was neither arrested nor convicted in the said case in which accused Lee was arrested and prosecuted in the year 2006. That the opening of LOC on misguided facts clearly proves that the documents in the case have been manipulated so as to falsely implicate the accused. Accused Piotr was not even made a co-accused in the complaint filed against accused Lee bearing SC No. N168/08.





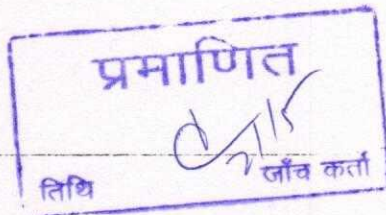
NCB Vs. Piotr Krzysztof Obrebski

26. It has been further contended that admittedly no contraband was recovered from the possession of accused Piotr or at his instance and the only evidence against the applicant to connect him with seized 8.5 kg of hashish which was recovered from luggage of accused Lee is retracted statement of accused Lee as well as the retracted statement of present accused Piotr u/s 67 NDPS Act. In this regard the Ld. Defence counsel has relied upon the observations made by Hon'ble Supreme Court in **Noor Aga Vs. Union of India 2008 (7)SC 409** as under:

"84. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place burden of proof in this behalf on the accused; but a bare perusal the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of accused on the prosecution is "beyond all reasonable doubt" but it is 'preponderance of probability' on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

85. With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt.

108. An inference that the appellant was subject to duress and coercion would appear from the fact that he is an Afghan National. He may know English but the use of expressions such



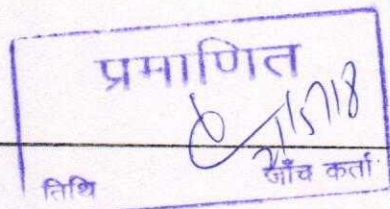


NCB Vs. Piotr Krzysztof Obrebski

as 'homogenous mixture', 'drug detection kit', 'independent witnesses' which evince a knowledge of technical terms derived from legal provisions, possibly could not be attributed to him. Possibility of fabrication of confession by the officer concerned, thus, cannot altogether be ruled out.

111. In Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras [(1999) 6 SCC 1], whereupon reliance has been placed by the High Court, this Court had used retracted confession as a corroborative piece of evidence and not as the evidence on the basis whereof alone, a judgment of conviction could be recorded."

27. He further contended that PW3 Pushpender, Manager of hotel Arihant has admitted in his cross-examination regarding the overwriting in entry no. 620 in hotel register wherein room no. 106 was converted into room no. 102 and further overwriting in column no. 7A, 7B and 8 of the said entry. It is also submitted that the invoice of the hotel is written as dated 10.12.00 which means the year 2000 and not. 2006. That the court has also observed the said fact of manipulation in hotel record in para no.4 of the order dated 28.02.2015. That from the abovesaid, it is clear that the hotel records were manipulated so as to falsely implicate the accused in the present case.
28. It has also been submitted that no call details showing any conversation between the present accused and accused Lee have been produced on record or relied upon to suggest any conspiracy between the two. That PW Sanjay Mehta deposed in the court that the applicant was convicted in Singapore whereas a clarification in this regard was placed by the NCB itself wherein it is reported by Singapore officials that the applicant was temporarily detained under Singapore law on 03.03.2007 and was repatriated on 24.03.2011. It was also reported that the said detention was not a part of trial proceedings or





NCB Vs. Piotr Krzysztof Obrebski

conviction by court of law. The accused hence has clean antecedents. It has been contended that the prosecution has failed to prove any conspiracy between the present accused and accused Lee beyond reasonable doubt.

29. Counsel for the accused has also relied upon observations made in **Haricharan Kurmi and Jogia Hajjam Vs. State of Bihar AIR 1964. SC 1184** and **Indra Dalal Vs. State of Haryana 2015 VII AD (SC) 156**. In Haricharan Kurmi's case, the hon'ble Supreme Court observed as under:

"Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S.30, the fact remains that it is not evidence as defined by S.3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt."

30. Ld. Defence counsel has also referred to **NCB Vs. Aziz Ahmed Crl.L.P.**

107/2007 of Hon'ble High Court of Delhi wherein para 15 has been referred





NCB Vs. Piotr Krzysztof Obrebski

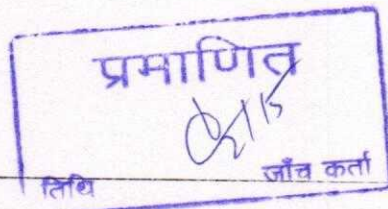
which provides as under:

"15. The Hon'ble Supreme Court in the case of UOI & Ors. Vs. Bal Mukund JT 2009(5) SC 45, has been pleased to observe as under:

19. The prosecution case principally hinges on the purported confessions made by the respondents. The learned Special Judge failed and/ or neglected to notice that the respondent No. 3 had retracted his confession at the earliest possible opportunity. He could have, therefore, been convicted only if independent corroboration thereof was available. Admittedly, no contraband was found from his possession. He was prosecuted for entering into a conspiracy in regard to commission of the offences under Section 8/18 of the Act with the respondent Nos. 1 and 2. Such conspiracy was not proved by the prosecution. No evidence whatsoever was brought on record in that behalf. The High Court, in our opinion, therefore, rightly accepted the contention of the said respondent, stating:

"12. As far as appellant Amritlal is concerned, he was apprehended only on the basis of the statement made by the appellants Bal Mukund and Basantlal. The only evidence available against him is his confessional statement recorded under Section 67 of the Act. M.R. Narvale (PW-7) has stated in his statement that statement of Amritlal Anjana Ex. P/24 was recorded by him. The contents of Ex. P/24 have not been duly proved by the prosecution. The so called confession has been retracted by the appellant Amritlal. He cannot be convicted only on the basis of Ex. P/24. Even the confessional statements of co-accused cannot form the basis of his conviction. His conviction is not based on the evidence and cannot be sustained."

22. No legal principle has been laid down therein. No reason has been assigned in support of the conclusions arrived at. If a statement made by an accused while





NCB Vs. Piotr Krzysztof Obrebski

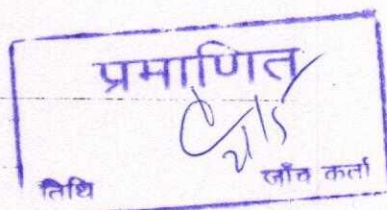
responding to a summons issued to him for obtaining information can be applied against a co-accused, Section 30 of the Evidence Act being not applicable, we have not been shown as to under which other provision thereof, such a confession would be admissible for making the statement of a co-accused relevant against another co-accused. If an accused makes a confession in terms of the provisions of the Code of Criminal Procedure or otherwise, his confession may be held to be admissible in evidence only in terms of Section 30 of the Evidence Act and not otherwise. If it is merely a statement before any authority, the maker may be bound thereby but not those who had been implicated therein. If such a legal principle can be culled out, the logical corollary thereof would be that the co-accused would be entitled to cross-examine the accused as such a statement made by him would be prejudicial to his interest."

31. I have heard the arguments at length and have also perused the entire record.

The present case against the accused Piotr finds its roots from case bearing SC No. N168/08 which was registered against one accused namely Lee Ah Keow. As per the facts of the said case, on 09.12.2006 Akhilesh Kumar Mishra, IO received an information that one person namely Lee Ah Keow was likely to depart for Copenhagen via IGI Airport on 10.12.2006 with huge quantity of hashish. On the basis of this information a team was constituted and accused Lee Ah Keow was intercepted and on checking of his baggage 8.5 Kg of hashish was recovered. Accused Lee in his voluntary statement u/s 67 NDPS Act disclosed that the accused Piotr (accused facing trial in the present case) arranged the said contraband and his journey to Copenhagen and also promised to pay him US\$ 2000-3000. On 15.12.2006 a Look Out Circular was opened against accused Piotr generated through NCB DZU, New Delhi. From the record, it is found that after the accused Lee was admitted to bail, he

SC No. 8426/16

Page No. 16 of 24





NCB Vs. Piotr Krzysztof Obrebski

absconded and was declared PO and the said file was consigned to record room.

32. Thereafter, on 23.02.2014 the present accused Piotr was detained at Sonauli Border, UP on the basis of the said LOC by the immigration authority and the information was sent to NCB and the investigation in the present case was started after his arrest.

33. Accused Lee in the said matter was arrested on 10.12.2006 on the allegation that 8.5 kg of hashish was recovered from his checked in baggage. In his statement recorded u/s 67 NDPS Act on 10.12.2006, he disclosed about the complicity of the present accused Piotr and stated that he was taking the drugs to Copenhagen on the instructions of accused Piotr and he was to get \$ 2000-3000 on delivery of the same in Copenhagen. It is also found from the record that on 21.12.2006 again a statement of accused Lee was recorded in which he stated that he was forced by accused Piotr to take drugs. This second statement of accused Lee in my considered view is not admissible in evidence as the same was recorded after his arrest. This statement being hit by section 25 of the Evidence Act is inadmissible in evidence. The said statement could have been admissible only against Lee and that also to the extent of recovery or discovery of any fact or material and not against the other accused. In regard to his first statement recorded on 10.12.2016 also, it can be said from the settled law that the same cannot be read against the present accused. The initial complaint bearing no. N168/08 was filed only against accused Lee. The present accused was not arrayed as an accused. It is also coming up that even no investigations in regard to the present accused were conducted at that time. In the present case SC No. 21/14 against accused Piotr also, the accused Lee has not been arrayed as a co-accused. Both the accused have never been tried



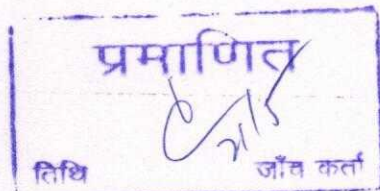


NCB Vs. Piotr Krzysztof Obrebski

together. Therefore the retracted statement of accused Lee in the other complaint cannot be relied or used against the present accused Piotr. Conspiracy is to do an illegal act by illegal means by two or more persons. Conspiracy cannot be hatched by a single person. In this regard, reliance can also be placed on observations made by the Hon'ble Supreme Court in **Suresh Budharamal Kalani Vs. State of Maharashtra (1998) 7 SCC 337** wherein the Hon'ble Supreme Court observed as under:

"6. Thus said, we may turn our attention to the confession made by Dr. Bansal and Jayawant Suryarao. Under Section 30 of the Evidence Act a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Since, admittedly Dr. Bansal has been discharged from the case and would not be facing trial with Kalani his confession cannot be used against Kalani. The impugned order shows that the Designated Court was fully aware of the above legal position but, surprisingly enough, it still decided to rely upon the confession on the specious ground that the prosecution was not in any way precluded from examining Dr. Bansal as a witness in the trial for establishing the facts disclosed in his confession. This again, was a perverse approach of the Designated Court while dealing with the question of framing charges. At that stage the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may, adduce in the trial, which would commence only after the charges are framed and the accused denies the charges. The Designated Court was, therefore not at all justified in taking into consideration the confessional statement of Dr. Bansal for framing charges against Kalani."

34. In the abovesaid judgment, the Hon'ble Supreme Court has clearly stated that u/s 30 of Evidence Act, the confession of an accused is admissible and relevant





NCB Vs. Piotr Krzysztof Obrebski

against a co-accused if both are jointly facing trial for the same offence.

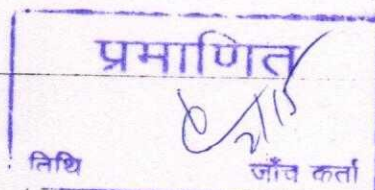
Section 30 of the Evidence Act provides as under:

'Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.'

35. Even in the Judgment which has been relied upon on behalf of the prosecution, **Mohd. Khalid Vs State of WB, JT 2002 (6) SC 486**, it was observed that for relying upon the statement of co accused u/s 30 of the Indian Evidence Act, the accused has to be tried jointly. The Hon'ble Supreme Court observed as under:

".....It is only when the other evidence tendered against the co-accused points to his guilt then the confession duly proved could be used against such co-accused if it appears to effect him as lending support or assurance to such other evidence. To attract the provisions of Section 30, it should for all purposes be a confession, that is a statement containing an admission of guilt and not merely a statement raising the inference with regard to such a guilt. The evidence of co-accused cannot be considered under Section 30 of the Evidence Act, where he was not tried jointly with the accused and where he did not make a statement incriminating himself along with the accused....."

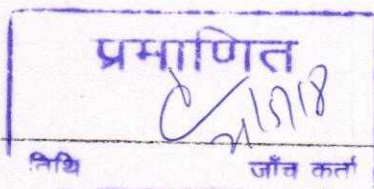
36. In the present case both the accused persons have never been tried jointly. In this regard, observations made by Hon'ble High Court of Delhi in **DRI Vs. Raj Kumar Mehta 2011(3) JCC (Narcotics) 156** are relevant. The observations made are as under:





NCB Vs. Piotr Krzysztof Obrebski

"16. Respondent Sheru Khan in Criminal Appeal No. 276/1998, has been charged for offence punishable under Section 21 of the Act for allegedly importing. There is no recovery from his possession or at his instance of any contraband. To prove the charge, the prosecution has relied on his statement recorded under Section 67 of the Act. No doubt, a statement under Section 67 of the Act would be admissible however, in the present case, the statement of Sheru Khan was recorded by Shri S.S. Jain in presence of PW-14 Jaḡan Nath Sharma, Jailor, while Sheru Khan was lodged in the jail at Jodhpur. Thus, this statement being hit by Section 25 of the Evidence Act is inadmissible in evidence. The prosecution is thus left with the statements of co-accused Raj Kumar Mehta and Sumer Khan recorded under Section 67 of the Act. Undoubtedly, a statement of a co-accused made to an officer, other than a police officer under Section 67 of the Act is admissible. However, how much value can be attached to such a statement is a matter of consideration. Whether a person can be convicted solely on the statement of the co-accused is an issue to be decided in the facts of the present case. No provision has been shown by the Ld. Counsel for the Appellant to demonstrate that the statement of co-accused is a substantive evidence and conviction can be based solely thereon. Learned counsel for the Appellant places reliance on Prabhu Lal v. The Assistant Director, Directorate of Revenue Intelligence, JT 2003 (Suppl.2) SC 459. However, the said decision did not relate to a criminal trial but to an adjudication proceedings where the standard required is preponderance of probabilities and not proof beyond reasonable doubt. The provision under which statement of a co-accused is admissible is Section 30 of the Evidence Act. The law in this regard is well-settled. A conviction cannot be based solely on the confessional statement of a co-accused because a statement of co-accused under Section 30 can be used only to lend assurance to other evidence against a co-accused, that is, it is one more circumstance in the basket of circumstances of the prosecution."





NCB Vs. Piotr Krzysztof Obrebski

37. From the abovesaid, it is clear that the statement of accused Lee in case complaint bearing no. N168/08 cannot be read against the present accused Piotr in the present case bearing no. SC No. 8426/2016. As far as the statement of the present accused Piotr u/s 67 of NDPS Act is concerned, it is settled law that even a retracted statement can also be relied upon if there is other evidence coming up on record to connect the accused with the offence. The same can be used alongwith the other evidence coming up on record against him.

38. In regard to the reliance of Ld. SPP on the observations made by Hon'ble Supreme Court in **State of Gujarat Vs. Mohd. Atik & Ors. AIR 1998 SC 1686** is concerned, in the same judgment in para no.6, hon'ble Supreme Court has observed as under:

"6. It is clear from the above section that a confessional statement recorded in accordance with the requirements contained in the Section becomes admissible in spite of the ban contained in Section 25 of the Evidence Act or Section 162 of the Code of Criminal Procedure. The requirements stipulated in Section 15(1) of the TADAA for admissibility of a confession made to a police officer are (1) The confession should have made to a police officer not lower in rank than a Superintendent of Police (2) it should have been recorded by said police officer (3) the trial should be against the maker of confession (4) such trial must be for an offence under TADAA or the Rules thereunder. If the above requirements are satisfied the confession becomes admissible in evidence and it is immaterial whether the confession was recorded in one particular case or in a different case."

39. It is provided in the judgment itself that the said observations were pertaining to an offence under TADAA or the rules thereunder. The observations made therein are hence not applicable in the facts of the present case.

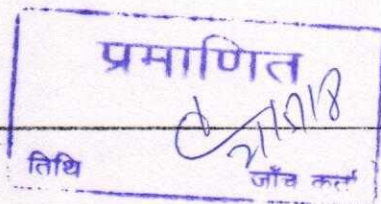




NCB Vs. Piotr Krzysztof Obrebski

40. In regard to the other evidence, admittedly in the present case there were a number of 'overwritings' and corrections in the entries in the hotel register wherein the alleged entries qua the present accused were made. Even PW2 Pushpender, manager in the said hotel had admitted in his cross-examination that there was overwriting in entry no. 620 of hotel register wherein room no. 106 was converted into room no. 102. There were further overwriting in column no. 7A, 7B and 8 of the said entry. Admittedly the invoice produced of the hotel was also dated as 10.12.00 which means the year 2000 and not 2006. Even my Ld. Predecessor in his order dated 28.02.2015 has also noted that there were certain cuttings and alterations in the records of the hotel. I have also seen the said entries. There are apparent corrections, cuttings/alterations in the entries which render them unreliable. Furthermore, it is also coming that in the year 2006, no investigations in regard to the complicity of accused Piotr were conducted in case SC No. N168/08.

41. It has also been contended by Ld. Counsel for accused that the LOC of the accused was got opened by misrepresentation of facts which is evident from the document bearing file no. 6/SIC/2006 (12)-V dated 15.12.2006, that the applicant was neither arrested nor convicted in case bearing no. VIII/62/DZU/06 wherein the accused Lee only was arrested and prosecuted in the year 2006. It has been contended by defence counsel that the LOC was got opened on misguided facts stating that the applicant was convicted in the abovesaid case. The said contention raised on behalf of the accused also seems to be correct as the document bearing file no. 6/SIC/2006 (12)-V dated 15.12.2006 produced on record does show that the LOC was got opened by mentioning that the applicant was got convicted in the said matter.



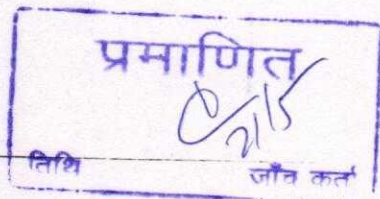


NCB Vs. Piotr Krzysztof Obrebski

42. Accused Lee in the present case was arrested on 10.12.2006. LOC against accused Piotr was got opened on 15.12.2006. In the complaint filed by the NCB against accused Lee, the accused Piotr was not made an accused. It was nowhere mentioned that NBW were issued against him or LOC was also opened against him. The LOC which has been produced on record as mark X does not inspire confidence. The said LOC as per the case of the prosecution itself, was opened on the request of Sh. Shankar Rao, Zonal Director, NCB however Mr. Shankar Rao has not even been made a witness in the present case and was never examined. The original LOC or the office copy of LOC has not been produced in this court. PW11 Sh. Ravi Shankar has only proved the letter dated 23.06.2014 whereby the LOC was closed.

43. It is quiet surprising that the LOC was opened on 15.12.2006 and thereafter even as per the record produced by the prosecution, accused Piotr has visited India on 27.01.2007, 14.02.2007, 14.06.2011, 29.06.2011, 10.09.2013, 25.09.2013 and 23.12.2013. The said visits are clearly shown in the document Ex.PW5/G produced by the prosecution. The accused however was never apprehended or stopped on these visits. He could only be arrested on 23.02.2014 at Sonauli checkpoint as per the case of the prosecution which creates serious doubts on the opening of LOC at that time.

44. It has also come up that accused Lee in his statement recorded u/s 67 stated that accused Piotr stayed together with him at hotel Arihant at Pahargunj however from the record it is found that the said hotel was not visited neither the room where they stayed was searched nor any official of hotel Arihant was examined at that time. Copy of the hotel checkin register was seized and statement of PW2 Pushpender, manger of the hotel was recorded only after the apprehension of the present accused Piotr. As already observed, there were





NCB Vs. Piotr Krzysztof Obrebski

various cuttings and overwriting in the entries pertaining to the stay and since the said record was not immediately seized on the apprehension of accused Lee, the same is unreliable.

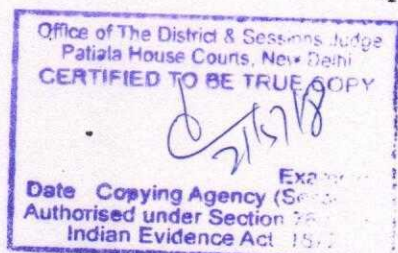
45. As per the prosecution, in his statement u/s 67 NDPS Act accused Lee also stated that his tickets for Kathmandu and Copenhagen both were arranged by accused Piotr, no investigations from concerned airlines or the travel agent who issued the tickets of accused Lee has been conducted which could have shown as to who arranged the same. Also when the accused Lee was arrested, his jamatalashi was conducted wherein it has been shown that 1827 Singapore dollars, 3200 Kroner, 100 Swiss Frank and 33 US dollars were found. Neither accused Lee in his statement stated that he got the said money from Piotr nor Piotr has ever stated in his statement that he had given any money to accused Lee. As per the statement of Lee he was supposed to get the money in Copenhagen on delivery of drugs. Since the aforesaid currency has been shown as jamatalashi and not the case property, it means that the same is not relate-able to the drug trade. From the abovesaid hence, it is clear that the prosecution has also failed to prove the charge of financing for possession and export of drugs against accused Piotr.

46. From the abovesaid hence, it is clear that apart from the retracted statement which could not be read against the accused, even otherwise there is no cogent evidence coming up on record against the accused. The accused accordingly stands acquitted.

Announced in the open court
on this 28th day of April, 2018

(Sudesh Kumar II)
Special Judge NDPS : New Delhi
Patiala House : New Delhi

SC No. 8426/16



Page No. 24 of 24