

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

SC No. 8453/16
ID No. 02403R0074212012

Narcotics Control Bureau
Through: Shri C.S.K. Singh
Intelligence Officer,
Narcotics Control Bureau, New Delhi

Versus

Saurabh Chadha
S/o Sh. Rajesh Chadha
R/o 4/32, Old Double Storey,
Lajpat Nagar, New Delhi

Date of Institution : 08.11.2012
Judgment reserved on : 26.02.2018
Date of pronouncement : 28.02.2018

JUDGMENT

1. The Narcotics Control Bureau (herein after referred to as NCB) through its Intelligence officer (IO) Sh. C.S.K. Singh has filed the present complaint against the aforementioned accused u/s 8(C) and 20 of the Narcotic Drugs and Psychotropic Substances Act (herein after referred to as NDPS Act).
2. Briefly stated the allegations against the accused as asserted in the complaint are as follows:
 - (a) On 17/9/2012 at about 10:30 hours Sh. C.S.K. Singh, Intelligence Officer, received an information that a person named Saurabh Chadha would be coming to Lajpat Nagar in his Fiat Palio car bearing registration no. DL 9CG 6472 and he is carrying some narcotic drugs with him.

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(b) The information was reduced into writing and was produced by Sh. C.S.K. Singh before Shri R.K. Singh, Superintendent NCB, who directed to constitute a team and take necessary action. A raiding team consisting of IO C.S.K. Singh, IO Rajesh Kumar, IO Jai Bhagwan, Sepoy Sanjeev Kumar and Driver Malkeet Singh left the NCB office at about 11.15 AM, in official vehicle no. DL 12C 1168 and reached the spot i.e. Gurjar Samrat Mihir Bhoj Road T Point, Delhi at about 12.00 Noon.

(c) After reaching the said spot, C.S.K. Singh, IO met many passersby and disclosed his identity to them and briefed them about the information and requested them to be present during search and seizure proceedings to which one person namely Ms. Shabnam voluntarily agreed. The whole raiding team along with witness put the surveillance in the area.

(d) At about 12.30 PM, one Fiat Palio car having registration no. DL 9C 6472 was seen coming and the car was stopped at the T Point of Gurjar Samrat Mihir Bhoj Road. The vehicle was being driven by accused Saurabh Chadha and one lady was also sitting in the car whose name was revealed as Babita w/o Saurabh Chadha.

(e) The NCB officers then introduced themselves and panch witness to them and apprised about the information. On request, Ms. Babita voluntarily agreed to remain present as independent witness during the search proceedings and to witness the proceedings. Accused Saurabh Chadha was then apprised about his legal rights and was issued notice U/s 50 of NDPS Act and was made to understand that he had a legal right to be searched before a Magistrate or a Gazetted Officer. The accused refused to exercise the said right and informed that any NCB officer could conduct his search.

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(f) Thereafter IO C.S.K. Singh conducted his personal search but nothing incriminating was recovered. Thereafter the search of his car was conducted and during search a transparent polythene containing dark brown colour semi solid substance was found under the driving seat. A small amount of substance was tested with the help of testing kit and on testing the substance gave positive indication for charas. Thereafter the substance was weighed and its weight came out to be 200 grams.

(g) Two samples of 25 grams each were drawn and kept in two transparent zip lock pouches and further kept in two separate white paper envelopes and were given mark A1 and A2. The remaining substance was kept in polythene and converted into cloth pullanda and was given mark A. The parcel and the samples were duly sealed and paper slips having dated signature of the IO, witness and the accused were pasted on all the parcels and the samples. Test memo in triplicate was also prepared at the spot. All the parcels A, A1, A2 and Fiat Palio car having registration no. DL 9CG 6472 were seized and panchnama was prepared at the spot.

(h) Summons u/s 67 NDPS Act were then issued to the accused and in pursuance of the same, he accompanied the NCB officials to their office and tendered his statement. The accused was thereafter arrested and his personal search was conducted.

(i) Seizure report u/s 57 NDPS Act regarding arrest, search and seizure of contraband was submitted by the IOs to his immediate superior officers.

(j) Summons were also issued to the independent witnesses and in pursuance of the same, they appeared in the NCB office and tendered their voluntary statements. The case property along with samples and test memo was deposited with the Malkhana Incharge.

(k) During further investigation, the sample of recovered substance was sent to CRCL for analysis and after receiving the report of the Chemical Examiner that the sample has tested positive for charas, the present complaint was filed.

3. On the basis of the material on record, Ld. Predecessor of this Court, vide order dated 04.01.2013, framed charge against the accused u/s 8 r/w section 20 (b) of NDPS Act to which the accused pleaded not guilty and claimed trial.
4. The prosecution in order to prove its case against the accused has examined 9 witnesses.
5. **PW3 IO Rajesh Kumar and PW7 IO C.S.K. Singh**, are members of the raiding team. They have deposed on similar lines and have reiterated more or less the assertions made in the charge sheet. As per their depositions, the secret information deposed to have been received by PW1 has been exhibited as Ex.PW1/A. The notice issued to the accused u/s 50 of the NDPS Act has been exhibited as ExPW7/A. The panchnama and test memo have been exhibited as ExPW7/C and ExPW7/D respectively. PW3 IO Rajesh Kumar has inter alia deposed that he had recorded the statement of accused u/s 67 NDPS Act and thereafter arrested him. Arrest memos and arrest reports submitted to the Superintendent have been duly exhibited. Summons issued by the IO to the panch witnesses who tendered their statements u/s 67 of NDPS Act have also been duly exhibited. The case property and the samples were also duly produced before the court and were duly exhibited during the depositions of the aforementioned witnesses.
6. **PW1 Sh. R.K. Singh** has inter alia deposed that on the day of incident, he was posted as Superintendent, NCB DZU and on that day, IO Sh. C.S.K. Singh had put up before him secret information Ex.PW1/A and after going through the

same, he had directed the IO to take necessary action and had issued seal of NARCOTIC CONTROL BUREAU DZU-2 to him. As per this witness, he had signed on the seal movement register Ex.PW1/B with respect to the handing over and return of the seals to and from the IO. He has then further deposed that IOs had put before him reports u/s 57 NDPS Act regarding seizure and arrest of accused. As per this witness, on 18/09/2012, he had forwarded the sample alongwith test memo Ex.PW1/F to CRCL vide forwarding letter Ex.PW1/E.

7. **PW5 B.S. Bisht**, Asst. Chemical Examiner, CRCL and **PW6 Sh. S.K. Singh**, Chemical Examiner, CRCL have inter alia deposed that the sample in question deposited with the CRCL, were examined by PW5 Sh. B.S. Bisht, Assistant Chemical Examiner under the supervision of PW6 Sh. S.K. Singh and the said witnesses have proved the chemical analysis reports prepared by them in this regard as Ex.PW5/B. As per their depositions, sample had tested positive for charas. The receipt which was issued by PW5 has been exhibited as ExPW5/A.
8. **PW9 Sh. S.K. Sharma** has inter alia deposed that on 17/09/2012 he was working as Intelligence Officer Malkhana Incharge in NCB, DZU, R.K. Puram and that in the present case, the entire case property were deposited with him in the Malkhana and he had made an entry to this effect in the Malkhana register. He has also deposed that sample A1 was sent to CRCL and that the remnant sample along with test report was deposited back with him in the Malkhana. The relevant pages of the malkhana register containing the said entries has been exhibited as Ex.PW9/B.
9. **PW8 Sh. Sanjeev Kumar**, driver has inter alia deposed that on 17/09/2012 on the directions of C.S.K. Singh IO, he had left the office of NCB along with the

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raiding team and had reached at Gurjar Samrat Bhuj Road, Delhi near Aksharsdham Temple. This witness has deposed that at 12.30 PM one car Palio in which one person and a lady were sitting was stopped by IO C.S.K. Singh. IO C.S.K. Singh talked with the driver of the car. According to this witness, IO C.S.K. Singh was conducting the proceedings near the car and he was standing at a little distance. IO C.S.K. Singh took the search of car and came on the side of the pavement and instructed him to stand near the car. This witness has further deposed that at about 02.00 PM, he had taken the Fiat car to the NCB office on the instructions of IO C.S.K. Singh and handed over the keys of the said car to IO C.S.K. Singh when he reached the NCB office. This witness has further stated that on 18/09/2012, he had carried the sample packet mark A-1 alongwith the forwarding letter and test memo in duplicate to the CRCL on the instructions of Sh. R.K. Singh, Superintendent, NCB and had deposited the same in CRCL. Acknowledgment receipt has been exhibited as ExPW5/A.

10. **PW2 Ms. Shabnam**, Public witness has deposed about the proceedings conducted by the NCB officials on the day of incident and has also identified her signatures on the Section 50 notices, panchnama, summons u/s 67 NDPS Act and her statement tendered before the NCB officers. She has further deposed about the seizure proceedings and has identified the case property produced in the court.
11. **PW4 Ms Babita Chadha** is the public witness, wife of the accused Saurabh Chadha, has deposed about the proceedings conducted by the NCB officials on the day of incident and identified her signatures on the Panchnama Ex.PW7/C, her statement under section 67 NDPS Act Ex.PW4/A, paper slips on the case

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property pullanda Marked A, samples marked A-1 & A-2. She deposed in her evidence about the dispute with her husband, accused Saurabh Chadha, and about the advice by the officials of the women cell, their stay at Rishikesh and their journey backward and the search and seizure proceedings at the spot.

12. Statement of accused was recorded u/s 313 Cr.PC wherein he stated that he is innocent and have been falsely implicated in the case, nothing incriminating was recovered from his possession and he was not driving the said car and that the said car does not belong to him nor it was in his possession. Accused did not lead any defence evidence.
13. Arguments have been advanced on behalf of Ld. SPP and also the Ld. Defence Counsel at length.
14. Ld. SPP has argued that due compliance of section 42, 55 and 57 of NDPS Act have been made. All the link witnesses were examined to rule out the possibility of tampering with the seal. All the connecting/link evidence has been proved to rule out the possibility of tampering of the case property from the point it was seized till the same was received at the office of CRCL, Pusa Road. Public witnesses have supported the case of the prosecution.
15. Ld. SPP has further argued that statement recorded under section 67 NDPS Act is a voluntary statement of the accused which clearly inculcates him in the involvement of the commission of the crime. Prosecution has proved its case beyond reasonable doubts and submitted that the accused be convicted for the offence committed by him.
16. Ld. Defence Counsel has argued that the prosecution has failed to prove its case against the accused beyond reasonable doubt and prayed for the acquittal of the accused.

17. Ld. Defence Counsel has argued that it is the case of the prosecution that on the basis of secret information car bearing registration no DL9CG6472 was stopped at the spot i.e. Gurjar Samrat Mihir Bhoj Road T-point and two persons, one male and one female, were sitting in the said car. It is further the case of the prosecution that their names were revealed to be Saurabh Chadha & Babita Chadha and notice under section 50 of NDPS Act was served only on accused Saurabh Chadha and Babita Chadha was made a witness to the proceedings. It is the case of the prosecution that nothing incriminating was recovered from the personal search of the accused Saurabh Chadha. After personal search of the accused Saurabh Chadha, search of said car was carried out and contraband was recovered from beneath the driver's seat. It is not the case of the prosecution that the contraband was recovered at the instance of the accused or that the accused had taken out the same from beneath the driver's seat. The accused has retracted his statement and prosecution has failed to place any independent corroboration of the facts disclosed in his statement recorded under section 67 of NDPS Act to prove that the said statement was a voluntary statement. The facts disclosed in the statement recorded under section 67 of NDPS Act lacks any corroboration and no inquiry/investigation has been done to corroborate the facts.
18. It has been argued on behalf of the accused that during the course of the investigation NCB was aware about the dispute between the accused Saurabh Chadha and the witness PW4 Babita Chadha but no investigation qua the same was carried out in order to ascertain if there could have been any possibility of planting of the drugs in the alleged car by the PW 4 Babita Chadha herself. No investigation was carried out to find out the facts about the stay of the accused at Rishikesh.

19. It has been argued on behalf of the accused that the prosecution has failed to establish any connection with the alleged car from which the alleged contraband was recovered. No investigation carried out to find out the owner of the said car and prosecution have failed to connect the said car with the accused Saurabh Chadha. No investigation has been done as to how the said car came in possession of the accused. On the date of incident also, the accused Saurabh Chadha appellant was driving the car and his wife was sitting by his side and the contraband was not recovered at his instance and the alleged contraband was recovered from the car. The appellant cannot be said to be in conscious possession of the narcotic substance.
20. Ld SPP however contended that the prosecution has been able to prove its case beyond reasonable doubt. He has also submitted that in his statement tendered u/s 67 of the NDPS Act the accused has admitted his guilt in the present case and has narrated the entire chronology of events describing his complicity in the offence. His contention is that the submission of the accused that he was coerced to write the said statement cannot be believed by this court as the accused has not entered in the witness box and he has not deposed this plea on oath. He has also contended that the mere filing of the retraction application by the accused is of no consequence. He also contended that if a statement is not retracted at the first available opportunity, no reliance can be placed upon it.
21. I have heard arguments at length. As per the case of the prosecution, on the basis of a secret information, the vehicle driven by the accused was stopped at the spot and two persons, the accused and one lady were found sitting in the car. Their names revealed to be Saurabh Chadha and Babita Chadha. However it has come up on record that notice u/s 50 of the Act was served only on

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accused Saurabh Chadha and his wife Babita Chadha was made a witness to the proceedings. It is pertinent to mention here that as per the case of the prosecution the accused Saurabh Chadha and his wife Babita were joint occupants of the said car. Prosecution have not given any explanation as to why notice under section 50 of NDPS Act was not served upon the lady passenger. It is surprising that her search was also not conducted which creates grave doubt about the veracity of the case of the prosecution. It is important to note here that it is not the case of the prosecution that the contraband was recovered at the pointing out of the accused Saurabh Chadha. During the course of trial, it has also come up that some matrimonial disputes were also going on between the accused and PW4 Babita Chadha. Even during the course of investigation, it has admittedly come on record that there were matrimonial disputes going on between the accused and his wife. However, the prosecution did not make any efforts to ascertain about the truth of the statement made by PW4 Babita Chadha. Even PW1 Superintendent Raj Kishore stated in his cross-examination that he was the supervisory officer of all the IOs in Delhi NCR office and he admitted that he has not asked the IO as to why the lady sitting next to the accused was not searched and in contrary was made a panch witness. It has come up on record that at the time of alleged incident the wife of accused PW4 Babita Chadha was having matrimonial disputes with the accused and was residing separately from her husband. She has admitted in her statement before the court that her complaint was pending before the women cell. All the NCB officials during their cross-examination stated that they never came to know at the spot about the matrimonial dispute between PW4 and the accused. At the time of hearing on bail application of accused on 04.12.2012, it has clearly come on record that there were already

complaints filed by PW4 against the accused. No enquiry in this regard were ever undertaken. In these circumstances, I find force in the argument advanced by Ld. Defence counsel that the possibility of planting of drugs in the car cannot be ruled out as wife of the accused had a motive for false implication of the accused. Ld. defence counsel also contended that witness PW4 left the spot immediately after the proceedings were over and her conduct raised doubts about her trustworthiness which clearly show that she had no sympathy at all towards accused Saurabh Chadha who is her husband. It is surprising that the witness PW4 has concealed about her matrimonial dispute with her husband. The conduct of PW4 Babita Chadha at the spot and after the incident is shocking which creates a grave suspicion and doubt about the veracity of the case of the prosecution. The way in which the investigation was carried out from the very initial stages makes it doubtful.

22. Furthermore the other public witness examined by the prosecution is PW2 Shabnam. This witness in her statement u/s 67 NDPS Act recorded by the IO has stated that on the date of incident, she was coming from Ghaziabad alongwith a 'property dealer' after seeing a plot and while she was present at the spot near the T point, she was requested by NCB officials to join the investigation. However deposing in the court she gave a totally different story wherein she stated that she was coming from the house of her sister who was residing at Garima Garden alongwith her three children in an auto and as her children were feeling hungry so she got the auto stopped at T point to purchase eatables and at this time, she was requested by NCB officials to join the investigation at about 12.30 PM and while they were telling her about the information in the meanwhile the accused came in the car and thereafter she witnessed the entire proceedings. She was confronted with her previous

statement during her cross-examination. I fail to understand as to why the said property dealer which she was accompanying on the day and was present at the spot was not requested to witness the proceedings. There is not even a mention of the said person in the entire investigation. It has also come up on record that during her examination in chief she stated that the amount of recovered charas was 100 gm instead of 200 gm and again said that weight of two samples was 20 gm each instead of 25 gm. She has even given wrong sequence of documents signed by her. She was allowed to be cross-examined by Ld. SPP on his request that according to him she has made some statement contrary to her statement given u/s 67 NDPS Act. However during her cross-examination, her demeanor was observed by my Ld. predecessor that on every suggestion being put by Ld. SPP, the witness was merely nodding her head stating that whatever the Ld. SPP is stating is correct and she has forgotten the details, the incident being old. In her cross-examination she also stated that she is illiterate and she cannot tell the registration number of the car of the accused. She could not tell the name of the hotel from where she had purchased the food. Again I find force in the contention raised by defence counsel that an autorickshaw would take more than two hours time in travelling a distance of 8.6KM only to reach at the spot from Garima Garden as stated by this witness. Again it is hard to believe that she spent 1½ hour in eating food from the rehriwala alongwith her three children and then she also joined the investigation for 2-2½ hours alongwith her three minor children who kept on standing there for such a long duration. The defence counsel also contended that it was beyond comprehension as to why she has obliged NCB officials by keeping her three minor children standing there who were earlier so impatient and irritated and forced her to stop the auto in between to eat food

at the T point. The incident happened on 17.09.2012 and PW2 Shabnam was examined by the NCB officials on 21.09.2012. Admittedly she is an illiterate lady. She did not know how to write and read however she was able to tell the number of the car. It is hard to believe that she has deposed so minutely after four days. From the abovesaid discussion, the testimony of PW2 Shabnam has become unbelievable and unworthy and cannot be relied upon as there are several inconsistencies and contradictions.

23. Furthermore it has also been argued on behalf of the defence that the prosecution has failed to connect the alleged car and the contraband with the accused and there is the retracted confession of the accused which the prosecution is relying upon. It has been argued that it is for the prosecution to prove that the alleged statement was a voluntary statement. He further argued that the prosecution cannot start with a retracted statement and to seek conviction of the accused only on the basis of a retracted statement.
24. He has pointed out that in its judgment pronounced in **Noor Aga vs. State of Punjab and Anr. JT 2008 (7) SC 409** the Hon'ble Supreme Court has categorically held that the onus of proving the statement of an accused recorded u/s 67 of the Act being voluntary is upon the prosecution and not on the accused. He contended that the entire case of the prosecution is based on surmises and conjectures and instead of investigation the NCB officials in the present case have only brutally tortured and threatened the accused to admit his guilt vide the so called voluntary statement u/s 67 of the Act.
25. According to him the retraction application filed before the court is a part of the judicial record and that the same bears a noting of the Ld. Judge to place it on record and that therefore, accused is not required to prove the said retraction

statement. He therefore submitted that none of the judgments relied upon by the prosecution are applicable to the facts and circumstances of the present case. The Hon'ble Supreme Court in its catena of judgments has reiterated repeatedly that conviction under this Act should not be based merely on the basis of the statement made by the accused u/s 67 of the Act without any independent corroboration, particularly in view of the fact that such statement has been retracted.

26. Now coming to the relevance of statement of the accused recorded u/s 67 NDPS Act, I have gone through all the judgments relied upon by the Ld. Counsels for both the sides. In its very recent judgment pronounced in Ram Singh's case (supra) the Hon'ble Supreme Court after discussing all its previous judgments has condensed the principle of law with respect to the statement of an accused recorded u/s 67 of the Act and in this regard in para 12 has held that:

"A confession, if it is voluntary, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of the accused. However, before solely acting on confession, as a rule of prudence, the Court requires some corroboration but as an abstract proposition of law it cannot be said that a conviction cannot be maintained solely on the basis of the confession made under Section 67 of the Act."

27. Thus, as per the judicial dicta a voluntary confession can be made the sole basis for the conviction of an accused for an offence under this Act, though as a rule of prudence the court may require some corroboration of the same. As discussed herein above, in the facts and circumstances of the present case, there is no corroborative relevant evidence produced by the prosecution to support the purported confessional statement of the accused. Even so I have

still proceeded to examine whether the statement of the accused recorded u/s 67 of the Act can be stated to be voluntary. Though both Ld. Counsels have argued that the onus of proving the confession as voluntary is not on their respective parties, in my considered opinion now that the entire evidence led both by the prosecution and the accused is before this court the question of onus of proving the said fact becomes irrelevant. This court was now bound to examine all the evidence that has been led both on behalf of the prosecution and the accused in order to determine the voluntary nature of the purported statement of the accused. There is no corroborating evidence coming up on record in the present case.

28. Further on perusal of the record it is also revealed that the accused allegedly procured contraband from one Gupt Ram whose mobile number is 08894284828 and the accused stayed at Krishna Ganga View hotel. From perusal of the record it is apparent that prosecution has not carried any inquiry to corroborate the facts and no efforts have been made to apprehend the person Gupt Ram whose mobile number was very much available with the prosecuting agency which only shows that the prosecuting agency was only interested in the implication of the accused and no further inquiry was conducted by them to corroborate truthfulness of the facts mentioned in the statement recorded under section 67 of NDPS Act. No call details of the said Gupt Ram or of the mobile number of the accused have been placed on record to prove the connectivity of the accused with said Gupt Ram. Prosecution has failed to prove that the statement of the accused statement recorded under section 67 of NDPS Act was a voluntary statement.

29. It is hence clear that despite the statement of the accused that he has procured the contraband from one Gupt Ram and he stayed at Krishna Ganga

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view hotel, no further investigation in this regard has been made. The accused was directly sent to judicial custody and no PC remand was sought. No CDRs to connect the accused with the said Gupt Ram or to locate his locations were placed on record. Everything in the matter has been done in a haste without enquiring into the true facts which creates doubt on the veracity of the entire investigation.

30. In such view of the above discussion it is being rightly contended on behalf of the accused that version of the prosecution that accused Saurabh Chadha voluntarily tendered his statement cannot be believed at all and thus the retracted statement cannot be made the sole basis for holding the accused guilty of the offence that he has been charged with.

31. In view of discussion herein above I am of the considered opinion that the prosecution has not been able to prove its case beyond reasonable doubts and hence the accused stands acquitted for the charges framed against him.

**Announced in the open court
on 28th day of February, 2018**

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