

MOOT PROPOSITION

Amar Das, Samar Das, Firanteen Bai and Joseph D'souza were tried for the offences u/s 8(c) read with section 18(c), 20(b)(ii), 25 & 29 of the Narcotic Drugs & Psychotropic Substances Act 1985. In the trial conducted before the Special Court Chhattispur (CP) the accused Amar Das and Samar Das were convicted and sentenced u/s 8(c) read with section 18(c) read with 31(1) of NDPS Act 1985 and Joseph D'souza was convicted and sentence u/s 20(b)(ii) of NDPS Act 1985, Firanteen Bai was acquitted.

Amar Das and Samar Das were sentenced to rigorous imprisonment for 10 years and fine of Rs. 1,00,000/- u/s 18(c) of NDPS Act 1985 and in default in payment of fine they were ordered to undergo further rigorous imprisonment of 6 months. On the other hand, Joseph D'souza was sentenced to rigorous imprisonment for 10 years and fine of INR 1,00,000/- u/s 20(b) (ii) r/w section 31(1) of the NDPS Act, 1985. The case of the prosecution before the Special Court was as under:

1. On 8th January 2015 Amar Das and Samar Das, was on their way to Chhattispur from Gurpur driving white colored Foyota Tortuner with registration number CP 10 CZ 2345. They were accompanied by Joseph D'souza, travelling in the same vehicle. The said vehicle was signaled to stop at a Police Naka near Taibandh Bypass on Gurpur-Chhattispur Road at about 7:30 pm on 8th January 2015. Police team at Naka duty comprised Sub-Inspector Happoo Singh, Head Constable Vijay Rathore, Constable Pritam Singh and Constable Dilip Singh of Anamka Police Station, Chhattispur.
2. Constable Dilip Singh asked Amar Das and Samar Das to come out of the vehicle and open its rear door for search. Amar Das and Samar Das mildly resisted and said to Dilip Singh that they may be allowed to proceed as they are in hurry to attend a family emergency work in Chhattispur. Dilip Singh reported the matter to Sub-Inspector Happoo Singh, who himself proceeded



towards the vehicle along with Head Constable Vijay Rathore. Sub-Inspector Happoo Singh told Amar Das and Samar Das that the vehicle was needed to be searched and Amar Das and Samar Das had to open the rear door of the vehicle. Amar Das alighted from the vehicle along with Samar Das and opened the rear door of the vehicle. Search of the vehicle was conducted by Head Constable Vijay Rathore in the presence of Sub-Inspector Happoo Singh.

3. A handbag was lying in the boot of the vehicle. Sub-Inspector Happoo Singh asked Pritam Singh to open the bag. To this Amar Das and Samar Das said that bag contained nothing else but clothes. They should be allowed to go as they were already late, and they needed to attend to some family emergency work. The police party became suspicious about the contents of the bag due to apparent hesitation of Amar Das and Samar Das. Sub Inspector called on phone one Deena Nath a resident of nearby village Kalholi and also requested one Sardul Singh, who was on his way to Lobad in his Marzuki Tola Car bearing Registration No. CP 10 AB 0007 and was stopped at Naka, at that time. Both Deena Nath and Sardul Singh were asked by Sub-Inspector Happoo Singh to witness the search of bag found in the vehicle of Amar Das and Samar Das.
4. On search of the bag two polythene packets were found containing substances like opium of about 1 Kg each. In the meantime, Amar Das and Samar Das slipped away from the spot and could not be found by the police party. However, Joseph D'souza was detained by Sub-Inspector Happoo Singh and a search was made from his possession in his backpack 5 Kg. of contraband Ganja was recovered. A recovery memo of three packets of the contraband substance were prepared which was signed by Deena Nath and Sardul Singh as independent witnesses.

Joseph D'souza told police that he was accompanying Amar Das and Samar Das from Lobad. He said he knew nothing about the narcotic found in the vehicle under seizure and the Narcotic in the backpack which belong to Samar Das. Personal search of Joseph D'souza was made by Head Constable Vijay Rathore after telling the Accused Joseph D'souza that "Do you agree to be searched here otherwise we will take you to the Gazetted Officer or the Magistrate?" Joseph D'souza submitted himself for search to Head Constable Vijay Rathore without saying anything. During the search, apart from the personal belongings, Ganja like substance of about 5 Kg knotted in a piece of polythene was found from the backpack of Joseph D'souza. The search memo was prepared and signed by independent witnesses Deena Nath and Sardul Singh and also by Sub-Inspector Happoo Singh and Head Constable Vijay Rathore with respect to recovery of the contraband from the person of Joseph D'souza.

5. The Foyota Tortuner vehicle CP 10 CZ 2345 and the recovered material were taken to Police Station Anamka along with Joseph D'souza in custody. Registration documents taken out of the vehicle revealed that Foyota Tortuner CP 10 CZ 2345 was owned by Firanteen Bai resident of House No. 789, Green Enclave Chhattispur.
6. The quantity of the Narcotic Substance (Opium) recovered from the bag placed in the Foyota Tortuner CP 10 CZ 2345 (two packets) and also the polyethylene bag recovered on personal search of Joseph D'souza were weighed separately, which weighed 1000 Gms, 1000 Gms and 5 Kg respectively. The matter was reported to Station House Officer of the Police Station Anamka, Chhattispur, Inspector Joginder Singh.



7. An FIR No. 1234/15 was registered at Police Station Anamka Chhattispur u/s. 8 (c) read with Ss. 18 (c), 20(b)(ii), 25 and 29 of the Narcotic Drugs and Psychotropic Act, 1985 against Amar Das and Samar Das, Joseph D'souza and Firanteen Bai, on 9th January 2015 at 10:00 am. Investigation of the case was entrusted to Sub Inspector Hoshiar Singh of Police Station Anamka Chhattispur by Inspector Joginder Singh. Accused Amar Das and Samar Das were arrested from their house No. 789, Green Avenue Chhattispur in the evening of 9th January 2015. Three sealed samples from each packet were sent to Forensic Science Lab Chhattispur on 26th January 2015. During the investigation the following facts were revealed by the Investigation officer.
- a) Amar Das and Samar Das along with their family members viz. Dipika (wife), Ranveer aged 10 years and Anil aged 8 years (sons), of Amar Das and Samar Das were out to Delhi from 28th December 2014 to 07th January 2015 travelling in the Foyota Tortuner Car CP 10 CZ 2345. Amar Das and Samar Das and their family members came back to Chhattispur on the evening of 07th January 2015. The Foyota Tortuner was owned by Mrs. Firanteen Bai mother of Amar Das and Samar Das.
 - b) Amar Das and Samar Das did not have any settled way of life, that is, there was no established business, profession, or job. However, they were leading comfortable and luxurious life, residing in house No. 789, Green Avenue, Chhattispur, owned by them.
 - c) Amar Das and Samar Das went to Lobad to Chhattispur visit the house of Joseph D'souza in the afternoon of 08th January 2015 in Foyota Tortuner vehicle No. CP 10 CZ 2345.
 - d) On the way back from Lobad to Chhattispur Joseph D'souza accompanied Amar Das and Samar Das. Joseph D'souza had agreed to sell off the consignment of opium Ganja brought from Delhi by Amar Das. Amar Das and Samar Das delivered a sample of the opium & Ganja to Joseph D'souza during the return journey to Chhattispur from Lobad on 8th January 2015.



- e) Two packets of Opium weighing total 2000 grams were recovered from the vehicle Foyota Tortuner Registration no. CP 10 CZ 2345 owned by Firanteen Bai and in the possession of Amar Das and Samar Das during search at Police Naka at Gurpur-Chhattispur Road, on 8th January 2015. 5 Kg of Ganja was recovered during personal search of Joseph D'souza. The FSL report of testing of the samples of the contraband seized stated it to be Opium & Ganja respectively.
- f) Police Report also revealed that Joseph D'souza had earlier been convicted for selling opium in 2005. He was sentenced to rigorous imprisonment for 5 years and a fine of Rs. 50000/- under Section 18 (c) of the NDPS Act, 1985.
- g) The police filed Challan u/s 173 Cr. P.C. on 05th March 2015 against Amar Das and Samar Das, Joseph D'souza and Firanteen Bai accused for the offences u/s 8 (c) read with Ss. 18 (c), 20(b)(ii), 25 and S. 29 of the NDPS Act, 1985.

8. Amar Das and Samar Das, Accused No. 1 & 2 and Joseph D'souza, Accused No. 3, remained in custody during investigation. However, Firanteen Bai, Accused No. 4, was on bail. On submission of Police Report u/s 173 Cr. P.C., copies of the documents were delivered to the accused. The trial court framed charges against all accused u/s 8 (c) r/w Ss. 18 (b), 20(b)(ii), 25 and 29 of the NDPS Act, 1985. All the accused did not plead guilty and abjured their guilt and they faced trial.
9. During trial, the Prosecution examined Deena Nath (PW-1), Sardul Singh (PW-2), Sub Inspector Happoo Singh (PW-3), Head Constable Vijay Rathore (PW-4) and Hoshiar Singh as Investigating Officer (PW-5). Prosecution also tendered into evidence the Reports of Forensic Science Lab as Ex, P-1, P-2 and P-3 confirming substance in the two samples as Opium & one sample as Ganja. The ownership proof of vehicle CP 10 CZ 2345 as owned by Firanteen Bai, Accused No. 4, was presented as Ex P-4. The prosecution also submitted the copy of the judgment of the Court regarding conviction of Joseph D'souza u/s 8 (c) r/w S. 18 (c) the NDPS Act, in 2005, but it was not marked. Opportunity to cross examine all the witnesses was given to the defence. The statements of all the accused were recorded u/s 313 of the Code of Criminal Procedure, 1973. In reply to the questions by the court, all the accused denied the prosecution version and pleaded false implication. The court also put questions to Accused No. 3 Joseph D'souza about his previous conviction, which he denied. Defence put up its case by cross examining prosecution witnesses, examining defence witnesses and producing documents as under.

10. That all the accused were falsely implicated by the police. It was denied that there was any search or seizure by police at Naka duty on 8th January 2015.

11. It was pleaded that accused No. 1 & 2 Amar Das and Samar Das had a dispute regarding boundary wall of his house No. 789, Green Avenue, Chhattispur with one Hawala Das. Amar Das and Samar Das went on trip to Delhi with their family, during school vacations of Amar Das children, from 28th December 2014 to 7th January 2015, taking benefit of the absence of Amar Das and Samar Das, Hawala Das encroached upon part of the land of the house owned by Amar Das and Samar Das, by constructing a wall. Harnam Singh (DW-2), a neighbour of Amar Das and Samar Das, deposed before the court about said encroachment.

12. Amar Das and Samar Das went to Police Station Anamka Chhattispur on 8th January 2015 at about 10:00 am to lodge complaint against Hawala Das for the said

encroachment of their land Amar Das and Samar Das met Inspector Joginder Singh, Station House Officer of Police Station Anamka Chhattispur to lodge his complaint against Hawala Das. Inspector Joginder Singh marked their complaint to Sub-Inspector Happoo Singh. A copy of the complaint was submitted to the court.

13. When Amar Das and Samar Das contacted Sub Inspector Happoo Singh at 11 am on 8th January 2015, Sub-Inspector Happoo Singh told Amar Das and Samar Das that he was busy in some other matter and Amar Das and Samar Das could see them in the evening, and at that time he would be at Naka Duty on Gurpur -Chhattispur Road.

14. Thereafter Amar Das and Samar Das went to the house of Joseph D'souza, his brother-in-law, at Lobad. Amar Das and Samar Das asked Joseph D'souza to accompany them to Chhattispur as they got dispute with Hawala Das and they needed his help. On their return journey from Lobad to Chhattispur at about





7:00 pm on 8th January 2015, Amar Das and Samar Das and Joseph D'souza halted at Police Naka on Chhattispur-Gurpur Road, to see Sub-Inspector Happoo Singh regarding Amar Das and Samar Das's complaint against Hawala Das.

15. Defence pleaded that the Sub-Inspector Happoo Singh was out to favour Hawala Das as he was an influential person with political links. Both Amar Das and Samar Das along with Joseph D'souza were taken to Police Station Anamka Chhattispur along with their vehicle and were put in the lock up. Thereafter accused in the present case were falsely implicated for the offences under NDPS Act.
16. Sardul Singh (DW-1) deposed before the trial court that he had not witnessed any search or seizure at police Naka on Chhattispur-Gurpur Road on 8th January 2015. But police got his signatures on some papers, on 9th January 2015 by calling him at Police Station Anamka, Chhattispur. He did not know what was written on those papers.
17. Defence also pleaded before the trial court

that Deena Nath was a gambler and a stooge of police. He remained witness in many cases at the behest of the Police, as and when required by Police.

18. The trial court, after considering all the material on record convicted Amar Das and Samar Das Accused No. 1 & 2 u/s 8(c) read with S. 18 (c) of NDPS Act. Joseph D'souza was sentenced with Rigorous Imprisonment of 10 years and a fine of Rs. One lac and in default of payment of fine a further rigorous imprisonment of six months under section 18(c) of NDPS Act, 1985. Accused No. 3 Joseph D'souza was sentenced to Rigorous Imprisonment of 10 years and a fine of Rs. One lac under sections 20(b)(ii) read with section 31 (1) of the NDPS Act, 1985. In default of payment of fine Joseph D'souza was to undergo a further term of rigorous imprisonment for one year. Accused No. 4 Firanteen Bai however was acquitted of the charges.
19. Appeal is preferred by both Amar Das and Samar Das and Joseph D'souza Appellants before the Hon'ble Rai Pradesh (RP) High Court. In the grounds of appeal, the

Appellants pleaded that the trial court has failed to rightly appreciate the facts of the case where the prosecution has utterly failed to prove the offences against them. The appellants further pleaded that they had been falsely implicated in the case. The procedure alleged to be adopted in search and seizure does not stand the scrutiny of law, and it also does not satisfy the safeguards provided under S. 50 of the NDPS Act, 1985. It is also alleged that the trial court has taken the factum of previous conviction of Appellant Joseph D'souza without framing charges for that and proper evidence on record.

- Argue the case on behalf of Appellants and Respondent.

Note:

- * Teams Must Frame Their Own Issues (minimum 3 issues).
- * Teams are not allowed to assume any additional information/ documents other than what has been provided.

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