

NCB Vs. Ashwani Kumar
Case No. SC/9601/16

15.03.2017

Present: Sh. Rajesh Manchanda, SPP for NCB.

Accused is present on bail.

Defence counsel Sh. Rajiv Mohan.

Case is today listed for consideration of charge.

As per the case of the prosecution, on 09.03.2016 at about 1300 hours at the office of DHL Express Pvt. Ltd. 71/3, Rama Road, Kirti Nagar, New Delhi the officials of NCB intercepted one parcel bearing no. 5573968562 destined to USA which was found containing 60 gm of some substance which when sent to CFSL, Lodhi Road, New Delhi was found to be opium and the said parcel was booked by the accused Ashwani Kumar at the instance of his co-accused Simranjit Singh and a lady who could not be arrested. After completion of investigation, present complaint has been filed u/s 18(c) and 23(b) of the NDPS Act.

It is argued by Ld. Counsel for the defence that the accused was not in conscious possession of the said contraband. It is stated that he is working as a partner in Trackon Courier, Amritsar and on 08.03.2016 a man namely Simranjit Singh alongwith a lady came at the office for booking a parcel with destination to USA and he expressed his inability to provide any identity card and promised that he would provide it at a later stage and the applicant had checked the contents of the said parcel and there was nothing suspicious in it and hence he had applied common prudence in checking the contents of the said parcel and bonafidely booked the same under his identity documents. It is further stated that he did not take any extra amount as consideration for booking the said parcel and at no stage, the accused had

any culpable mental state. It is further stated that there is no investigation by the NCB about the real culprits i.e. Simranjit Singh and the lady who had accompanied with him.

Per contra, Ld. SPP for NCB has vehemently controverted the contentions of Ld. Counsel for defence. It is stated that during investigation, LOC was got opened against the said Simranjit Singh whose identity could be known by the investigating agency but he could not be apprehended. It is further stated that it was accused Ashwani who had booked the said parcel under his identity documents and the invoice is also in his name. It is further stated that besides attempt to export the said contraband out of India, he is also liable to be charged for the possession of the said contraband u/s 21(b) NDPS Act. Reliance is placed on Mohan Lal Vs. State of Rajasthan (2015) 6 SCC 222.

It has come in the investigation that the parcel in question was booked by accused Ashwani Kumar and he had attached invoice and his driving license for booking the said parcel. In his statement u/s 67 NDPS Act, he has admitted about the said fact although he has stated therein that one Simranjit Singh and a lady had come for booking the said parcel but they did not have any identity document and after checking the contents of the said parcel, he had booked the said parcel under his own identity document. In my view, the onus is on the accused to prove during trial that he was not in conscious possession of the same or that he was not aware of the contraband at all in the said parcel. Under section 35 NDPS Act, the court has to presume the existence of culpable mental state and it is for the defence, during trial to prove to the contrary, if any.

This court does not agree with the contention of Ld. SPP for NCB that accused is also liable to be charged for possession of the said

contraband u/s 21(b) NDPS Act. The authority of Mohan Lal (supra) relied upon by Ld. SPP for NCB is clearly distinguishable. In the said case, the accused had concealed the contraband in a pit, after digging the earth, underneath a small bridge and in that context, it was held that he had requisite degree of control, even if the said narcotic substance was not within his physical control at that moment and hence the court inferred his possession qua the said contraband. However, it is not so in the present case. Here the accused had already booked the parcel containing the contraband in Amritsar and it was intercepted later at the premises of DHL Express Pvt. Ltd. in Delhi. Hence the said parcel was out of his control. Moreover, even if accused is charged for making an attempt to export the said contraband out of India, the issue of possession is inbuilt in it and hence in my view there is no requirement to separately charge the accused u/s 21(b) NDPS Act.

In view of the above, in my view, there is prima facie material on record to proceed against the accused for the offence punishable u/s 23(b) r/w section 28 of NDPS Act.

Charge has accordingly been framed to which the accused pleads not guilty and claims trial.

List this case for PE on 19.07.2017 and 20.07.2017.

(Deepak Garg)
Spl. Judge, NDPS/N. Delhi
15.03.2017