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UNION OF INDIA

v.

LEEN MARTIN & ANR.

(Criminal Appeal No. 2150 of 2011)

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FEBRUARY 01, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

C *Narcotic Drugs and Psychotropic Substances Act, 1985 – ss.8(c), 23 – Contraband goods – Recovery of hashish weighing 12.03 kg from respondent no.1 – Conviction under ss.8(c), 23 – High Court acquitted respondent no.1 of all charges on the ground that the prosecution failed to establish that the panchas were present during seizure procedure and the testimony of intelligence officer (PW-1) relied upon by trial court was highly inconsistent and full of contradictions – On appeal, held: Evidence of independent witnesses contradicted the statement of PW-1 – They categorically stated that they were called by PW-1 and by the time they reached, the bag was already opened – The Panchanama was not read over to them and they were asked to sign on number of papers and they were not aware of the contents – When the statement of official statement is impaired due to infirmities, it is not safe to place reliance upon the same and pass conviction order against the accused – High Court rightly acquitted respondent No.1.*

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Dismissing the appeal, the Court

F **HELD: Both PW-8 and PW-9 have categorically stated that, when they were called by the Intelligence Officer (PW-1) and by the time they reached, the bag was already opened. Further it was admitted by them that, the panchanama was not read over to them. They were asked to sign on number of papers and they were not aware of the contents. Moreover, PW-1 i.e., the intelligence officer did not state that the bag containing the narcotic substance was opened in the presence of panchas. The cross-examination of PW-9 clearly revealed that he did not agree to the contents of the panchanama with respect to the fact that the search and inspection of the baggage took place in his presence. His signatures obtained on the panchanama were not**

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voluntarily put. The entire case of the prosecution hinged on the alleged recovery of the narcotic substance from respondent no. 1 but, this very fact was not proved beyond reasonable doubt as independent witnesses PW-8 and PW-9 portrayed a different story as to the recovery and seizure. In the facts and circumstances of this case exclusive reliance on the statement made by respondent no. 1 would neither be prudent nor safe; especially considering the fact that, the statement of respondent no. 1 procured under Section 67 of the NDPS Act was retracted. [Paras 10, 11] [659-E-G; 660-B-D]

2. The statement of the official witness PW-1 cannot be the sole basis for convicting respondent no. 1. When the statement of official witness is impaired due to infirmities, it is not safe to place reliance upon the same and pass conviction order against the accused. In the present case, the statements of the independent panch witnesses depict a different picture than the one portrayed by the official witness PW-1. The High Court had rightly acquitted the respondent no.1 taking into consideration the aforesaid aspects. [Paras 12, 13] [660-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2150 of 2011.

From the Judgment and Order dated 20.11.2008 of the High Court of Judicature at Bombay in Criminal Appeal No. 379 of 2007.

Ms. Alka Agrawal, T. C. Sharma, K. L. Janjani, B. V. Balaram Das, Mrs. Anil Katiyar, Advs. for the Appellant.

Anand Grover, Sr. Adv., Ms. Tripti Tandon, Satbir Singh Pillania, Somvir Deswal, R. C. Gubrele, Kunal Cheema, Nishant Ramakantrao Katneshwarkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. This criminal appeal arises from the impugned judgment, and order, dated 20.11.2008, in Criminal Appeal No. 379/2007 passed by the High Court of Judicature at Bombay, wherein the High Court acquitted the respondent no.1 of all the charges under sections 8(c), punishable under Section 20(b)(ii)(c) and under Section 28 read with Section 23 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'N.D.P.S Act').

A 2. A brief reference to the prosecution case may be necessary
for disposal of this case. On 05.05.2004, the officers of Customs, Air
Intelligence Unit, at Chhatrapati Shivaji International Airport, Mumbai
noticed that a passenger of European origin was found to be suspiciously
loitering near the airline counters of Swiss Air. Observing such suspicious
B behavior, the airline personnel were alerted for segregating the baggage
of the respondent no.1. After completing his immigration and custom
formalities, respondent no.1 was intercepted by the Intelligence Officer
and subjected to examination by a sniffer dog.

C 3. When there was an indication about the presence of narcotic
or psychotropic substance, he was taken to a baggage examination area.
On opening suit case his personal belongings were kept aside, even then,
his suit case was found to be abnormally heavy. On examination, a false
bottom was detected and when the false bottom was removed, three
rectangular packets wrapped in cellophane tape were discovered
containing brown colored substance which tested positive for hashish, a
D contraband substance. Net weight of the recovered substance was found
to be measuring 12.03 Kg. Later, the samples were drawn and the goods
were seized under a seizure panchnama. It is to be noted that, on
06.05.2004, respondent no.1 recorded his statement under Section 67 of
N.D.P.S Act. After completion of the investigation, charges levelled
E against him, the accused (respondent no. 1 herein) pleaded not guilty
and claimed trial.

4. The trial court in N.D.P.S. Special Case No. 133 of 2004
conducted full-fledged trial which resulted in conviction of the respondent
no.1, for offences under Section 8(c), punishable under Section
20(b)(ii)(c), with rigorous imprisonment for 10 years and fine of
F Rs. 1,00,000/- in default to suffer simple imprisonment for six months.
Further, the respondent no. 1 was sentenced under Section 28 read with
Section 23 of N.D.P.S Act to undergo rigorous imprisonment for 10
years and to pay fine of Rs. 1,00,000/- and in default to suffer simple
imprisonment for six months. Both sentences were ordered to run
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5. Aggrieved by the order of conviction of the trial court,
respondent no. 1 approached the High Court in Criminal Appeal No. 379
of 2007. The High Court by an order dated 20.11.2008, acquitted the
respondent no. 1 of all charges as, in the opinion of the High Court, the
H prosecution failed in establishing that the panchas were present during

the seizure procedure. The High Court while setting aside the trial court order observed that the trial court erred in convicting the respondent while relying on the sole evidence of PW-1 which is highly inconsistent and full of contradictions. A

6. Aggrieved by the acquittal of respondent no. 1, Union of India has preferred the present appeal before this court by way of special leave petition. B

7. We have heard the learned counsel appearing for the appellant – Union of India and the learned senior counsel appearing for respondent no.1.

8. It is brought to our notice by the learned senior counsel appearing for respondent no.1 that his client has already undergone four and a half years of incarceration and he is also not in the country. C

9. Learned counsel appearing for the appellant – Union of India accepts the aforesaid statement.

10. Taking into consideration the evidence of PWs 8 and 9, panch witnesses, we find that their evidences are contradicting the statement of the Intelligence Officer (PW-1). We may note that except the statement made under Section 67 of the N.D.P.S. Act by respondent no.1, there is no other material to substantiate the case against the said respondent. Both PW-8 and PW-9 have categorically stated that, when they were called by the Intelligence Officer (PW-1) and by the time they reached, the bag was already opened. Further it was admitted by them that, the panchanama was not read over to them. They were asked to sign on number of papers and they were not aware of the contents. Moreover, PW-1 i.e., the intelligence officer did not state that the bag containing the narcotic substance was opened in the presence of panchas. The cross-examination of PW-9 clearly reveals that he does not agree to the contents of the panchanama with respect to the fact that the search and inspection of the baggage took place in his presence. His signatures obtained on the panchanama were not voluntarily put, which is apparent from the following statements made by PW-9 during the cross-examination: D
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“As I was Trainee and new person I did not want to hurt the custom officer, therefore I signed panchanama and articles without reading it.”

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A Moreover, aforesaid conclusion is substantiated by the statement of PW-8 made in the examination-in-chief in the following manner-

“After entering the office room of AIU Section, I saw one open suitcase, number of officers were present and packets were shown to me... I signed on numbers of papers and on packets being shown to me.”

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11. It is to be noted that the entire case of the prosecution hinges on the alleged recovery of the narcotic substance from respondent no. 1 but, this very fact is not proved beyond reasonable doubt as independent witnesses PW-8 and PW-9 have portrayed a different story as to the recovery and seizure. In the facts and circumstances of this case exclusive reliance on the statement made by respondent no. 1 would neither be prudent nor safe; especially considering the fact that, the statement of respondent no. 1 procured under Section 67 of the NDPS Act was retracted on 29.06.2004.

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12. After analysis of the above circumstances and evidences; prudence dictates that the statement of the official witness PW-1 cannot be the sole basis for convicting the respondent no. 1. It may be noted that when the statement of official witness is impaired due to infirmities, it is not safe to place reliance upon the same and pass conviction order against the accused. In the present case, as already stated above, the statements of the independent panchwitnesses depict a different picture than the one portrayed by the official witness PW-1.

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13. We are of the opinion that the High Court had rightly acquitted the respondent no.1 taking into consideration the aforesaid aspects.

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14. In view of the above and having regard to the fact that the incident is of the year 2004, we find no reason to interfere with the impugned order passed by the High Court. In the result, the appeal lacks merit and is dismissed.