

**REPORTABLE****IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL No(s). 2150/2011****UNION OF INDIA**

...APPELLANT(S)

VERSUS

**LEEN MARTIN & ANR.**

...RESPONDENT(S)

**JUDGMENT****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').

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 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.
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 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 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 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 concurrently.

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 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.

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.
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.
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:

*“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.”*

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.”*

- 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.

**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 panch witnesses depict a different picture than the one portrayed by the official witness PW-1.

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

**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.

.....**J.**  
**(N.V. RAMANA)**

.....**J.**  
**(S. ABDUL NAZEER)**

**New Delhi,**  
**February 01, 2018.**