

(2015) 01 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 303 and 410 of 2012

Deepak Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 374

Evidence Act, 1872 — Section 114(g)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 20(b)(ii) (C), 29, 42, 42 (2)

Citation : (2015) 1 ShimLC 579

Hon'ble Judges : Piar Singh Rana, J.; Sanjay Karol, J.

Bench : Division Bench

Advocate : Vivek Sharma and Ajay Kochhar, for the Appellant; B.S. Parmar, Additional Advocate General and J.S. Guleria, Assistant Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Piar Singh Rana, J.—Both appeals are filed against the same judgment and sentence passed by learned Special Judge Fast Track Court Shimla in Sessions Trial No. 18-S/7 of 2011 titled State of H.P. v. Deepak Kumar and another decided on 31.5.2012. Both appeals are consolidated in order to avoid the repetition.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by the prosecution are that on dated 5.3.2011 at about 9.05 PM near Panchayat Ghar Gharyana falling within the jurisdiction of Police Station Dhalli District Shimla co-accused Deepak Kumar while travelling in vehicle having registration No. HR-12J-4248 was found in conscious and exclusive possession of 1 Kg. 600 grams of cannabis (Charas) without licence and permit pursuant to criminal conspiracy of co-accused Joginder Singh. It is alleged by prosecution that on the same date time and place

co-accused Joginder Singh was driving the vehicle having registration No. HR-12J-4248. It is alleged by prosecution that secret information was received by Inspector Meenakshi Bhardwaj which was sent to Dy. S.P. It is alleged by prosecution that raiding party was constituted comprised of S.I. Rupinder Kumar, ASI Rajesh Kumar, ASI Kalyan Singh and H.C. Bhoom Parkash. It is alleged by prosecution that raiding party proceeded in vehicle having registration No. HP-07B-0407 towards Karsog side. It is further alleged by prosecution that at about 9 PM when police party reached near Gharyna Panchayat Ghar then vehicle having registration No. HR-12J-4248 came from Tatapani side and same was stopped. It is alleged by prosecution that another vehicle No. HP-03B-0667 also came from Karsog side which was driven by one Devender Sharma and same was also stopped by police party. It is alleged by prosecution that members of raiding party have given their personal search and memo Ext. PW1/A was prepared. It is also alleged by prosecution that option was given to accused persons whether they intended to be searched before the Magistrate or gazetted officer and accused persons have given the offer that they should be searched before the police officials. It is alleged by prosecution that consent memo Ext. PW1/B was prepared and one bolt of vehicle was slightly raised and thereafter bolt was opened and three packets were found. It is alleged by prosecution that all packets were wrapped with black coloured tape. It is alleged by prosecution that 1 Kg. 600 grams of charas was found and NCB form in triplicate Ext. PW11/A was prepared and specimen of seal also placed upon NCB form. It is alleged by prosecution that specimen of seal also obtained on piece of cloth and I.O. also prepared ruka Ext. PW11/A-1 and handed over the same to ASI Kalyan Singh along with case property, sample seals, NCB forms, seizure memos with direction to send the same to P.S. CID Bharari. It is further alleged by prosecution that FIR Ext. PW6/B was prepared and site plan Ext. PW11/B was prepared. It is alleged by prosecution that SHO resealed the parcels and issued resealing certificate. It is alleged by prosecution that special report under Section 57 of N.D.P.S. Act was sent to Dy. S.P. Crime Branch Shimla and thereafter case property was handed over to MHC. It is alleged by prosecution that case property was sent to office of FSL Junga for chemical examination along with NCB form and relevant documents. It is alleged by prosecution that report of chemical examiner is Ext. PW11/D.

3 Learned Special Judge Fast Track Court Shimla framed the charge against the appellants under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act on dated 17.8.2011. Appellants did not plead guilty and claimed trial.

4. The prosecution examined as many as eleven witnesses in support of its case:--

4.1 Prosecution also produced following piece of documentary evidence in support of its case:--

5. Learned Special Judge, Fast Track Court Shimla convicted the appellants under

Section 20(b)(ii)(C) read with Section 29 of N.D.P.S. Act. Learned trial Court sentenced the appellants to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs. 1 lac each. Learned trial Court further directed that in default of payment of fine the appellant would undergo simple imprisonment for a period of one year. Learned trial Court further directed that period of custody would be set off. Feeling aggrieved against the judgment and sentence passed by learned Trial Court the appellants have filed present appeals under Section 374 of the Code of Criminal Procedure and a prayer for acceptance of appeals sought.

6. We have heard learned Advocates appearing on behalf of the appellants and learned Additional Advocate General appearing on behalf of the State and also perused the entire record carefully.

7. Question that arises for determination before us in this appeal is whether learned trial Court did not properly appreciate oral as well as documentary evidence placed on record and whether learned trial Court had committed miscarriage of justice by convicting both the appellants.

Findings in both appeals i.e. Cr. Appeal No. 303 of 2012 titled Deepak Kumar v. State of H.P. and Cr. Appeal No. 410 of 2012 titled Joginder Singh v. State of H.P.

ORAL EVIDENCE ADDUCED BY PROSECUTION:

8.1. PW1 SI Rupinder Kumar has stated that he is posted as SI/IO in P.S. CID Bharari Shimla since October 2010 and on dated 5.3.2011 Inspector Meenakshi of P.S. CID Shimla told that she had received prior information regarding contraband. He has stated that thereafter he, Inspector Meenakshi, ASI Kalyan Singh, ASI Rajesh, H.C. Bhom Parkash went in vehicle having registration No. HP-07B-0407 towards Karsog side and official vehicle was driven by C. Ravi Kumar. He has stated that at about 9 PM they reached Gharyana and stopped official vehicle in the middle of road in zigzag manner. He has stated that thereafter vehicle having registration No. HR-12J-4248 came from Karsog side and another vehicle No. HP-03B-0667 also came from Karsog side which was driven by Devinder Sharma. He has stated that vehicle having registration No. HR-12J-4248 was stopped and one man Bhom Parkash was found on the road and he was asked to join the investigation. He has stated that in presence of Devinder Sharma and Bhom Parkash the occupants of vehicle No. HR-12J-4248 were asked about their identity. He has stated that co-accused Joginder was on driver seat and Deepak was on front seat of vehicle. He has stated that accused persons were asked to search the police officials. He has stated that Bhom Parkash took the search of police officials and memo Ext. PW1/A was prepared on spot. He has stated that thereafter Investigating Agency told that they suspected the contraband in the vehicle. He has stated that option was given to accused persons whether they intended to be searched before the gazetted officer or before the Magistrate or before the Investigating Agency. He has stated that accused told that they would give search to the police officials present at the

spot. He has stated that consent memo Ext. PW1/B was prepared which bears signatures of Bhom Parkash and Devinder. He has further stated that thereafter both accused persons told that packets of charas were concealed by them below the footrest of front left tyre of their vehicle. He has stated that thereafter co-accused Deepak present in Court laid down underneath the vehicle and co-accused Joginder Singh present in Court directed co-accused Deepak to open the nut bolts of steel plate underneath the footrest of left front tyre. He has stated that thereafter co-accused Deepak opened the nut bolt and took out red bag wrapped with black tape. He has stated that in red bag two other polythene packets were also there and in those packets charas was kept. He has stated that recovered charas was weighed with scale which was in the I.O.'s kit and it was found 1.700 Kg with bag and found 1.600 Kg. without bag. He has stated that recovered charas was put in same bag along with polythene packets and then wrapped in cloth parcel and sealed with four seals of "K" and seizure memo was prepared. He has stated that sample of seal was taken in cloth parcel and NCB form in triplicate was filled. He has stated that seal after use was given to Bhom Parkash. He has stated that thereafter ruka was sent to P.S. CID Bharari through ASI Kalyan for registration of FIR. He has stated that red bag Ext. P2, black packets Ext. P3 and Ext. P4 and bulk charas Ext. P5 are the same which were recovered from possession of accused persons. He has stated that thereafter spot map was prepared by I.O. and accused persons were arrested. He has denied suggestion that no recovery of contraband was effected from accused persons. He has denied suggestion that all documents were prepared at the later stage just to create the evidence.

8.2 PW2 Bhom Parkash has stated that he is ex-serviceman and he also worked with Home Guard. He has stated that he remained Panchayat member of his Panchayat from 2000 to 2005. He has stated that on dated 5.3.2011 in the evening one Devinder Sharma came to his house at village Palyad and he went to see him off in his vehicle. He has stated that after seeing him off on the main road he was coming back towards his house. He has stated that thereafter he received a call from Devinder Sharma that some quarrel was going on. He has stated that thereafter he came back to the main road at 9.15 PM. He has stated that he was told by police officials that they were from CID and police officials further told that charas was recovered from accused. He has stated that accused persons were also present at the spot. He identified the accused persons in Court. He has stated that at that time two black packets were on front left footrest of the vehicle and one red bag was in the hand of lady police official. He has stated that co-accused Joginder Singh was outside the vehicle. He has stated that he does not remember the registration number of the vehicle. He has stated that contraband was measured with help of scale and it was found to be 1.700 Kg. with bag and 1.600 Kg. without bag. He has stated that they all went to the Panchayat office which was about 40-50 metres from the spot. He has stated that thereafter recovered contraband was placed in red coloured bag along with polythene packets and then wrapped and sealed in cloth parcel. He has stated

that memo Ext. PW1/D was prepared which bears his signatures and signatures of Devinder Sharma. The witness was declared hostile by prosecution. He has stated that accused did not tell in his presence that they were carrying the contraband in the vehicle. He has also stated that no personal search of police officials was conducted in his presence. He has also stated that no option was given to accused persons in his presence whether they intended to be searched before the gazetted officer or Magistrate. He has denied suggestion that co-accused Deepak laid down himself underneath the vehicle and he has denied suggestion that after opening the nuts and bolts of plate three polythene packets recovered. He has denied suggestion that he is inimical towards the police officials

8.3 PW3 Sunil Negi has stated that he remained as Dy. S.P. Crime Branch Shimla till September 2011 and on dated 5.3.2011 at about 8.15 PM C. Naginder Singh brought information under Section 42 of N.D.P.S. Act at his residence which he received and made entry of same in the concerned register. He has stated that he also made endorsement on the information letter and endorsement on the letter is encircled portion A to A and information letter is Ext. PW3/A. He has stated that on dated 6.3.2011 C. Naginder Singh brought information under Section 57 of Act at his residence and he made endorsement on letter which is encircled A to A and information letter is Ext. PW3/B which is in his hand and bears his signatures. He has denied suggestion that in order to do manipulations police has separately maintained register pertaining to N.D.P.S. cases and he has also denied suggestion that he did not receive Ext. PW3/B on dated 6.3.2011.

8.4 PW4 C. Naginder Singh has stated that he is posted in Crime Branch Shimla since 2009 and on dated 5.3.2011 he was in police station CID Bharari Shimla and Inspector Meenakshi handed over one letter at 7 PM to him containing compliance of provisions of Section 42(2) of the Act and also told him that same be handed over to Dy. S.P. Crime. He has stated that he went to office of Dy. S.P. and he came to know that Dy. S.P. had left the office and thereafter he went to the residence of Dy. S.P. and handed over Ext. PW3/A to him. He has stated that copy of letter brought back by him and thereafter he handed over the same to Inspector Meenakshi. He has stated that on dated 6.3.2011 at about 11.30 AM Inspector Meenakshi gave letter Ext. PW3/B under Section 57 of the Act and directed him to deliver the same to Dy. S.P. Crime. He has stated that he handed over the letter to Dy. S.P. at his residence. He has denied suggestion that he did not go to residence of Dy. S.P. on 5th and 6th March 2011. He has denied suggestion that he did not hand over the letters Ext. PW3/A and Ext. PW3/B to Dy. S.P.

8.5 PW5 H.C. Pradeep Kumar has stated that he was posted as Reader to Dy. S.P. Crime Shimla since 2009 and on dated 5.3.2011 C. Naginder came to office at 6.30 PM and he told that he was to give information under Section 42 of the Act to Dy. S.P. He has stated that Dy. S.P. had left the office and thereafter he and Naginder Singh went to residence of Dy. S.P. Crime. He has further stated that thereafter Naginder Singh handed over the information in written to Dy. S.P. Shri

Sunil Negi who received the same and entered in the register. He has stated that copy was given to him which was kept by him in record. He has stated that he has brought the original record and copy Ext. PW3/A is true copy of original. He has stated that on dated 7.3.2011 when Sunil Negi came to office he gave him copy of special report under Section 57 of the Act and Dy. S.P. made the entry regarding special report. He has stated that entries are at Sr. Nos. 5 and 6 of the register. He has stated that Ext. PW3/B is true copy of original. He has denied suggestion that he did not go with C. Naginder Singh on dated 5.3.2011 with register and also denied suggestion that he did not receive the special report on dated 7.3.2011.

8.6 PW6 H.C. Parkash Chand has stated that he is posted as MHC in P.S. CID Bharari since November 2009 and on dated 5.3.2011 at about 6.30 PM Inspector Meenakshi was present in police station and she received the secret information under Section 42(2) of N.D.P.S. Act. He has stated that SI Rupinder Singh ASI Rajesh, ASI Kalyan, H.C. Bhom Parkash were also present and they left the police station in vehicle No. HP-07B-0407 which was driven by C. Ravi Kumar. He has stated that police officials went towards Sunni and Karsog side and rapat was entered which is Ext. PW6/A. He has stated that he has brought the roznamacha and Ext. PW6/A is correct copy of it. He has stated that on dated 6.3.2011 at 12.30 AM ASI Kalyan came to police station CID Bharari and handed over ruka along with case property and documents to SI Rattan Singh. He has stated that SI Rattan Singh handed over ruka to him and he recorded FIR Ext. PW6/B. He has stated that he prepared police file and sent the same to I.O. through ASI Kalyan Singh. He has stated that ASI Kalyan Singh handed over the case property sealed in parcel, copy of seizure memo, NCB form, resealing certificate which he deposited in malkhana after making entries in malkhana register. He has stated that he has brought the malkhana register and entries recorded at Sr. No. 36 and further stated that copy Ext. PW6/C is correct as per original. He has stated that on dated 7.3.2011 he filled the relevant column No. 12 of NCB form and sent the case property alongwith sample seal, copy of seizure memo, NCB form in triplicate, resealing certificate, copy of FIR and docket vide RC No. 16/11 through C. Parkash Chand to FSL Junga for analysis. He has stated that Parkash Chand gave the receipt of deposit on the same day. He has stated that he has brought RC register and stated that copy Ext. PW6/D is correct as per original. He has stated that no tampering was done with case property. He has denied suggestion that on dated 5.3.2011 he did not make any entry in Ext. PW6/A and also denied suggestion that no case property was deposited with him along with documents. He has denied suggestion that he did not send any case property along with documents to FSL Junga. He has denied suggestion that entries have been ante timed.

8.7 PW7 C. Parkash Chand has stated that he is posted as Constable with Crime Branch Shimla since 2007 and on dated 7.3.2011 MHC Prakash Chand gave to him one sealed parcel, sealed with nine seals of K and ten of N along with sample seal, NCB form, seizure memo, copy of FIR and documents for depositing with

FSL Junga which he deposited on the same day and gave the receipt to MHC He has stated that no tampering was done with case property during the period it remained in his custody. He has denied suggestion that he did not take any case property to FSL Junga for analysis on dated 7.3.2011.

8.8 PW8 SI Rattan Singh has stated that he remained posted as SI/IO in P.S. CID Bharari Shimla from 2008 to June 2011 and on dated 6.3.2011 ASI Kalyan Singh presented before him at about 12.30 AM one sealed parcel sealed with nine seals of K along with ruka, NCB forms and seizure memo. He has stated that he gave ruka to MHC Prakash Chand for registration of FIR and he resealed the sealed parcel with ten seals of N and took separate seal sample Ext. PW8/A. He has stated that he also filled up column Nos. 9 to 12 of NCB form and then handed over the sealed parcel, sample seal, NCB form to MHC for depositing in the malkhana and FIR Ext. PW6/B bears his signatures. He has stated that ruka bears endorsement encircled A and it is in his hand writing and bears his signatures and he directed that contraband be got analysed from FSL. He has denied suggestion that entries were filled by MHC subsequently. He has denied suggestion that entries were interpolated and also denied suggestion that case property was not produced by ASI Kalyan Singh with documents and he has also denied suggestion that he did not reseal the case property.

8.9 PW9 Ranjit Singh has stated that he is cable operator at Rohtak. He has stated that he knew driving and accused Joginder who was present in Court is known to him. He has stated that co-accused Deepak was also known to him as he is from his village. He has stated that Suresh Kumar is also resident of village of Joginder. He has stated that he does not know whether Suresh was having vehicle No. HR-12J-4248. He has stated that Suresh Kumar used to visit on foreign trip. The witness was declared hostile. He has denied suggestion that he has given statement to I.O. that vehicle No. HR-12J-4248 belonged to Suresh Kumar was sold by him to Joginder. He has denied suggestion that he has given the statement that vehicle was sold by Joginder to Parveen. He has denied suggestion that as Parveen had not paid the amount to Joginder vehicle was operated by Joginder. He has denied suggestion that Suresh Kumar had sold the vehicle on affidavit. He has denied suggestion that he has deposed falsely.

8.10 PW10 ASI Kalyan Singh has stated that he is I.O. at P.S. CID Bharari Shimla from 1.9.2010 to 6.8.2011 and on dated 5.3.2011 Inspector Meenakshi told that she had received secret information regarding contraband. He has stated that thereafter he, Inspector Meenakshi, SI Rupinder, ASI Rajesh, H.C. Bhom Parkash went in official vehicle No. HP-07B-0407 towards Karsog side. He has stated that vehicle was driven by C. Ravi Kumar. He has stated that Inspector Meenakshi told that two boys aged 25 and 26 were coming in tata vehicle No. HR-12J-4248 with contraband towards Shimla. He has stated that at about 9 PM they reached Gharyana and stopped the vehicle in the middle of the road in zigzag manner. He has stated that vehicle having registration No. HR-12J-4248 came from Karsog side and thereafter immediately vehicle No. HP-03B-0667 came from Karsog side

which was driven by Devinder Sharma. He has stated that vehicle bearing No. HR-12J-4248 was stopped by police officials and one man Bhom Parkash was on the road at that time and he was asked to join the investigation. He has stated that in presence of Devinder Sharma and Bhom Parkash the occupants of vehicle No. HR-12J-4248 were asked about identities and he has stated that co-accused Joginder was on driver seat whereas co-accused Deepak was on front seat. He has stated that personal search of police officials was taken and memo Ext. PW1/A was prepared. He has stated that police officials told both the accused that police officials have suspicion that both accused were carrying contraband with them in the vehicle. He has stated that option was given to accused persons whether they intended to be searched before the gazetted officer or Magistrate. He has stated that accused told them that they intended to be searched by police officials present at the spot. He has stated that consent memo Ext. PW1/B was prepared. He has further stated that thereafter both accused told that packets of contraband were concealed by them below the footrest of front left tyre of vehicle. He has further stated that thereafter co-accused Deepak laid down underneath the aforesaid vehicle. He has further stated that co-accused Joginder directed co-accused Deepak to open the nut bolts of steel plate. He has stated that thereafter co-accused Deepak opened the nut bolts and red coloured bag was found wrapped with black tape and in red bag contraband was found. He has stated that in addition to it two other polythene packets were found and in those packets also contraband was kept. He has stated that recovered contraband was weighed with scale which was in I.O.'s kit and it was found 1.700 Kg. with bag and 1.600 Kg. without bag. He has stated that recovered charas along with polythene packets wrapped in a cloth parcel and sealed with nine seals of K. He has stated that seizure memo was prepared and sample seal was took on cloth parcel. He has stated that NCB form in triplicate was prepared and seal after use was given to Bhom Parkash. He has stated that ruka was prepared by Inspector Meenakshi and same was handed over to him along with case property sample seals, NCB form, seizure memos of charas and vehicle at 10.30 PM with direction to take the same to P.S. CID Bharari. He has stated that he reached at police station CID Bharari at 12.30 AM in private vehicle and he handed over case property, relevant documents and ruka to SI Rattan Singh. He has stated that case property remained intact in his custody. He has denied suggestion that there is no driver namely Ravi Kumar in P.S. CID. He has stated that he is not witness to any memo prepared at the spot. He has stated that contraband was found hidden underneath the front tyre side. He has stated that contraband was recovered from the space which was in between engine and tyre. He has stated that police officials recovered three packets containing charas. He has denied suggestion that he was not the member of raiding party.

8.11 PW11 Meenakshi has stated that she remained posted as I.O. in P.S. CID Shimla. She has stated that on dated 5.3.2011 at about 6.45 PM she received secret information at P.S. CID Shimla that two boys aged 24 and 26 years were coming in vehicle having registration No. HR-12J-4248 with contraband towards

Shimla. She has stated that after receiving the information she prepared special information report under Section 42 (2) of Act Ext. PW3/A and handed over the same to C. Naginder with direction to hand over to Dy. S.P. Crime Branch Shimla. She has stated that at 6.45 PM she along with SI Kalyan, SI Rupinder, ASI Rajesh, H.C. Bhom Parkash proceeded in official vehicle No. HP-07B-0407 towards Karsog side. She has stated that vehicle was driven by C. Ravi Kumar. She has stated that at about 9 PM they reached Gharyana and stopped their vehicle in the middle of road in zigzag manner. She has further stated that vehicle having registration No. HR-12J-4248 came from Karsog side which was driven by co-accused Joginder Singh and then immediately vehicle No. HP-03B-0667 came from Karsog side which was driven by Devinder Sharma. She has stated that vehicle No. HR-12J-4248 was stopped and one man Bhom Parkash was also walking on the road at that time and he was coming from Tatapani side and he was asked to join the investigation. She has stated that thereafter members of raiding party have given their personal search to accused in presence of witnesses and memo Ext. PW1/A was prepared at the spot which bears her signatures. She has stated that accused were told that raiding party had suspicion that accused were possessing contraband with them or in the vehicle. She has stated that thereafter accused persons were apprised of their legal right to be searched before the gazetted officer or Magistrate and option was given to accused persons. She has stated that memo Ext. PW1/B was prepared and accused had given the option that they should be searched by police officials. She has stated that bolt of vehicle was slightly raised and co-accused Deepak who was present in Court laid down underneath the vehicle and further stated that co-accused Joginder opened the bolt of vehicle. She has stated that thereafter co-accused Deepak opened the nut bolt of steel plate and under the footrest of left front tyre three packets were found. She has stated that two packets were wrapped with black coloured tape and one bag was of red colour. She has stated that recovered contraband was weighed with scale which was in I.O.'s kit and on weighment it was found 1.700 Kg. with bag and 1.600 Kg. without bag. She has stated that recovered charas was put in same bag along with polythene packets and wrapped in cloth parcel with seal. She has stated that NCB form in triplicate was filled at the spot and sample seal was also obtained on cloth parcel. She has stated that seal after use was given to Bhom Parkash. She has stated that vehicle having registration No. HR-12J-4248 was also took into possession along with documents i.e. RC Ext. P6, affidavit of Joginder Singh regarding sale of vehicle and insurance certificate in the name of Suresh Kumar. She has stated that ruka was prepared and same was handed over to ASI Kalyan Singh along with case property, sample seals, NCB form, seizure memos of charas with direction to take the same to P.S. CID Bharari. She has stated that red bag is Ext. P2 and black packets are Ext. P3 and Ext. P4 and bulk charas is Ext. P5. She has stated that said articles are same which were recovered from accused persons present in Court. She has stated that thereafter she inspected the spot and prepared site plan Ext. PW11/B and also recorded statements of witnesses under Section 161 Cr.P.C. She has stated that she also

prepared special report under Section 57 of the Act and handed over the same to C. Naginder with direction to take the same to Dy. S.P. Crime. She has stated that after receiving the report from FSL Ext. PW11/D and after completion of investigation she handed over the case file to Inspector Tenzin Negi who prepared challan and presented in Court. She has stated that she is acquainted with signatures of Inspector Tenzin Negi as she worked under him for two years. She has denied suggestion that entries in the daily diary register were later on manipulated. She has denied suggestion that false case has been planted against accused persons and she has also denied suggestion that documents were prepared later on. She has denied suggestion that accused persons were picked from Dhalli as they had altercation with police regarding some traffic offence.

9. Statement of appellants recorded under Section 313 Cr.P.C. They have stated that personal search of accused was conducted at Dhalli. Accused have further stated that when they were coming from Narkanda side then at Thego their vehicle was challaned at 5.30 PM and thereafter they came to Dhalli. Accused persons have stated that police party again stopped them as they were having black glasses on the windows and they had altercation with them. They have further stated that police party took them to an isolated place and took their signatures on many documents. Accused have also stated that they are innocent and falsely implicated in this case. Accused persons did not lead any defence evidence.

Testimony of PW2 Bhom Parkash is fatal to the prosecution

10. It is the case of prosecution that 1.600 Kg. charas was found in conscious and exclusive possession of accused in presence of independent witnesses namely Bhom Parkash and Devender Sharma. We have carefully perused seizure memos Ext. PW1/C and Ext. PW1/D placed on record. Seizure memos Ext. PW1/C and Ext. PW1/D signed by three witnesses namely Bhom Parkash, Devender Sharma and Rupender Kumar. PW2 Bhom Parkash eye witness of recovery has specifically stated in positive manner when he appeared in witness box that when he reached at the place of incident at that time accused persons did not state that they were carrying contraband. PW2 has also stated in positive manner that no personal search of police officials was conducted in his presence. PW2 Bhom Parkash has also stated in positive manner that no option was given to accused persons in his presence that whether they intended to be searched by gazetted officer or Magistrate. PW2 has stated in positive manner that when he reached at the spot at the time one red packet was already in the hands of lady police constable and he has further stated that two bulk packets were on front left footrest of vehicle. PW2 contradicts the entire story of prosecution. Prosecution has alleged that contraband was hidden underneath the front tyre side and was recovered from the space which was between the engine and tyre. PW2 did not state when he appeared in the witness box that contraband was recovered from the space between the engine and tyre and PW2 also did not state that contraband was hidden underneath the front tyre side. It was held in case

reported in Latest State of H.P. Vs. Hanacho Alias Stewart, that joining of independent witnesses is not an empty formality but is intended to ensure the fairness in conducting the search and to corroborate the version of Searching Officer about the search and seizure of contraband. It was held that if independent witness did not support the prosecution case then same casts doubt about the veracity of police officials and version of prosecution. Hence we are of the opinion that testimony of PW2 Bhom Parkash is fatal to the prosecution in present case.

Non-examination of another independent witness namely Devender Sharma is also fatal to the prosecution

11. In the present case it is the case of prosecution that charas was recovered from the exclusive and conscious possession of accused in presence of independent witnesses Devinder Sharma and Bhom Parkash. One Bhom Parkash did not support the prosecution story and another witness Devinder Sharma was present in Court on dated 10.10.2011 but learned Public Prosecutor Mr. Purinder Sharma has given the statement before learned Special Judge Shimla that he does not want to examine witness Devinder Sharma present in Court being won over by accused. No reason has been assigned by prosecution as to why prosecution did not examine another independent witness Devinder Sharma when he was present in Court despite the fact that PW2 Bhom Parkash did not support the prosecution. The prosecution could ascertain the true facts of the case by way of declaring witness Devinder Sharma as hostile and prosecution could ascertain the truth by way of cross examination of Devinder Sharma. We are of the opinion that simply stating that Devinder Sharma was won over by accused is no positive ground for non-examination of independent witness Devinder Sharma in the trial Court when Devinder Sharma was present in Court for his examination. Hence adverse inference under Section 114(g) of Indian Evidence Act is drawn against the prosecution for non-examination of independent eye witness Devinder Sharma who was present in Court on dated 10.10.2011.

Non-production of original seal is also fatal to the prosecution case

12. It is the case of prosecution that original seal after use was handed over to PW2. Original seal was not produced in Court for the purpose of comparison and no FIR was recorded to the effect that original seal was lost. It was held in case reported in Latest HLJ 2011 HP 1195 (DB) titled Nanha v. State that if original seal is not produced then conviction could not be recorded. (See (1998)8 SCC 449 titled State of Rajasthan v. Gopal)

Investigation of case by complainant herself is also fatal to the prosecution in present case

13. As per FIR Ext. PW6/B it is proved on record that complainant in present case was Inspector Meenakshi Bhardwaj. It is also proved on record that entire investigation of case i.e. preparation of seizure memo, preparation of site plan,

recording the statements of witnesses, filling up of NCB form and preparation of sample was conducted by complainant herself. There is no evidence on record in order to prove that another Investigating Officer was not available. It is well settled law that investigation of a criminal case should be conducted by independent Investigating Officer. Practice of investigating the case by complainant in criminal case is deprecated by Hon''ble Apex Court of India in case reported in 1993 Criminal Law Journal 3716 titled Gyan Chand v. State of Rajasthan.

Two views are possible in present case and accused are entitled for the benefit of two views

14. In Narcotic Drugs and Psychotropic Substances cases seizure memo is substantive piece of evidence. We have carefully perused the seizure memos Ext. PW1/C and Ext. PW1/D. Eye witnesses of seizure memos are (1) Bhom Parkash (2) Devinder Sharma and (3) Rupinder Kumar. PW1 Rupinder Kumar official witness has specifically stated that contraband was recovered from possession of accused but PW2 Bhom Parkash has specifically stated that when he reached at the spot the contraband was already in the hands of lady police constable and further stated that no option was given to accused persons whether they intended to be searched by gazetted officer or by Magistrate and has specifically stated that no contraband was recovered from the space between engine and tyre. We are of the opinion that two views have emerged in present case. It was held in case reported in Mool Chand Vs. Jagdish Singh Bedi and Others, that when evidence in criminal case is of such a nature that two views are possible then view favourable to accused should be adopted. (See: 1998 (2) S.L.J. 1408 Shashi Pal and others v. State of HP, State of H.P. Vs. Sudarshan Singh, , See State of Himachal Pradesh Vs. Inder Jeet and Others, , See State of H.P. Vs. Diwana and Others, It was held in case reported in 2007(1) SCC (Cri) 377 titled Deelip and another v. State of H.P. (Apex Court of India) that if in N.D.P.S. cases two views are possible then view favourable to accused should be adopted and benefit of doubt should be given to accused. (Also see Ritesh Chakarvarti Vs. State of Madhya Pradesh, Also see 2003(9) SCC 159 titled Jagdish v. State of H.P. Also see State of Punjab Vs. Baldev Singh, etc. etc., . Also see State of Punjab Vs. Balbir Singh,

15. Submission of learned Additional Advocate General appearing on behalf of State that all memos have been signed by witnesses and in view of signatures of witnesses upon the memos appeals filed by appellants be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that solely signing of document does not mean that contents of document are admitted by person who signed the document. It is well settled law that contents of document should be proved in Court in accordance with law as per Chapter V of Indian Evidence Act 1872.

16. Another submission of learned Additional Advocate General appearing on behalf of State that judgment and sentence of learned trial Court be affirmed on

the testimonies of police officials is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that conviction could be based on the evidence of police officials provided such evidence is trustworthy and inspires confidence. It is well settled law that police officials undoubtedly are competent witnesses but the Court has to be cautious and careful while scrutinizing their statements. In present case other police officials are not signatory to substantial documents i.e. seizure memos and only Rupender Kumar is the signatory to substantial documents i.e. seizure memos Ext. PW1/B and Ext. PW1/C. It is well settled law that contents of document cannot be proved by way of testimonies of witnesses who are not signatories to the document and one independent witness namely Bhom Parkash who is signatory to documents i.e. seizure memos Ext. PW1/B and Ext. PW1/C did not support the prosecution story as alleged by prosecution and another witness of substantial documents i.e. seizure memos Ext. PW1/B and Ext. PW1/C namely Devinder Sharma was not examined by prosecution despite the fact that Devinder Sharma was personally present in Court for examination and other police officials are only corroborative witnesses and are not eye witnesses of substantial documents i.e. seizure memos Ext. PW1/B and Ext. PW1/C of contraband. It is proved on record that on dated 5.3.2011 at Theog vehicle of accused was challaned at 5.30 PM and it is also proved on record that on the same date at Panchayat Office Gharyana falling within the jurisdiction of P.S. Dhalli vehicle was again intercepted at 9.05 PM. It is the case of prosecution that prior information was given to police officials qua presence of contraband in vehicle having registration No. HR-12J-4248. We are of the opinion that concept of two views theory is applicable in the present case when different eye witness of incident gives contradictory testimony qua relevant fact which is the issue before the criminal Court. In present case the issue before the Criminal Court is whether contraband measuring 1.600 Kg. was recovered from exclusive and conscious possession of accused or not. In present case PW1 has specifically stated that contraband measuring 1.600 Kg. was recovered from exclusive and conscious possession of accused in presence of PW1 but another witness PW2 eye witness of seizure memo has specifically stated that when he reached at the spot contraband was already in the hands of lady police official. PW1 stated that option was given to accused persons whether they intended to be searched by gazetted officer or by Magistrate but on the contrary PW2 eye witness stated in positive manner that no option was given to accused in his presence. We are of the opinion that above said facts proves two contradictory views in present case and benefit of two contradictory views cannot be given to prosecution as per law. It was held in case reported in Anjlus Dungdung Vs. State of Jharkhand, that suspicion however strong cannot take place of proof. It was held in case State (Delhi Administration) Vs. Shri Gulzari Lal Tandon, that suspicion however grave cannot take place of proof. (also see Sharad Birdhichand Sarda Vs. State of Maharashtra, , See: Bhugdomal Gangaram and Others Vs. State of Gujarat, See: State of U.P. Vs. Sukhbasi and Others, .

17. In view of above stated facts we hold that learned trial Court did not properly

appreciate oral as well as documentary evidence placed on record. We accept both appeals and set aside the judgment and sentence passed by learned trial Court. We acquit both accused persons by way of giving them the benefit of doubt. Contraband will be confiscated to State of H.P. in accordance with law after the expiry of period of filing further proceedings. Fine if deposited be refunded to appellants. Appellants shall be released forthwith if not required in nay other criminal case. Learned Additional Registrar (Judicial) will issue warrant of discharge forthwith to officer in-charge of jail along with certified copy of judgment. Certified copy of this judgment be placed on the file of Cr. Appeal No. 410 of 2012 titled Joginder Singh v. State of H.P. and file of learned trial Court along with certified copy of this judgment be sent back forthwith. Both appeals stand disposed of. All pending miscellaneous application(s) if any also stand disposed of.