
(2009) 01 SHI CK 0031
In the High Court Of Himachal Pradesh

Jai Pal and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 50

Citation : (2009) 01 SHI CK 0031

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The appellants have assailed the judgment of their conviction and sentence, passed by the learned Special Judge (Fast Track Court), Kullu, in Sessions Trial No. 42 of 2007, decided on 23.4.2008, u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, in short "the Act", for allegedly having in possession of 1 Kg. Charas each by Jai Paul and Duni Chand, 800 grams by Ved Singh, appellants.

2. Precisely the case of the prosecution is that on 25.5.2007 at about 2.30 p.m., the police party headed by SI Ram Karan was on patrolling duty in police vehicle in Jibhi area. On seeing the police vehicle, the appellants coming on foot got scared and concealed themselves behind a pine tree at the place known as a Chiladhar.

3. It caught the attention of the police party, they got suspicious. They stopped their vehicle and encircled the appellants. In the meanwhile a Taxi bearing No. HP-01K-0826 being driven by PW1 Hardayal Singh came from Chehni side. Hominder Dutt was sitting besides the driver in the said Taxi. The police included both S/Shri Hardayal Singh (PW1) and Hominder Dutt in the investigation of the case and asked the identity of the appellants in their presence. The police suspected the contraband in their possession, as such, SI Ram Karan informed them about their rights to be searched in presence of the Magistrate or the

Gazetted Officer.

4. The appellants opted to be searched before the police present on the spot. SI Ram Karan prepared the consent memos Exts.PM, PN and PO of the appellants Jai Pal, Ved Singh and Duni Chand respectively, in the presence of the witnesses aforesaid.

5. Before conducting the search of the appellants, SI Ram Karan SHO Banjar, rendered himself to be searched by the appellants, but nothing offensive was found in his possession. To this effect, document Ex.PP was prepared.

6. Thereafter, the police conducted the search of the appellant Jai Pal Singh and recovered one polythene envelope found beneath his Kurta containing 1 Kgs. of Charas in the shape of sticks and balls. Two samples of 25 grams each were separated for analysis. Each of the sample was sealed with seal impression "T". Remaining bulk was also sealed with the same seal. Impression "T" was also taken on a piece of cloth.

7. The NCB forms were prepared in triplicate. The facsimile of the seal impression "T" was also fixed against column No. 8 thereof and one of such form is Ex.PK. Seal after its use was handed over to PW1 Hardayal Singh. The Charas found in the possession of Jai Pal was taken into possession vide memo Ex.PS.

8. Thereafter, SI Ram Karan conducted the search of appellant Ved Singh. During the search of his green coloured bag, he found 800 grams of Charas in the shape of tikkies and balls. Two samples of 25 grams each were separated and sealed with seal impression "M". The remaining bulk was also sealed with the same seal. The NCB forms, in triplicate, were prepared. The facsimile of the seal impression was also fixed on NCB forms, one of which is Ex.PU. The seal after its use was handed over to PW Hardayal Singh. A seizure memo Ex.PB was prepared in the presence of the aforesaid witnesses.

9. Thereafter, the appellant Duni Chand was also searched by SI Ram Karan. During his personal search, a green coloured bag inside his Kurta was found tied with a string. On opening it, it contained one kilograms (1 Kg.) of Charas in the shape of tikkies, balls and sticks. Two samples of 25 grams each were separated from the recovered quantity and sealed with seal impression "H". The remaining bulk was also sealed with the same seal. The NCB forms, in triplicate, were prepared. The facsimile of the seal impression was also fixed on NCB forms, one of which is Ex.PJ. Sample of seal was also taken separately on a piece of cloth and the seal after its use was handed over to PW Hardayal Singh. A seizure memo Ex.PZ was prepared, which was signed by the appellant as well as by the aforesaid witnesses.

10. A Ruqa Ex.PA/A was sent to the police station, for registration of the case, on the basis of which, FIR was formally registered. The police prepared the site plan Ex.PA/B. the appellants were arrested and each one of them were informed the grounds of their arrest in writing vide memo Ext.PA/C to Ex.PA/E. The special

report was sent to the office superior on 26.5.2007, which was received in his office on the same day.

11. The case property was deposited in the Malkhana and its entry was made in the Malkhana register, the copy whereof is Ex.PF. From the above three recoveries, one sample each was sent through constable Lakshman Dass No. 154, for the chemical analysis to FSL Junga through RC Ex.PG containing the details of Ext.PH and these samples were deposited in the said laboratory on 27.5.2007.

12. The samples were examined and as per the report of analysis, the samples so received in the laboratory were of that of the Charas containing 31.2 per cent resin in sample No. P-1, 30.32 per cent in sample No. P-2 and 31.9 per cent in sample No. P-3.

13. After recording the statements of the witnesses and completing the challan, it was presented in the court for the trial of the appellants. The appellants were charge-sheeted for the offence aforesaid. They pleaded not guilty and claimed trial.

14. The prosecution examined its witnesses to prove its case against the appellants. The statements of the appellants were also recorded u/s 313 of the Code of Criminal Procedure. Their defence was denial simplicitor. According to them, nothing was recovered from them. No evidence in defence was led.

15. After hearing the parties and on conclusion of the trial, the appellants were convicted u/s 20(B) of the Act, on the strength of the judgment passed by this Court in Dharam Pal v. State of H.P. and Anr. Latest HLJ 2007 (HP) 827 for keeping in their possession the Charas more the "small quantity", but less than the "commercial quantity", as such, the appellant Jai Pal Singh was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 30,000/-, appellant Ved Singh was sentenced to undergo rigorous imprisonment for a period of two years and six months and to pay a fine of Rs. 25,000/- and appellant Duni Chand was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 30,000/-. They were also given the benefit of Section 428 of the Code of Criminal Procedure.

16. Feeling aggrieved and dissatisfied with the impugned judgment of conviction and sentence, the appellants filed the present appeal, on the grounds that the learned trial court did not appreciate the evidence in the right perspective and further that Hardayal Singh driver of the Taxi did not support the story of the prosecution and there was non-compliance of the mandatory provisions of law. It was also contended that the NCB forms were not deposited in the Malkhana alongwith contraband.

17. I have heard the learned Counsel for the parties and have carefully reappraised the evidence on record.

18. PW7 SI Ram Karan, at the relevant time was posted as SHO at Police Station

Banjar. He testified on oath that he along with the other police officials were on patrolling in Jhibi area. They were traveling in the police vehicle No. HP-34-0213. Around 2.30 p.m., they reached near Chiladhar and noticed the appellants walking on foot. On seeing the police party, they fled away and concealed themselves behind the pine trees. The police vehicle was stopped. They were encircled and brought to the road side. In the meanwhile a Maruti Van being driven by PW1 Hardayal Singh also reached there. One passenger Hominder Dutt was also sitting besides him. Both were included in the investigation of this case. Suspecting the contraband in the possession of the appellants, the option in the above terms, was given to them for their search before the Magistrate or the Gazetted Officer. The appellants exercised their option to be searched by the police on the spot. The memos were prepared. During the search, the Charas was recovered as stated above. The samples were separated and the case property was taken into possession vide recovery memos. The whole proceeding was witnessed by the independent witnesses referred above. S.I. Ram Karan identified the remaining Charas parcels during the trial of the case. He was subjected to the lengthy cross-examination, but nothing material could be extracted from him, which can be read in favour of the appellants. He has categorically denied that the Charas was planted upon the appellants. He further denied that the appellants were photographed at police station, Banjar and not on the spot, however, he admitted that the Chiladhar is a secluded place. He has denied that the appellants were falsely implicated in this case.

19. PW5 MHC Chaman Lal stated that on 25.5.2007, SI/SHO Ram Karan had sent a Ruka to police station Banjar, through HC Hari Singh, which was received in the police station at 6.00 p.m. on the basis of which FIR Ex.PD was recorded and he proved his endorsement on the ruqa Ex.PE. He further stated that around 8.30 p.m. SHO Ram Karan had handed over nine sealed parcels. NCB forms in triplicate, samples of seal impressions "H", "M" and "T" to him. He further stated that those three sealed parcels bearing three seal impressions of "H" on each parcel and three sealed parcels bearing three seal impressions of "T" on each of them and three sealed parcels bearing three seal impression of "M". These articles were deposited in the police Malkhana and its entry was made at serial No. 92 in the Malkhana register and he proved its extract as correct as per the original record. On 25.7.2007, according to him one sample each sealed with seal impressions H, M and T along with samples of seal impressions H,M and T, NCB forms in triplicate and other relevant documents were handed over to PW4 Constable Lakshman Dass by him, with the direction to deposit the same in FSL Junga vide RC No. 37/07. After its deposit, PW4 handed over the receipt Ex.PH of RC Ex.PG. He further stated that the case property was not tempered with at any stage. He also stated that the column No. 12 of the NCB forms in triplicate was filled in by him. He proved the entry in his own hand on the NCB forms Ex.PJ, K and L. He denied in cross-examination that the case property was not deposited with him and also that it was not kept in the safe custody. He further stated that necessary entries were made in the Malkhana register after depositing of the

case property.

20. PW4 Lakshman Dass has afforded the necessary corroboration to his statement and in cross-examination, he stated that he handed over the case property in the laboratory to the Sub Inspector Incharge and obtained the receipt. However, he denied the suggestion that the case property was tempered with.

21. PW1 Hardayal Singh has not supported the case of the prosecution, however, he has admitted that on 25.5.2007, he was traveling in the said Taxi along with Hominder Dutt. He disowned his statement made to the police u/s 161 of the Code of Criminal Procedure. He also denied the recoveries from the appellants as alleged. Although he has proved his signatures on the documents and admitted that he was never threatened by the police to sign these documents. He also admitted his signatures on the recovery parcels and also the samples. In cross-examination, he has stated that the appellants were photographed outside the police station with the Charas put on them by the Police. His testimony smacks of clear bias to the prosecution. If the police intended to photograph them with Charas they could have been shown somewhere else than in police station. Secondly, his version that they were in the police station and signed the documents and parcels there is of no consequence because he did not complain against the conduct of the police to any higher authority. He can not be treated so simple a person that he did not know where and on what proceedings he was appending his signatures, that too without any threat or promise by the police.

22. PW2 HHC Kanshi Ram had handed over the special report to the Dy. S.P. on 26.5.2007.

23. On the critical examination of the aforesaid evidence, I find that the prosecution has been able to prove the case against the appellants in accordance with law. In the present circumstances, there has been a complete compliance of Section 50 of the Act. The option to the appellants was given in accordance with law. The appellants were made fully aware of their right and each of them consented to be searched by the police. The evidence on this aspect is found untainted, reliable and worth inspiring confidence.

24. The statements of the official witnesses with respect to the recovery, as discussed above, is also consistent worth inspiring confidence and without any embellishment. No malice or ill-will is imputed to the police party by the appellants who are the residents of Haryana, travelling in the remote areas of District Kullu without any cogent explanation. Thus by not supporting the case of the prosecution by PW1 is of no value or consequence when the statements of the official witnesses are worth inspiring confidence. The pure and simple case of the appellants that nothing was recovered from them and this case was planted against them is worth rejecting. The minor discrepancies lurking here and there in the statements of the witnesses of the prosecution do not shake the foundation of the prosecution case, is not material thus required to be ignored.

The non-production of the photographs during the trial of the appellants also does not shake the case of the prosecution in any manner in absence if any motive or malice to implicate the appellants falsely in the case.

25. The quantity recovered from each of the appellants, in the remote area of district Kullu, by no stretch of imagination can be said to be a planted one.

26. From the point of recovery till the examination of the contraband, the link evidence is complete. Non-mentioning of the NCB forms in the Malkhana register especially when it is not disputed in the statements of the witnesses cast no aspersion on the truthfulness of the case of the prosecution.

27. On the scrutiny of the evidence, I find that the official witnesses are trustworthy and their testimonies can safely be acted upon.

28. The learned trial court in my opinion has rightly appreciated the evidence in the right perspective and there is no ground to upset the findings of the guilt of the appellants as the conclusion drawn is based upon the proper appreciation of evidence, as such the conviction and sentence calls for no interference.

29. In result, the appeal sans merit and is accordingly dismissed.

30. Records of the learned trial court be returned.