
(2008) 05 SHI CK 0042
In the High Court Of Himachal Pradesh

Jorg Jagoda

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-05-2008

Acts Referred:

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

Citation : (2008) 2 ShimLC 199

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—Appellant is aggrieved by the judgment of trial Court, whereby he has been convicted of Offence, punishable u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1 lac; in default of payment of fine to undergo rigorous imprisonment for a further period of six months. So, he has preferred the present appeal.

2. Case of the prosecution is as follows. On 28.10.2005, a police party headed by PW-4 SI Lal Singh, left Police Station, Manali at 5.30 A.M., after making an entry in the Daily Diary, copy Ext.PW1/A. At Naggur two more police officials, named PW-1 Constable Chet Ram and HC Parkash Chand joined the party. On 29.10.2005, the police party was divided into two. One party, comprising of PW-4 SI Lal Singh, PW-1 Constable Chet Ram and HC Parkash Chand left towards Chanderkheni, to detect crime relating to narcotic drugs and psychotropic substances. Around 4 P.M., when this party reached a place called Rumsu, the appellant, who is a German National, was spotted. He was carrying a rucksack on his back. On seeing the police, he started behaving abnormally and tried to run away. He was over-powered. He was informed that it was suspected that he was carrying some narcotic drug and psychotropic substance and so, it was intended to search his person and that he had a right to be searched in the presence of some Magistrate or a gazetted officer and if he so desired, search could be

arranged in the presence of a Magistrate or a gazetted officer of one of the specified departments. Appellant allegedly opted for being searched by the police party on the spot. Thereafter his rucksack was searched and was found to contain 2.200 kgs. of Charas. Two samples, each weighing 25 grams, were separated. Both the samples and the bulk Charas were made into three separate parcels. All the parcels were sealed with a seal, which produced the impression of letter "T" of English alphabet. Search and seizure memo, was prepared, which was signed by PW-1 Constable Chet Ram and HC Parkash Chand, besides PW-4 SI Lal Singh, who headed the police party. No independent witness was associated. A written report was sent to the Police Station through Constable Chet Ram for formal registration of the case. All the three sealed parcels, i.e. two parcels containing samples and one containing the bulk stuff were produced to PW-7 SHO Jagdish Chand, who resealed the parcels with his own seal that produced the impression of letter "A" of English alphabet. The three parcels were then deposited with PW-2 MHC Hari Singh. He sent one of the two sample parcels to Central Forensic Science Laboratory, Chandigarh through PW-3 HHC Bir Singh, on 2.11.2005. Incharge of the aforesaid laboratory at Chandigarh returned the sample through letter dated 3.11.2005, Ext.DA through constable PW-3 HHC Bir Singh, saying that already there were many samples lying with the said laboratory for analysis and that a laboratory in Himachal Pradesh State at Kandaghat had become operational, as intimated vide letter dated 31.10.2005. The sample was then sent to CTL Kandaghat on 1.12.2005, vide RC Ext. PW3/A. The Chemical Examiner of CTL, Kandaghat, vide report Ext. PA gave the opinion that the sample contained the contents of Charas.

3. Appellant was charged with an offence, punishable u/s 20 of the Narcotic Drugs and Psychotropic Substances Act by the trial Court. He pleaded not guilty and was, therefore, put on trial. Prosecution examined PW-4 SI Lal Singh and PW-1 Constable Chet Ram to prove the alleged recovery of Charas from the appellant. It examined PW-2 HC Hari Singh and PW-3 HHC Bir Singh to link the report Ext. PA of the Chemical Examiner with the sample taken from the stuff allegedly recovered from the appellant.

4. Learned Counsel representing the appellant has submitted that the prosecution examined only two police officials to prove the accusation of recovery of Charas from the appellant and that not only that the statements of the two officials are contradictory to each other, but are also contradictory to the departure entry, copy Ext.PW1/A, made in the Rojnamcha. Another submission made by him is that the link evidence produced by the prosecution is not trustworthy, because as per entry in the Register Malkhana, the sample which was examined at the laboratory, was handled, besides PW-2 HC Hari Singh and PW-3 HHC Bir Singh, by another police official, named HHC Sher Singh and not only that the prosecution did not examine said Sher Singh, but the two witnesses of link evidence examined by the prosecution also did not clear that ambiguity.

As regards the first submission made on behalf of the appellant, entry in the

Rojnamcha, copy Ext. PW1/A, shows that the police party comprising of PW-4 SI Lal Singh, ASI Lal Chand, HC Dole Ram No. 180, HC Naresh Chand No. 10, HHC Ajay Kumar No. 211, HHC Uttam Singh No. 33 and LC Surajmani No. 200, left Police Station on 28.10.2005 at 5.30, in the morning. Names of PW-1 Constable Chet Ram and HC Parkash Chand, in whose presence search of the rucksack of the appellant was conducted and Charas recovered, do not appear in this entry, Ext. PW1/A, even though PW-1 Constable Chet Ram, while in the witness box, very categorically stated that he left the Police Station, as per this

5. PW 4 SI Lal Singh stated that PW-1 Constable Chet Ram and HC Parkash Chand did not accompany the police party from Police Station, Manali, but they came across them at Naggar. However, as already noticed, PW-1 Constable Chet Ram says that he started with the police party from the Police Station, per Roznamcha entry Ext. PW1/A itself and thus he contradicts PW-4 SI Lal Singh.

6. Again, according to entry Ext. PW1/A, police party left the Police Station on 28.10.2005, but PW-4 SI Lal Singh and initially PW-1 Chet Ram also (in the examination in chief) stated that the party left the Police Station on 29.10.2005. In the cross-examination, PW-1 Chet Ram, however, stated that the party left the Police Station on 28.10.2005 and spent the night intervening 28th and 29th October, 2005, in the open at a place called Rumsu. Rumsu, as per prosecution version, is a village close to the place in the forest where the appellant was apprehended. PW-4 SI Lai Singh, however, says that the party comprising of himself, PW-1 Constable Chet Ram and HC Parkash Chand proceeded for the spot on 29th October, 2005 from Naggar. Now when the party was already there at Rumsu, which is 11 kilometres away from Naggar and the journey can be performed only on foot, per testimony of PW-1 Constable Chet Ram, question of the party leaving for the spot on 29.10.2005 from Naggar did not arise. This contradiction in the testimony of the above named two witnesses remains unexplained.

7. Defence plea is that an unclaimed bag was lying in the forest and the police suspected that it belonged to the appellant and so, he was taken into custody. The contradictions in the testimony of the above named two witnesses indicate that at least one of the two witnesses was not on the spot at the time of the alleged recovery, search and seizure. HC Parkash Chand was not examined by the prosecution and no plausible explanation was offered for withholding him.

We also find that initially the sample parcel was handed over to PW-3 HHC Bir Singh on 2.11.2005 for being carried to CFSL at Chandigarh against Road Certificate Ext. PW2/D. An entry to this effect was made in the Register Malkhana, copy Ext. PW2/C. HHC Bir Singh, when in the witness box as PW-3, stated that the authorities of CFSL, Chandigarh, did not accept the sample on the plea that they were already having a number of samples and that Himachal Pradesh having established its own forensic laboratory, the sample could be examined there and that a letter to this effect, Ext. DA, was given to him by the authorities of the said laboratory, while returning the sample parcel. PW-2 HC

Hari Singh, MHC, also stated that the sample was brought back by HHC Bir Singh. However, in the register Rojnamcha, copy Ext.PW2/C, we find a note to the effect that the sample parcel was brought back from CFSL, Chandigarh on 5.11.2005 by HHC Sher Singh No. 143. This entry runs counter to the testimony of PW-3 HHC Bir Singh No. 149 and PW-2 HC Hari Singh, MHC. Prosecution did not examine HHC Sher Singh No. 143, who, as per the aforesaid note in the Register Malkhana, handled the sample parcel, to get uttered from his mouth, on oath, that he had not tampered with the contents of the sample parcel or how it came to be handled by him when neither PW-2 HC Hari Singh nor PW-3 HHC Bir Singh says that the sample was handled by him (HHC Sher Singh) at any point of time.

In view of what has been discussed hereinabove, we are of the considered view that the case against the appellant does not stand established beyond reasonable doubt.

Hence, the appeal is accepted. Appellant's conviction and sentence, as passed by the trial Court, are set aside and he is acquitted. He being in custody is ordered to be released, at once, in case his detention is not required in any other case.