

(2002) 05 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Respondent Criminal Appeals No. 41 of 2002

MS. Shriki Ravit

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 09-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 279, 279(1), 313, 361(1), 465
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 42, 42(1), 42(2)
Punjab Excise Act, 1914 — Section 61

Citation : (2002) 2 ShimLC 276

Hon'ble Judges : R.L. Khurana, J;M.R. Verma, J

Bench : Division Bench

Advocate : Om Prakash and Anup Chitkara, for the Appellant; J.K. Verma, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—The abovenoted two appeals arising out of the judgment dated 17.1.2002 of the learned Sessions Judge, Kulluin Sessions Trial No. 82/2001, are being disposed of by this single judgment.

The two Appellants, hereinafter referred to as the accused, are Israeli nationals. They have been convicted for the offence u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short: the NDPS Act) and upon such conviction each of them has been sentenced to rigorous imprisonment for ten years and to pay a fine of Rupees one lac. In default of payment of fine each of the two accused has been sentenced to imprisonment for a further period of six months.

2. Briefly, the prosecution story may be thus stated. Sub Inspector Chuni Lal (PW-13) Incharge Police Post, Bhuntar on 12.6.2001 at about 4 a.m. was present in the area of Hathithan along with Head Constables Om Prakash and Moti Ram, as per the directions of the superior officers in connection with "Naka-bandi". At

about 4.30 a.m. Tata Sumo vehicle bearing registration No. DL-8CF-3158 came from Manikaran side. The said vehicle was signalled to stop. PW-1 Rajeev Saini was found driving the said vehicle, who on demand produced the documents of the vehicle. Such documents on checking were found to be in order. Two foreign girls were found sitting on the back seat of the vehicle, who had kept their belongings including a haversack, on the seat as well as on the floor of the vehicle. Both these girls on seeing the police became perplexed and immediately came out of the vehicle. On becoming suspicious that the two girls may be possessing some contraband, PW-13 demanded their passports. They were found to be possessing valid passports and visa. On the basis of suspicion, the luggage of the two girls was checked. During the course of such checking "Charas" in the form of 20" long, 4" wide and one inch thick slab was found stitched and sewn under the belt of the haversack. Such "Charas" on weighment was found to be 2500 grams. Two samples weighing 25 grams each were taken out. The two samples were then sealed in two separate packets with three seals each of the seal "H". The remaining quantity of "charas" weighing 2450 grams was put back in the haversack and then sealed in a packet with five seals of seal "H" and taken into possession vide memo Ex. PW1/ A. The seal used in sealing the packets was handed over to PW-1 Rajeev Saini. The two girls, namely, the two accused, were informed about the grounds of their arrest and thereafter they were arrested.

3. On the basis of the report Ex. PW 13/13, made by PW-13, a case for the offence u/s 20, NDPS Act came to be registered at Police Station, Kullu vide FIR No. 296 of 2001 (Ex. PW5/A).

4. During the course of investigation PW-13 took into possession the vehicle along with its documents vide memo Ex. PW 1/D. He on the same day, that is, on 12.6.2001 produced the two packets containing sample and one packet containing the remaining quantity of "charas" sealed by him with the seal "H" before PW-8 Sub Inspector Kanwar Singh, the then Station House Officer of Police Station, Kullu. PW-8 on the three packets having been produced before him, re-sealed the same with the seal "M" and deposited such sealed packets in the Malkhana of the Police Station. One sealed packet containing the sample on 19.6.2001 was sent to the Chemical Examiner, which sample on analysis was found to be that of "charas".

5. The investigation revealed that accused Shriki Revit (hereinafter referred to as A-I) had checked in Hotel Rainbow at Kasol along with one companion on 1.5.2001. She stayed in such hotel till 11.6.2001. She had booked Tata Sumo Vehicle of one Samir Malhotra of Delhi for the purpose of her journey from Kasol to Delhi. The vehicle bearing No. DL-8CF-3158 was brought from Delhi to Kasol on 11.6.2001 by PW-1 Rajeev Saini. He reached Kasol at about 9.30 p.m. On his having contacted the two accused he was informed by the two accused that they would be leaving for Delhi at about 1 a.m. The two accused, however, started from the Hotel at Kasol at about 4 a.m. on 12.6.2001. The two accused were having six bags as their personal luggage. Five bags were kept in the dicky of the

vehicle and the sixth bag was kept by them on the back seat of the vehicle. At about 4.30 a.m. when the vehicle reached Hathithan, it was stopped and checked leading to the recovery of "charas" as aforesaid.

6. After completion of the investigation, the two accused were sent up for trial for the offence u/s 20, NDPS Act. They pleaded not guilty and claimed trial. The case of the two accused is that of denial simpliciter.

7. The prosecution in support of its case examined thirteen witnesses in all. No defense, however, was led by the accused.

8. The learned trial Judge, on consideration of the evidence coming on the record, came to the conclusion that a case u/s 20, NDPS Act stood proved against each of two accused beyond a reasonable doubt. He, therefore, convicted and sentenced each of the two accused as aforesaid vide the impugned judgment dated 17.1.2002.

9. Aggrieved by the conviction and sentence imposed upon them, the two accused have approached this Court by way of the present appeals. We have heard the learned Counsel for the parties and have also gone through the record of the case.

10. The learned Counsel for the accused at the very outset has contended that the trial of the accused stood vitiated for non-compliance of Section 279, Code of Criminal Procedure, since the learned trial Court failed to explain the evidence coming on record to accused Cohen Berta (hereinafter referred to as A-2) in the language understood by her. It was contended that A-2, an Israeli national, admittedly does not know and understand English language, as is evident from orders dated 25.9.2001 and 7.1.2002 passed by the learned trial Judge, and though the services of A-1 were obtained by the learned trial Judge as an interpreter for explaining the contents of the charge on 25.9.2001 and the questions put to A-2 and the answers given by her while recording the statement u/s 313, Code of Criminal Procedure, on 7.1.2002, there is nothing on record to show that the evidence recorded was explained to A-2 within the meaning of Section 279(1), Code of Criminal Procedure, 1973.

In *Shivnarayan Kabra Vs. The State of Madras*, a case pertaining to the then State of Madras, the evidence of the prosecution was given either in Tamil or in English languages. The accused therein did not, know either of the languages. There was nothing on record to show that such evidence was explained/interpreted to the accused in a language understood by him. A contention was raised that the trial stood initiated due to non-compliance of the provisions contained in Section 361 (1) of the Criminal Procedure Code, 1898 (corresponding to Section 279(1) of the Code of Criminal Procedure, 1973). Repelling the contention, it was held that violation of Section 361(1), Code of Criminal Procedure, 1898 was merely an irregularity and unless prejudice is shown to have been caused to the accused, the trial would not vitiate.

11. In the present case, even if it be assumed that there has been a violation of Section 279, Code of Criminal Procedure, 1973, there is nothing to show that any prejudice has been caused to the accused. No objection whatsoever was raised by the accused during the trial. The learned Counsel for the accused, during the course of hearing of the present appeal, also could not point out any prejudice having been caused to the accused. The violation of Section 279, Code of Criminal Procedure, being only an irregularity is curable u/s 465, Code of Criminal Procedure, 1973. Therefore, the trial has not vitiated in the present case.

12. On merits, the learned Counsel for the accused has contended that the prosecution has failed to prove and establish the offence against either of the two accused beyond a reasonable doubt and as such the conviction and sentence imposed upon each one of them cannot be sustained. The following contentions were raised:

- (i) Conscious possession of the two accused or either one of them not proved;
- (ii) There has been non-compliance of the mandatory provisions of Section 42, NDPS Act;
- (iii) The article alleged to have been recovered from the two accused has not been proved to be Charas.

13. The learned Assistant Advocate General, on the other hand, has supported the conviction and sentence of the two accused on the grounds and for the reasons recorded by the learned trial Court.

Contention No. (i)

Before a person can be convicted for the offence u/s 20, NDPS Act, the prosecution is obliged to prove that such person was found in possession of the narcotic.

In *Duni Chand v. Emperor*, AIR 1940 Lahore 36, seven persons were found sitting in a restaurant around two tables lying side by side, on four chairs and a cot lying near the table. They had their hands or elbows on the table on which there were four tumblers containing small quantities of liquor. Some empty tumblers were also found on the table. A bottle containing eight ounces of liquor of the same variety was also found on the table. The trial Magistrate convicted all the seven persons for the offence u/s 61(1)(a), Punjab Excise Act, on the ground of their being collectively responsible for possession of liquor on the table without trying to find out if any of these seven persons was in individual possession of any tumbler containing the liquor. On revision having been preferred by one of those seven persons, the High Court of Lahore set aside the conviction and sentence by holding that the conviction on the ground of collective responsibility was bad and the trial Court ought to have enquired into if any of these persons was in individual possession of liquor.

14. The Hon''ble Apex Court recently had an occasion to deal with a similar

situation in (2000) 10 SCC 257 Ismail Khan Aubkhan Pathan v. State of Gujrat In this case, Inspector of Police Crime Branch in the Vigilance Squad received secret information that illicit trafficking was going on in the room on the first floor of a building which was in possession of one Nasir and that the said Nasir had kept a stock of charas and was dealing with the same through his servants. A raid was conducted. Upon entering the room six persons were found present there. He also found one gunny bag kept in the corner of the room. On opening the gunny bag charas was recovered therefrom. All the six persons found present in room were arrested and put to trial for the offence u/s 20 NDPS Act. The learned trial Court convicted five persons and acquitted the sixth one. The conviction and sentence of such five persons were confirmed in appeal by the Gujarat High Court. On further appeal before the Apex Court the conviction and sentence of all the five persons were set aside and they were acquitted of the offence. It was held:

There is no evidence that anybody had seen that any one of the accused was dealing with narcotic drugs. There is also no evidence to show that any one of them had admitted either through a confession or otherwise of any incriminating role. Nor is there evidence that the accused persons, who were found sitting in the room, had possession of the room, actual or constructive. It is the prosecution case that the said room was in the possession of Nasir. But that Nasir is not an accused in this case. He was not examined as a prosecution witness to disclose as to how the accused persons happened to be in the room. None of the neighbours supported the prosecution case that any one of the accused had a connection with the article in question.

15. Thus, we are left with only a modicum of evidence as against the accused, which only shows that they were present in the room which was in the possession of one Nasir and that the said room contained a gunny bag with the narcotic substance "charas".

16. It appears that the High Court put the burden on the Appellants to explain as to how they were present in the room. This is what the High Court has observed:

In the present case, at odd hours of the night when the premises was raided, all the accused were present and have not explained as to how and why and since when they were present in the premises. Therefore in our opinion, only inference can be drawn from their unexplained presence in the premises, they being not tenants of the premises is that they were in possession of the premises at the relevant time and the substance found from that premises is possessed by them.

17. In the present case, according to the prosecution the two accused were found sitting on the back seat of Tata Sumo and the bag from which the Charas is alleged to have been recovered, was kept on the back seat in between the two accused.

18. Though as per PW-13 such bag was searched, surprisingly enough no memo with regard to the articles found in such bag appears to have been prepared.

PW-13 Chuni Lal, the investigation officer, has gone to state that nothing else except the "charas" was found in such bag.

19. It is significant to note that as per the prosecution case, "charas" in the form of 20" long 4" wide and 1" thick slab was found stitched and sewn to the belt of the bag and it was recovered after unstitching such belt. If the charas was recovered from the belt of the bag, was the bag absolutely empty since as per PW-13 nothing else was recovered there from.

20. It is the case of the prosecution that the personal luggage of the two accused consisted of six bags, out of which five bags were kept in the dicky while the sixth bag was kept on the back seat of the vehicle. The record shows that all such keys were never checked and searched by PW-13 Sub Inspector Chuni Lal.

21. Ex. PW-I/E is the search memo alleged to have been prepared by PW-13 Sub Inspector Chuni Lal during the search of the luggage comprising of five bags of the two accused. A perusal of the same shows that only two bags were searched inasmuch as the detail of the articles recovered there from have been mentioned. The concluding part of this memo records that there were in all five bags which contained personal belongings of the two accused.

22. It is significant to note that during the personal search of the two accused at the time of arrest and search of their luggage, they are shown to be not possessed of any money either in foreign or Indian currency. The two accused are foreigners and were traveling from Kasol to Delhi. It cannot be believed that they were not possessing any money with them.

23. The entire story put forth by the prosecution is not free from doubt. It is the admitted case of the prosecution that PW-1 Rajeev Saini had been deputed by Samir Malhotra to carry and bring occupants of Room No. 18, Rainbow Hotel, Kasol to Delhi. PW-1 was carrying a "chit" from Samir Malhotra in this regard. PW-1 on reaching Kasol had reported about his arrival to occupants of Room No. 18. The two accused, according to PW-1 were occupants of Room No. 18. At that time a boy and a girl were also found in the room along with the two accused. PW-1 was informed by the persons in Room No. 18 that they would start for Delhi at about 1 a.m. However, the two accused started at 4 a.m. on 12.6.2001.

24. Ex. P6 is the Guest Register of Rainbow Hotel, while Ex. PW9/ B are the entries at Serial Nos. 264 and 265 of such register. Vide entry No. 265, A-I is shown to have checked in the Hotel on 1.5.2001 at 3 p.m. in Room No. 28. She is shown to be accompanied by one Pinnhs Zrien, an Israeli national vide entry No. 28. Both A-I and her companion are shown to have checked out of the Hotel on 4.6.2001 at 12 noon. There is no entry about A-2 having ever stayed in this Hotel either individually or as a companion of A-I.

25. If A-I had checked out from the Hotel on 4.6.2001 at 12 noon as per entry at Serial No. 265 of Register Ex. P6, the story of the prosecution that she left the Hotel at 4 a.m. on 12.6.2001 in Tata Sumo being driven by PW-1 Rajeev Saini

stands belied.

26. PW-9 Vijay Rana, the Manager of the Hotel, has come up with an explanation that A-I had in fact left the hotel on 11.6.2001 and the date of departure has inadvertently been mentioned as 4.6.2001 on the basis of earlier entry at Serial No. 264.

27. The explanation put forth by PW-9 appears to have been introduced as an after thought and on the evidence coming on the record stands falsified. Entry at serial No. 264 of Register Ex. P6 pertains to the companion of A-I who had checked in the Hotel along with her on 1.5.2001 in Room No. 28. This companion of A-I is shown to have checked out from the Hotel at 12 noon on 4.6.2001. It is not the case of the prosecution that the entry qua checking out of the companion of A-I is also wrong. A bare perusal of the entries made in column No. 5 of the entries at serial 264 and 265 of the Register Ex. P6 shows that the same appear to have been made at one and the same time. In other words, as per these entries A-I and her companion had checked out of the hotel on 4.6.2001 at 12 noon. Therefore, the presence of A-I at the hotel on the night of 11.6.2001 or early hours of 12.6.2001 is rendered doubtful.

28. As stated above, there is nothing in the Register Ex. P6 regarding A-2 having stayed in the hotel either in her own name or as companion of A-I. Her presence in the hotel on 11.6.2001 or 12.6.2001 also is doubtful.

29. It is in evidence that A-I was staying in Room No. 28. There is nothing on record to suggest that she ever occupied Room No. 18. It is in the evidence of PW 9, the Manager of the Hotel, that as per entries at serial Nos. 326 and 327 of the Register Ex. P6, Patric James, an Irish National and Ayala Drihem, an Israeli National were occupying Room No. 18. They had checked in the Hotel on 6.6.2001 at 12 noon and had checked out on 11.6.2001 at 12 noon. This room thereafter remained vacant till 29.8.2001.

30. PW-1 Rajeev Saini is very specific in his statement that he was instructed by his employer Samir Malhotra to carry and bring the occupants of Room No. 18, Rainbow Hotel, from Kasol to Delhi and that he had met the occupants of Room No. 18 at about 9 p.m. on 11.6.2001 in the said room. Room No. 18, as pointed out above, was vacant at that time. Admittedly, the two accused were not the occupants of the said room. Who was in that room at that time? This question has remained a mystery. According to PW 1, besides the two accused, a boy and a girl were also present in the room. There is nothing on record to show as to who was the said boy and the girl found in the company of the two accused in Room No. 18 by PW 1.

31. It is also in the statement of PW 1 that a chit was given to him by his employer Samir Malhotra with regard to the occupants of Room 1 No. 18. Such chit is not forthcoming. It was a material piece of evidence show as to for whom the vehicle was sent by Samir Malhotra from Delhi. This Samir Malhotra who could have thrown some light as to who had booked the vehicle and for whom he

had sent the vehicle, has not been examined in the present case. Therefore, an adverse inference is to be drawn against the prosecution.

32. The "charas" is alleged to have been recovered from bag Ex. P- 1. This bag Ex. P-I was never put to either of the two accused in their statement recorded u/s 313, Code of Criminal Procedure. The question put to the accused in the form of Question No. 5 is to the following effect:

Q. 5. That on checking of the bag kept in between you and your co-accused charas in the shape of patti wrapped in plastic paper, kept in the bottom of the bag was found. Charas on weighment was found 2.500 kilograms, out of which three samples of 25 grams separated, packed and sealed with seal H. Remaining charas was also separately packed and sealed with same seal. NCB forms filled, seal entrusted to PW 1 Rajiv Saini per receipt Ex. PW 1/B and charas packet and sample packet taken in possession under memo Ex. PW 1/A. What have you to say?

33. Nothing was put to the accused that bag Ex. P-I was the bag which was kept by them on the back seat in between them or that the same belongs to them or anyone of them. Therefore, the circumstance that "charas" was recovered from bag Ex. P-I cannot be used against the two accused.

34. From the evidence coming on record, the prosecution has not been able to prove the recovery of "charas" from the conscious possession of the two accused.

Contention No. (ii) Section 42, NDPS Act provides:

42. Power of entry, search, seizure and arrest without warrant or authorisation.-
(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs, control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any buildings conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such

entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under Sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy two hours send a copy thereof to his immediate official superior.

35. Dealing with the scope and ambit of the above Section, the Hon^{ble} Supreme Court in *State of Punjab v. Balbir Singli* 1994 (1) Crimes 753, has held:

.... u/s 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

36. In *Mohinder Kumar v. The State, Panaji Goa* 1995 DC 264, the Assistant Sub Inspector of Police while on patrolling duty reached Anjuna Out-post at village Vagator. After parking his jeep, he along with certain police constables reached a

house, where he noticed two persons sitting in the verandah of that house. The said two persons on seeing the police, hurriedly entered the house, "his aroused suspicion in the mind of the Assistant Sub Inspector, whereupon he went to the house and directed the said two persons to stay put in the house. He also directed the Head Constable to alert Ors. and to arrange for Panchas. On arrival of Panchas he and his companions entered the house and during the course of search charas was recovered. Charas was also recovered from the personal search of the said two persons. The search and seizure took place between 7.45 p.m. and 6 p.m., that is, after sun-set. A contention was raised that there had been violation of Section 42 of the NDPS Act.

37. It was held that from the stage he had reason to believe that the accused persons were in custody of narcotic drugs and sent for Panchas, he was under an obligation to proceed further in the matter in accordance with the provisions of the Act. u/s 42(1) proviso if the search (is carried out between Sun-set and Sun-rise, he must record the grounds of his belief. Admittedly, he did not record the grounds of his belief at any stage of the investigation subsequent to his realizing that the accused persons were in possession of charas. He also did not forward a copy of the ground to his superior officer, as required by Section 42(2) of the Act because he had not made any record under the proviso to Section 42(1).

38. In the present case, the search of the vehicle and luggage was carried out by PW 13 Sub Inspector Chuni Lal at about 4.30 a.m., that is, before the sun-rise. He has stated that he became suspicious on the two accused persons becoming perplexed, that they may be possessing some contraband. The moment PW 13 became suspicious and had reasons to believe that the two accused might be in possession of some contraband, it was obligatory for him to have recorded the reasons for his belief before carrying out the search, which was carried out after sun-set and before the sun-rise. It was further obligatory for PW 1 to send a copy of the grounds of his belief to his immediate Superior Officer.

39. Since the mandatory requirement u/s 42 NDPS Act has not been complied with in the present case, the trial stands vitiated and the two accused cannot be convicted and sentenced for the offence u/s 20, NDPS Act.

Contention No. (iii)

40. It is the admitted case of the prosecution that the case property as well as the two samples seized were sealed by PW 13 Sub Inspector Chuni Lal with the seal mark "H". On the three sealed packets having been produced by PW 13 before PW 8 Sub Inspector Kanwar Singh, the In charge of Police Station, Kullu, such packets were resealed with the seal mark "M" by PW 8. Ex. PW 8/B the NCB form shows that each of the two packets containing the sample were sealed by PW 13 with three seals of seal mark "H" and resealed by PW 8 with two seals of seal mark "M".

One sealed packet containing the sample is stated to have been sent by PW 10 Head Constable Bhagat Ram to the Chemical Examiner on 19.6.2001 through

Constable Hem Raj (PW 7) vide Road Certificate Ex. PW 10/A.

41. A perusal of Road Certificate Ex. PW 10/A shows that two sealed samples, that is, one pertaining to case FIR No. 296 of 2001 and the other pertaining to case FIR No. 302 of 2001 were sent to the Chemical Examiner. The present case pertains to FIR No. 296 of 2001. A perusal of Road Certificate Ex. PW 10/A shows that the sealed packet containing the sample in respect of case FIR No. 296 of 2001 is recorded as having been sealed with three seals of seal marked "M". There is no mention of the seal marked "H". It is not the case of the prosecution that the packets sealed with seal "H" by PW 13 were repacked and resealed by PW 8 with seal mark "M".

42. As stated above, as per NCB form Ex. PW 8/B, the packets containing the sample bore three seals of seal mark "H" and two seals of seal mark "M". The fact that the sealed packet containing the sample sent to Chemical Examiner vide Road Certificate Ex. PW 10/A was sealed with three seals of the seal mark "M" leads to the only conclusion that either the sealed packet containing the sample did not pertain to the present case or it was tampered with before it was sent to placed on the report of Chemical Examiner to hold that what was allegedly recovered from the accused was "charas".

43. For the foregoing reasons, both the appeals are allowed. The conviction and sentence imposed upon the two accused are set aside and they are acquitted of the offence u/s 20 NDPS Act. Both the accused who are in jail undergoing sentence shall be set at liberty forthwith if not required in any other case. The amounts of fine, if already recovered, shall be refunded to them forthwith. Case property shall be dealt with as per the directions of the learned trial Court.