
(2015) 10 SHI CK 0073
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 218/2015

Rajinder Singh and Others	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2015) 10 SHI CK 0073

Hon'ble Judges : Rajiv Sharma and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : Nareshwar Singh Chandel, Advocate, for the Appellant; P.M. Negi, Deputy Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The instant appeal has been instituted against Judgment dated 3.3.2015 rendered by learned Special Judge, Kullu, District Kullu, Himachal Pradesh in Sessions trial No. 33 of 2013 (284 of 2013), whereby appellants-accused (hereinafter referred to as "accused" for convenience sake), who were charged with and tried for offence under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "Act" for convenience sake), have been convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1.50 Lakh each, and in default of payment of fine, to further undergo rigorous imprisonment for six months for commission of offence under Section 20 of the Act.

2. Case of the prosecution, in a nutshell, is that on 6.5.2013, police party headed by SI/SHO Lal Chand consisting of ASI Man Singh, HC Chaman Lal and Constable Ramesh of Police Station, Bhunter was on patrolling duty. At around 1.30 am, when they were 1 km ahead of Larji towards Bihali side on the left bank of the river, two persons were found coming towards Larji. They were carrying bags with them. On seeing the police party, they tried to turn back. They were

apprehended. One of them disclosed his identity as Rajinder Singh. He was carrying a red coloured carry-bag. Another accused Teja Singh was also carrying one brown coloured carry bag. It was a secluded place as such SI/SHO Lal Chand sent ASI Man Singh to Larji to bring independent witnesses to be associated in the investigation. He returned back and told that he had knocked at the doors of the shopkeepers but none of them woke up. Man Singh and Chaman Lal were associated as witnesses. Lal Chand gave his personal search to the accused. Bags were searched On opening the bag of Rajinder Singh, cannabis in the shape of sticks, balls and rectangular discs was found in the same. Similarly, bag of Teja Singh was also opened. It contained Charas. It weighed 2.50 kgs. Investigating Officer put contraband recovered from the accused in same carry bags after putting separate cloth parcels sealed with 8 seals of "H". He also filled up NCB form-I in triplicate and took sample seal on a cloth. Contraband was taken into possession. Rukka was prepared and sent to the Police Station through ASI Man Singh. FIR was registered. Investigating Officer prepared site plan and also recorded statements of witnesses. He produced the case property and other documents before MHC and deposited with him. He prepared special report. Case property was sent to FSL Junga on 6.5.2013, which was deposited there on 7.5.2013. Investigation was completed and Challan was put up in the Court after completing all the codal formalities.

3. Prosecution has examined as many as 7 witnesses to prove its case against the accused. Accused were also examined under Section 313 CrPC. According to them, they were falsely implicated. Accused have also produced two witnesses in their support. Trial Court convicted and sentenced the accused as noticed herein above. Hence, this appeal.

4. Mr. Nareshwar Singh Chandel, Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused.

5. Mr. P.M. Negi, Deputy Advocate General, has supported the judgment of conviction.

6. We have heard the learned counsel for the parties and also gone through the record carefully.

7. PW-1 Nikhil Kumar deposed that ASI Gian Chand handed over two sealed parcels weighing 2.5 kgs duly sealed with 8 seals of "H" alongwith copy of FIR, NCB form as well as sample seal vide RC No. 60/13 on 6.5.2013. He took the same to FSL Junga and deposited the same at FSL Junga on 7.5.2013.

8. PW-3 ASI Man Singh deposed that the police party was going towards Larji-Sainj-Bihali road in Government vehicle. At about 1.30 am, they were present on the left bank, 1 km ahead of Larji. They had laid a Naka. They noticed two persons with the help of search lights. They were coming on foot and were carrying bags in their right hands. After seeing the police, both tried to turn back. Police got suspicious. They apprehended the accused. Accused disclosed their identities. SI/SHO sent ASI Man Singh towards Larji. He went to Larji and

knocked at the doors of 3-4 shops but none opened the door. He came back and told this fact to the SHO. The place where accused were intercepted, was secluded. SHO associated him and Chaman Lal as independent witnesses. SI/SHO gave his personal search to the accused. Bags were searched, which contained 2.5 kgs charas. Charas recovered from both the bags was put back in the respective bags separately and sealed with eight seals of "H". IO filled in NCB-I form in triplicate. He prepared ruka and sent the same to the police station Bhunter. FIR was registered. Case property was produced in the Court during the examination of PW-3 ASI Man Singh. In his cross-examination, PW-3 Man Singh has admitted that on Larji-Sainj road, there were offices and residential houses and colony of HPSEB. He admitted that the road on left bank joins main road i.e. Larji-Sainj road. He also admitted that place of occurrence was on left bank road. He further admitted that there was a petrol pump at Larji Bazaar. He also admitted that the forest check post was at Larji. There are government offices, forest rest house at Larji. It took him 10 minutes to reach Larji and another 10 minutes to come back to the spot.

9. PW-5 Gian Chand deposed that on 6.5.2013, SI/SHO Lal Chand handed over two parcels allegedly containing 2.500 kg charas, sealed with 8 seals of "H" each alongwith NCB form-I in triplicate, copy of seizure memo, copy of FIR, sample seal "H". He made entry in the Malkhana register at Sr. No. 73/13. He proved the extract of the same which is Ext. PW-5/A. He sent the case property to FSL Junga through Nikhil Kumar vide RC No. 60/13.

10. PW-7 SHO Lal Chand has also deposed the manner in which accused was apprehended and codal formalities of seizure and sampling were completed at the spot. He sent ASI Man Singh towards Larji side to call independent witnesses. He came back in half an hour. He had knocked the doors of 3-4 shops but nobody opened the door. He prepared ruka Ext. PW-7/A. It was handed over to ASI Man Singh. He sent the same to Police Station Bhunter. He also prepared special report vide Ext. PW-4/A. In his cross-examination, he admitted that there is a bridge on the left bank road which links this road with main Larji-Sainj road. In his further cross-examination, he has admitted that there was one petrol pump and forest check post at Larji. He admitted that there is a Bazaar and residential houses at Larji. ASI Man Singh has gone from the spot to look for independent witnesses. He did not think it proper to send a Jeep with Man Singh to call for witnesses of the locality. He also admitted that from the left bank road, vehicles of Hydel project used to cross. He also admitted that residents of this area also use this road.

11. DW-1 Pot Ram has produced log book from 13.4.2013 to 10.5.2013 which is Ext. DW-1/A.

12. DW-2 Devinder Verma was examined without oath. He admitted that he was working as Nodal Officer with M/s. Bharti Airtel. He was required to maintain liaison with government and police authority. He did not bring record pertaining to Cell Nos. 98054, 05870, 98051, 21424 and 86268, 33242.

13. It has come in the statement of PW-3 ASI Man Singh that on Larji-Sainj road, there were residential houses, official colony of HPSEB etc. He admitted that left bank road ultimately joins the main road. He further admitted that there was a petrol pump at Larji Bazaar and a check post was also at Larji. There were government offices and rest house at Larji. According to him, he had gone to call for independent witnesses. He had knocked doors of 3-4 shopkeepers but none had opened the door. It is not believable that when the police officer that too of the rank of ASI had gone at night to knock at the doors of 3-4 shopkeepers, nobody opened the door. There were also residential houses as well as official colony of HPSEB. It has not come in the evidence that he has visited residential houses and colony. There was petrol pump at Larji Bazaar. There was also a check post at Larji which remains functional for 24 hours. There were government offices and rest house at Larji.

14. PW-7 SI/SHO Lal Chand has also admitted, as noticed herein above, that there were petrol pump and forest check post at Larji. There was bazaar and residential houses at Larji. If he wanted to have independent witnesses, even during night time, he should have sent Man Singh with a Jeep to bring independent witnesses at the spot. It is true that it was 1.30 am at night but no sincere efforts have been made by the prosecution to examine independent witnesses though residential colony of HPSEB and residential houses, shops and government offices were situate at Larji besides the petrol pump at Larji Bazaar.

15. Case property was produced while recording the statement of PW-3 Man Singh and it was opened in the Court. It was produced by the Public Prosecutor. Who has brought the case property from Malkhana to the Court has not been produced. Entry in the Malkhana register to this effect that who has taken the property to the Court, is necessary as per Punjab Police Rules. Para 22.70 of the Punjab Police Rules, 1934, as applicable to the State of H.P. reads as under:

"22.70. Register No. XIX- This register shall be maintained in Form 22.70.

With the exception of articles already included in register No. XVI every article placed in the storeroom shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

The register may be destroyed three years after the date of the last entry."

The register is to be maintained in Form 22.70. It reads as under.

"FORM NO. 22.70.

POLICE STATION _____ DISTRICT

Register No. XIX.-Store-Room Register (Part-I)

Column 1.- Serial No.

2. No. of first information report (if any), from whom taken (if taken from a person), and from what place.

3. Date of deposit and name of depositor.
4. Description of property.
5. Reference to report asking for order regarding disposal of property.
6. How disposed of and date.
7. Signature of recipient (including person by whom dispatched).
8. Remarks.

(To be prepared on a quarter sheet of native paper)."

16. It is necessary that as and when case property is taken out from Malkhana, necessary entry is required to be made in the Malkhana Register and also at the time when case property is redeposited in the Malkhana. Case property in NDPS cases is required to be kept in safe custody from the date of seizure till its production in the Court. It is also necessary that when case property is taken out from Malkhana, DDR is made and also at the time when case property is redeposited in the Malkhana. Thus, it casts doubt whether it is the same case property which was recovered from the accused and sent to FSL or it was case property of some other case.

17. In view of the discussion and analysis made hereinabove, the present appeal is allowed. Judgment dated 3.3.2015 rendered by learned Special Judge, Kullu, District Kullu, Himachal Pradesh in Session trial No. 33 of 2013 (284 of 2013), is set aside. Accused are acquitted of the offence under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985. They are ordered to be released forthwith, if not required by the police in any other case. Fine amount, if any paid by the accused, be refunded to them. Registry is directed to prepare the release warrants of the accused and send the same forthwith to the Superintendent of Jail concerned.

Judgment for consideration please.

Sureshwar Thakur, J.

I agree/I do not agree.

Rajiv Sharma, J.

List for pronouncement of judgment on 29.10.2015.