
(2016) 03 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 91/2016

State of Himachal Pradesh

APPELLANT

Vs

Anil Kumar and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, Section 29

Citation : (2016) 3 CriCC 821 : (2016) CriLJ 2772 : (2016) 4 Crimes 397 :
(2016) ILRHP 234 : (2016) 5 RCRCriminal 836 : (2016) 2 SimLC 664

Hon'ble Judges : Rajiv Sharma and Piar Singh Rana, JJ.

Bench : Division Bench

Advocate : M.A. Khan, Additional Advocate General, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—1. The State has come in appeal against Judgment dated 23.9.2015, rendered by learned Special Judge-I, Shimla, HP in Sessions Trial No. 14-S/7 of 2015, whereby respondents-accused (hereinafter referred to as "accused" for convenience sake), who were charged with and tried for offence under Section 20 read with Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as "Act" for convenience sake), have been acquitted.

2. Case of the prosecution, in a nutshell, is that on 19.1.2015, at about 12.05 AM, a police party consisting of ASI Mast Ram, HC Ravinder Kumar, Constable Ravi Kumar, Constable Ajay Kumar and Driver HC Rajinder headed by SI Virochan Negi was present on National Highway near Tara Devi PWD workshop. A Bolero Camper jeep bearing No. HP-08A-0669 came from Shimla side which was being driven by Guru Dutt. The vehicle was stopped. Accused Anil Kumar was found sitting in front seat of the Bolero Camper and accused Rinku Chauhan and Rajinder were sitting in the rear seats of the said jeep. A rucksack bag (Pithu) of

black and brown colour was found near the feet of Anil Kumar. In the said bag, another carry bag was found. It contained Charas in the form of balls and sticks, without any licence or permit. It weighed 1.150 Kgs. The charas and carry bag were repacked and sealed in a cloth parcel Ext. P-2 sealed with nine impressions of seal "X". Sample of seal "X" was obtained on separate piece of cloth. IO Virochan Negi filled in NCB form in triplicate, Ext. PW-9/B. Rukka Ext. PW-9/A was prepared and sent to the Police Station, Boileauganj (West), Shimla for registration of FIR through Constable Ajay Kumar. On the basis of Rukka, FIR Ext. PW-9/E was registered against accused persons. Personal search of the accused was conducted. Recovered Charas Ext. P5 was taken to Police Station Boileauganj, where it was resealed with seal impression "M" by Inspector Viri Singh and sample of seal "M" was also taken on separate piece of cloth Ext. PW-9/C. Resealing certificate is Ext. PW-9/D. Case property was handed over to MHC Police Station, Boileauganj, who entered the same in the Malkhana Register, copy of which is Ext. PW-2/A. IO also prepared spot map Ext. PW-11/A. Case property was sent to the FSL Junga for chemical examination vide RC Ext. PW-2/B.

3. Prosecution has examined as many as 11 witnesses to prove its case against the accused. Accused were also examined under Section 313 Cr.P.C. According to them, they were falsely implicated. Accused were acquitted by the learned trial Court. Hence, this appeal.

4. Mr. M.A. Khan, Additional Advocate General, has vehemently argued that the prosecution has proved its case against the accused.

5. The State has produced its own record alongwith statements of witnesses. We have heard the learned counsel for the appellant and also gone through the record carefully.

6. PW-1 C. Ajay Kumar deposed that they laid a Naka near Tara Devi PWD Workshop. At 12.05 A.M., one Mahindra Bolero Camper came from Shimla side. Vehicle was stopped. Name of the driver of the jeep was Guru Dutt. Accused Anil Kumar was sitting in the front seat. In the back seat of the jeep, Rinku Chauhan and Rajinder were sitting. One bag of black and brown colour was lying near the feet of Anil Kumar. It was checked. In the said bag, there was another carry bag. On opening said bag, black coloured substance was found in the shape of balls and sticks. It weighed 1.150 kgs. Substance was repacked in the carry bag in the same manner and carry bag was put into the bag and said bag was sealed with 9 seals of "X". Seal was handed over to HC Ravinder Kumar. NCB form in triplicate was prepared and impression of seal "X" was also put on NCB form. Sample of seal "X" was also taken separately on a piece of cloth. Seizure memo was prepared regarding sealing of cloth parcel, vehicle, documents and key. Rukka was handed over to him by IO. In the cross-examination, he has admitted that other vehicles were checked before the vehicle of the accused on the spot. The spot is on national highway where there was traffic. Three vehicles were challaned under the Motor Vehicles Act. No offer was made by police for their

own personal search to the accused persons. Proceedings were completed on the spot in the official vehicle by the IO. The spot was 200 metres away towards Solan from Tara Devi workshop. When documents were prepared by the IO, he was inside the vehicle and on the rear seat ASI Mast Ram and HC Ravinder Kumar were sitting. He alongwith driver of official vehicle was standing near the vehicle of accused persons. All accused were inside their vehicle. Case property was kept in the official vehicle when first document was prepared. IO SI Virochan Negi put the case property inside the official vehicle from the vehicle of accused. He was outside the official vehicle when documents were prepared inside the vehicle. Case property remained inside the police official vehicle up to police station. NCB form was filled in by the IO inside the official vehicle. IO has filled in columns No. 1 to 8 of NCB form but left the space for numbering FIR. The case property was sealed inside the official vehicle of police. Case property was sealed with 9 seal of "X". Seal was handed over to HC. Ravinder. The doors of the official vehicle were not open when the documentation in the present case was done by the IO on the spot. Doors of the official vehicle were also not open when case property was sealed.

7. PW-2 Anil Kumar deposed that he was posted as IO in PS Boileauganj, Shimla. He had also charge of MHC Police Station (West) Boileauganj, Shimla. On 19.1.2015, at about 6.20 AM, Inspector SHO Viri Singh deposited with him one parcel sealed with nine seal impressions of "M" stated to be containing another parcel having 9 seal impressions of "X" stated to be containing 1.150 kg. charas, sample of seal M, NCB form in triplicate. He made entries in this regard in the Malkhana Register. He sent the case property on 20.1.2015 through Constable Mohit to FSL Junga. He deposited the same at FSL Junga and handed over RC Ext. PW-2/B. In his cross-examination, he has specifically admitted that as per Malkhana Register, no specimen of seal "X" was deposited with him and same has not been referred in the Malkhana Register. He also admitted that the original of sample seal "M" was also not deposited in the Malkhana. He also admitted that on Ext. PW-2/B, copy of RC, there is cutting in encircled portion "A". He also admitted that on 19.1.2015, there is no entry in the Malkhana Register regarding case property taken out from the Malkhana. Volunteered that on 20.1.2015, case property was sent to FSL, Junga and thereafter, there is no reference of the case property in the Malkhana Register. He further admitted that there is no entry in the Malkhana register regarding taking out the case property to the Court. Volunteered that there is a Rapat in this regard. He also admitted in his further cross-examination that the parcels which were deposited with him on 19.1.2015 were signed by two witnesses but the parcel shown to him in the Court was not signed by any witness.

8. PW-3 C. Mohit Kumar deposed that MHC Anil Kumar handed over to him one parcel sealed with nine seal impressions of seal "M" alongwith NCB form in triplicate, sample seal "M", copy of seizure memo, copy of FIR vide RC No. 18/15, Ext. PW-2/B and docket to be deposited with FSL Junga. He deposited the same and handed over RC to the MHC.

9. PW-8 H.C. Ravinder Kumar deposed the manner in which vehicle was stopped. Charas was recovered. Sealing proceedings were completed at the spot. In the cross-examination, he has admitted that the seizure memo Ext. PW-8/B was prepared outside the vehicle of accused persons by using front bonnet of the vehicle of accused. Rukka was also prepared on the front bonnet of the vehicle of accused. While documentation was done on the spot, case property remained inside the vehicle of the accused persons upto 5 A.M. Case property was taken out from the vehicle of accused in the Police Station.

10. PW-9 Inspector Viri Singh, SHO deposed that on 19.1.2015, Constable Ajay produced Rukka before him. He recorded FIR No. 22/2015. IO/SI Virochan Negi produced a cloth parcel sealed with 9 seals of "X" stated to be containing 1.150 kg charas alongwith NCB form in triplicate, sample seal "X". Cloth parcel was sealed. He also examined NCB form in triplicate and filled in the relevant columns. He sealed parcel in another cloth parcel sealed with 9 seals of "M" and put the impression of seal "M" on NCB form in triplicate.

11. PW-11 Virochan Negi also deposed the manner in which accused were apprehended and, search, sealing and seizure proceedings were completed at the spot. In his cross-examination, he deposed that the bag of charas upto 5 P.M. remained in the vehicle of accused persons and was brought to Police Station in the same vehicle. He did not remember to whom seal "M" was handed over or who kept the same. He also admitted that on Rukka Ext. PW-9/A in red circle, there is cutting in the date.

12. PW-1 C. Ajay Kumar in his cross-examination, as noticed herein above, has categorically deposed that the proceedings were prepared at the spot in the official vehicle by the IO. He alongwith driver of the official vehicle was standing near the vehicle of the accused. Case property was kept in the official vehicle when first document was prepared. IO/SI Virochan Negi put case property inside the official vehicle from the vehicle of the accused. Case property remained inside the official vehicle upto the Police Station. However, PW-8, HC Ravinder Kumar deposed that the seizure memo Ext. PW-8/B was prepared outside the vehicle of the accused persons by using front bonnet. Seizure memo was written by the SI Virochan Negi when documentation was done at the spot. Case property remained inside the vehicle of accused upto 5 P.M.

13. There is major contradiction in the statements of PW-1 Ajay Kumar and PW-8 Ravinder Kumar. PW-1 Ajay Kumar, deposed that the entire documentation was done inside the official vehicle and the case property remained inside the official vehicle upto the Police Station. However, PW-8, Ravinder Kumar deposed that the documentation was done on the bonnet of vehicle of accused persons and case property also remained inside the vehicle of accused. PW-11 SI Virochan Negi deposed that the bag upto 5 P.M. remained in the vehicle of accused and brought to the police station in the same vehicle. PW-2 Anil Kumar has admitted in his cross-examination that as per Malkhana register, no specimen of seal "X" was deposited with him hence there is no reference of the same in the Malkhana

Register. He also admitted that original of seal "M" was also not deposited in the Malkhana. He also admitted that after 19.1.2015, there is no entry in the Malkhana Register about the case property being taken from the Malkhana and that there was no entry in the same regarding taking case property to the Court. Volunteered that there was Rapat in this regard.

14. It was necessary to make entry in the Malkhana Register when case property was taken out from the Malkhana to be produced in the Court and entry was again required to be made in the Malkhana Register when it was received back.

15. Thus, the prosecution has failed to prove that contraband was recovered from the conscious possession of the accused persons. There is no occasion for us to interfere with the well reasoned judgment of the learned trial Court.

16. There is no merit in the present appeal and the same is dismissed, so also the pending applications, if any.