

(2012) 03 SHI CK 0258
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 97 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Bachan Singh Gorkha

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100(4), 378
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 50

Citation : (2012) 03 SHI CK 0258

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Justice V.K. Ahuja, J.—This is an appeal filed by State of Himachal Pradesh u/s 378 of the Cr.P.C. against the judgment, dated 1.11.2003, passed by learned Sessions Judge, Kullu, H.P., vide which the respondent was acquitted of the charge framed against him u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as the Act). Briefly stated, the facts of the case are that PW-6 HC Gurdial Singh alongwith other police officials was on patrolling duty from Manali to Fifteen Miles towards Batahar Bihal. At 3.30 p.m., one unknown person was spotted, who, on seeing the police party, got perplexed and was apprehended on suspicion. He disclosed his name as Bachan Singh, who was carrying a pithu bag. He was given an option whether he wanted to be searched either before a Magistrate or a Gazetted Officer vide memo. On search of the pithu bag, 1.700 kg charas wrapped in a polythene paper was recovered and two samples of 25 grams each were taken as per procedure, which were sent to the expert and on receipt of the report of the chemical examiner, the challan was filed before the learned trial Court, who tried the respondent u/s 20 of the Act leading to his acquittal.

2. We have heard Mr.Rajesh Mandhotra, learned Deputy Advocate General for the appellant and Mr.Chaman Negi, learned counsel for the respondent and have

gone through the record of the case.

3. The main ground taken by the learned trial Court in acquitting the respondent was that the mandatory provisions of Section 100(4) Cr.P.C. were not complied with by the Investigating Officer before conducting the personal search of the accused and as such it had weighed with the learned trial Court in acquitting the respondent of the charge framed against him.

4. Coming to the statement of PW-8 Hari Singh, Head Constable, he has stated that the accused was searched after giving an option to him u/s 50 of the Act. In regard to non compliance of the provisions of Section 100(4) Cr.P.C., he simply stated that the place was isolated and, therefore, no independent witness was available and was associated in the proceeding of the case. In cross examination, he admitted that near the bridge, there is a rain shelter and bus stoppage. He also admitted that at a distance of about 100 meter, there are two shops. The accused was spotted at a distance of about 100 meters from Fifteen Miles Bridge on the right side of the road. He stated that he had not noticed any passer-by on the road since he was busy in the proceedings of the case.

5. PW-6 HC Gurdial Singh has also stated hat no passer-by was noticed. The place was isolated one, therefore, no independent witness was called. PW-7 Constable Uttam Singh, another member of the raiding party, has stated that there is a rain shelter, bus stop and shops also and a link road leading to 6-7 villages.

6. From a perusal of the statement of the Investigating Officer itself, it is clear that near the place of recovery, there is a rain shelter, bus stop and two shops also. He did not state that he made efforts to call any person from those shops or from the bus stoppage or made attempts to join independent witnesses. He simply stated that it was an isolated place and, therefore, no witness was available, but, whether he made attempt to associate independent witness or not was not stated by him. Moreover, the time of the recovery was 3.30 p.m. and it cannot be said to be such time when persons were not available on the road or in the shops. According to law, the provisions of Section 100(4) Cr.P.C. are mandatory in nature in regard to associating of two independent witnesses. However, in case the Investigating officer gives an explanation in regard to the non-compliance of provisions that the witnesses were not available or that it was night time or he could not find any person, his explanation, if found, plausible, can lead to an inference that the provisions of Section 100(4) Cr.P.C. were complied with. In the present case, the Investigating Officer H.C. Hari Singh has not made any statement that he made efforts and since he was unable to join independent witnesses, he proceeded to search the accused. He never stated that he made any effort in that regard and then came to the conclusion that no independent witness was available. Therefore, no plausible explanation has been given by him in regard to non-compliance of mandatory provisions of Section 100(4) Cr.P.C. and the net result of the discussion is that these provisions were not complied with and as such the accused deserved acquittal on this ground.

The learned trial Court in acquitting the respondent has mainly considered this point and those findings cannot be termed as perverse calling for an interference by this Court and as such there is no merit in the appeal filed by the appellant which deserves to be dismissed. We accordingly hold that there is no merit in the appeal filed by the appellant, which is dismissed.