

(2014) 11 SHI CK 0041
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 188 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Chiranji Lal

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 417, 418, 423
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2014) 11 SHI CK 0041

Hon'ble Judges : Sanjay Karol, J; Piar Singh Rana, J

Bench : Division Bench

Advocate : B.S. Parmar, Additional Advocate General, Vikram Thakur, Deputy Advocate General and J.S. Guleria, Assistant Advocate General, Advocate for the Appellant; Avneesh Bhardwaj, Advocate for the Respondent

Judgement

Sanjay Karol, J.—In relation to FIR No. 56/2008, registered at Police Station, Nirmand, District Kullu, under the provisions of Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the Act), accused Chiranji Lal stands acquitted by the trial Court, vide impugned judgment dated 15.12.2011, passed in RBT No. 16-AR/3 of 2008/2011, titled as State of Himachal Pradesh v. Chiranji Lal.

2. Trial Court found the prosecution not to have proved the fact that 750 grams of Charas was recovered from the conscious and exclusive possession of the accused. It is the case of prosecution that on 14.5.2008, police party headed by Tej Ram (PW-11), comprising of Diwan Chand (PW-1), Gopal Chauhan (PW-3), Chand Prakash (PW-7) and Pritam Singh had gone to village Chotu in connection with investigation of crime under the Act. On suspicion, accused, who after seeing the police party tried to flee away, was searched and Charas wrapped around his legs was allegedly recovered.

3. Contradictions in the testimony of the prosecution witnesses, glaring and fatal, weighed with the trial Court in acquitting the accused.

4. We have heard Mr. B.S. Parmar, learned Additional Advocate General, on behalf of the State as also Mr. Avneesh Bhardwaj, Advocate, on behalf of the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmary nor any perversity with the same, resulting into miscarriage of justice.

5. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offence.

6. In *Prandas Vs. The State*, , Constitution Bench of the apex Court, has held as under:

"(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.C., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.C. in an appeal from an order of acquittal has been stated in ? AIR 1934 227 (Privy Council), in these words:

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."

7. In *Court Tej Ram* states that while he was returning after investigating crime pertaining to FIR No. 55/2008, he saw the accused, who seeing the police party, became perplexed and tried to flee away. Suspecting that he may be carrying

some contraband substance, his consent was obtained vide Memo (Ex. PW-1/A). On search, Charas wrapped around the knees of the accused was recovered. On weighment, it was found to be 750 grams. Two samples of 25 grams each were drawn and sealed separately. NCB form (Ex. PW-8/B), in triplicate, was filled up. Contraband substance was seized in the presence of Gopal Chauhan (PW-3). Ruka (Ex. PW-6/A) was sent through Constable Chand Prakash (PW-7), on the basis of which FIR No. 56, dated 14.5.2008 (Ex. PW-6/B), under the provisions of Section 20 of the Act, was registered at Police Station, Nirmand, District Kullu, Himachal Pradesh. Case property was entrusted to MHC Lal Chand (PW-6). Special Report was sent to the SDPO, Ani. It has also come through the testimony of HC Lal Chand (PW-6) that the sample was sent for chemical analysis to the FSL, Junga and report of the Chemical Analyst (Ex. PA & Ex. PW-11/C) obtained.

8. Careful perusal of the testimony of the spot witnesses, i.e. Diwan Chand (PW-1), Gopal Chauhan (PW-3), Chand Prakash (PW-7) and Tej Ram (PW-11), would reveal that there are major contradictions, which are fatal to the prosecution case.

9. Though trial Court, to some extent, has believed the testimonies of spot witnesses, but however facts, as emerging from record are otherwise. Police officials present on the spot admit that village Koyal was just at a distance of 1 km. Walking distance would not be more than ten minutes. Gopal Chauhan admits that the vehicle, in which police party had travelled, was sent to drop Shankar Dass at Speun Nallah. Why is it that police did not send the vehicle to village Koyal or any other place nearby for getting independent witnesses has not been explained. Version of Chand Prakash that no witness was available does not inspire confidence, for he admits that there are three-four houses near Speun Nallah. No effort was made to visit these houses. Non-association of independent witnesses in the given facts and circumstances is fatal.

10. But what is fatal to the prosecution case is the testimony of Chand Prakash, who states that Ruka was sent at 6.30 p.m., whereas NCB form reveals that Charas was seized at 7.30 p.m. Now, if search and seizure operations stood completed at 6.30 p.m., as is evident from the Ruka, then obviously the NCB form, disclosing the recovery to be effected at 7.30 p.m. stands contradicted.

11. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so as to prove that the accused was found in conscious and exclusive possession of Charas.

12. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully appreciated the evidence so placed on record by the parties.

13. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P.*, it cannot be

said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

Appeal stands disposed of, so also pending application(s), if any.