
(2011) 04 SHI CK 0364
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 325 of 2001

State of Himachal Pradesh

APPELLANT

Vs

Hira Singh and Another

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

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

Citation : (2011) 04 SHI CK 0364

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is directed against the judgment dated 1.2.2001 passed by the learned Additional Sessions Judge, Shimla in Sessions Trial No. 25-S/7 of 2000 whereby the Respondents, who were charged with and tried for offence punishable, u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act" for convenience sake), have been acquitted.

2. Case of the prosecution, in a nutshell, is that on 28.6.2000 at about 12.35 A.M. Harjit Singh, Head Constable, (PW-9) was on patrol duty alongwith PW-3 Ranjit Singh and Kalam Singh and two independent witnesses Sh. Satish Kumar Sood (PW-7) and Ramesh Kumar (PW-8). When they were present at Tikkar Ghati, a Maruti van bearing registration No. HP-02-0085 came from Basantpur side. It was stopped by PW-9 Harjit Singh with the help of two constables. One man escaped, however, two other persons were apprehended and search was made out in the presence of the witnesses. One cotton bag lying on the back seat of the van was recovered. It was found containing charas in a polythene bag. A weighing machine was called on the spot through PW-7 Satish Kumar, Shop-keeper, and on weighing it was found 1 kg. 650 grams of charas. Two samples of 25-25 grams each were taken out for chemical analysis. The two

samples and the remaining charas were sealed in three parcels and the signatures of the Respondents as well as witnesses were obtained on the Panchnama. The samples and the remaining charas were sealed with seal impression "H" and a sample was taken on the cloth and the seal impression was handed over to witness Satish Kumar (PW-7). On the basis of Ruka, FIR Ex.PW-4/B was registered against both the Respondents u/s 20 of the Act. The S.H.O., Police Station Boileauganj also reached the spot after receiving the information. He resealed the sample parcels and the remaining charas with seal impression "N". The samples were sent for chemical analysis. The Chemical Examiner gave his report Ex.PW-9/G.

3. Prosecution examined nine witnesses to prove its case. Respondents were examined u/s 313 of the Code of Criminal Procedure. They pleaded not guilty. Learned Additional Sessions Judge acquitted the Respondents on 1.2.2001.

4. Mr. Rajesh Mandhotra has vehemently argued that the prosecution has proved its case against the Respondents. According to him, learned trial court has not appreciated the evidence in right perspective.

5. Mr. N.D. Sharma and Mr. Sanjeev Kuthiala have supported the judgment dated 1.2.2001.

6. We have heard the learned Counsel for the parties and have perused the record carefully.

7. Prosecution has not examined Kalam Singh, who was present on the post. PW-3 Ranjit Singh has not deposed anything about the recovery of charas from the Maruti van. He only testified that he took Ruka Ex.PW-3/A and handed over the same to M.H.C. Police Station, Boileauganj, Shimla. Independent witnesses Satish Kumar (PW-7) and Ramesh Kumar (PW-8) have not supported the prosecution case. According to PW-7 Satish Kumar, no recovery was effected in his presence. He further stated that he was called to Police Post, Dhimi alongwith scale and weights. He also testified that PW-8 Ramesh Kumar was also called to the Police Post, Dhimi. According to him, sealing of parcels and preparation of memo Ex.PW-7/A was done at the Police Post. He also admitted in his cross-examination that neither the Respondents were searched nor anything was recovered from them, in his presence. Statement of PW-8 Ramesh Kumar is also on the same lines.

8. According to the prosecution, recovery was made at 12.30 A.M. However, PW-6 Keshav Ram, Inspector has reached the spot at about 2.30 A.M. PW-9 Harjit Singh has supported the prosecution case. His Statement has also been supported by PW-6 Keshav Ram. However, as noticed above, statements of PW-6 Keshav Ram and PW-9 Harjit Singh cannot be read in isolation. The prosecution has failed to explain why material witness Kamal Singh has not been examined, who according to the Ruka Ex.PW-3/A, was present on the spot. The alleged recovery of the charas has not been supported by PW-3 Ranjit Singh. Two independent witnesses, i.e. PW-7 Satish Kumar and PW-8 Ramesh Kumar have

been declared hostile. Rather their version is that they were not present on the spot but were called at the Police Post. In view of this, the prosecution has failed to prove the case against the Respondents. Accordingly, we will not interfere with the well reasoned judgment passed by the trial court.

9. Consequently, in view of the observations and discussions made hereinabove, there is no merit in the appeal and the same is dismissed. Bail bonds of the Respondents stand discharged.