

---

**(2016) 03 SHI CK 0052**  
**In the High Court Of Himachal Pradesh**  
**Case No : Criminal Appeals No. 763 of 2008**

State of Himachal Pradesh

APPELLANT

Vs

Jagdish Thakur

RESPONDENT

---

**Date of Decision :** 22-03-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 417, Section 418, Section 423

Penal Code, 1860 (IPC) — Section 42

**Citation :** (2016) 2 SimLC 800

**Hon'ble Judges :** Sanjay Karol and Piar Singh Rana, JJ.

**Bench :** Division Bench

**Advocate :** V.S. Chauhan, Additional Advocate General, Kush Sharma, Deputy Advocate General and J.S. Guleria, Assistant Advocate General, for the Appellant; B.C. Verma, Advocate, for the Respondent

**Final Decision :** Disposed off

---

## Judgement

Sanjay Karol, J.—1. State has appealed against the judgment dated 23.8.2008, passed by learned Special Judge-I, Sirmaur District at Nahan, Himachal Pradesh, in Sessions Trial No. 17-ST/7 of 2008, titled as State of Himachal Pradesh v. Jagdish Thakur, challenging the acquittal of respondent Jagdish Thakur (hereinafter referred to as the accused).

2. It is the case of prosecution that on 1.12.2007, when a police party comprising of HC Kamlander Singh (PW-12), Constable Jai Parkash (PW-2), Constable Sushil Kumar (PW-6), Constable Mukesh Kumar (PW-3) and headed by SI Manish Chauhan (PW-13) was present at Kainchi Mod, Haripur Dhar, a secret information was received to the effect that the accused was in possession of contraband substance. Proceedings, under the provisions of Section 42 of the Act, were recorded and information sent by SI Manish Chauhan, through Constable Sushil Kumar, which was received in the Office of Dy.S.P. (HQ), Nahan, by HC Jagjeet Singh (PW-5). SI Manish Chauhan constituted a raiding party,

consisting of independent witness Virender Kumar (PW-1) and police official Constable Jai Parkash. Accused was found carrying a bag on his shoulder. After obtaining his consent vide Memo (Ex. PW-1/B), police searched the bag, from which Charas in the shape of Battis and Golas was recovered. Upon weighment, the same was found to be 5 kgs 100 grams. Two samples, each weighing 50 grams, were drawn. The samples as also the bulk parcel were sealed separately with seal of impression "X". NCB form (Ex. PW-8/A), in triplicate, was filled up on the spot and contraband substance taken into possession vide Memo (Ex. PW-1/F). Ruka (Ex. PW-3/A) led to the registration of FIR No. 83/07, dated 1.12.2007 (Ex. PW-3/B), for commission of offence, punishable under the provisions of Section 20 of the Act, at Police Station, Renukaji. With the file having been taken back to the spot, after completion of the proceedings and arrest of the accused, police party returned to the Police Station and handed over custody of the accused and the case property to ASI Bihari Lal (PW-8), who resealed the case property with seal of impression "T" and entrusted the same to MHC Surender Singh (PW-4). Sample was taken to the Forensic Science Laboratory by Constable Thaneshwar (PW-9). On receipt of the report of the Laboratory (Ex. PW-14/A) and with the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

3. Accused was charged for having committed an offence punishable under the provisions of Section 20 of the Act, to which he did not plead guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as 14 witnesses and statement of the accused under the provisions of Section 313 of the Code of Criminal Procedure was also recorded, in which he took the following defence:

"I was standing in front of the rain shelter where the police arrived. Police enquired from me the names and addresses of the persons who fled away from the rain shelter on seeing the police from a distance. The police suspected them to be my associates. When I told them that I do not know those persons, the police got annoyed with me and arrested me. The bag was not recovered from me. It has been falsely shown to have been recovered from me. Immediately thereafter I was brought to the Rest House at Dadahu (Renuka Ji), where my signatures on various documents were taken. PW Virender Kumar was signaled to stop by the police at the rain shelter and no recovery was effected from me in his presence. He was coming from Dadahu side towards Haripurdhar. His signatures on various documents were also taken in the rest house. I am innocent and have been falsely implicated in this case."

5. Based on the testimonies of witnesses and the material on record, trial Court acquitted the accused of the charged offence. Hence, the present appeal by the State.

6. We have heard Mr. V.S. Chauhan, learned Additional Advocate General, Mr.

Kush Sharma, learned Deputy Advocate General and Mr. J.S. Guleria, learned Assistant Advocate General, on behalf of the State as also Mr. B.C. Verma, 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/infirmity nor any perversity with the same, resulting into miscarriage of justice.

7. 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.

8. In *Prandas v. The State*, , AIR 1954 SC 36, 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 - "*Sheo Swarup v. Emperor*", , AIR 1934 PC 227 (2) at pp.229, 230 (A), 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." "

9. The genesis of the prosecution story of the police party having received secret information stands contradicted by the police officials. According to SI Manish Chauhan, when the information was received by him, he was sitting, alongwith

other police officials, inside the Jeep. He shared such information with the other police officials. However, such fact stands contradicted by Constables Mukesh Kumar and Sushil Kumar, who have categorically deposed that neither did they have any knowledge about any information received by SI Manish Chauhan nor did he share it with them. Their testimony is unambiguous and categorical to such effect.

10. That apart, we find that even on the question of recovery of the contraband substance from the conscious and exclusive possession of the accused, the statutory presumption cannot be raised, for prosecution has not been able to even prima facie prove such fact. Testimonies of the police officials, as we have discussed earlier, are uninspiring in confidence.

11. Not only that, we find that independent witness Virender Kumar has not supported the prosecution case and through his testimony, a version other than the one which the prosecution wants the Court to believe has emerged. Thus, there are two versions with regard to the prosecution story.

12. Independent witness Virender Kumar states that he was taken to Police Station, Renukaji, where he was asked to sign certain papers. In fact, in his uncontroverted testimony, he has deposed that the police was making inquiries from the accused about the address of the person who ran away from the rain shelter. Apparently the bag from which the contraband substance was recovered belonged to such person. This witness has, in fact, probablized the defence taken by the accused.

13. Testimonies of the police officials also stand falsified from the number of seals found on the sample, which was sent to the Forensic Science Laboratory, as it does not tally with the numbers disclosed by SI Manish Chauhan. Case property sent to the Forensic Science Laboratory bore seven seals, whereas SI Manish Chauhan had affixed only five seals were affixed.

14. Further, possibility of the case property being tampered with cannot be ruled out, for it has come in the testimony of HC Surender Singh that after the case property stood deposited in the Malkhana, ASI Bihari Lal, the then SHO, had taken away the key of the Malkhana from him. When was the key returned, and whether the case property was kept in safe custody during such period or not, remains unproven on record. Also, the SHO admits to have received the NCB form in loose form. Thus, even by way of link evidence, prosecution has not proved its case, beyond reasonable doubt.

15. There is yet another missing link in the present case. Information, under the provisions of Section 42 of the Act, cannot be said to have been handed over to the Dy.S.P., for he has not been examined in Court. Statement of HC Jagjeet Singh and Constable Sushil Kumar, regarding receipt of the report by the Dy.S.P., does not fulfill the requirement of law, for none of the witnesses was familiar with the handwriting of the Dy.S.P. and also no record was maintained in his office.

16. Thus, from the material placed on record, prosecution has failed to establish that the accused is guilty of having committed the offence, he has been charged with. The circumstances cannot be said to have been proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused does not stand proved beyond reasonable doubt to the hilt. The chain of events does not stand conclusively established, leading only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered do not fully establish completion of chain of events, indicating to the guilt of the accused and no other hypothesis other than the same.

17. 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.

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

19. 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 Mohammed Ankoos and others versus Public Prosecutor, High Court of Andhra Pradesh, Hyderabad , (2010) 1 SCC 94, 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.