
(2011) 12 SHI CK 0276
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 64 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Mohan @ Molam Ram

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 20

Citation : (2011) 12 SHI CK 0276

Hon'ble Judges : Sanjay Karol, J; R.B. Misra, J

Bench : Division Bench

Judgement

Justice R.B. Misra, J.—The present criminal appeal has come up for consideration after the leave to appeal has been granted u/s 378(3) of the Code of Criminal Procedure against the judgment dated 25.11.2004 passed in Sessions trial No. 2 of 2004 by Sessions Judge, Kullu, H.P.

2. The prosecution case is that, 1.400 Kilograms of charas was recovered from the possession of the accused/respondent after holding a Naka at Lohani. Two-two samples of 25-25 grams each were taken from the recovered charas and the same was sealed with three seals of impression "H" on each parcel and samples were sent for chemical examination. After completion of investigation, the accused/respondent was charged for offence u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act).

3. In order to prove its case, prosecution examined as many as 8 witnesses. Accused was also examined u/s 313 of the Code of Criminal Procedure, wherein he denied the prosecution case.

4. The learned Sessions Judge, on analysis of the prosecution witnesses and material on record, inter alia on many of the grounds has found that the prosecution has failed to prove its case beyond reasonable doubt. Beside the above, the impugned order also requires no interference on the ground that the prosecution case is vitiated on the ground that the sample recovered was not

actually charas. A view has already taken by this Court (Division Bench) in its judgment dated 19.9.2011, Cr. Appeal No. 391 of 2002 (State of H.P. Vs. Subhash Sharma @ Bhasi). The relevant paragraphs is extracted herein below:-

15. The cystolithic hair is a fiber which could also be found in flowering tops of the cannabis plant, but the definition of charas does not include other parts like flowering and fruiting tops, leaves or stem. The definition of charas is given in Section 2(iii)(a) of the Act. Charas, is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish. Since it does not make any mention whether this resin was of a cannabis plant. Therefore, in our opinion the report of analysis is discrepant. The Division Bench of this Court in which one of us (Surinder Singh, J) was also one of the Members Sunil Kumar versus State Latest HLJ 2010 (HP) 207 examined almost similar reports in a Bunch matters and taking note of the aforesaid definition of charas under the Act viz-a-viz the statement of the Experts recorded during the trial as well as before this Court, held that charas should be resin of cannabis plant only or the concentrated preparation and resin known as hashish oil or liquid hashish. Thus, in absence of the fact that it was also that of a cannabis plant, result of analysis cannot be said to have in conformity with the definition of charas. As such the accused persons were given the benefit of doubt and were accordingly acquitted.

5. In view of the above observations, we are of the view that vide Ex. PW-8/A, though four samples each of 25 grams of charas was taken and samples were sent for chemical examination, but on normal examination cystolithic hair was found present and beams alkaline test was found positive, resin was upto 29.14% and on this chemical examination it was found that the contents of sample was charas. However, such view is not in consonance of our judgment as mentioned above, as such the prosecution cannot be said to have been proved its case beyond reasonable doubt. As such the Criminal Appeal, being devoid of any merits, is accordingly dismissed.

6. Bail bonds, furnished by the respondent, are hereby discharged.