

**(2021) 08 SHI CK 0181**  
**In the High Court Of Himachal Pradesh**  
**Case No : Criminal Appeal No. 231 Of 2010**

|                           |    |            |
|---------------------------|----|------------|
| State Of Himachal Pradesh | Vs | APPELLANT  |
| Narinder Singh And Others |    | RESPONDENT |

**Date of Decision :** 18-08-2021

**Acts Referred:**

Punjab Excise Act, 1914 — Section 61(1)(a)  
Code Of Criminal Procedure, 1973 — Section 293, 313

**Citation :** (2021) 08 SHI CK 0181

**Hon'ble Judges :** Anoop Chitkara, J

**Bench :** Single Bench

**Advocate :** Nand Lal Thakur, Ram Lal Thakur, Sunny Dhatwalia, Gaurav Gautam

**Final Decision :** Dismissed

## Judgement

FIR Number,"217 dated 13.11.2002 Registered in Police Station Jawali, District Kangra, H.P. under

Sections 61(1)(a) of Punjab Excise Act, 1914, as applicable to the State of H.P

Trial Court Case No.,"17-III/04 Decided on 07.12.2009 by JMFC, Jawali, District Kangra, H.P.

party was being supervised by of Dy.SP, whose name was not mentioned in ruka. In the evidence, the name of Dy.SP is revealed as Janam Singh.",

Despite that, the prosecution did not tender in evidence the extract of daily diary, mentioning the departure of aforesaid police officials. It assumes",

importance because the prosecution did not take photographs of the spot, while conducting search and seizure. Had there been photographs, then",

those photographs would have proved the search and seizure at the spot.,

19. As per the prosecution's own case, as revealed from the memos and statements of the prosecution witnesses, sealing and sampling had taken",

place at the spot. Such process required cloth and sealing material, apart from seals. If the police officials had left the police station alongwith",

investigation kit, then it should normally be mentioned in the daily diary and the non-mentioning of such I.O. investigation kit, can only be believed as an",

error if photographs of the spot corroborate the same or independent witnesses prove it. In the present case, neither the investigator took any",

photographs at the spot nor associated any independent witnesses from the locality. Given above, the factum of departure from the police station, the",

manner in which accused were nabbed and search and seizure at the spot itself is not proved beyond reasonable doubt.,

20. Although the statements of the police officials is of equally important, however, the Legislature in some cases has given special treatment to the",

gazetted officers, i.e. NDPS Act. As per the prosecution case, Dy.SP was present with the police. Despite that, the prosecution chose not to examine",

him. The general experience shows that the Public Prosecutor does not call the higher officers in the witness-box even if it fails the entire prosecution,

case itself. The learned Public Prosecutors forgot that they are not subordinate of the police officials, but unfortunately, they themselves give undue",

importance to the higher police officials, as was done by not examining the Dy.SP in the present case.",

21. The time of occurrence was 10.20 p.m. The plains of Himachal Pradesh are comparatively warmer in comparison to the hills, thus, it was possible",

to associate witnesses. It has come in the cross-examination of PW-1, HHC Ashok Kumar, that at a distance of 1500 mtrs. there were 15-20 house.",

Similarly, it also came in the statement of the investigator, PW-5, that there were 10-15 villages in between Jawali to Nagrota Surian. Although, he",

denied that 10-15 house were there near to the place of occurrence, but he stated that those were cow-sheds. Thus, with a view to overcome the",

contraction of HHC Ashok Kumar, PW-1, the investigator, PW-5, Mohammad Arshad, forgot that if there are cow-sheds then there would be even",

care takers. Thus, this is a flimsy excuse for non-associating independent witnesses.",

22. In the entirety, non-examination of Dy. SP, non- association of independent witnesses and non-tendering in evidence the daily diary report, which",

mentioned about the departure of the police officials, creates a doubt about the case of the prosecution and it cannot be terms as proved beyond",

reasonable doubt.,

23. I have gone through the judgment of acquittal passed by learned trial Court, which is well reasoned and does not call for any interference by this",

Court.,

Given above, there is no merit in the present appeal and the same is accordingly dismissed.",