

(2011) 12 SHI CK 0246
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No.193 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Sanjeev Kumar, Gautam Kumar, Bimal Kumar and Om
Parkash

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

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

Citation : (2011) 12 SHI CK 0246

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B.Misra, Judge

1. 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, in reference to judgment dated 24.12.2002 passed by learned Sessions Judge, Mandi, HP in Session Trial No. 13 of 2002, thereby acquitting the respondents/accused for the offence u/s of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short "NDPS Act;)
2. Mr. Abhishek Sood, Advocate is requested to assist the court as Amicus Curiae. He has agreed to assist the court.
3. As per the prosecution storey, accused/respondents were apprehended on 21.1.202 during nakka by the police officials, wherein 3 Kgs of contraband goods was recovered from their possession being carried in three polythene packets beneath the rear seat of the car in which the accused/respondents were traveling. The search was conducted by associating two independent witnesses and other police officials, whereby 3 KGs of "charas" was recovered. Out of the recovered "charas, two samples of 25 grams each were taken and were sealed

separately and sample was sent for chemical examination.

4. In order to prove its case, prosecution has examined as many as 14 prosecution witnesses, whereas through their statements u/s 313 Cr.P.C. accused/respondents denied the same.

5. Learned Sessions Judge, on analysis of the prosecution witnesses, materials on record and keeping in view the discrepancies, improbabilities and inconsistencies in the prosecution witnesses, has arrived at the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. Inter-alia, on analysis as has been made by learned Sessions Judge, an important aspect which requires consideration is that on 21.1.2002 the alleged contraband good was recovered from the possession of accused/respondents and sample was taken and in that respect, chemical examiner has reported back that on microscopic examination cystolithic hair was present and beams alkaline test positive and the resin was found upto 29.07% in the sample and on that basis the contraband good recovered was said to be of "charas", whereas this Court (Division Bench) vide its judgment dated 19.9.2011, Cr. Appeal No. 391 of 2002 (State of H.P. Vs. Subhash Sharma @ Bhasi), has taken a view that the contraband goods recovered in such circumstances cannot be said to be a "charas" The relevant paragraph 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.

6. In view of the above analysis and observations made by this Court in Subhash Sharma @ Bhasi (supra), in the present case also, the contraband good recovered cannot be said to be "charas". As such the prosecution cannot be said to have brought home guilt to the accused persons.

7. In these circumstances, the criminal appeal, being devoid of merit, is

accordingly dismissed.

8. The bail bonds, furnished by the accused/ respondents, are discharged.

9. We appreciate and place on record the word of appreciation for the assistance rendered by Mr. Abhishek Sood, Advocate, as Amicus Curiae in the present case.