

(2010) 05 SHI CK 0244

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 716 of 1996

State of Himachal Pradesh

APPELLANT

Vs

Sita Ram and Others

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18

Citation : (2010) 05 SHI CK 0244

Hon'ble Judges : V.K. Sharma, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The present appeal has been listed for hearing after leave to appeal has been granted u/s 378(3) Cr. P.C in reference to the impugned judgment dated 4.6.1996, passed by the learned Additional Sessions Judge, Shimla, in Sessions Trial No. 7-S/7 of 1993, by adjudicating the offence u/s 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985, acquitting all the accused persons by giving benefit of doubt.

2. In order to adjudicate the present appeal, it is necessary to give the factual background of the case. The case of the prosecution was that on 4.7.1991 at about 7-30 AM, PW-6 Ravinder Kumar Inspector/S.H.O., Police Station Theog, in connection with routine patrol duty, was present in the area of village Lumbi-Dhar within the jurisdiction of Police Station, Theog, with PW-4 Jagdish Chand constable and some other police officials accompanying PW-6 at the time of patrol duty. The police had received secret information against the accused persons, that the accused persons had been cultivating poppy plants in their fields in village Pachhi-Dhar in Tehsil Theog, District, Shimla. On receipt of this information against the accused persons, PW-6 had formed a raiding party. PW-1 Shyam Lal and PW-7 Rajinder Singh had been associated in the raiding party as non-official witnesses. In the presence of PW-1 and PW-7, Inspector/S.H.O.

Ravinder Kumar (PW-6) had proceeded to raid and search the field of the accused persons in revenue estate Sharaiyar within the jurisdiction of Police Station, Theog. In the presence of the witnesses, the police had found that the accused persons had cultivated 207 poppy plants in their field No. 650 measuring bigha 3 biswas in revenue estate Sharaiyan. The police had got the poppy plants up-rooted. The police had taken five poppy plants as sample. The sample poppy plants and the rest of the plants had separately been sealed with seal "P" and the possession was taken vide recovery memo Ex.PA. The sample poppy plants had been got examined from the Chemical Examiner, who, vide report Ext.PX, had found the sample examined by him containing poppy plants within the meaning of the Act and rules prevalent.

3. In order to prove the case, the prosecution has examined as many as seven witnesses. The accused persons in their statement u/s 313 Cr.P.C have denied the prosecution case and had shown their innocence. The points for determination were framed and dealt with.

4. We have heard the learned Additional Advocate General and the learned Counsel for the accused and perused the record.

5. PW-1 Shyam Lal and PW-7 Shri Rajinder Singh, non official witnesses at the stage of investigation have supported the prosecution case. PW-6 Shri Ravinder Kumar, Inspector/SHO, had recovered 207 poppy plants from the field of the accused persons in the presence of PW-1 and PW-7, vide recovery memo Ext.PA. However, at the stage of evidence, PW-1 and PW-7 have not supported the prosecution case. PW-2 Chet Ram constable had stated that he carried the sealed packet containing sample poppy plants, which was taken to the Laboratory for chemical examination. PW-3 Jia Lal, Field Kanungo, stated that on 25.6.1992, he had demarcated khasra No. 650 of revenue estate Sharaiyan. PW-3 said to have prepared report Ex.PD and field map Ex.PE of khasra No. 650. Ex.PF is jamabandi for the year 1990-91 of khasra No. 650 and Ex.PG is khasra girdwari of khasra No. 650 of Ravi 1991. PW-4 Jagdish Chand constable and PW-6 Ravinder Kumar Inspector/SHO, had supported the prosecution case. PW-6 said to have prepared report Ex.PB, which has been entrusted to PW-4, with a direction to hand over the same to the Police Station. On the basis of the report Ex.PB, FIR Ex.PC, has been registered against the accused persons.

6. PW-6 had prepared rough sketch map Ex.PW-6/A of the field of the accused persons and took photographs Ex.PW-6/B and Ex.PW-6/C of the field. PW-5 Vijay Sen, Head Constable had got the field in dispute demarcated from PW-3 Jia Lal, Field Kanungo. PW-1 Shyam Lal and PW-7 Rajinder Singh, at the stage of evidence had stated that the police had not raided and searched the field of the accused persons in their presence on 4.7.1991. According to PW-1 and PW-7, the police had not recovered 207 poppy plants from the field of the accused persons. Despite cross examination of PW-1 and PW-7 by the prosecution, nothing favourable could be derived from them. As such, PW-1 and PW-7 have weakened the prosecution case.

7. It transpires from the testimonies of the prosecution witnesses that no one has observed the accused persons cultivating poppy plants in their field, as the prosecution has failed to examine any proprietor of revenue estate Sharaiyan to ascertain under whose physical possession the land was kept where the alleged poppy plants were being cultivated. PW-4 Jagdish Chand, constable and PW-6 Ravinder Kumar, Inspector/SHO, had not strengthened the version of prosecution that the accused persons were cultivating the poppy plants in the field in question. In our considered view, the prosecution has failed to ascertain and to find out as to whose instance cultivation of poppy plants was made in the field in question.

8. At the instance of police, demarcation of khasra No. 650 was made by PW-3 Jia Lal, Field Kanungo. It is pertinent to note that on 25.6.1992, poppy plants were not found in the field in question by PW-3 Jia Lal. It is also worth mention that PW-5 Sh. Vijay Sen, Head Constable, has not been found accompanying PW-6 Ravinder Kumar, Inspector/SHO, at the material time on 4.7.1991. In the record prepared by PW-6 Ravinder Kumar, Inspector/SHO, the khasra No. 650, wherein, poppy plants had been cultivated had not been indicated properly. In these circumstances, PW-5 Vijay Sen, Head Constable, had failed to demarcate and determine the site. It is also worth to mention that the land comprising of khasra No. 650, where the alleged poppy plants were said to have been cultivated was not exclusively owned by the accused. Jamabandi Ex.PF, khasra girdwari Ex,PG reveal that large number of persons apart from father of the accused were the joint owners in possession of khasra No. 650. In such circumstances, it is difficult to indicate that the accused persons were in exclusive possession of any portion of khasra No. 650.

9. For the purpose of proving the guilt u/s 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985, it becomes necessary to ascertain and find out the exact person responsible, who cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports etc. On the basis of record, the prosecution has failed to ascertain under whose possession and control the land was at the relevant time on which the alleged poppy plants were cultivated. Such discrepancies which have come to light have weakened the case of the prosecution.

10. In the facts and circumstances and on the basis of record learned Additional Sessions Judge, Shimla, had rightly arrived at the conclusion acquitting the alleged accused. There is no scope of any interference in the impugned judgment. The appeal being devoid of any merit is dismissed.