

(2010) 10 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 470 of 1997

State of Himachal Pradesh

APPELLANT

Vs

Yogesh Kumar Sharma and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 20

Citation : (2010) 10 SHI CK 0019

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—State has appealed against the judgment dated 30.06.1997 of learned trial Court, whereby respondents Yogesh Kumar Sharma, Parkash Chand and Anil Kumar, who were tried for an offence, u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, have been acquitted.

2. Facts which led to the trial of the respondents may be stated. On 08.11.1996, S.I. Sant Ram (PW-8), had gone to Giripul in connection with crime detection and V.I.P. duty, accompanied by some police officials. Dy. S.P. Rajgarh, Shri C.P. Verma (PW-2) had also gone to that place by a Gypsy. Around 11:00 A.M., a Maruti Van, whose registration number on the front side could not be read on account of number plate being blotted with mud, appeared from Rajgarh side. It was going towards Solan.

3. S.I. Sant Ram on noticing that the number plate was mud-smudged, signalled for stopping the Van. It was not stopped. That aroused the suspicion of S.I. Sant Ram. So, he chased the Van in the Gypsy of Dy. S.P., Shri C.P. Verma (PW-2). Van was over-taken across the bridge at a distance of 1/2 Km.. Besides the driver, i.e., respondent Anil Kumar, two other respondents were also present in the Van. These two other respondents were occupying rear seat. Search of the Van was conducted in the presence of Dy. S.P., Shri C.P. Verma (PW-2).

4. There were two bags under the rear seat and one bag was lying by the side of driver's seat. All the three bags contained Charas. One bag contained 10 kg. charas, another 5 kg. charas and third one 5 kg. 400 grams charas. Two samples weighing 25 grams charas were separated from each of the three bags. Samples were made into separate parcels and the same were sealed with a seal that produced impression of letter "M" of English alphabet.

5. Report Ex.-PC was drawn and sent to the Police Station for the registration of the case. Case was registered vide F.I.R. Ex.- PC/1. Case property alongwith the sample parcels was deposited with the Moharar Head Constable, Police Station Rajgarh. Three samples, one from each of the three bags, were sent to Chemical Examiner, Govt. Opium and Alkaloid Works, Neemuch, (M.P), who vide report Ex.-PL, opined that the samples were of Charas, within the meaning of Section 2(iii) (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985. On completion of the investigation, report, u/s 173 of the Criminal Procedure Code alongwith relevant documents, was filed in the trial Court.

6. Respondents were charged with an offence, u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985. They pleaded not guilty. So, they were put on trial. Trial Court acquitted the respondents, holding that the evidence on record did not establish that they were in conscious possession of the recovered stuff.

7. We have heard learned Senior Additional Advocate General, as also the learned Counsel representing the respondents and gone through the record.

8. Learned trial Court has taken the view that as per evidence on record, Maruti Van, in question, had been hired by one Vijay Kumar and said Vijay Kumar and one Surinder Singh boarded the taxi at the start point and they alighted from the taxi ahead of Giripul. Further, it has been held that since the taxi had been hired by one of the persons, who boarded it before it reached Giripul, it can legitimately be presumed that the bags, in question, had been placed in the Van by those persons or atleast by Vijay Kumar, who had hired the taxi.

9. In the report, u/s 173 of the Criminal Procedure Code, Vijay Kumar and Surinder Singh were named as absconders. Dy. S.P. (PW-2) Shri C.P. Verma, under whose supervision search was conducted, stated in the course of cross-examination, that Vijay Kumar and Surinder Singh were named as absconders, because the investigation of the case revealed that they had boarded the Van on the fateful day, and alighted from it before the Van reached Giripul. In view of this statement of PW-2 Shri C.P. Verma, as also the testimony of the owner of the Van PW-4 Shri Ramesh Kumar, who stated that the taxi had been hired by Vijay Kumar, we do not think that it would be appropriate to interfere with the view taken by the trial Court, because the view cannot be said to be perverse or improbable, or not supportable by the evidence on record.

10. In addition to the reasoning given by the trial Court, we find that the report of Chemical Examiner, Ex.-PL cannot be used to conclude that the recovered stuff

was in fact Charas. Report does not disclose as to what tests were conducted and what was found in the sample contents in the course of such tests, which led the Chemical Examiner to opine that the contents were of Charas. The report simply says that qualitative analysis of the sample contents showed that the samples were of Charas. The report of the Chemical Examiner is silent about the tests conducted and the constituents of the samples stuff, noticed in the course of such tests.

11. For the foregoing reasons, we are not inclined to interfere with the judgment of acquittal, passed by the trial court. Consequently, the appeal is dismissed.