
(2010) 12 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 364 of 1997

State of H.P

APPELLANT

Vs

Abdul Jawahar

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

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

Citation : (2010) 12 SHI CK 0008

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

Bench : Division Bench

Judgement

R.B. Misra, J.—The present criminal appeal has come up for consideration after leave to appeal u/s 378(3) of the Code of Criminal Procedure has been granted in reference to the impugned judgment dated 21.11.1996, passed by the learned Addl. Sessions Judge, Kullu in Sessions trial No. 21 of 1996, acquitting the alleged accused for the offence under Sections 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the "NDPS Act").

2. The prosecution case is that SI Gurbachan Singh, Incharge, Police Post, Bhuntar while on patrol duty along with Constable Narinder Singh, Constable Chet Ram and Constable Rajinder Kumar reached at Whether the reporters of the local papers may be allowed to see the Judgment? Bajaura, they met S/Sh. B. D. Sharma, and Dina Nath, Excise and Taxation Inspectors (ET Is) along with Sh. Nek Ram, Peon in the Excise Department. They jointly arranged a "NAKA" for the purpose of excise and traffic checking on the National Highway outside Senior Secondary School, Bajaura. They noticed one person coming at about 9.30 P.M. from Jhiri side on National Highway-21 carrying a bag on his back. On seeing the police party, that person tried to flee away. However he was over powered by SI Gurbachan Singh. On suspicion, search was made. Wherein 3.300 kilograms charas was recovered, out of which 25 grams each was separated and sealed with seal impression "H". Remaining charas was also sealed with the same seal. The sample parcels as well as the parcels containing recovered charas along with

rucksack (Ext.P5) were taken into possession vide recovery memo Ext.PW-1/B in the presence of S/Sh. B. D. Sharma, Dina Nath and HC Narinder Singh. On receipt of Chemical Examiner's report and completion of investigation, the challan was presented against the accused for trial.

3. In order to prove its case, prosecution examined as many as nine witnesses, whereas, accused-Respondent, through his statement u/s 313 Code of Criminal Procedure denied the prosecution case.

4. On analysis of the prosecution witnesses and materials on record, Learned Addl. Sessions Judge has observed that the contraband good was taken into possession vide recovery memo Ext.PW-1/C, which also bears the signatures of the accused. The evidences on record indicate that the contraband good/charas was recovered from the conscious and exclusive possession of the accused. The arguments advanced on behalf of the Respondent-accused that the sampling was analysed by the Kandaghat Laboratory and the report Ext.PW-7/A is not a legally valid report within the meaning of the Act/Rule. In view of the oral evidence of Sh. B. D. Sharma, Constable Chet Ram and SI Gurbachan Singh, Chemical Report of Kandaghat Laboratory (Ext.PW-7/A) has not been believed by the learned Addl. Sessions Judge despite the prosecution having proved its case beyond reasonable doubt.

5. On analysis of the prosecution witnesses and materials on record, it appears that the recovery of charas/contraband goods was made from the conscious and exclusive possession of the accused. However, Learned Additional Sessions Judge has not appreciated the prosecution case properly by saying that the Public Analyst, Food and Drugs Laboratory at Kandaghat appointed as Chemical Examiner for the whole of the State of Himachal Pradesh was not the authorized Chemical Examiner, therefore, the report of Kandaghat Laboratory was not an authentic report, in view of the judgment of this Court passed in Pawan Kumar v. State of H.P., whereas as per the judgment of Hon''ble SC in AIR 2004 SC 4743 (State of H.P v. Pawan Kumar) the chemical report of Kandaghat Laboratory is treated to be authentic report, the relevant observations of Hon''ble Supreme Court in Pawan Kumar (Supra) are extracted as below:

6. Rule 2(c) of NDPS Rules has to be read in conjunction with Chapter III of the said Rules including Rules 17 and 22. These Rules show that when the opium is delivered by the cultivator to the District Opium Officer, if suspected of being adulterated with any foreign substance, it shall be forwarded to the Government Opium Factory. Chapter III relates to analysis of samples of lawfully cultivated and produced opium. On examination by the Chemical Examiner is found to be adulterated. There is no vision in the NDPS Act or Rules debarring chemical analysis of opium found to be in illegal possession of an accused contrary to the provisions of the Act and seized, in any other laboratory which may be authorized to analyse the sample. There is also no requirement that such opium must be examined by the Chemical examiner within the meaning of Rule 2(c).

7. In the present case, two notifications one dated 14th April, 1982 and the other dated 9th April, 1984 issued by the Government of Himachal Pradesh have been extracted in the impugned judgment. By notification dated 14th April, 1982 issued in the name of the Governor, Himachal Pradesh, the Public Analyst, Himachal Pradesh Food and Drugs Laboratory, Kandaghat, District Solan was appointed as Chemical Examiner for the whole state of Himachal Pradesh with immediate effect in public interest. By notification dated 9th April, 1984, the setting up of composite testing laboratory at Kandaghat, District Solan, Himachal Pradesh for analyzing/testing samples taken from various departments mentioned in the notification under various Acts/Rules was ordered with immediate effect. The police department is one of the departments mentioned therein. The notification, inter alia, provides that functions of the laboratory is testing of samples, sent by various departments, police being one of it.

8. The High Court, with reference to the above notifications, has noticed that the NDPS Act was enforced subsequent to the issue of notifications and the notifications would not cover the cases under the said Act. I am unable to sustain this view. The notification dated 9th April, 1984 is not restricted to the testing of samples sent under any particular Act/Rule. It is a notification which empowers the laboratory at Kandaghat to analyse and test the samples sent by Public department under various Acts/Rules without mentioning name of any Act/Rule. The notification would not exclude samples sent for testing under the NDPS Act. The notification is not restricted to only those Acts and Rules which were in existence when the notification was issued. Clearly, it would include the testing of samples sent by the Police department under any Act or Rule which may even come into operation after the issue of the notification. In our view, the Full Bench of Madhya Pradesh High Court in Ram Dayal Vs. Central Narcotic Bureau, on analysis of Sections 9 and 76 of the 6 NDPS Act and Rule 2(c) rightly came to the conclusion that there is no provision in the Act and the Rules debarring chemical analysis of unlawfully possessed opium seized in connection with an offence, elsewhere at any other laboratory. The High Court fell into an error in excluding from consideration the opinion of Chemical Examiner, Kandaghat laboratory (Exhibit PF). Therefore, the conclusion of the High Court that the prosecution has failed to prove that the incriminating material recovered from the possession of the respondent was opium, could not be sustained.

23. I am in respectful agreement with the view expressed by my learned and respected Brother that the opinion of Chemical Examiner Kandaghat Laboratory was not to be excluded. However, I am unable to agree with the views as regards Section 50 of the NDPS Act.

6. The above view has also been affirmed by the Supreme Court in State of H.P. vs. Jaswant Kumar (2004) SCC 516, wherein it was observed that certificate furnished by the Testing Laboratory, Kandaghat after chemical examination of recovered article is valid in law.

7. The observations and findings of the learned Addl. Sessions Judge are

erroneous and are not legally sustainable.

8. From the aforesaid analysis, the judgment dated 21.11.1996 is set-aside to the extent that learned Addl. Sessions Judge has not believed the 7 Chemical Examiner report in respect of the analysis of the sampling and proving the case in favour of the prosecution. In our considered view, the prosecution has been able to prove its case beyond reasonable doubt and has also been able to successfully bring home the guilt of the accused/respondent. As such, the accused/respondent is held guilty of the offence u/s 20 of NDPS Act for carrying 3.300 Kgs. contraband goods/charas and, therefore, the accused is sentenced for the offence u/s 20(b)(ii)(c) of the NDPS Act. After hearing learned counsel for the respondent, the accused-respondent has been awarded sentence to undergo rigorous imprisonment for 10 years with a fine of `1,00,000/- and in default of payment of fine, he is to further undergo rigorous imprisonment for one year. The accused has to suffer the aforesaid sentence accordingly. Bail bonds furnished by the accused are cancelled.