
(2011) 03 SHI CK 0296
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 244 of 2001

State of H.P.

APPELLANT

Vs

Gajinder and Another

RESPONDENT

Date of Decision : 05-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0296

Hon'ble Judges : Surinder Singh, J;R.B. Misra, J

Bench : Division Bench

Judgement

Surinder Singh, J.—The Respondents were acquitted by the learned trial Court, for allegedly keeping in their possession the narcotics i.e. 250 grams of Opium and 50 grams of Charas in their Dhaba, as such, the State has challenged their acquittal in the present appeal.

2. Respondent No. 2 Des Raj @ Raju was alleged to be the owner of the Dhaba, which was running under the head and style of "Five Star Dhaba" at Kothipura on partnership basis with Ravi Kumar (Proclaimed Offender). The case of the prosecution is that Gajinder Respondent was found working as a servant in the said Dhaba.

3. On 1.2.2000, around 9.30 p.m., PW7 Anant Ram SHO, Police Station Sadar, Bilaspur was on traffic checking in Kothipura. On receiving the information that the Respondents were dealing in the narcotics in the Dhaba, he jotted down this information and sent a Ruqa for the registration of the case. Thereafter, he alongwith police party proceeded towards the Dhaba aforesaid and included PW1 Hem Chand and Parkash Chand (not examined) as the independent witnesses, who were found present in the Dhaba taking tea. SI/SHO Anant Ram served a notice upon Respondent Gajinder to the effect that he wanted to search the Dhaba as he suspected contraband therein, but said Gajinder declined to give his consent unless the search is conducted in the presence of a Gazetted Officer. Thereafter, Anant Ram aforesaid contacted PW2 Dy.S.P. Headquarter Madan Lal on wireless set. He reached the spot around 10.55 p.m., in his presence and in

presence of aforesaid independent witnesses, police conducted the search. During the search, two polythene envelopes one containing 250 grams Opium and another containing 50 grams of Charas were recovered from the showcase of the Dhaba. From each of the recovered stuff, two samples of 10 grams were separated and all the four samples were sealed with seal impression producing the English letter "X" and remaining bulk of each substance was also sealed with the same seal separately.

4. Respondent Gajinder was arrested and grounds of arrest were also informed to him. Another Respondent was not present. Case property was brought to the Police Station and deposited in the Malkhana. Thereafter, police also arrested the owner of the Dhaba Des Raj @ Raju Respondent. His another partner Ravi Kumar belonged to Maharashtra and could not be traced, as such he was declared proclaimed offender.

5. One of the sample parcel of each of the items recovered from the Dhaba were sent through PW4 Constable Budhi Singh for analysis. As per the report of the analysis Ex.PP, one of the sample parcel tested positive for Opium and another for Charas containing 28.71 percent resin and the cystolithic hair were found present and in the opinion of the Expert, it contained the contents of Charas.

6. After completing the investigation, the case was presented in the court for the trial of the Respondents. The learned trial Court held that though the aforesaid items were recovered from the showcase of the Dhaba, but the exclusive and conscious possession of accused Gajinder was not proved and there is also no evidence on record against Respondent Des Raj that Dhaba was owned by him.

7. We have heard the learned Counsel for the parties and have carefully and meticulously and examined the prosecution evidence.

8. The official as well as independent witnesses testified about the recovery of the contraband from the showcase of the Dhaba, but pertinently, PW1 Hem Chand admitted that there were 4-5 servants present in the Dhaba and further stated that one more servant apart from Gajinder was inside the Dhaba when the search was made by the Dy.S.P., but the police had arrested Gajinder only and not the other servants. PW2 Madan Lal, Dy.S.P. stated that at the time of search, only Gajinder was present and no other servant was present.

9. PW7 SI/SHO Anant Ram denied that there were 5-6 servants at the time of search in the said Dhaba and also denied that one more servant apart from Gajinder was inside the Dhaba, but however admitted in so many words that one of the servants was present in the tin-roofed hut, which was extension of the said Dhaba. It was also searched. Pertinently, the Investigating Officer neither took into possession any document with respect to the ownership nor collected any evidence, who was managing daily affairs of Dhaba. Rather the document of Dhaba Ex.DA proves that the Dhaba was being run by the absconded accused.

10. Further, PW6 Amar Nath, a taxi driver did not support the case of the

prosecution, but stated that he knew about "Five Star Dhaba" for the last about five years and admitted in the cross-examination that he did not know as to who was the owner, Manager or servant of the said Dhaba.

11. From the evidence on record, we find two stories coming forward, firstly that only Gajinder was present in the Dhaba, secondly that there were 5-7 other servants of the same Dhaba when it was being searched. It is a settled proposition of law that where two views are available on record, the view favourable to the accused has to be accepted. Having concluded so, in our opinion, the prosecution has failed to prove the actual and conscious possession of the recovered stuff from the Respondents also for the reason that the Investigating Officer did not take into possession any revenue or other record in order to fix the responsibility of Respondent No. 2 as owner of the Dhaba. Further we also find that none of the witnesses have come forward to say that it was Gajinder who was also operating the showcase from where the alleged recovery was effected, which could have proved his animus.

12. For the foregoing reasons, we did not find anything to interfere with the acquittal of the Respondents, as such the appeal lacks merit, accordingly dismissed.

13. The Respondents are hereby discharged of their bail bonds entered upon by them at any time during the proceedings of the case.

14. The matter stands disposed of. Send down the record.