



**\IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

**Cr.A. No. 519 of 2008
alongwith Cr.A. No. 26/2009
Reserved on: 16.5.2014
Decided on:22.5. 2014**

1. Cr. Appeal No. 519/2008

Mohinder Pal and another. ...Appellants.
Versus
State of Himachal Pradesh. ...Respondent.

2. Cr.A. No. 26/2009

Surender Pal. ...Appellant.
Versus
State of Himachal Pradesh. ...Respondent.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? ¹ Yes

For the Appellants : Mr. Anup Chitkara, Advocate.

For the Respondent: Mr. P.M. Negi, Dy.A.G.

Per Justice Rajiv Sharma, Judge.

Both these appeals are instituted against a common judgment dated 31.7.2008 rendered by the Special Judge, Chamba Division, Chamba in Sessions Case No. 4 of 2008, whereby the appellants-accused (hereinafter

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

referred to as “accused” for convenience sake), who were charged with and tried for offence punishable under section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, have been convicted and sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of ` one lakh each and in default of payment of fine, they were ordered to suffer simple imprisonment of one year each.

2. Case of the prosecution, in a nutshell, is that on 20.10.2007, ASI Ranjit Singh, Incharge, CIA Staff, Chamba alongwith other police officials was present at place Saun Morh. At about 9.10 A.M., the police party spotted two persons coming down from the hill side. These persons, on seeing the police party, got perplexed and tried to flee away. They were carrying polythene bags in their hands. The police party headed by ASI Ranjit Singh nabbed them. Bags were checked and the same were found to be containing some solid and sticks like narcotic substance. The contraband found to be charas. The recovered contraband on weighing was found to be 1 kg 500 grams each from the two bags, which the accused were carrying in their hands. The legal formalities were completed. The I.O. separated two samples of 25 grams each from each of the recovered contraband. The samples

and the bulks thereafter were sealed with seal 'T' and the seal after use was handed over to witness Ramesh Kumar. The I.O. prepared *rukka* and sent the same to the Police Station for registration of the case. Thereafter, the case property alongwith accused was produced before the S.H.O. He re-sealed the same with seal 'A' and the case property was kept in the Police Malkhana. After the receipt of report of Forensic Science Laboratory, challan was prepared and submitted before the court for trial.

3. Prosecution examined as many as 12 witnesses in all to prove its case against the accused. Statements of accused were recorded under section 313 of the Code of Criminal Procedure. They denied the entire prosecution case and took the defence of false implication. The Special Judge, Chamba Division, Chamba, as noticed hereinabove, has convicted and sentenced the accused.

4. Mr. Anup Chitkara has vehemently argued that the prosecution has failed to prove its case against the accused.

5. Mr. P.M. Negi, learned Deputy Advocate General, has supported the judgment passed by the Special Judge.

6. I have heard the learned counsel for the parties and have perused the records carefully.

7. PW-1 Vijay Kumar and PW-2 Ramesh Kumar have not supported the case of the prosecution and they were declared hostile.

8. PW-1 Vijay Kumar has deposed that he did not remember the date and month, but in the year 2007, he was replacing the punctured tyre of his vehicle at place Gate. One policeman came to him and took him to a shop and asked him to put signatures on blank papers and plain pieces of clothes. Nothing was recovered in his presence from the accused. He was declared hostile. He was cross-examined by the learned Public Prosecutor. In his cross-examination, he has deposed that neither his statement was recorded nor he made any statement to the police. He has denied the contents of mark 'A'. He has denied the suggestion that the contraband was taken into possession vide Mark 'B'. However, he has identified his signatures on it in circle red. He has denied the suggestion that 1 kg 500 gms charas was recovered from accused Mohinder Pal and 1 kg 500 gms charas was recovered from accused Surender Pal. He has denied the suggestion that police separated samples from the bulks. He has also denied that bulks and sample parcels were separately sealed with seal 'D'. He has also denied that specimen sealed impressions were taken on pieces of cloth and after

filling the NCB form, the seal was handed over to him. The police has obtained his signatures on the plain pieces of clothes. He has denied the suggestion that his signatures were taken on the bulk as well as on the sample parcels. He has identified his signatures on both the bulks parcels Mark 'C' and 'D' and sample parcels 'E', 'F', 'G' and 'H' encircled red. He also identified his signatures on Marks 'J' and K encircled red. Again reiterated that he has put his signatures on plain pieces of clothes. He has also denied that accused were present on the spot.

9. PW-2 Ramesh Kumar in his examination-in-chief has deposed that one year back 3-4 policemen came to his shop and asked him to sign on blank papers and pieces of plain white clothes as they had recovered charas. He was declared hostile by the prosecution. Learned Public Prosecutor was permitted to cross-examine him. He has denied the suggestion that he was summoned by the police to Saun Morh, where the police weighed the charas, recovered in two separate polythene envelopes. He has also denied the suggestion that the recovered contraband was weighed in his presence, which was found to be 1.5 kg each, wrapped in polythene bags. He has denied the contents of mark 'L'. According to him, he has not made such statement to the police. He has denied the

suggestion that two samples of 25 gms each were taken in his presence. He has also denied the suggestion that bulk and parcels were sealed in his presence by the police with seal "T". He has also denied that the recovered contraband was taken into possession vide seizure memo Mark 'B'. He has admitted his signatures. He has denied that bulks and samples were sealed in his presence. He has identified his signatures on bulks marks 'C' to 'D' and samples marks 'E' to 'H'. According to him, signatures were obtained by the police on the pieces of clothes.

10. PW-3, Surinder Kumar has testified that on 20.10.2007, he alongwith ASI Ranjeet Singh, HC Tilak Raj, Constables Daya Singh, Manohar Lal and Raj Kumar was present at Soun Nallah at about 10.00 AM. In the meantime, two persons came from the hill side. They were carrying polythene bags in their hands. They were stopped and their bags were checked. They were directed to open the bags carried by them. ASI Ranjeet Singh found charas in the shape of sticks in the bags. On weighing, 1 kg 500 gms charas was found in each bag. Two samples of 25 gms each were taken. ASI Ranjeet Singh sealed the parcels in different packets. Bulks were separately sealed. The contraband was sealed with seal "T". After filling the NCB form, seal was given to Ramesh Kumar. The bulks and

samples were taken into possession vide memo mark 'B'. Thereafter, ASI Ranjeet Singh prepared Rukka. He handed over the same to him. He took the same to police station Chamba. FIR was registered. In his cross-examination, he has deposed that they left Chamba at 1.00 a.m. (midnight). They went on foot upto Sultanpur and from Sultanpur, they went in a vehicle. According to him, firstly, the accused were noticed by ASI Ranjeet Singh. Firstly, accused Mohinder Pal was apprehended. The police had no suspicion that the accused were carrying charas. Police had no prior information about transportation of charas. The I.O. had not given his search to the accused or witnesses before conducting the search of the accused. Self stated that I.O. had not searched the accused but accused Mohinder Pal, voluntarily opened the bag. Constable went to arrange for weights and scales at 9.10 A.M. and he came back within half an hour. He did not know the time, when Rukka was drafted by the I.O. He took Rukka at 10.45 A.M. and reached the police station at 11.40 A.M. He did not remember the time when he reached back at Saun Nallah. They came back from the spot at 6-7.0 p.m.

11. PW-4 Manohar Lal, has deposed that two persons came to the spot from the hill side. They were

carrying polythene bags in their hands. ASI checked the bags carried by the accused and the same were found to be containing charas. Codal formalities were completed. The bulks and samples were duly sealed. Rukka was prepared. Copy of Rukka was sent to Chamba for information. He took the rukka and delivered it to the Reader of Superintendent of Police, Chamba on the same day. In his cross-examination, he has deposed that firstly accused Mohinder Pal was stopped by the A.S.I. Both of them were simultaneously spotted. Firstly, accused Mohinder Pal was apprehended. A.S.I. had suspicion that accused might be carrying charas. A.S.I. had not asked the accused if they wanted to give their search to some Gazetted Officer/Magistrate or to the police. A.S.I. had given his search to the accused and witnesses before searching them. Firstly, accused Mohinder Pal was searched. Constable went to arrange for weights and scale at 9.15 A.M. and also to summon the witnesses. He came back within 20-25 minutes alongwith weights, scale and witnesses. Rukka was prepared at 10.45 A.M. and delivered the same in the office of Superintendent of Police, Chamba at 11.40 A.M.

12. PW-5 Deepak Kumar has testified that on 20.10.2007, ASI Ranjit Singh of C.I.A. Staff produced two

big parcels, four small parcels and NCB form before S.H.O. Jatinder Kumar. These parcels were duly sealed with seal impression 'T'. S.H.O. Jatinder Kumar re-sealed these samples as well as bulk parcels with seal 'A' and the seal after use was handed over to him. The reseal memo Ex.PW-5/A was drawn. He signed the same. The S.H.O. Jatinder Kumar obtained specimen seal impression on a piece of cloth Ex.PW-5/B. He also signed the same. In his cross-examination, he has stated that ASI Ranjit Singh produced the case property before the S.H.O. Jatinder Kumar at 7.30 P.M. Seal 'A' was made of *lakh*. He has not brought the seal, which was handed over to him by the Inspector/S.H.O.

13. PW-6 Constable Om Parkash has deposed that on 20.10.2007, Constable Manohar Lal had brought copy of Rukka Ex.PW-6/A at 11.40 A.M. He produced it before the-then S.P. Shivpal Singh Verma.

14. PW-7 Ramesh Chand had brought the Malkhana, Daily Diary, R.C. and F.I.R. register. According to him, Surinder Kumar brought Rukka Ex.PW-7/A to the Police Station. F.I.R. Ex.PW-7/B was registered. Inspector/S.H.O. Jatinder Kumar deposited with him two bulk parcels, four small sample parcels duly sealed with seal 'T' and 'A', NCB forms, recovery memo, sample seal

impression, which were entered by him in the Malkkhana register at serial No. 473. On 21.10.2007, two sample parcels, two sample seal impressions, N.C.B. form, recovery memo and copy of F.I.R. were sent by him through constable Mehar Singh No. 295 vide R.C. No. 165/2007. He returned the same vide Ex.PW-7/C.

15. PW-8 Constable Mehar Singh has deposed that on 21.10.2007 he had given him two sample parcels, NCB forms, copy of FIR, seizure memo, sample seal impression for depositing the same with Forensic Science Laboratory, Junga vide R.C. No. 165/2007. He deposited the same on 23.10.2007 and returned the R.C. to MHC.

16. PW-9 Inspector Jatinder Kumar has testified that on 20.10.2007, Constable Surinder Kumar brought a Rukka Ex.PW-7/A. He registered the FIR Ex.PW-7/B. Thereafter, he made endorsement on the Rukka Ex.PW-9/A and returned the case file to him. On the same day, at 7.30 P.M. ASI Ranjit Singh produced before him, two bulk parcels containing 1 kg 450 grams, charas each sealed with seal "T", four sample parcels duly sealed with seal "T", eight specimen seal impressions, six NCB forms. He re-sealed all the parcels with his seal in presence of Constable Deepak Kumar vide reseal memo Ex.PW-5/A. The seal after use was handed over to Constable Deepak

Kumar. He also took impression of his seal on the NCB forms and made entries in the NCB form regarding re-sealing vide Ex.PW-9/B. He signed the same. In his cross-examination, he has deposed that it took ten minutes in re-sealing the same. After re-sealing, he deposited the case property with MHC. However, he did not remember its time.

17. PW-10 SI Diwan Chand has testified that on 10.1.2008, the case file was produced before him by ASI Ranjit Singh. He has prepared the challan and presented the same in the court.

18. PW-11 ASI Ranjit Singh was the Investigating Officer. According to him, on 20.10.2007, he alongwith HC Tilak Raj, Constables Surinder Kumar, Raj Kiran, Daya Singh and Manohar Lal was on patrolling duty. When they reached Saun Morh at about 9.10 A.M. two persons were spotted coming from hill side. They were carrying polythene bags in their hands. They got perplexed. He nabbed them with the help of other police officials. He opened the bags carried by the accused. He found the same to be containing charas in the shape of sticks. He deputed constable Raj Kiran to arrange for local witnesses as well as weights and scale. After sometime, constable Raj Kiran came back alongwith

independent witnesses, namely, Ramesh Kumar and Vijay Kumar. The contraband as contained in the bags was weighed separately. It weighed 1½ kgs each. Thereafter, he took two samples each from the recovered contraband. Both the bulk parcels as well as four sample parcels were sealed with seal "T". He also obtained specimen seal impressions on a piece of cloth. The seal after use was handed over to PW Ramesh Kumar. He prepared Rukka Ex.PW-7/A. It was sent to police Station, Chamba for registration of case. He also prepared site plan Ex.PW-11/B. The accused were informed about the grounds of arrest. He filled column Nos. 1 to 8 and the remaining columns were filled in by S.H.O. Police Station, Chamba except column No.12. In his cross-examination, he has deposed that he noticed the accused from a distance of about 30 feet. Accused were nabbed by the police party due to their abnormal behaviour. Firstly, police party nabbed accused Mohinder Pal and thereafter Surinder Pal was nabbed. It took about three hours to complete the investigation. Self-stated that the entire proceedings were completed at about 12.30 in the noon. The police party returned back to Police Station, Chamba at about 7.30 P.M. alongwith case property and accused. The seal "T" was in the shape of ring and it was made of silver.

19. PW-12 Constable Raj Kiran has deposed that on 20.10.2007, he alongwith ASI Ranjit Singh and other police officials was on patrolling duty. At about 9.10 A.M., two persons came from hill side. They on seeing the police party, tried to run away. They were carrying bags in their hands. The police party nabbed them. The codal formalities were completed by the Investigating Officer. The recovered contraband weighed 1 kg 500 grams each. In his cross-examination, he has deposed that the accused were firstly noticed by the ASI. When the accused tried to run away, it did not raise suspicion. Firstly, accused Mohinder Pal was nabbed. He went to arrange for weights and scale.

20. What emerges from the discussion of the evidence of the prosecution witnesses is that PW-1 Vijay Kumar and PW-2 Ramesh Kumar, independent witnesses, have not supported the case of prosecution at all. According to them, the police has obtained their signatures on blank papers and pieces of plain white clothes. PW-1 Vijay Kumar has denied that the contraband was taken into possession vide memo mark 'B'. He has also denied that the police has weighed the charas in his presence. He has denied the suggestion that 1 kg 500 of charas was recovered from accused Mohinder

Pal and 1 kg 500 grams of charas was recovered from accused Surinder Pal. He has also denied the suggestion that the police has separated the samples from the bulks. He has denied that the bulks and samples were sealed with seal 'T'. He has denied the suggestion that after re-sealing the bulks and parcels, he put his signatures on them. Similarly, PW-2 Ramesh Kumar has denied the suggestion that he was called by the police on 20.10.2007 to Saun Morh. He has also denied that the contraband was weighed in his presence and was found to be 1 kg 500 grams each wrapped in polythene envelopes. He has also denied that from each of the bulk, police took two samples of 25 grams each in his presence. He has admitted his signatures encircled red at point B-1, on bulks marks 'C' and 'D' and sample parcels marks 'E' to 'H'. However, both the witnesses have categorically stated that their signatures were obtained on plain papers and pieces of clothes.

21. According to PW-3 Constable Surinder Kumar, two persons came from hill side. They were carrying polythene bags in their hands. They were stopped and their bags were checked by ASI Ranjit Singh. They were directed to open the bags. PW-4 Constable Manohar Lal has also deposed that two persons came from the hill side.

They were carrying polythene bags in their hands. ASI checked the bags of the accused and the same were found to be containing charas. PW-11 ASI Ranjit Singh has deposed that two persons were spotted coming from hill side. They were carrying polythene bags in their hands. On seeing the police party, they got frightened and tried to flee away. He nabbed them with the help of police officials. PW-11 ASI Ranjit Singh, in his cross-examination, has deposed that he noticed them from a distance of about 30 feet. The accused were nabbed by the police due to their abnormal behaviour. Firstly, police nabbed accused Mohinder Pal and thereafter accused Surinder Pal was nabbed. PW-12 Constable Raj Kiran has deposed that two persons were seen coming from the hill side, who on seeing the police party, tried to run away. They were carrying polythene bags in their hands. The police party nabbed them. According to PW-3 and PW-4, accused were stopped and checked by ASI Ranjit Singh, however, as per the statements of PW-11 and PW-12, accused tried to run away from the spot and were nabbed by the police personnel. PW-4 Manohar Lal has admitted that the I.O. had not given his search to the accused or witnesses before conducting the search of the accused, though he volunteered that I.O. had not searched the

accused but accused Mohinder Pal, voluntarily opened the bag. According to PW-5 Constable Deepak Kumar, the parcels were duly sealed with seal impression 'T' and S.H.O. Jatinder Kumar re-sealed the samples as well as bulk parcels with seal 'A' and the seal after use was handed over to him. The reseal memo Ex.PW-5/A was drawn. He signed the same. However, he has not brought the seal, which was handed over to him by the S.H.O. PW-7 Constable Ramesh Chand has testified that on 20.10.2007 at about 8.00 P.M. Inspector/S.H.O. Jatinder Kumar deposited with him two bulk parcels, four small sample parcels duly sealed with seal 'T' and 'A', NCB forms, recovery memo and sample seal impressions, which were entered by him in the Malkhana register at Sr. No. 473 of Malkhana register. PW-9 Inspector Jatinder Kumar has stated that ASI Ranjit Singh produced before him two bulk parcels containing 1 kg 450 grams of charas each sealed with seal 'T', four sample parcels duly sealed with seal 'T', eight specimen seal impressions, six NCB forms. He re-sealed all the parcels with his seal in presence of Constable Deepak Kumar vide reseal memo Ex.PW-5/A. The seal after use was handed over to Constable Deepak Kumar. But as already noticed hereinabove, PW-5 Constable Deepak Kumar has not produced the seal.

PW-9 Inspector Jatinder Kumar has not deposed that he has put his seal 'A'. He has only deposed that he resealed the parcels in the presence of Constable Deepak Kumar.

22. It is settled law by now that conviction can be made on the basis of statements of official witnesses in case their statements inspire confidence. In the present case, the prosecution case has not been supported by PW-1 Vijay Kumar and PW-2 Ramesh Kumar. According to the prosecution, contraband was recovered from the accused in the presence of PW-1 Vijay Kumar and PW-2 Ramesh Kumar and the sealing process was also completed in their presence. However, they have been declared hostile. There are major contradictions, as stated hereinabove, in the statements of PW-3 Constable Surinder Kumar, PW-4 Constable Manohar Lal, PW-11 Ranjit Singh and PW-12 Constable Raj Kiran, the manner in which the accused were nabbed at Saun Maor at 9.10 A.M.

23. Accordingly, in view of the discussion and analysis made hereinabove, the appeals are allowed. The judgment dated 31.7.2008 rendered by the learned Special Judge, Chamba Division, Chamba in Sessions Case No. 4 of 2008 is set aside. Accused are acquitted of the charges

framed against them. Fine amount, if already, deposited
be released to the accused. Accused be released
forthwith. ◇

24. We place on record our appreciation for the
assistance rendered by Mr. Anup Chitkara, Advocate.

**(Justice Rajiv Sharma),
Judge.**

**(Justice Sureshwar Thakur),
Judge.**

22.5. 2014
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High Court