

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

Cr. Appeal No. 124 of 2017

Reserved on: 30.04.2019

Date of Decision: 4.7.2019

Pala Singh & others

...Appellants.

Versus

State of H.P.

...Respondent.

*Coram:**The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.**The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.**Whether approved for reporting?¹. Yes.*

For the Appellants:

Mr. Manoj Pathak,
Advocate.

For the Respondent:

Mr. Vikas Rathore, Mr.
Narender Guleria, Additional Advocate
Generals with Mr. J.S. Guleria, Mr. Kunal
Thakur, Dy. Advocate Generals & Mr.
Sunny Dhatwalia, Assistant Advocate
General.

Vivek Singh Thakur, Judge.

Present appeal has been preferred by convicts-appellants against the judgment dated 1.7.2016, passed by Additional Sessions Judge-cum-Special Judge (CBI), Shimla, H.P., Camp at Theog, in Sessions Trial No.6-T/7 of 2013/12, titled as State of Himachal Pradesh vs. Pala Singh & others,
¹Whether reporters of the local papers may be allowed to see the judgment?

in case FIR No. 49/2012, dated 6.4.2012, registered at Police Station Theog, District Shimla, H.P., whereby convicts/appellants Pala Singh and Raghubir Singh have been convicted for commission of offence under Section 20 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short NDPS Act) whereas accused Narayan Singh was acquitted under Section 29 of the NDPS Act, by extending benefit of doubt in his favour.

2. The convicts/appellants have been sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay fine in the sum of Rs.1,00,000/- each, for commission of offence under Section 20 of NDPS Act and in default of payment of fine, to undergo further simple imprisonment for a period of one year each.

3. The State has not preferred any appeal against acquittal of co-accused Narayan Singh, whereas convicts/appellants Pala Singh and Raghubir Singh have assailed their conviction and sentence imposed upon them in present appeal.

4. We have heard Mr. Manoj Pathak, Advocate for the convicts/appellants and Mr. Vikas Rathore, learned Additional Advocate General for the State and have also gone through the record.

5. The prosecution case, in brief, is that police party headed by PW-12 Inspector Baldev Thakur, consisting of PW-13 ASI Karam Singh, PW-3 Constable Manoj Kumar, PW-4 Constable Mohd. Mehmood, Constable Satish and Constable Rajesh, had left the Police Station in official vehicle being driven by Constable Rajesh, for patrolling towards Sainj-Balag-Kuthar etc., after recording D.D. entry No.7(A) Ext.PW6/C at 7.00 a.m. on 6.4.2012 and at about 10.15 a.m., it was present at Sewag curve (Mor), on a road from Balag to Kuthar along with Constable Naresh Kumar and Constable Anil Kumar, who were accompanying this police party from Police Post Chhaila. At that time, a white coloured car bearing registration No. PB-76-0430 (Indigo), occupied by driver Pala Singh and his co-passenger sitting on front seat (co-accused Raghubir Singh), came from Kuthar side and on inquiry, they disclosed their names and addresses and by that time, PW-7 Prem Pandey came in his pick-up on the spot and PW-8 Moti Ram also came on the spot by chance, who were associated as witnesses by the Investigating Officer, for checking the vehicle, wherein Raghubir Singh (accused) was sitting with a bag in his lap. During checking, 6 packets were recovered from this bag, which were containing contraband therein, which was

identified as cannabis. Thereafter, on checking of right side dash board of the vehicle, 11 packets containing charas were also recovered. On weighing, total recovered charas was found to be 8.200 kg. The recovered contraband was repacked in the bag and sealed with seal impression 'A' and thereafter, taken into possession vide memo Ext.PW7/A. The NCB-1 form Ext.PW12/A was filled in triplicate and sample seal impression was also taken on a separate cloth Ext.PW7/C and the seal was handed over to PW-7 Prem Pandey. The sample seal impression and parcel were signed by the witnesses i.e. PW-7 Prem Pandey, PW-8 Moti Ram and PW-13 ASI Karam Singh and also by the convicts/appellants. Thereafter, rukka Ext.PW12/B was prepared and sent to Police Station through PW-4 Constable Mohd. Mehmood, whereupon ASI Sanjeev Kumar had registered the F.I.R. Ext.PW2/A and had handed over the copy thereof to PW-4 Constable Mohd. Mehmood, for delivering the same to the Investigating Officer (PW-12). During investigation, site plan Ext.PW12/C was also prepared and accused were arrested vide memos Ext.PW3/B-1 and Ext.PW3/B-2 and thereafter, Jamatalashi/ personal search of the convicts/appellants was conducted vide memos Ext.PW12/D and Ext.PW12/E. On

8.4.2012, the case file was handed over to PW-13 ASI Karam Singh for further investigation.

6. The vehicle (Indigo Car) being used by the convicts/appellants was also impounded. The car alongwith key as well as relevant documents were deposited by PW-12 Baldev Thakur in the Malkhana by handing over the same to PW-6 MHC Sunil Kumar, who had entered it at serial No.581 of the Malkhana Register.

7. On 7.4.2012, PW-6 MHC Sunil Kumar had sent parcel to State Forensic Science Laboratory, Junga through PW-4 Mohd. Mehmood along with documents vide R.C. No.58/12 (Ext.PW6/B). The parcel was delivered in State Forensic Science Laboratory, Junga on the very same day. Respective extracts of Malkhana Register and R.C. are Ext.PW6/A and Ext.PW6/B.

8. It is further case of the prosecution that during interrogation, convicts/appellants had disclosed that they had purchased the charas from co-accused Narayan Singh, whereupon, house of Narayan Singh was raided and he was arrested. On the basis of call details of mobile phones being used by convicts/appellants and co-accused Narayan Singh and location of tower of these phones in the concerned area, it was found that co-accused Narayan Singh had

provided the charas to convicts/appellants. During investigation, it was found that the accused were also using telephones, which were not in their names, but in the names of someone else. After procuring details of the telephones from the Nodal Officers of the concerned companies, statements of the persons, in whose names mobile connections were issued, were also recorded.

9. On 7.4.2012, special report Ext.PW11/A was prepared which was delivered to the Sub-Divisional Police Officer, Theog on the very same day and the said report, after making endorsement by Sub-Divisional Police Officer, was handed over to PW-11 HC Man Dev, who had entered the said report in the concerned register. Extract of the register is Ext.PW11/B. After receiving chemical analysis report Ext.PX, from State Forensic Science Laboratory, Junga, challan was prepared and presented in the Court.

10. On finding prima facie complicity of accused persons in commission of offence, convicts/appellants were charged under Section 20 of the NDPS Act, whereas co-accused Narayan Singh was charged under Section 29 of the NDPS Act. The accused persons had pleaded not guilty and thus, were subjected to trial.

11. The prosecution had examined 19 witnesses to substantiate its case. Whereas, after recording their statements under Section 313 Cr.P.C., the convicts/appellants and their co-accused Narayan Singh had opted not to lead any evidence in defence. On completion of trial, as detailed supra, the trial Court has convicted the convicts/appellants and has acquitted co-accused Narayan Singh.

12. As the respondent/State has not filed any appeal against the acquittal of co-accused Narayan Singh, the witnesses examined to prove his complicity in the offence committed by the convicts/appellants, i.e. PW-5 Ms. Sapna Devi, PW-10 Devinder Verma and PW-14 Smt. Manjeet Kaur, are not relevant.

13. PW-9 Amrit Pal Singh is owner of the car being used by convicts/appellants. He has verified that convict/appellant Pala Singh was the person employed by him as driver and he was in-charge of the vehicle at relevant point of time. PW-16 Krishana Nand had received the parcel at State Forensic Science Laboratory, Junga and had made entry in the crime Register at serial No.481, extract whereof is Ext.PW16/A. Thereafter, on receiving the result and case property, he had handed over it to

Constable Pardeep, who had deposited the same in the malkhana.

14. The independent witnesses in present case i.e. PW-7 Prem Pandey and PW-8 Moti Ram, in their deposition before the Court, were declared hostile for resiling from their previous statements recorded under Section 161 Cr.P.C. Therefore, when independent witnesses have become hostile, statements of official/police witnesses are to be scrutinized with care and caution.

15. Learned counsel for the convicts/appellants has disputed correctness of the impugned judgment, on the ground that independent witnesses i.e. PW-7 Prem Pandey and PW-8 Moti Ram have not supported the prosecution case and there are major contradictions and discrepancies in the testimonies of official witnesses, having effect on the genesis of the prosecution story. It is contended on behalf of the convicts/appellants that from the evidence on record, it appears that it is a case of prior information, but the Investigating Officer has failed to follow mandatory provisions of NDPS Act, required to be followed in such a case and further that the Investigating Officer PW-12 Baldev Thakur has not prepared any document on the spot. It is also contended that in the arrest memos Ext.PW3/B-1 and

Ext.PW3/B-2, time of arrest of accused persons has been shown as 2.00 p.m. and in these documents, quantity of recovered charas i.e. words "8.200 grams" have been mentioned in printed form after typing it on the computer. Whereas, it is admitted case of the prosecution that police party was not having any computer on the spot and as per prosecution story, convicts/appellants were apprehended at 10.15 a.m., rukka was prepared at 12.15 p.m. and thereafter, police party remained on the spot till 4.00 p.m. and had reached in the Police Station at 7.00 p.m. In these circumstances, there was no possibility of typing out quantity of recovered charas i.e. 8.200 kg in Ext.PW3/B-1 and Ext.PW3/B-2 on the spot, but is typed on these documents, which indicates that the said documents were not prepared on the spot at the time of alleged arrest of convicts/appellants at 2.00 p.m., which creates doubt on the fairness of investigation, rendering the prosecution story doubtful.

16. It is further contended on behalf of the convicts/appellants that in R.C. Ext.PW6/B, date has been mentioned as 7.6.2012 instead of 7.4.2012 and there is no mention of sending sample seal impression and NCB form alongwith recovered contraband and further that PW4

Constable Mohd. Mehmood has stated that rukka is in the handwriting of Karam Singh whereas Investigating Officer at that time was PW12 Inspector Baldev Singh. It is further contended that Investigating Officer has not prepared any document on the spot, which again creates doubt about presence of PW-12 Baldev Thakur on the spot. In the light of submissions made hereinbefore, it is canvassed that the convicts/appellants are entitled for benefit of doubt.

17. Lastly, learned counsel for the respondent has also raised the issue that in the present case, complainant as well as Investigating Officer is one and same Officer and therefore, keeping in view the pronouncement of Apex Court in ***Mohan Lal vs. State of Punjab*** reported in ***AIR 2018 SC 3853***, the respondents are entitled for acquittal.

18. Learned Additional Advocate General for the State has supported the impugned judgment, for the reasons assigned therein with further submission that verdict in ***Mohan Lal's*** case is not applicable in present case.

19. The plea raised on behalf of the convicts/appellants, that it is a case of prior information, does not bear out from the record, as the police party had left the Police Station at 7.00 a.m., for patrolling in the area

of Sainj-Balag-Kuthar etc., after recording it in Daily Station diary vide Ext.PW6/C. During cross-examination to PW-6 HC Sunil Kumar, who has proved this Daily Diary Entry on record, the correctness of this document has not been disputed, which amounts to admission of the said document. Further, no such suggestion has ever been put to Investigating Officers PW-12 Baldev Thakur and PW-13 ASI Karam Chand or to PW-3 Constable Manoj Kumar and PW-4 Constable Mohd. Mehmood. Therefore, plea raised by the convicts/appellants, at this stage, regarding prior information, is without any basis and is not sustainable.

20. The ground taken by the convicts/appellants that the Investigating Officer PW-12 Baldev Thakur has not prepared any document himself or on the spot, is also not having any bearing on the merits of the case as it has come in the statements of officials witnesses that some of the documents were prepared by the Investigating Officer himself and some of the documents were prepared/reduced into writing by other police officials including PW-13 ASI Karam Singh, under the dictation of PW-12 Baldev Thakur. No doubt, the arrest memos Ext.PW3/B-1 and Ext.PW3/B-2 contain the quantity of recovered contraband in printed form, whereas the convicts/appellants were arrested on the

spot at 2.00 p.m. and at the spot, there was no computer available with the police and it indicates that these memos were not prepared on the spot, but later on, in the Police Station. But this fact is also of no help to the convicts/appellants, as PW-12 Baldev Thakur, in his cross-examination has stated that no document was prepared regarding information given to the relatives of the accused persons and they were not having computer with them on the spot and both the arrest memos, having description of recovered contraband, were typed in the computer. Similarly, PW-13 Karam Singh, in his cross-examination, has also stated that no arrest memos were prepared on the spot, but these were prepared in the Police Station. However, the arrest information was given from the spot. Meaning thereby, it is a case of the prosecution that these arrest memos were prepared in the Police Station. The convicts/appellants were arrested on the spot, but their arrest memos were prepared in the Police Station and their personal search, after arrest, was conducted in the Police Station itself, which is evident from the memos of search (Jamatalashi) Ext.PW12/D and Ext.PW1/E, proved on record by PW-17 HC Satish Kumar. The preparation of arrest memos Ext.PW3/B-1 and Ext.PW3/B-2 not on the spot but in Police

Station may be a lapse on the part of Investigating Officer, who should have prepared the arrest memos on the spot, but this lapse does not falsifies the prosecution case and it does not have any effect on the veracity of the prosecution witnesses. The fact that these memos were prepared in the Police Station, has been disclosed by the prosecution witnesses in their deposition. Therefore, this act on the part of investigation, though amounts to faulty investigation, but is of no help to the convicts/appellants, as no prejudice, to have been caused to them on this count is apparent. The plea of convicts/appellants that quantity of recovered contraband has been typed in Ext.PW3/B-1 and Ext.PW3/B-2, is also not fatal to the prosecution, for the reason that said typing out of quantity stands satisfactorily explained, as discussed above and therefore, it also does not extend any benefit to the convicts/appellants, rather by telling truth official witnesses have established their creditworthiness so as to inspire confidence in prosecution story.

21. It is a fact that independent witnesses PW-7 Prem Pandey and PW-8 Moti Ram have been declared hostile for resiling from their previous statements made under Section 161 Cr.PC. But it is settled law that testimony of hostile witness cannot be brushed aside only on the ground that

the witness has been declared hostile. Credible part of the hostile witness, which is acceptable in the facts and circumstances of the case and is duly corroborated by other reliable material on record, can be taken into consideration in favour of either party. Scrutiny of these witnesses indicates that though they have not supported the prosecution case in totality, but they have admitted presence of police party along with two persons on the spot on the given date and time and also recovery of charas from the Indigo Car bearing No.PB-76-0430. They have also admitted their presence on the spot as indicated in photographs Ext.PW3/A-1 to Ext.PW3/A-7. PW-7 Prem Pandey has corroborated the prosecution case regarding his appearance on the spot in his vehicle and his association during search and seizure procedure. Similarly, PW-8 Moti Ram has also corroborated the prosecution story regarding the manner of his presence on the spot. Though PW-7 Prem Pandey has expressed his ignorance about the presence of PW-8 Moti Ram on the spot, however, he has admitted that he along with Moti Ram is visible in the photographs of the spot. PW8 Moti Ram has also admitted his presence along with PW-7 on the spot. These witnesses have also admitted their signatures on the seizure memos Ext.PW7/A and

Ext.PW7/B. PW-8 Moti Ram has admitted that packets were recovered by the police from the vehicle bearing registration No.PB-76-0430 and has also admitted that recovered packets were weighed in their presence, but he did not remember the quantity of recovered charas. The evidence as a whole, of these independent witnesses, inspire confidence about truthfulness of the prosecution case.

22. The prosecution has also examined owner of the vehicle bearing registration No.PB-76-0430 i.e. Amrit Pal Singh as PW-9. In his examination-in-chief, he has clearly stated that he had engaged convict/appellant Pala Singh as a driver, who had borrowed the vehicle for taking his family to Sri Naina Devi Ji Temple and Anandpur Sahib and on 8.4.2012, he came to know about impounding of his vehicle by the police, whereupon he came to Theog along with his father and had talked with convict/appellant Pala Singh in the Police Station, Theog, when he was in police custody there and Pala Singh had disclosed that he had brought the vehicle to Theog and was caught carrying charas in it. In his cross-examination, his veracity remained unshaken. He has proved on record the certificate Ext.PW9/A, issued by him, wherein he had certified that Pala Singh was engaged by him as a driver on the vehicle involved in the incident.

23. In rukka Ext.PW12/B, against the column of the date thereon, the date has been mentioned as 7.6.2012, but at the same time, on this document, there is a seal of Police Station, Theog, mentioning R.C. No.58/12 with the date 7.4.2012 and also under the signatures of the person issuing it, date has been mentioned as 7.4.2012. On its back side, 'In-charge of Case Receipt and Dispatch Branch', Office of Director, State Forensic Science Laboratory, Junga has acknowledged the receipt of articles as per this R.C. on 7.4.2012. PW-16 SI Krishna Nand, who was Incharge Crime Branch SFSL, Junga in his deposition, has stated that PW-4 Mohd. Mehmood had brought one parcel on 7.4.2012, which was received by him on the same date. PW-4 Mohd. Mehmood has also corroborated the said date. Therefore, mention of wrong date at one place in the R.C. does not have any effect on the veracity of the prosecution case.

24. PW-16 Krishna Nand has also proved on record the receipt of result from State Forensic Science Laboratory, Junga on 24.4.2012 along with case property and handing over of the same to Constable Pardeep of Police Station, Theog, after making entries in Crime Register maintained by the officials posted in SFSL and he has proved the abstract of Crime Register Ext.PW16./A. The report of State Forensic

Science Laboratory has been proved on record as Ext.PX, wherein it is recorded that the case property was received in the Laboratory on 7.4.2012 and the quantity thereof was found 8.182 kg and on chemical analysis, the same was found to be sample of charas.

25. The plea that respondents are entitled for acquittal in view of ratio of law settled in **Mohan Lal's case supra** is not available to the respondents as the Apex Court in case **Varinder Kumar vs. State of Himachal Pradesh** reported in **2019 SCC Online SC 170** has clarified that the judgment passed in **Mohan Lal's case** shall not affect the status of cases instituted/filed prior to the said judgment, rather this judgment shall have the prospective applicability/effect and all pending criminal prosecutions, trials and appeals prior to the law laid down in **Mohan Lal's case supra** shall continue to be governed by the individual facts of the case.

26. Except, points discussed hereinabove, no other point has been urged so as to doubt the veracity of official witness. We also do not find any material contradiction, discrepancy or improvement in evidence of spot official witnesses, PW3 C.Manoj, PW4 Mahmood, PW12 Inspector baldev Singh and PW13 Karam Chand and also other

witnesses so as to doubt on the prosecution story. Acceptable portion of statements of hostile independent witnesses is also tilting the balance in favour of prosecution case.

27. As discussed hereinabove, we find no merit in points raised on behalf of appellants. Therefore, there is no illegality, irregularity or perversity in convicting and sentencing the appellants. Therefore, no ground for interference in conviction and sentence imposed on appellants is made out. Accordingly, the appeal is dismissed. Record be sent back to the learned trial Court.

(Dharam Chand Chaudhary),
Judge.

(Vivek Singh Thakur),
Judge.

July 4, 2019
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