



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

Cr.Appeal No. 408 of 2019

Reserved on : 18.9.2020

Decided on: 24.9.2020

Sanjay Kumar

...Appellant.

VERSUS

State of H.P.

...Respondent.

Coram

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.
The Hon'ble Mr. Justice Chander Bhusan Barowalia,
Judge.**

Whether approved for reporting? yes

For the Appellant: Mr. Kulwant Singh Gill, Advocate.

For the Respondent: Mr. Hemant Vaid, Mr. Hemanshu Mishra and Mr. Narender Guleria, Addl. AGs with Mr. Vikrant Chandel and Mr. Narender Singh Thakur, Advocate.

Sureshwar Thakur, Judge

The instant appeal is directed against the judgment rendered, on 30.5.2019, by the learned Special Judge, Chamba, Division Chamba (HP), upon, Sessions

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Trial No. 15 of 2017 and, where through(s), the appellant stands convicted, and, also stands sentenced to undergo rigorous imprisonment, for, a period of eleven years, and, to pay a fine of Rs. 1,10,000, and, in default of payment of fine, becomes sentenced to undergo simple imprisonment, for, a period of one year, for, the commission, of, offence(s) punishable under Section 20(b)(ii)(C), of, the Narcotic Drugs, and, Psychotropic Substances Act, 1985.

2. Brief facts of the case, are, that on 18.12.2016, HC Kuldeep Chand (PW-10), In charge Police Post Behloun Cantt, Police Station Dalhousie alongwith Constable Rajinder Kumar (PW-1), and, Constable Surinder Singh PW-2, was on patrolling, near MH Road Dalhousie Cantt, near JCO Mess, where, one person appeared, on footpath, from, the side of Surkhigala. On seeing the police, the aforesaid person became perplexed and started fleeing, on, the same footpath. He was

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nabbed by HC Kuldeep Chand at a distance of 15-20 feet. He was brought on road for inquiry. It is further alleged in the prosecution story that said person was holding a carry bag of blue colour in his right hand. At that time, two persons namely Anuj Bedi (PW-3) and Megh Nath were passing by on the road, who were associated by the Police in the investigation. It is further alleged that name and address of the appellant were ascertained. On suspicion, carry bag in possession of the accused/appellant was checked in the presence of Anuj Bedi, Megh Nath and Constable Rajinder Kumar. It was found to contain a transparent polythene envelope having black coloured substance in round and stick shapes. It is alleged by the prosecution that on the basis of smell and experience, police found the same to be charas, which on weighment, was found to be 1kg and 200 grams. The allegedly recovered charas was sealed and parceled into a parcel (Ext. P-1) sealed with six seal impressions of "DK"

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sample seal was drawn, NCB form in triplicate was filled in, seal impression was put thereon. Seal after use was alleged to have been handed over to Anuj Bedi. On completion of codal formalities, Rukka was sent through Constable Surinder Singh (PW-2) to Police Station, Dalhousie for registration of FIR, which was registered by Inspector Sunny Guleria (Ext. PW7/A). It is alleged that vide Ext. PW1/C, Fard Jamatalashi, personal search of accused was conducted. Case property was produced before Inspector Sunny Guleria, who resealed the same with seal impression "DK", who also filled in relevant columns of NCB form. He also retained specimen seal impressions (Ext. PW4/A) and handed over seal after its use to Constable Dharvinder (PW-4). Reseal memo was prepared and handed over case property to MHC Bhagwan Chand (PW-8), who deposited the articles in the Malkhana and made an entry at Sr.No. 147 vide Ext. PW8/A. Case property was sent to FSL Junga on

20.12.2016 through Constable Surinder Singh(PW-2) vide RC No. 126/2016 (Ext. PW8/B). As per report of FSL,11.67% w/w resin was found in the sample sent for analysis. The statements, of, the witnesses were recorded, and, on completion of investigation(s), a Challan was put in the Court, and, the accused was produced to face trial.

2. The accused was charged for committing, an, offence punishable, under Section 20 of the ND & PS Act. In proof of the prosecution case, the prosecution examined ten witnesses. On conclusion of recording, of, prosecution evidence, the statement of the accused, under, Section 313 Cr.P.C. was recorded, by the trial Court, wherein, he claimed false implication. He examined three witnesses in defense.

3. On an appraisal of evidence on record, the learned trial Court, recorded findings, of, conviction against the accused/appellant herein.

4. The appellant, is, aggrieved by the judgment of conviction, and in consequent therewith sentence, recorded upon him, by the learned Special Judge, Chamba, District Chamba. The learned counsel appearing for the appellant, has concerted, and, vigorously contended qua the findings of conviction, recorded by the learned Special Judge, standing not, based on a proper appreciation, by him, of the evidence on record, rather, theirs standing sequelled by gross misappreciation, by him, of the material on record. Hence, he contends qua the findings of conviction being reversed by this Court, in the exercise of its appellate jurisdiction, and, theirs being replaced by findings of acquittal.

5. On the other hand, the learned Additional Advocate General, has with compatible force and vigour, contended that the findings of conviction recorded by the Court below, standing based on a mature and balanced

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appreciation of evidence, on record, and, theirs not necessitating any interference, rather theirs meriting vindication.

6. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

7. Recovery, of, 1kg and 200 gms Charas, was effectuated through memo, borne in Ext.1/B. The afore recovery became effectuated from the site, reflected in the site plan, hence borne in Ext. PW10/C. The afore recovery became effectuated, from, a carry bag, held by the accused, in his right hand. The FIR, vis-à-vis, the apposite recovery, as made, from the conscious and exclusive possession, of, the accused, becomes borne in Ext. PW 9/A. Even though, the effectuation, of, recovery, of the afore weight, of, contraband, from the purported conscious, and, exclusive possession, of, the accused, hence from a carry bag, held by the accused, in his right

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hand, would not, perse invite the attraction(s) or application(s), of, the mandate, of, Section 50 of the ND &PS Act, (i) inasmuch as, its mandate, becoming attracted, only upon, the, recovered contraband, being tethered to the body of the accused, yet, it appears that the Investigating Officer, prior to his effectuating the recovery from the carry bag, held by the accused, in his hand, made Jamatalashi, upon the accused, and the items, as reflected in the Jamatalashi memo, borne in Ext. PW1/D, appear to hence became recovered, through, the afore made memo. Needless to say that, since, the accused through, his counsel, rather during the, course, of, the latter, conducting cross-examination, upon the prosecution witnesses concerned, does not, obviously espouse through suggestions, becoming meted to them, qua false recovery, of, the recovered contraband, becoming effectuated, upon a Jamatalashi, being made, upon the accused's person, by the Investigating Officer

concerned, (ii) thereupon, there was no imperative necessity, cast upon the Investigating Officer, to, before proceeding to undertake the afore process, to, hence seek the apposite consent, of, the accused.

8. In Ext. PW1/A, narration(s) exist(s), vis-à-vis, six seal impression(s), each carrying thereon(s), English alphabet "DK", becoming embossed, upon, the seized contraband, and, thereafter, upon, the NCB form, embodied in Ext. PW10/A, hence compatible therewith narration(s), authored by the Investigating Officer concerned, hence becomes echoed therein, to, also exist, upon, the case property. Upon, the, case property becoming deposited, with, the SHO concerned, the latter proceeded, to, as unraveled in Ext. PW10/A, emboss thereon(s), 6 re-sealing, seal impressions, each carrying thereon(s) English Alphabet "DJ". Subsequently, the case property became transmitted, through, road certificate, embodied in Ext. PW8/B, to the FSL concerned, and

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thereon, also echoing(s), bearing all the apposite compatibilities, and, appertaining to the number(s), of, seal impression, and, to the English alphabets, carried upon, the seized case property(ies), become visibly unfolded. Upon the case property(s), becoming deposited with the FSL concerned, the latter as unfolded by Ext. PZ, made affirmative articulations thereon, qua , the contents thereof, being Charas.

9. As aforestated, since no articles became recovered, upon, the carrying(s), of, a jamatalashi, upon, the accused's person, rather the recovery, of, contraband became effectuated, from, a carry bag, Ext. P-5, hence carried by the accused, in his right hand, (iii) and when, the, entire trend of cross-examination, of, the prosecution witnesses, does not, un-earth, qua any suggestion, being put to each, of, them qua, despite upon a personal search, of, the accused, being made, rather any item, of, contraband, in, pursuance thereto becoming recovered,

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and thereafter, it becoming planted in Ext. P-6, polythene bag, kept inside Ext, P-5, the latter exhibit whereof, is, the apposite carry bag, held by the accused in his right hand, , (iv) thereupon, wants of meteings, of, the afore suggestion(s), vis-à-vis, the prosecution witnesses, do not, erode the efficacy of the recovery, of, contraband as made from carry bag, held by the accused, in his right hand, hence through memo comprised, in, Ext. PW1/B. Emphatically also, the independent witnesses, to the recovery memo, inasmuch as, Anuj Begi, has fully supported the prosecution case, on all parameters, and also when no suggestions, became meted to him, hence holding any echoing), vis-à-vis, the Investigating Officer concerned, disingenuously planting, the, recovered item(s), of, contraband, inside the carry bag, held by the accused, in his right hand, (v) nor when any suggestion, became meted to him, rather suggestive, vis-à-vis, the recovery, of, contraband, being made not at the site, of,

occurrence, rather at, a, site alternative thereto, (vi) and also when no affirmative answer thereto, became meted hence by the afore independent witness(es), (vi) thereupon the defense cannot contend before this Court, that the apt recoveries, as made through memo, borne in Annexure PW1/B, from the conscious and exclusive possession, of, the accused, being tainted with any vice, of, any mandatory procedural compliances, becoming breached.

10. Recovery of charas, vide memo Ext. PW1/B, was made from polythene, Ext. P-6, kept inside carry bag, Ext. P-5, and, the afore recovery became effectuated through memo, embodied in seizure memo, Ext. PW1/B, and therein narrations, occur, qua (a) six seal impressions, each carrying thereon(s), English alphabet "DJ", becoming embossed, on, cloth parcel, Ext.P-1, (b) NCB form, borne in Ext. PW10/A, carries compatible therewith narrations, hence, authored by the

Investigating Officer, and, thereafter thereon(s), the SHO concerned also has made authored narrations, vis-à-vis, his re-sealing cloth parcel, Ext. P-1, with six re-seal, seal impressions, each carrying thereon(s) English alphabet "DK", (c) road certificate embodied in Ext. PW8/B, carries compatible therewith narrations. The FSL report, embodied in Ext. PZ also carries conforming therewith recitals, and in the report of the FSL, embodied in Ext. PZ, there is also a recital, vis-à-vis, the chemical examiner concerned, embossing on Ext. P-1, hence seals, of, the FSL concerned. However, all the afore compatibilities, hence appertaining to the number(s) of seal impression(s), and, the existence(s) thereon(s), respectively, of English alphabets "DJ", and "DK", rather, upto the stage, whereat the case property, became delivered, at, the FSL concerned, may not, perse, nail the accused, (d) unless in contemporaneity, vis-à-vis, the production of Ext. P-I in Court, hence all the afore

compatibilities also invincibly existed. For discerning the afore factum, a reading, of, the observation, made by the learned trial Court, during the examination-in-chief, of PW-1, wheretowhom the case property, became produced/shown in Court, is, imperative, the Court observation(s), whereof stand extracted hereinafter:

“ At this stage Id. APP produced a sealed parcel Ext.P-1 brought by C. Narinder Mahajan, Assistant Mal Muharar, District Malkhana, Chamba vide Rapat No. 645, dated 2.5.2018, Ext. MM which is taken on record. Parcel Ext. P-1 sealed with six seal impressions of Seal DK, DJ and JMIC, Dalhousie each and four seal impressions of FSL alongwith two small Pulindas Ext. P2 and P3 sealed with three seal impressions of JMIC Dalhousie each and sample seal Ext. P-4 of JMIC, Dalhouie. The seals are intact. The Id. PP sought permission to open the parcel Ext. P-1. Prayer is considered and allowed. The witness identified the signatures on the parcel Ext. P-1 under red circle “A”.

Reading(s), of, the afore(s), does, make visible upsurging(s), vis-à-vis, all the afore compatibilities, as

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respectively narrated in the apt memos, hence also emerging upon the production, of, Ext. P-1 in Court. The afore became not contested by the defence, hence, an inference becomes drawn, vis-à-vis, the defence acquiescing(s), vis-à-vis, at the stage of production, of Ext. P-1 in Court, it being the (one) hence recovered, from, the conscious and exclusive possession, of, the accused, hence through memo Ext. PW1/B, (e) and, also sparks a concomitant inference, especially with the accused, not, denying the existence, of, his signatures, on Ext. P-1, or upon the seizure memo, qua hence his also accepting, the authenticity(es) of all the recitals, embodied in all the relevant memos, wherein, his unchallenged authentic signatures exist, (f) besides with his acquiescing, given his not challenging, the occurrence, of his authentic signatures, upon, the relevant parcels, thereupon, concomitantly he becomes inferred, to, hence, also acquiesce, vis-à-vis, the

contents borne therein, as, reported by the FSL, to be charas.

11. The apt sequitur, therefrom, is, qua, dehors the absence, of, recitals, in conformity therewith, hence existing, in, the mallkhana register, and, also dehors, no entries being made, in, the Mallkhana register, vis-à-vis, retrievals therefrom, at various stages, of, the case property, no deductions, becoming hence derivable, vis-à-vis, all the afore imperatively proven linkages, rather appertaining to all the apposite compatibilities, hence appertaining, to, numbers, of, seal impressions, embossed, upon, Ext. P-1, and, also vis-a-vis the English Alphabets, respectively existing thereon(s), (a) though all reiteratedly making vivid proven, and, unchallenged upsurgings, vis-à-vis, theirs throughout the stages, commencing from, the seizure, of, the contraband, through, the afore memo(s), upto the production, of, case property in Court, hence becoming provenly, qua rather

theirs becoming either snapped, or de-linked. The necessity, of, the afore alluded entries, hence, existing in the Mallkhana Register , and, also the necessity, if any, of the production of the extract, of, Mallkhana Register, in, Court, for discerning the afore factum, hence therefrom(s), would arise only upon (a) all the afore alluded apt connectivities, linkages and congruities, vis-à-vis, the afore imperative factum(s), becoming fully proven, to get snapped or through, apt challenges being made at the time of production of case property in Court, hence by the learned defence counsel, (b) or there being a challenge to occurrence, of, signatures, of, the marginal witnesses, to, all the memos, rather by the marginal witnesses concerned, (c) their being a challenge by the accused to the occurrence of his signatures, both upon the sealed cloth parcel(s), and, also upon all the relevant memos. The afore alluded challenging evidence, is, however amiss, (d) thereupon the proven occurrence(s) of

the apt connectivities/congruities, or linkages, inter se the afore vital factum probandum, even upto, the stage of production, of, the case property in Court, hence, nails the charges against the accused. Predominantly, also, since the seals, as made, upon, the case property, upon, becoming provenly broken, thereupon, rather an inference would ensue, vis-à-vis, the case property, becoming tampered with, whereupon the afore alluded existence, of, extract(s)/entries, in, the Mallkhana Register, were enjoined to be scribed therein. However, contrarily hereat, with all the apposite seals remaining intact, hence, no inference(s) of tampering, can become drawn, nor the abstract of Malkhana register hence making/scribing thereon, the apposite entries, was enjoined to be produced, nor held any evidentiary vigor.

12. The learned counsel for the convict, contends that, since the IO has not recorded any statement, vis-à-vis, the Investigating Officer, at the relevant time,

carrying the IO kit, nor with the Incharge Mallkhana, of, Police Station concerned, making any echoing(s), vis-à-vis, I.O kit becoming handed over to the Investigating Officer concerned, (i) thereupon the Police became defacilitated, to, at the relevant site of occurrence to hence complete the proceedings, (ii) and, rather the conclusion therefrom, is that the relevant proceedings were commenced, and also became concluded at a site, other than, at the site mentioned in the recovery memos, whereupon, the, entire proceedings, acquire, an, entrenched stain, of, vitiation. However, the afore contention, cannot become accepted by this Court, as the independent witness, to the relevant proceedings, was omitted to be meted, during his cross-examination, hence any apposite suggestion, qua therewith, nor obviously, any affirmative elicitation(s), qua therewith, emanated from him, rather for supporting the afore made espousal, before this Court, by the learned counsel for the accused.

In aftermath, the afore made submissions by the learned counsel for the appellant, before this Court, has become rudderless.

13. Further more, the learned counsel for the appellant/convict has also stated, that, in view of Mark D-2, Mark whereof is a departure rapat, hence suggesting that the police party, had left at a time, than, as became testified by the prosecution witnesses, (i) thereupon the espousal made by the defense, that, the recovery, purportedly effectuated from the conscious and exclusive possession of the accused, was at a place other, than, the site mentioned, in, the recovery memo, borne in Ext. PW1/B, and was also a sequel, of, the recovered contraband, being disingenuously planted upon the accused, rather acquiring tenacity. However, Mark. D-2 is the photo copy of the original, and, also when it is not signed, besides when DW-2, upon stepping into the witness box, has stated that he has not placed, on record

alongtherewith, the requisite certification, (ii) whereas the afore certificate was an imperative statutory necessity, for an apt reliance becoming placed, thereon, (iii) thereupon, hence the absence of the afore certification, renders Mark D-2, to become wholly insignificant. Moreso, since the independent witness, to the relevant proceedings, inasmuch as Anuj Bedi, upon, stepping into the witness box, rather not making any voicing(s), in his cross-examination, hence supportive of the afore projections, as made before this Court, by the learned counsel for the appellant, thereupon, it is to be concluded, that, the recovery, was made, from the site of occurrence, as reflected, in recovery memo, borne in Ext. PW1/B.

14. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court has appraised the entire evidence, on record, in a wholesome and harmonious manner, and, the

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analysis thereof, by the learned trial Court, hence does not suffer, from, a perversity or absurdity of misappreciation and non-appreciation, of evidence, on record.

15. There is no merit in the appeal, and, the same is dismissed. The impugned judgment is affirmed and maintained. The records be sent down forthwith.

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge

24.9.2020
(kalpana)