



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

Cr. Appeal No.4196 of 2013.

Judgment reserved on: 5.11.2014.

Date of Decision: January 9, 2015.

State of Himachal Pradesh.

....Appellant.

Vs.

Anil Kumar son of Sh Kali Ram.

....Respondent.

Coram:

Hon'ble Mr. Justice Sanjay Karol, Judge.

Hon'ble Mr. Justice P.S. Rana, Judge.

Whether approved for reporting? Yes.

For the appellant:

Mr. B.S. Parmar Addl. Advocate
General with Mr. J.S. Guleria,
Asstt. Advocate General.

For the respondent:

Mr. S.M. Goel Advocate.

Whether reporters of the Local papers are allowed to see the judgment? yes.

P.S.Rana, Judge.

JUDGMENT: Present appeal is filed against the judgment passed by the learned Special Judge-I Sirmour District at Nahan in Sessions Trial No. 3-ST/7 of 2012.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by prosecution are that on dated 8.11.2011 at 3.30 PM at bifurcation Ronhat-Bela Baswa road accused was found in exclusive and conscious possession of 650 grams charas. It is alleged by prosecution that on dated 8.11.2011 PW7 ASI Partap Singh along with PW1 HC Bishan Singh, PW2 HHC Rajinder Singh and PW3 Kaku Chauhan left Police Station Shillai in official vehicle No HP-18A-0233 which was driven by PW4 Constable Heera Singh towards Rohnat side in connection with traffic checking and detection of cases. It is alleged by prosecution that at about 3.30 PM when the aforesaid police party was present at place Bella bifurcation accused came from Rohnat side carrying a bag in his hand and on seeing the police officials accused threw his bag down from the road and tried to run away from the spot. It is alleged by prosecution that thereafter accused was chased and apprehended and

thereafter the bag thrown by accused was lifted by PW7 ASI Partap Singh and on checking it was found that bag contained contraband of charas. It is alleged by prosecution that thereafter PW7 Partap Singh sent PW3 Kaku Chauhan for bringing weight and scale which was brought from Shillai market and on weighment 650 gram charas was found. It is alleged by prosecution that thereafter charas was put back into same polythene envelope and sealed with seal impression 'S'. It is alleged by prosecution that thereafter NCB form Ext PW6/C were filled in triplicate and thereafter sample of seal Ext PW1/B was handed over to PW1 HC Bishan Singh. It is alleged by prosecution that thereafter search and seizure memo Ext PW1/C were prepared and rukka Ext PW2/A was sent to Police Station Shillai through PW2 HHC Rajinder Singh along with case property. It is alleged by prosecution that thereafter PW2 Rajinder Singh delivered rukka Ext PW2/A to PW6 MHC Chattar Singh on the basis of which FIR Ext PW2/B was registered. It is alleged by prosecution that PW2 deposited case property with PW6 in malkhana and entry in malkhana register at serial No.298 was recorded. It is alleged by prosecution that extract

of malkhana register is Ext PW6/A. It is alleged by prosecution that thereafter PW7 Partap Singh prepared site plan Ext PW7/B and got photographs Ext P4 to P8 clicked by PW4 Constable Heera Singh from his mobile camera. It is alleged by prosecution that grounds of arrest were conveyed to accused. It is alleged by prosecution that thereafter on dated 9.11.2011 PW7 Partap Singh sent case property to FSL Junga through PW5 Constable Sunil Dutt vide RC No.53/2011 who after depositing the same in laboratory obtained its receipt which was handed over by him to PW6 Chattar Singh on his return to Police Station. It is alleged by prosecution that after receiving the report of Chemical Examiner Ext PW7/D SI Balak Ram prepared challan in the present case. Charge was framed against the accused on dated 21.9.2012 under Section 20 of Narcotic Drugs and Psychotropic Substances Act 1985. Accused did not plead guilty and claimed trial.

3. Prosecution examined as many as seven witnesses in support of its case.

Sr.No.	Name of Witness
PW1	Bishan Singh
PW2	Rajinder Singh
PW3	Kaku Chauhan
PW4	Heera Singh
PW5	Sunil Dutt
PW6	Chatter Singh
PW7	Partap Singh

4. Prosecution also produced following piece of documentary evidence in support of its case:-

Sr.No.	Description.
Ext PW/A	Memo regarding identification of Charas
Ext PW1/B	Sample of seals
Ext.PW1/C	Seizure memo of charas
Ext.PW2/A	Rukka
Ext.PW2/B	FIR
Ext.PW2/C	Endorsement in rukka
Ext.P4 to P8 & P9	Photographs & CD
Ext.PW6/A	Entry in malkhana register

<i>Ext PW6/B</i>	<i>Copy of RC</i>
<i>Ext PW6/C</i>	<i>NCB Form</i>
<i>Ext PW7/A</i>	<i>Copy of DD No.9(A)</i>
<i>Ext PW7/B</i>	<i>Site Plan</i>
<i>Ext PW7/C</i>	<i>Memo regarding information of arrest</i>
<i>Ext PW7/D</i>	<i>Report of chemical examiner</i>

5. Statement of accused was also recorded under Section 313 Cr.P.C. He has stated that he is innocent and false case has been filed against him. He has stated that no independent witness was associated. Accused did not lead any defence evidence. Learned trial Court acquitted the accused.

6. Feeling aggrieved against judgment passed by learned Special Judge-I, Sirmour District at Nahan appellant-State filed present appeal.

7. We have heard learned Additional Advocate General appearing on behalf of the State and learned Advocate appearing on behalf of the respondent and also perused entire record carefully.

8. Point for determination in the present appeal is whether learned trial Court did not properly appreciate oral as well as documentary evidence adduced by the parties and caused miscarriage of justice to the appellant as alleged in memorandum of grounds of appeal.

ORAL EVIDENCE ADDUCED BY PROSECUTION:

9 PW1 HC Bishan Singh has stated that he was posted as Investigating Officer at Police Station Shillai. He has stated that on dated 8.11.2011 he along with ASI Partap Singh HHC Rajinder Singh and Constable Kaku Chauhan had left Police Station Shillai in official vehicle No. HP-18A-0233 which was driven by Constable Hira Singh towards Ronhat side in connection with traffic checking and when accused saw police officials he threw his bag down from the road and turned back and started running towards Ronhat. He has stated that thereafter police officials chased accused and apprehended the accused and bag which was thrown down the road by accused was took by ASI Partap Singh and on checking one polythene envelope containing charas in the shape of sticks was recovered. He has stated that thereafter Constable Kaku Chauhan was sent to procure weights and

scales which he brought from Shillai market and on weighing the charas present in the polythene envelope was found 650 grams in the shape of sticks. He has stated that thereafter charas was put back in the same polythene envelope and sealed with seal impression 'S'. He has stated that NCB form was prepared in triplicate and thereafter sample of seal Ext PW1/B was drawn and seal was handed over to him. He has stated that search and seizure memo Ext PW1/C was prepared which was witnessed by him. He has stated that thereafter ASI Partap Singh scribed rukka and sent the same to Police Station through HHC Rajinder Singh. He has stated that parcel cover is Ext P1 which bears his signature. He has stated that polythene containing charas is Ext P2 which was recovered from accused. He has stated that bag is Ext P3. He has stated that they did not make any efforts to associate any independent witness though the vehicles were plying on the road. He has stated that they did not call any independent witness while sealing charas. He has stated that he did not re-collect whether a bus of Sharma travelers crossed from that place which plies between Gatta Dhar to Shillai. He has denied suggestion that accused was not

apprehended at the spot. He denied suggestion that no contraband was recovered from the possession of accused. He denied suggestion that false proceedings have been carried out against the accused. He denied suggestion that accused was took to the spot and thereafter photographs were clicked. He denied suggestion that he deposed falsely being police officials.

9.1 PW2 HHC Rajinder Singh has stated that during the year 2011 he was posted as HHC in Police Station Shillai. He has stated that on dated 8.11.2011 he along with ASI Partap Singh, HC Bishan Singh and Constable Kaku Chauhan left Police Station Shillai at 2.45 PM towards Ronhat side in connection with traffic checking in official vehicle No HP-18A-0233 which was driven by Constable Hira Singh. He has stated that at about 3.30 PM when they were present at Bella Baswa bifurcation accused Anil Kumar came from Ronhat side and was in possession of bag in his hand. He has stated that when accused saw police officials accused turned back and threw bag down the road. He has stated that thereafter they chased the accused and apprehended him. He has stated that thereafter the bag which was thrown

down the road by accused was picked up by ASI Partap Singh and after checking bag 650 grams charas was found. He has stated that charas was put back in the same polythene envelope and put into a parcel and sealed with seal impression 'S'. He has stated that NCB form in triplicate was prepared. He has stated that sample of seal Ext PW1/B was drawn and seal was handed over to HC Bishan Singh. He has stated that search and seizure memo Ext PW1/C was prepared which was witnessed by him. He has stated that thereafter ASI Partap Singh drawn rukka Ext PW2/A and handed over the same to him which he delivered to MHC Chatter Singh on the basis of which he recorded FIR Ext PW2/B. He has stated that after making endorsement Ext PW2/C on rukka he handed over case file to him which he delivered to ASI Partap Singh at the spot. He has stated that he also took case property to Police Station along with NCB form and deposited the same with MHC. He has stated that parcel cover Ext P1, polythene containing charas Ext P2 and bag Ext P3 are the same which were sealed at the spot. He has stated that during the period when they remained present at the spot several vehicles crossed. He has stated

that during the proceedings no efforts were made to join independent witness. He has stated that he does not know whether information with regard to incident was given to superior officer or not. He has denied suggestion that false case has been filed against accused. He denied suggestion that no contraband was recovered from accused. He denied suggestion that no rukka was sent through him. He denied suggestion that he deposed falsely being police official.

9.2 PW3 Kaku Chauhan has stated that he was posted as Constable General Duty at Police Station Shillai since 2010. He has stated that on dated 8.11.2011 he along with ASI Partap Singh, HC Bishan Singh and HHC Rajinder Singh left Police Station at 2.45 PM towards Ronhat side in connection with traffic checking in official vehicle No. HP-18A-0233. He has stated that at about 3.30 PM when they were present at place Bell Baswa bifurcation accused Anil came from Ronhat side. He has stated that accused was in possession of bag in his hand. He has stated that when accused saw police officials accused threw his bag down the road and turned back and tried to run away. He has stated that accused was chased and apprehended. He has stated

that thereafter ASI Partap Singh picked up bag which was thrown down the road by accused. He has stated that thereafter bag was checked and 650 grams charas was found in bag. He has stated that after weighing the charas it was put into a parcel and sealed with seal impression 'S' and seizure memo was prepared. He has stated that NCB form was prepared and rukka was sent to Police Station Shillai through HHC Rajinder Singh. He has stated that thereafter ASI Partap Singh prepared site plan and recorded the statements of the witnesses. He has stated that no photograph was taken of the place where the bag was actually found. He has denied suggestion that no contraband was recovered from accused. He denied suggestion that no scale and weights were brought by him from Shillai market. He denied suggestion that no proceedings were drawn in his presence.

9.3 PW4 Heera Singh has stated that during the year 2011 he was posted as Constable Driver in Police Station Shillai. He has stated that on dated 8.11.2011 he left police station Shillai by driving official vehicle No HP 18-A-0233 along with police officials headed by ASI Partap Singh

towards Ronhat side in connection with traffic checking. He has stated that they reached at place Bella bifurcation at 3 PM. He has stated that at about 3.30 PM accused Anil Kumar came from Ronhat side carrying a bag in his hand. He has stated that on seeing the police officials accused threw down bag from the road and turned back and tried to run away. He has stated that accused was chased and apprehended by police officials. He has stated that ASI Partap Singh picked up bag which was thrown by accused and on checking it was found charas in the shape of sticks. He has stated that thereafter constable Kaku Chauhan was sent for procuring scale and weights which he brought from Shillai market. He has stated that on weighment the charas was found 650 grams and thereafter charas was put back in the same polythene envelope and sealed with seal impression 'S'. He has stated that thereafter seal was handed over to HC Bishan Singh. He has stated that thereafter NCB form and seizure memo was prepared. He has stated that rukka was drawn and sent to Police Station through HHC Rajinder Singh. He has stated that he clicked photographs Ext P4 to P8 from his mobile phone camera. He has stated that CD is

Ext P9. He has stated that bag was lying five metres below the road. He has stated that from police station they directly went to Bella bifurcation and reached there at 3 PM. He has stated that the distance of Bella bifurcation from Police Station is about 1.5 Km. He has stated that no prior information was received qua contraband. He has stated that no vehicle was checked. He has stated that they reached back in police station at about 7.30 PM. He has stated that several vehicles crossed the spot when they were present at the spot. He has stated that they did not make any efforts to associate any independent witness.

9.4 PW5 Sunil Dutt has stated that he was posted as Constable General Duty in Police Station Shillai since 2011. He has stated that on dated 9.11.2011 MHC Chatter Singh had handed over case property of case comprising one sealed parcel which was sealed with seal impression 'S' along with sample of seal and NCB form in triplicate and a docket vide RC No.53/2011. He has stated that he delivered the same in FSL Junga on dated 11.11.2011. He has stated that case property remained intact in his custody.

9.5 PW6 Chattar Singh has stated that during the year 2011 he remained posted as MHC in Police Station Shillai. He has stated that on dated 8.11.2011 at 5.35 PM HHC Rajinder Singh had delivered rukka Ext PW2/A to him on the basis of which he recorded FIR Ext PW2/B and after registration of case he made endorsement on rukka Ext PW2/C and handed over case file to HHC Rajinder Singh for being delivered to ASI Partap Singh. He has stated that on the same day at 6 PM HHC Rajinder Singh deposited one sealed parcel along with sample of seal in malkhana. He has stated that he recorded entry in malkhana register at serial No.298 and its extract is Ext PW6/A. He has stated that the same is true copy of original malkhana register. He has stated that on dated 9.11.2011 he sent case property to FSL Junga through constable Sunil Dutt vide RC No.53/2011. He has stated that case property remained intact and was not tampered. He has stated that no resealing was conducted.

9.6 PW7 Partap Singh has stated that during the year 2011 he remained posted as Investigating Officer in Police Station Shillai. He has stated that on dated 8.11.2011 he along with his subordinate officials left Police Station

Shillai in official vehicle No. HP-18A-0233 vide DD No.9 copy of which is Ext PW7/A. He has stated that at about 3.30 PM when they were present at place Bella Bashwa bifurcation accused Anil Kumar came from Ronhat side. He has stated that accused was in possession of bag in his right hand and threw the bag on the side of the road and turned back and tried to run away. He has stated that accused was chased and overpowered and thereafter he lifted the bag. He has stated that after checking the bag one green colour polythene envelope was found containing charas in the shape of sticks. He has stated that thereafter Constable Kaku Chauhan was sent to Shillai market for bringing weighing scales. He has stated that thereafter charas was placed in the same polythene and bag and thereafter the bag was sealed with nine seals impression 'S'. He has stated that a column of NCB form was filled. He has stated that seal was handed over to HC Bishan Singh. He has stated that thereafter search and seizure memo Ext PW1/C was prepared in the presence of HC Bishan Singh and HHC Rajinder Singh. He has stated that thereafter rukka Ext PW2/A was prepared which was sent to Police Station along with case property,

sample seal and NCB forms. He has stated that thereafter he prepared site plan Ext PW7/B and recorded the statements of witnesses. He has stated that after the receipt of report of chemical examiner Ext PW7/D case file was handed over to SHO Balak Ram for preparation of challan. He has stated that parcel cover Ext P1 bears his signature. He has stated that polythene containing charas Ext P2 and bag Ext P3 are the same which was sealed at the spot by him. He has stated that special report is not on record. He has stated that there is no reference of special report and sending the same to SDPO Paonta Sahib. He has denied suggestion that an abandoned bag was found by the police. He denied suggestion that contraband was falsely planted upon the accused. He has admitted that column Nos. 9 and 11 have not been filled in NCB form. He denied suggestion that there is discrepancy in the time of recovery of contraband in seizure memo and in the NCB form. He denied suggestion that accused has been falsely implicated in the present case in order to get reward and promotion.

10. Submission of learned Additional Advocate General appearing on behalf of State that no reason has been

assigned by learned trial Court for discarding the versions of official witnesses and further submission of learned Additional Advocate General appearing on behalf of State that there was no occasion on the part of police officials to falsely implicate the accused and reliance should have been placed on testimonies of PWs and submission of learned Additional Advocate General appearing on behalf of State that learned trial Court has given undue weightage to minor contradictions and on these grounds appeal filed by State be accepted is rejected being devoid of any force for the reasons hereinafter mentioned.

Non-joining of independent witness in present case is fatal to prosecution despite availability of independent witnesses

11. PW1 H.C. Bishan Singh eye witness of incident has specifically stated in positive cogent and reliable manner that Investigating Officer did not make any effort to associate any independent witness despite the fact that vehicles were plying on the road at the time of alleged incident. Even PW2 HHC Rajinder Singh has also specifically stated in positive manner that no efforts were made to join independent witness by Investigating Officer. Even PW4 C. Heera Singh has stated that a number of vehicles crossed when police

party was present at the spot but no efforts were made to join the independent witnesses in present case. It was held in case reported in **(1987)2 Crimes 29 (Delhi High Court) titled *Rattan Lal vs. State*** that if public witnesses were deliberately not associated in the search and seizure proceedings in narcotic drugs and psychotropic substances cases then prosecution case is not free from doubt. As per testimonies of PW1 Head Constable Bishan Singh and PW2 Rajinder Singh and PW4 C. Heera Singh a number of vehicles were crossing on the place of incident at the time of preparation of seizure memo but Investigating Officer did not associate any independent witness in search and seizure proceedings and no efforts were made by Investigating Officer to associate independent witnesses in investigation of case. There is no evidence on record that independent witnesses refused to join the search and seizure proceedings despite efforts made by Investigating Officer to join them as independent witnesses. Hence we are of the opinion that non-joining of independent witnesses by prosecution at the time of preparation of search and seizure memo despite the availability of independent witnesses has caused miscarriage

of justice to accused in present case in order to prove impartial investigation on the part of Investigating Officer. Hence it is held that testimonies of PW1 HC Bishan Singh, testimony of PW2 HHC Rajinder Singh and PW4 Constable Heera Singh that many vehicles crossed from the place of incident at the time of preparation of search and seizure and no efforts made by Investigating Officer to join independent witnesses are fatal to the prosecution in the present case.

Non-placing of special report on record is also fatal to the prosecution.

12. PW7 ASI Partap Singh has specifically stated in positive manner that special report was not placed on record and he has further stated that no reference of sending the special report to SDPO was mentioned in challan is also fatal to prosecution. No reason has been assigned by prosecution as to why special report was not placed on record and no reason has been assigned by prosecution that as to why reference of special report was not mentioned in list of documents filed along with challan. Non-placing of special report on record and non-mentioning of reference of special

report in challan has caused miscarriage of justice to accused and same is fatal to the prosecution.

Non-filling of column Nos. 9 and 11 of NCB form is fatal to the prosecution

13. Investigating Officer PW7 ASI Partap Singh has specifically stated in positive manner that column Nos. 9 and 11 of NCB form qua resealing of parcel by SHO of Police Station were kept blank. We have carefully perused the NCB form and found that column Nos. 9 and 11 of NCB form qua resealing by SHO have been kept blank. Hence it is held that same are fatal to the prosecution and create doubt in the mind of Court and same has caused miscarriage of justice to accused.

Non-resealing of process of contraband by SHO Police Station is fatal to prosecution.

14. PW6 HC Chatter Singh has specifically stated in positive manner that no resealing of parcels by SHO was conducted. It was held in case reported in 1995 Criminal Law Journal page 744 titled State of Punjab Vs. Kulwant Singh (P&H Full Bench) that prosecution case would become doubtful when sealing and resealing process was defective. It was held that all sample taken from seized material have

necessarily to be sealed with the seal of an officer incharge of Police Station. It was further held that same is mandate of law. It was further held that words used as 'shall' of Section 55 of Narcotic Drugs & Psychotropic Substance Act is mandatory in nature to protect tampering of parcel because punishment mentioned in NDPS case is grave in nature. Hence we are of the opinion that same is fatal to the prosecution and has caused miscarriage of justice to accused.

Difference between time of recovery of contraband in seizure memo and NCB form creates doubt in the mind of Court

15. As per First Information Report and seizure memo recovery of contraband was effected on dated 8.11.2001 at 3.30 hours and as per entries of NCB form recovery of contraband was effected at 4 PM. This has created doubt in the mind of Court. Difference of time qua search and seizure of contraband in NCB form and seizure memo has created doubt in the mind of Court.

Entire investigation conducted by complainant himself is also fatal to the prosecution

16. As per FIR complainant in present case is ASI Partap Singh and it is proved on record that complainant ASI

Partap Singh himself investigated the entire case and he himself seized the contraband, sealed the parcels, sent the ruka, prepared site plan and recorded statements of prosecution witnesses. In present case whole investigation was conducted by complainant himself which is against the criminal jurisprudence and *ipso facto* contrary to law and same has caused miscarriage of justice to accused. It is not the case of prosecution that no other independent Investigating Officer was available. We are of the opinion that entire investigation in present case conducted by complainant namely ASI Partap Singh has caused miscarriage of justice to accused. Entire investigation by complainant himself was deprecated by Hon'ble Apex Court of India in case reported in **AIR 1976 SC 985 titled Bhagwan Singh vs. The State of Rajasthan. Also see 1993 Criminal Law Journal 3716 titled Gyan Chand vs. State of Rajasthan.**

Non-production of original seal in Court for comparison is fatal to prosecution

17. In present case prosecution did not produce original seal in Court for comparison purpose. It was held in case reported in **Latest HLJ 2011 HP 1195 (DB) titled Nanha vs. State** that if original seal is not produced in court for

comparison then conviction could not be recorded. **See 1998 (8) SCC 449 titled *State of Rajasthan vs. Gopal*** It is well settled principle of law that if two reasonable conclusions are possible on the basis of the evidence on record the appellate Court should not disturb the finding of acquittal recorded by the learned trial Court. **(See (2013)2 SCC 89 titled *Mookkiah and another vs. State* See 2011(11) SCC 666 titled *State of Rajasthan vs. Talevar*, See AIR 2012 SC (Supp) 78 titled *Surendra vs. State of Rajasthan* , See 2012(1) SCC 602 *State of Rajasthan vs. Shera Ram @ Vishnu Dutta.*)** It is also well settled principle of law (i) That Appellant Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible though the view of the appellate Court may be more probable. (ii) That while dealing with a judgment of acquittal appellant Court must consider entire evidence on record so as to arrive at a finding as to whether views of learned trial Court are perverse or otherwise unsustainable. (iii) That Appellate Court is entitled to consider whether in arriving at a finding of fact learned trial Court failed to take into considered any admissible fact (iv) That learned trial Court failed to take into consideration

evidence brought on record contrary to law. **(See AIR 1974 SC 2165 titled Balak Ram and another vs. State of U.P., See (2002)3 SCC 57, titled Allarakha K. Mansuri vs. State of Gujarat, See (2003)1 SCC 398 Raghunath vs. State of Haryana, See AIR 2007 SC 3075 State of U.P. vs. Ram Veer Singh and others, See AIR 2008 SC 2066 (2008) 11 SCC 186 S. Rama Krishna vs. S. Rami Raddy (D) by his LRs. & others. Sambhaji Hindurao Deshmukh and others vs. State of Maharashtra, (2009)10 SCC 206 titled Arulvelu and another vs. State, (2009)16 SCC 98 Perla Somasekhara Reddy and others vs. State of A.P. and (2010)2 SCC 445 titled Ram Singh @ Chhaju vs. State of Himachal Pradesh.)**

18. Submission of learned Additional Advocate General appearing on behalf of State that conviction could be sustained on the testimonies of police officials in absence of prior enmity of police official and on this ground appeal filed by State be accepted is rejected being devoid of any force for reasons hereinafter mentioned. It is well settled law that conviction can be sustained on testimony of police officials if same is trustworthy reliable and inspires confidence of Court. It is also well settled law that conviction could be sustained on testimony of police officials if independent

witnesses could not be procured despite best efforts by Investigating Agency. In present case it is proved on record beyond reasonable doubt that many vehicles passed at the time of preparation of search and seizure memo on public road. It is proved on record that Investigating Agency intentionally did not associate the independent witnesses in present case and it is not the case of prosecution that independent witnesses were not available despite best efforts. Nonjoining of independent witnesses by Investigating Agency intentionally despite availability of independent witness has created doubt about the fair investigation of case in the mind of Court. Hence we are of the opinion that it is not expedient in the ends of justice to convict the accused solely on testimonies of police officials because as per prosecution story recovery of 650 grams charas at 3.30 PM was effected upon the public road and many vehicles have crossed the place of incident at the time of preparing the search and seizure memos but investigating agency did not associate any independent witnesses in recovery and seizure memos which has created doubt about the impartial investigation of

present case in the mind of Court and same has caused miscarriage of justice to accused. ◇

19. In view of above stated facts appeal filed by State is dismissed and judgment passed by learned trial Court is affirmed. Accused is acquitted by way of giving him benefit of doubt. Contraband will be forfeited in favour of State of H.P. in accordance with law after the expiry of limitation for filing further proceedings. Appeal stands disposed of. File of learned trial Court along with certified copy of this judgment be sent back forthwith. All pending miscellaneous application(s) if any also stands disposed of.

**(Sanjay Karol),
Judge**

**January 9, 2015
(R)/(ms).**

**(P.S. Rana)
Judge**

High Court of H.P.