



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

Cr.Appeal No. 485 of 2017

Reserved on :27.8.2020

Decided on:1st September, 2020.

State of H.P.

...Appellant.

VERSUS

Deep Chand

...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. Narender Guleria, Addl. A.G.

For the Respondent: Mr. Goldy Kumar, Advocate.

Sureshwar Thakur, Judge

The instant appeal is directed against the judgment rendered, on29.5.2017, by the learned Special Judge (IV), Kangra at Dharamshala, H.P., upon Session Trial No.07-B/VII/2014, and, where through(s), the appellant stands acquitted.

...2...

2. Brief facts of the case, are, that on 2.1.2014, at about 6:30 p.m. SI Gian Chand alongwith HC Kuldeep, HC Rajinder Kumar, C Kuljeet Singh, and, C Pawan Kumar was present at Paprola in connection with patrolling and detection of Crime under NDPS Act, vide Rapat Ext. PA. The aforesaid police party headed by SI Gian Chand received a secret information that a person wearing blue coloured jacket holding a carry bag in his hand is wandering near Railway Crossing, Baijnath, in order to sell cannabis, and if, the person is raided immediatedly, a huge quantity of Charas can be recovered from him. On the basis of this information, I.O. Gian Chand prepared information under Section 42(2) of the NDPS Act Ext. PW4/A and sent it to SDPO/Dy.SP Puneet Raghu. Thereafter, PW-9 Investigating Officer SI Gian Chand alongwith other police officials visited Railway crossing, Baijnath, where accused was found standing, holding a carry bag in his hand. On inquiry

...3...

accused disclosed his name as Deep Chand. SI Gian Chand the Investigating Officer gave an option and apprised accused about his right, as to whether he intend to be searched before the Magistrate or before some Gazetted Officer and memo Ext. PW1/A was prepared. The aforesaid memo was also signed by accused as well as by Dy.SP. Thereafter, the Investigating Officer as well as other Police officials gave their personal search to accused and memo Ext. PW1/B was prepared. The personal search of the accused was conducted, but no contraband was found, however, during the search of the carry bag, held by accused, it was found containing one polythene bag having charas. On weighing the contraband, it was found to be 500 gms, of, charas. The recovered charas was again put into the same polythene and carry bag, which was sealed in a cloth parcel with six seals of "A" and NCB form in triplicate Ext. PW9/A was filled in this regard. The specimen seal impression "A"

...4...

was also taken on a separate piece of cloth Ext. PW1/C and the seal, after use, was handed over to witness Ravi Kumar. The case property i.e. parcel Ext. P-1 containing carry bag Ext. P-2, polythene bag Ext. P-3, and, Charas (cannabis) Ext. P-4, was taken into possession vide seizure memo Ext. PW1/D in presence of witnesses, who signed the same alongwith accused. Ruqua Ext. PW9/C was prepared at the spot and sent the same to the SHO Police Station, Baijnath through C.Pawan Kumar, on the basis of which FIR No. 2/2014 Ext. PW6/A was registered against accused. During investigation, Investigating Officer prepared the spot map Ext. PW9/B as per the factual position on the spot. Thereafter, accused were arrested vide memo Ext. PW1/E and information qua arrest of the accused was given to his mother. On 2.1.2014 at about 11:15 p.m. I.O. handed over the case property to SHO police Station, Baijnath, who re-sealed the same with five seals, of, seal

...5...

impression "K", and, issued the re-seal certificate Ext. PW6/D. The specimen seal impression "K" was also taken on a separate piece of cloth Ext. PW6/C. On 4.1.2014. Special report, under, Section 57 of NDPS Act, report whereof, is, Ext. PW4/C, was also prepared. The seized contraband was sent to SFSL Junga, for, chemical examination vide Road Certificate, borne in Ext. PW5/B, and, the chemical examiners report, is, borne in Ext. PY. During investigation, the, statements of witnesses, under, Section 161 Cr. P.C. were recorded. After completion of investigations by PW-9 SI Gian Chand, the case file was handed over to SHO/Insp. Rajinder Singh, Police Station Baijnath, who prepared the present Challan, and, presented it before 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

...6...

examined nine 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. However, he did not lead any evidence in his defence.

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

4. The State/appellant, is, aggrieved by the judgment of acquittal recorded by the learned Special Judge, Kangra (IV), Dharamshala. The learned Additional Advocate General has concertedly, and, vigorously contended qua the findings of acquittal 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 acquittal being reversed

...7...

by this Court, in the exercise of its appellate jurisdiction, and, theirs being replaced by findings of conviction.

5. On the other hand, the learned counsel appearing for the respondent/accused, has with compatible force and vigour, contended that the findings of acquittal recorded by the Court below, standing based on a mature and balanced 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, 500 gms Charas, was effectuated through memo, borne in Ext.1/D. The afore recovery became effectuated from the site, reflected in the site plan, hence borne in Ext. PW9/B. The afore recovery became effectuated, from, a carry bag, slung on the shoulder of the accused, and, was in pursuance, of, a

...8...

recorded prior information, as, embodied in Ext. PW4/A. The FIR, vis-à-vis, the apposite recoveries, as made, from the conscious and exclusive possession, of, the accused, becomes borne in Ext. PW 6/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, rather slung on the shoulder, of, the accused, 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 for his personal search being conducted, by the Investigating Officer, the latter obtained through memo, embodied in Ext. PW1/A, hence his apposite consent. However, in pursuance, to, a personal search, of, the accused, hence carried, in sequel to his giving, his, apposite consent, through

memo, borne in Ext. PW1/A, no contraband was recovered.

8. In Ext. PW1/A, narration(s) exist(s), vis-à-vis, six seal impression(s), each carrying thereon(s), English alphabet "A", becoming embossed, upon, the seized contraband, and, thereafter, upon, the NCB form, embodied in Ext. PW9/A, hence compatible therewith narration(s), authored by the Investigating Officer concerned, hence exist, upon, the case property. Upon, the, case property becoming deposited, with, the SHO concerned, the latter proceeded, to, as unraveled in Ext. PW9/A, emboss thereon(s), 5 re-sealing, seal impressions, each carrying thereon(s) English Alphabet "K". Subsequently, the case property became transmitted, through, road certificate, embodied in Ext. PW5/A, to the FSL concerned, and thereon, also echoing(s), bearing all the apposite compatibilities, and, appertaining to the number(s), of, seal impression, and,

to 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. PY, made affirmative articulations thereon, qua , the contents thereof, being Charas.

9. The learned trial Court, in making the order, of, acquittal, upon the accused, had assigned reasons, inasmuch as (a) the solitarily associated, and, independent witness, who stepped into the witness box, as PW-2, rather reneging from his previously recorded statement in writing, (b) PW-5, the Mallkhana Incharge, making a deposition, vis-à-vis, no entry being made in the Mallkhana Register, appertaining to retrievals therefrom, at various stages, of, the case property (c) occurrence of contradiction(s), interse the prosecution witnesses', inasmuch as PW-1, deposing qua the accused being apprehended, and also the search memo,

...11...

being prepared, in the presence, of, the Dy.S.P.,
whereas, the Dy.S.P., upon, stepping into the witness
box, in contradiction thereto, deposing qua the accused
being nabbed, by the Investigating Officer, at the stage,
of, his arriving at the spot, (d) there being
transgression(s) with the statutory procedures,
appertaining to the recitals, borne in the apposite
consent memo, embodied in Ext. PW1/A, inasmuch as,
the accused becoming asked to mete his consent hence
for his being personally searched, by, the Magistrate, or
the police officer concerned, whereas, the apposite
statutory provisions, rather mandating, vis-à-vis, the
meteable exercisable option(s), to the accused, rather
conveying qua his being searched, by a Magistrate, or by
any Gazetted Officer. Lastly, the learned trial Court,
depended, upon, verdicts, rendered in case titled as,
**“Dinesh Kumar and another versus State of Himachal
Pradesh”**, Latest HLJ 2015 (HP Vol.2), and in case titled,

as, “**Roshan Lal versus State of H.P. Latest HLJ 2015 (HP) Vo. 2,**” wherein it has been expostulated qua, wants’ of proof, of, entries, appertaining to retrieval(s), from the Mallkhana, if the apposite deposited thereat, hence, case property, hence, for its’ transmission, to the FSL concerned, or vis-à-vis, its’ production in Court, rather rendering vulnerable to skepticism the prosecution case, and, the accused, becoming entitled to an acquittal.

10. However, for the reasons assigned hereinafter, we are in complete disagreement, with, the afore assigned reasons, made in the impugned verdict, as, rendered by the learned Special Judge, (IV), Kangra, at Dharamshala.

(a) Even though PW-5, a witness to recovery memo, Ext. PW4/A, reneged from all the recitals, as become embodied therein, yet his mere oral digression(s) or renegeing(s), from, all the echoing(s), occurring therein, are, in-consequential, for, the reasons, (b) his, acquiescing(s), vis-à-vis, his appending his signature(s),

thereon, rather without any pressure, becoming exerted upon him, by the Police. The afore acquiescing(s), vis-à-vis, the afore factum, does, operationalize, the mandate of Section 91 and 92, of, the Indian Evidence Act, wherein a statutory bar, is, engrafted against receipt of oral evidence, rather in departure(s) from or in digression(s), from, the proven authentic signed, recitals, as, become embodied in the relevant documents/memos, (c) thereupon, with PW- Ravi Kumar, hence acquiescing, vis-à-vis, the occurrence, of, his authentic signatures, upon, the apposite memo, in pursuance whereof, Charas Ext. P-4, became recovered from carry bag, Ext. P-3, hence carried inside carry bag Ext. P-2, rather obviously renders all his oral digressing(s), from the echoing(s), proven through his validly acquiesced signatures, hence, occurring therein, rather to be inconsequential, and, estops him, as well as

this Court, from nullifying, the, evidentiary worth, of, all the recitals borne therein.

11. Even though, the learned Special Judge, has emphasized, upon, the existence(s), of, interse contradiction(s) hence interse the deposition, of, Ext. P-1, and, Dy.S.P. Mr. Puneet Raghu, inasmuch as PW-1, deposing, qua the Dy.SP concerned, being available at the spot, at the time of, the accused, being apprehended, and, search memos, borne in Ext. PW1/A, and, in Ext. PW1/B, becoming prepared, (d) whereas, in purported contradiction thereto, the Dy.S.P. concerned deposing, vis-à-vis, the accused being already nabbed by the Investigating Officer, prior to his arriving, at the relevant site. However, needless emphasis has been meted, to, the afore obvious minimal contradiction, as the afore Mr. Raghu, is, neither a signatory to the apposite memo, nor he was the Investigating Officer, nor was required to prove all the narrations/echoing(s), borne hence, in

recovery memo, Ext. PW1/D or in NCB form, borne in Ext. PW9/A, or in the road certificate, borne in Ext. PW5/B, or in the report of the FSL, embodied in Ext. PY. It appears that he arrived at the relevant site, only in a supervisory capacity, and, not as an Investigating Officer, and was not enjoined to render any proof, vis-à-vis, any imperative linkages, rather commencing from the preparation, of, seizure memo, borne in Ext. PW 1/D, upto the production, of, the case property, in Court, except his making a deposition, qua, being available, at the site of occurrence.

12. As afore stated, since recovery of Ext. P-4, was made, from polythene bag, Ext. P-3, kept inside the carry bag, Ext. P-2, hence through provenly validly prepared recovery memo, embodied in Ext. PW1/D, (i) thereupon, the afore manner, of, effectuation, of, recovery, of, contraband, from the conscious and exclusive possession, of, the accused, conspicuously, when it did

not become tethered, to, the accused's body, hence also did not invite any attraction nor compliance(s), becoming meted, vis-à-vis, the mandate of Section 50, of, the ND & PS Act. (ii) Thereupon any statutory deviations, vis-à-vis, the officers, wherebeforewhom, the exercisable option(s), mentioned therein, became meted, to, the accused, inasmuch as it being scribed therein, vis-à-vis, his consent being elicited, for, his personal search being conducted by the scribed therein Officer, rather hence being officers, contrary, to, the, statutory provisions, is, necessarily wholly legally in-consequential. Even otherwise, no articles became recovered upon his personal search, becoming conducted, rather the recovery, of, contraband became effectuated, from, a carry bag, Ext. P-2, hence slung on his shoulder, (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, through, the statutorily infirmly made, hence consent memo, drawn in Ext.PW1/A, rather contraband, in, pursuance thereto becoming recovered, and, thereafter, it becoming planted in Ext. P-3, polythene bag, kept inside Ext, P-2, the latter exhibit whereof, is, the carry bag, slung on the shoulder, of, the accused, (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, slung on the shoulder, of, the accused, hence through memo comprised, in, Ext. PW1/D, (v) nor reiteratedly any infirmity or any departures, in the wordings, borne in Ext. PW1/A, rather from the statutory mandate(s), and appertaining, to, the apposite valid options, being exercisable before, a, Magistrate, or before a Gazetted Officer, than as inaptly, narrated therein to be a police

gazetted officer, carry no tenacity, to advance the defence's espousal.

13. Recovery of charas, vide memo Ext. PW1/D, was made from polythene, Ext. P-3, kept inside carry bag, Ext. P-2, and, the afore recovery became effectuated through memo, embodied in seizure memo, Ext. PW1/D, and therein narrations, occur, qua (a) six seal impressions, each carrying thereon(s), English alphabet "A", becoming embossed, on, cloth parcel, Ext.P-1, (b) NCB form, borne in Ext. PW9/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 five re-seal, seal impressions, each carrying thereon(s) English alphabet "K", (c) road certificate embodied in Ext. PW5/B, carries compatible therewith narrations. The FSL report, embodied in Ext. PY also carries conforming therewith

recitals, and in the report of the FSL, embodied in Ext. PY, 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 “A”, and “K”, rather, upto the stage, wherent 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 examination-in-chief, of PW-1, wheretowhom the case property, became produced/shown in Court, is, imperative:

“ At this stage Id. APP produced one cloth parcel having six seals of seal impression ‘A’ and five seals of impression ‘K’ and four seals of FSL. Seals found intact. Id. APP request to open the same. Request allowed and parcel is allowed to be opened.”

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

14. 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) through 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 Malkhana 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, the apposite entries, was enjoined to be proved.

15. Even though, the learned Special Judge, has relied upon, the, judgments (supra), wherein, there is an imperative necessity cast, upon, the production, of, extract of mallkhana register, in Court, for enabling hence discerning(s) being made therefrom, and, appertaining, to, complete interse congruities, becoming scribed therein, hence conforming, with, the relevant memos, and, appertaining, to number(s) of seal impressions, and, to English alphabets made thereon(s) and, upon the case property(ies) (b) also for gauging therefrom, the scribings, appertaining to retrievals, therefrom, at various stages, of, the case property, for, all the relevant purpose. However, for the reasons ascribed hereinabove, unless the afore challenging evidence becomes adduced, or the case property(ies), is, provenly tampered with, arising from breaking, of, seal,

thereupon, the imperative proven links, hence appertaining to interse synchronization(s) occurring qua number(s) of seal impressions/re-sealing impressions, made upon the case property, and, also, vis-à-vis, the English alphabets, embossed thereon(s), and, imperatively, vis-à-vis, all apposite memos, (c) and, commencing from the seizure, of, the case property, through the apposite seizure memo, from conscious and exclusive possession of the accused, at the relevant site, and, upto its production in Court, rather cannot be construed inefficacious, (d) more so when the afore challenging evidence, for ensuring, the, calling, of, the apt entries, in the Malkhana Register, is, amiss hereat. Contrarily, when reiteratedly, the, afore interse congruity(es), is, throughout(s) rather upsurging hereat, hence does rather assume(s) evidentiary worth, (e) and, also subsumes effects, if any, of, the afore expostulations, made in the afore alluded judgments.

Furthermore, even if there is non-association, of, any independent witness, though, available at the site of occurrence, hence by the Investigating Officer concerned, also, would not, rather undermine, the efficacy, of, the afore incriminating evidence hence firmly establishing, all the apposite links, since, the recovery, of, the case property, at the site of occurrence, from the conscious and exclusive possession, of the accused, and, upto its production in Court.

16. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court has not appraised the entire evidence, on record, in a wholesome and harmonious manner, and, the analysis thereof, by the learned trial Court hence suffers, from, a perversity or absurdity of mis-appreciation and non-appreciation, of evidence, on record.

17. There is merit in the appeal, and, the same is

...27...

allowed. The impugned judgment is quashed and set aside. The accused/respondent be produced before this Court, on 14.9.2020, for his being heard on quantum of sentence,

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge

1st September, 2020

(kalpana)