

Prem Chand Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Sep-28-2005

Reported in : 2006CriLJ1821

Judge : K.C. Sood, J.

Acts : Narcotics Drugs and Psychotropic Substances Act, 1985 - Sections 20, 36B, 41, 42 and 55; ;Code of Criminal Procedure (CrPC) - Section 374(2)

Appeal No. : Cri. Appeal No. 296 of 2005

Appellant : Prem Chand

Respondent : State of H.P.

Advocate for Def. : Ashok Chaudhary, Addl. A.G.

Advocate for Pet/Ap. : Anup Chitkara, Adv.

Judgement :

K.C. Sood, J.

1. Appellant Prem Chand, hereinafter referred to as the 'accused', has been convicted by the learned Sessions Judge, Kullu for an offence punishable under Section 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('Drugs Act' for short.) and sentenced to suffer rigorous imprisonment for one year and to

pay a fine of rupees 15.000/-. In case of default in the payment of fine, he is to undergo imprisonment for a period of two months.

2. Aggrieved, the accused is in this appeal under Section 36B of the Drugs Act read with Section 374(2) of the Code of Criminal Procedure.

The prosecution case:

3. On the evening of May 4, 2004, Assistant Sub Inspector Bhim Sen (PW3) along with other Police Officials, including Head Constable Ran Swaroop (PW1), Constable Om Parkash (PW2) and Constable Sanjay Kumar was on routine patrol. When the Police party was near village Fozal Prar, the accused was spotted coming from Prari village carrying a plastic bag in his right hand. On seeing the police party, the accused turned back and tried to run away. This raised suspicion. Accused was overpowered by the Police Party. On the search of the bag, carried by the accused, charas weighing 150 gms was recovered. Two samples of 25 grams each were drawn from the charas so recovered. They were separately packed and sealed with seal 'M' by ASI Bhim Sen. The remaining charas was also separately packed and sealed with seal 'M'. Memorandum of recovery was prepared and ruka (PW3/A) was sent to Police Station, Manali for the registration of the case. FIR Exhibit PW8/A was accordingly registered. The accused was informed of the offence he has committed and the punishment prescribed for such offence by a memorandum Exhibit PW1 /D. The case property was produced by A.S.I. Bhim Sen before Inspector Jagdish Chand (PW5), S.H.O. Police Station, Manali who also put his seal 'H' on both the samples as well as parcel of remaining charas. The case property thereafter was deposited with the Moharrar Head Constable Mohar Singh (PW6) who after making necessary entry (Exhibit PW6/A) in the register deposited the same in the Malkhana. One of the samples was sent, along with NCB form in triplicate, to the Chemical Examiner, CTL Kandaghat for analysis. The Chemical Examiner found the sample on analysis to be that of charas. The accused was accordingly prosecuted., convicted and sentenced, as noticed above.

4. Mr. Anup Chitkara, learned Counsel for the accused assails the conviction on the grounds:

(a) Recovery appears to be fake because of several contradictions in the statements of various witnesses;

(b) Provision of Section 55 of the Drugs Act was not complied with;

(c) Special impression of seal affixed by Inspector Jagdish Chand, then S.H.O. Manali does not tally with the seal impression 'H' on the NCB Form/Chemical Examiner's report.

(d) There is over-writing in the road certificate which shows that the sample which was drawn from the recovered material was not sent and it was some other sample which was sent to the Chemical Examiner;

(e) The entries in the malkhana register shows that only two samples and the remaining recovered charas were deposited in the Malkhana whereas along with sample, copy of FIR, specimen impression of the seal used, NCB form were also sent to the Chemical Examiner.

(a) Recovery appears to be fake because of several Contradictions in the statements of various Witnesses.

5. Mr. Chitkara, learned Counsel for the appellant submits that the contradictions in the evidence of the various witnesses renders the recovery of the contraband from the accused doubtful. He refers to the statement of Constable Om Parkash (PW2) who, in his evidence, states that ruka was prepared by the Investigating Officer and then handed over to him at about 6.45 p.m. for delivery of the same at Police Station, Manali and he handed over this ruka (Ext. PW1 /C) to the M.H.C. Police Station, Manali at about 8.00 p.m. who in turn gave the same to Inspector SHO Jagdish Chand (PW5). The S.H.O. after recording the FIR, handed over the case file with FIR number. He handed over the case file to Investigating Officer Bhim Sen at Police Post Patli Kuhal. Constable Om Parkash in his testimony also states. 'I came back to Police Post Patli Kuhal with case file at 8.45 p.m.' but. A.S.I. Bhim Sen (PW8) in his testimony states that after the completion of the proceedings of recovery on the spot, he started from the place of recovery at about 8.00 p.m. and reached Patli Kuhal at 8.45 p.m. But in other part, of his

testimony, he states, ' I remained till 9.00 p.m. at 'Patli Kuhal and thereafter by Haryana Roadways, went to Police Station Manali'. PW8 Inspector Jagdish Chand the then S.H.O. Police Station, Manali in his evidence states that FIR was recorded on the basis of ruka which bears his signatures and the same was signed by him and handed over to constable Om Parkash at 9,30 p.m.

6. The argument is that if the case file was handed over to constable Om Prakash at 9.30 p.m. then he could not have handed over the same to ASI Bhim Sen at Police Post Patli Kuhal at 8.45 p.m. This is a minor contradiction. With the passage of time, the memory regarding details like this is trifling particularly when contemporaneous record of the recording of FIR is reflected in the FIR itself. This contradiction does not make the recovery of charas from the accused doubtful. The other contradiction pointed out by Mr. Chitkara is that Head Constable Ram Swaroop (PW1) states that the Police Party proceeded from Dobhi towards the place from where the recovery was made in a private Van and there was one passenger in the Van in addition to the Driver, whereas, ASI Bhim Sen states that they went to Dobhi in a Bus and from Dobhi to Fozal in a Van and only taxi driver was in the van. This again is not such a contradiction which may cause doubt on the prosecution case or render the evidence of the witnesses unacceptable regarding the recovery of charas.

7. The next contradiction is that Head Constable PW1 states that accused was spotted while going up-hill whereas ASI Bhim Sen, Investigating Officer, in his testimony states that accused was spotted when on straight path. This contradiction again is of no consequence and does not dent the prosecution case in any manner.

8. The last contradiction is about distance of Police Station, Manali from the place of recovery. Learned counsel for the appellant submits that the ruka Exhibit PW1/C says that distance of spot from Police Station is 28 kms, whereas, the distance in fact is about 38 kms. There is no contradiction. It is true that the ruka Exhibit PW1 / C gives distance of the place of recovery from Police Station, Manali as 28 kms and In the evidence of A.S.I. Bhim Sen, the Investigating Officer, it has come that Patli Kuhal is at a distance of 22 kms. from Manali and Fozal is at about

seven or eight kms and the place of recovery is at about two and half kms from Fozal which makes the distance 38 kms. The distance of spot from Police Station is shown as 28 kms as direct distance. The distance is not via Patli Kuhal or Dobhi. There could possibly be another route from the place of recovery to the Police Station, Manali. In any event, even if it is a contradiction, it is of no consequence.

(b) Provision of Section 55 of the NDPS Act were not complied with.

9. So far question of non-compliance with the provisions of Section 55 of the Drugs Act is concerned, the argument is that sample of the recovered charas could only be taken by the officer-in-charge of the Police Station and not by the Investigating Officer who recovered the charas and therefore, there is violation of Section 55 of the Drugs Act. Section 55 of the Drugs Act reads:

55. Police to take charge of articles seized and delivered.-- An officer in-charge of a Police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

10. A reading of Section 55 shows that the Officer-in-charge of Police Station is to take charge and keep in safe custody all articles including the contraband seized under the Act which may be delivered to him and he can also allow any officer who may accompany such article to police station or who may be deputed for the purpose to affix his seal to such articles or to take samples from them and all samples so taken shall also be sealed with a seal of the Officer-in-charge of the police station. The provision is salutary in nature. The Authorised Officer under Section 42 and 41 of the Act includes the officer of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces and therefore, when they deposit the case property with the Incharge of a Police Station, they are

permitted to seal such case property with their own seal as well as draw sample from it. It does not exclude taking of the sample from the recovered contraband by an Investigating Officer. In the present case, the samples admittedly were drawn by the Investigating Officer A.S.I. Bhim Sen and the case property along with the samples so drawn was deposited with the Station House Officer who sealed the sale property as well as the sample with his own seal 'H'. There is no contravention of Section 55 of the Drugs Act, In any event, Section 55 is not mandatory and is merely directory in nature and no prejudice is caused to the accused even if there is a non-compliance with the provisions of Section 55 of the Drugs Act.

(c) The specimen impression of seal affixed by Inspector Jagdish Chand then S.H.O. Manali does not tally with the seal impression 'H' on the NCB form/chemical Examiner's report.

11. The contention of Mr. Chitkara, learned Counsel for the appellant is that the impression seal 'H' is not identical to the impression seal 'H' on the NCB form/Chemical Examiner's report. Though specimen seal 'H' is not on the record. Only seal of the Investigating Officer, i.e. 'M' is on record which tallies and is identical to the seal on the NCB form Exhibit PW3/B. However, specimen seal 'H' was produced in the Court by Mr. Chitkara learned Counsel for the appellant which was compared with seal 'H' on the NCB form which is identical. The argument is misplaced and without any foundation. There is no cross-examination of any of the witnesses to this effect.

(d) There is over-writing in the road certificate which shows that the sample which was drawn from the recovered material was not sent and it was some other sample which was sent to the Chemical Examiner.

12. So far the over-writing of the road certificate is concerned, it is admitted position that ASI Bhim Sen has drawn two samples and sealed those samples with seal 'M'. The remaining charas was also sealed in a parcel and sealed with the same seal.

There is an over-writing in the road certificate (Exhibit PW6/A) whereby the sample of the recovered charas was sent to the Chemical Examiner. It records that this sample was sealed with six seals of 'M' and six seals of 'M' as also one seal each on the NCB form in triplicate. It further records that one of the samples along with specimen seals 'H', 'M' is sent for analysis is sent through constable Sumehar Singh. It appears, instead of seal 'M' seal 'A' was recorded and it has been corrected to 'M' by the concerned officer of the Police Station. In fact, Mohar Singh who recorded and sent the road certificate to the Chemical Examiner appearing as PW6 clearly states that he initially wrote seal 'H' and 'A' was collected by him as 'M' with the same pen and ink because he Inadvertently wrote letter 'A' instead of 'M'. The fact remains that the Investigating Officer had sealed both the samples as well as charas recovered from the accused with seal 'M' and It was inadvertently that 'A' was recorded on the road certificate by the M.H.C. who corrected it Immediately with the same pen and ink. There is no merit in the contention.

(e) The entries in the malkhana register shows that only two samples and the remaining recovered charas was deposited in the malkhana whereas along with sample copy of the FIR, specimen impression of the seal used, NVB form were also sent to the Chemical Examiner.

13. The next contention of Mr. Chitkara, learned Counsel for the appellant Is that the Malkhana register records that only two samples of recovered charas were deposited in the Malkhana whereas, MHC has also sent copy of the FIR, specimen impression of seals and NCB form to the Chemical Examiner. True it is. But there is nothing in the Police rules or in the record which may show that copy of the FIR, specimen impression of seal and NCB form is also to be deposited In the Malkhana. In fact, these documents remain in the case file of a Police Station and are sent along with the sample to the Chemical Examiner. The argument is without any substance-.

14. No other point is urged.

15. To conclude, the conviction recorded by the learned trial Judge is not visited with any illegality nor is there any misappreciation of evidence. There is no merit in the appeal against the conviction which is dismissed.

16. In the end, Mr. Chitkara prays that accused is only 20 years of age and long detention in jail would make him a hardened criminal therefore, the sentence of imprisonment may be reduced to the imprisonment already undergone.

17. Looking to the mitigating circumstances, the quantity recovered which has no commercial value, the age of the accused, the background of the accused, the fact that he is a student of class twelve and the fact that he is a first offender, the sentence of imprisonment is reduced from one year to nine months and fine imposed reduced from rupees 15.000/- to 7000/-. In case of default in the payment of fine, the accused will have to suffer further imprisonment for two months. The case property shall be dealt with as ordered by the learned trial Judge.

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