

Harjit Singh Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Oct-15-2009

Judge : Surjit Singh and; Surinder Singh, JJ.

Appellant : Harjit Singh

Respondent : State of H.P.

Disposition : Appeal dismissed

Judgement :

Surinder Singh, J.

1. The challenge in this appeal is to the judgment dated 4.3.2006, passed by Learned Sessions Judge Solan, in Sessions Trial No. 15-S/7 of 2005, whereby the appellant Harjit Singh has been convicted for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as 'the Act', allegedly for keeping in his possession 5 kgs Charas and sentenced to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/-; in default of payment of fine, to further undergo rigorous imprisonment for two years.

2. The factual matrix of the case is that on 20th April, 2005, PW11 Inspector Gurdial Singh accompanied by Addl. SHO ASI Arjun Singh and other police officials was on patrolling duty at Bus Stand Parwanoo. Around 3.10 p.m., he

briefed the officials to do random checking of the buses crossing that place. The first bus which came on the spot, from Shimla side was of Himachal Roadways Transport Corporation (HRTC), which was going to Ambala. Constable Davinder Kumar and Constable Ram Lal (PW1) entered the bus from the front door. In the meantime, the appellant who was carrying the bag Ex.P1 on his right shoulder gave a push to Constable Davinder Kumar got down and ran away towards Kalka. The police got suspicion; they followed and apprehended him at some distance.

3. Witnesses, PW9 Giri Raj, who was running a tyre puncture shop and PW2 Sardari Lal, a carpenter working at Parwanoo, were standing nearby. They were associated as independent witnesses to the search.

4. On conducting the search of the bag (Ex.P1) of the appellant, it was found containing Charas in a plastic packet, in the shape of wicks and balls. The weight of the recovered stuff was taken; it came out to be 5 Kgs., out of which two samples of 25 grams each were randomly drawn. The bulk and both the samples were sealed separately with seal impression 'A' in the presence of independent witnesses aforesaid. The seal impression was also taken on a piece of cloth Ex.PW11/A. NCB forms in triplicate were filled in, on the spot. Ex.PW11/C is one of such forms.

5. The case property was taken into possession vide memo Ex.PW1/A. The appellant was arrested and the grounds of arrest were informed to him. On his personal search, two bus tickets valuing of Rs. 13/- were inter-alia found in his possession, were pasted by the police on a piece of paper Ex.PW2/A. The personal search memo Ex.PW11/F was also prepared.

6. Ruqa Ex. PW6/A was prepared and sent through C. Davinder Kumar, to police station for the registration of the case. The Investigating Officer Inspector Gurdial Singh also prepared site plan Ex.PW11/B of the place of alleged recovery.

7. On the same day special report Ex.PW3/A was sent to the SP Solan through a special messenger PW4 Pawan Kumar, which was handed over to S.P. Solan, through his Reader.

8. During the investigation, the copy of the way-bill Ex.PW8/A and the list of tickets Exts.PW8/B issued to the conductor by the Dhalli office of HRTC were taken into possession.

9. The case property was deposited by PW11 Inspector Gurdial Singh in the Malkhana with PW5 MHC Paramjit Singh, alongwith the NCB forms and the sample of seal. Next day i.e. on 21st April, 2005, one of the sample was sent through PW4 C. Pawan Kumar for examination alongwith NCB forms, sample of seal and the police docket, which was deposited by him in 'Chemical testing laboratory' (CTL) Kandaghat. After depositing the aforesaid property in the laboratory, he obtained the receipt of Road Certificate, which was handed over to the MHC aforesaid.

10. On the examination of the sample in the laboratory, as per the report Ex.PW11/H, it tested positive and was found to have contained 32.7% resin, which is the content of Charas.

11. On completing the investigation, the challan was presented in the court. The appellant was put on trial.

12. The learned trial court, prima-facie, found it a case falling under Section 20 of the Act, as such, the appellant was charge-sheeted for the offence aforesaid. To prove its case, the prosecution examined its witnesses and the appellant was also examined under Section 313 Cr.P.C. He denied the case of the prosecution and also the circumstances, which were found attendant upon him. He took up the stand that he was arrested by the police from a tea shop at Parwanoo and taken to police station, where he was given beatings and made to thumb-mark some papers. He disowned bag Ex.P1 and denied the recovery of any contraband from his possession.

13. On the strength of the evidence led before it, the learned trial court did not find it a case of acquittal straightway under Section 232 Cr.P.C., as such; the appellant was called upon to enter into his defence. The appellant examined DW1 Shammi Kaushal, a shopkeeper of Solan Bazaar. He stated that on 20th April, 2005, he was travelling in the bus in question which was stopped by the police at Parwanoo.

The police checked the said bus. One of the three passengers seating on three seater bench had a bag with him. On seeing the police, he kept his bag on the floor of the bus and ran- away. It was checked. It contained 'Charas'. Thereafter the owner of the bag was not traceable. The appellant was arrested on suspicion. The police requested the bus passengers to become the witness in the case, but they refused and asked the police to bring the real culprit.

14. The learned trial court disbelieved the defence story but believed the prosecution case and its witnesses. Thus, the appellant was convicted and sentenced as aforesaid. Feeling aggrieved, the appellant filed the instant appeal.

15. PW11 Inspector Gurdial Singh has mutatis mutandis corroborated the case of the prosecution to which PW9 Giri Raj lends strength. The accused cross-examined them at length but nothing material could be extracted from any of them. However, PW2 Sardari Lal turned hostile.

16. PW11 Inspector Gurdial Singh in his cross-examination stated that when the appellant ran away alongwith the bag hung on his shoulder, they suspected some contraband with him. He was apprehended and was arrested in the front of the shop of Nag Pal, adjoining to the shop of M/s Om Sons and at that time number of persons were present there. He associated the above independent witnesses during the search and was found in possession of 'Charas' which was in the shape of wicks and balls. Thereafter two samples of 25 each were taken from the recovered bulk and sealed on the spot.

17. Further PW9 Giri Raj, not only supported the recovery but also stated that the 'charas' sample was separated and sealed on the spot in his presence and Sardari Lal (PW2). He further stated that the seal after its use was handed over to PW Sardari Lal and the case property was taken in possession vide memo Ex.PW1/A. He identified his own signatures thereon and that of Sardari Lal having been signed in his presence. He further stated that the bus ticket, mobile etc. were recovered from the appellant, on his personal search by the police. As stated above, PW2 Sardari Lal turned hostile to the prosecution case but admitted his signatures on the seizure memo Ex.PW1/A after going through it but with the same breath, stated that he did not go through it. He also stated that the bus

tickets were pasted on a piece of paper Ex.PW2/A in his presence but according to him the tickets were not recovered from the appellant.

18. No malice has been imputed to PW11 Inspector Gurdial Singh nor to PW9 Giri Raj to depose against the appellant.

19. On the critical examination of the evidence aforesaid It stands proved on record that the police had recovered the stuff from the bag Ex.P1 to which the appellant was carrying. The presence of PW2 Sardari Lal at the time of the recovery also stands established beyond a reasonable doubt but he had tried to suppress the truth.

20. To establish that the recovered stuff was Charas, Pw11 stated that The case property alongwith the samples was deposited with MHC in the malkhana and one of the two samples was sent through C. Pawan Kumar alongwith police docket, which also contained NCB forms and sample of seal as testified by C. Pawan Kumar on oath before the learned trial court. The sample was deposited in the Laboratory. The report of the Chemical Analyst Ex.PW11/H certifies that on 21st April, 2005 the sample was deposited in the laboratory by the said constable and the seals tallied with the sample of seal sent separately and also with facsimile of the seal on the NCB form, which were found intact and unbroken. The said report also testified that the sample tested positive as it contained 32.7% resin, which is a content of Charas.

21. We find that the link evidence is also complete from the time of recovery of the alleged offending article and taking sample of the contraband till its examination in the laboratory. Thus in these circumstances even the non-production of seal by PW2 Sardari Lal, who turned hostile to the prosecution, is not fatal to the prosecution and there is overwhelming evidence to hold that the recovered stuff from the appellant is Charas.

22. Thus the learned Counsel for the appellant Sh. Vinay Thakur, confronted with the above position put his reliance on the judgment of apex Court in Mr. Gaunter Edwin Kircher v. State : AIR 1993 SC 1456 and submitted that the recovered stuff was in the shape of wicks and balls and the Investigating Officer not spell out

whether he had taken the sample from the wicks or from the balls or after mixing and making it homogenous, so as to make it a representative sample. The learned Counsel further submitted when there is no such evidence on record, it cannot be presumed by any stretch of imagination that the sample so taken was of a representative character thus it can also not be said that the remaining stuff would be 'Charas'. According to him, at the worst the appellant can be held responsible for keeping in his possession the resin contents in 50 grams sample parcel which was tested positive on its examination by the laboratory, which falls within the definition of 'small quantity'.

23. We have carefully examined the above submissions and have carefully gone through the judgment of the apex court. In Mr. Gaunter Edwin Kircher's case *supra*, the accused was arrested with only two pieces of charas weighing 7 gms. and 5 gms. Respectively and only one piece was sent for chemical analysis and the said piece was found to have been less than 5 gms. Considering these facts, the Supreme Court observed that from the report of the chemical analyst it could not be presumed or inferred that the substance and the other piece weighing 7 gms, which was not sent for analysis also contained Charas and it was also observed that it had to be borne in mind that the act applied to certain Narcotic drugs and psychotropic substances and not to all kind of intoxicating substances and in any event, in the absence of positive proof that both the pieces recovered from the accused contained Charas only, it would not be safe to hold that the prosecution could prove that 12 gms. of Charas was recovered from the accused. The Supreme Court thus held that the prosecution could prove positively that the Charas weighing about 4.57 gms. was recovered from the accused and the failure to send the other piece had given rise to that inference.

24. In the case at hand, the total quantity recovered was 5 Kgs. or say a huge quantity. The Act and the Rules do not provide for sending the entire quantity for analysis nor do say that some portion of each piece from the recovered stuff should be separated as sample. Samples are normally taken by picking up a few pieces at random. But in the present case, it is not the case of the defence that the sample taken from the stuff, recovered from the appellant, was not representative. The sampling process was not assailed in the cross-examination of any of the

witnesses. In particular no suggestion was put to PW11 Inspector Gurdial Singh, who seized the stuff and took out a sample, that the sample taken by him did not represent the recovered stuff. It is also pertinent to note even no such ground was taken in the grounds of appeal. Therefore, we are of the considered view that it is too late in the day for the appellant to come out with a plea that the sample of the recovered stuff was not representative.

25. In Mr. Gaunter Edwin Kircher's case *supra*, relied upon as a precedent, there were only two pieces of charas of different weights, recovered from the appellant out of which only one piece was sent for analysis. Apparently, this could not be the representative sample. It was quite likely that other piece was not Charas, but something different as the total quantity of both the pieces was very small. Thus, the facts of the case before the Supreme Court are distinguishable from the facts of the present case.

26. In view of the above position, we see no merit in appeal and the same is therefore, dismissed.