

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. A. No. 91 of 2000

Decided on: 29.02.2008

State of Himachal Pradesh

.....Appellant

Versus

Kali Dass

.....Respondent

Coram:

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?

For the appellant:

Mr. J.S. Guleria, Law Officer.

For the respondent:

Mr. Anuj Nag, Advocate.

V.K. Ahuja, J:

This is an appeal filed by the State of H.P. under Section 378 Cr. P.C. against the judgment of the court of learned Chief Judicial Magistrate, Kangra, at Dharamshala dated 30.08.1998, vide which the respondent was acquitted of the charge framed against him under Section 61(1)(a) of the Punjab Excise Act, as applicable to the State of Himachal Pradesh.

Briefly stated, the facts of the case are that on 23rd July, 1994, A.S.I. Gurdas Ram, accompanied by other police officials was on his way from Khaniyara village to Patola village in District Kangra. They became suspicious on seeing the accused who was apprehended and a bottle containing 650 mls. of illicit liquor was recovered from his possession. A sample was taken which was sent to Chemical Examiner and on completion of the investigation, the challan was filed against the

¹ Whether reporters of Local papers may be allowed to see the judgment?

respondent, who was tried by the learned trial Court leading to his acquittal.

Heard.

The submissions made by the Law Officer were that the learned trial Court wrongly relied upon the minor infirmity in the prosecution case and had not given the reasons for disbelieving the prosecution story and as such those findings are perverse, calling for an interference by this Court. On the other hand, learned counsel for the respondent had submitted that it is a fact that another view could have been taken by the learned trial Court on the basis of the evidence, is not sufficient to hold that the judgment of learned trial Court is perverse and is liable to be set aside.

On appraisal of the Judgment passed by the learned trial Court, it is clear that one infirmity so pointed out by the learned trial Court was that the seal does not appear to have been handed over to an independent witness or the Constable. According to the prosecution the seal was handed over to Home Guard official, who was the member of police patrolling party. The said observation cannot be said to be correct as it is not the requirement of the law that the seal must be handed over to an independent witness and the said independent witness must be examined by the prosecution.

The second infirmity pointed by the learned trial Court was that the constable, PW-2, Dev Raj, who had deposited the sample in the office of the Chemical Laboratory at Kandaghat did not state the name of the concerned official with whom the sample was deposited. On this basis the learned trial Court came to the conclusion that the necessary link evidence was missing. This observation to my mind made by the learned trial Court is incorrect. It is not the requirement of law that the name of the official of the Laboratory must be stated by the official, who deposited the case property in that office. The statement of PW-2,

Dev Raj, Constable was very clear that he deposited sample duly sealed in the office of Chemical Examiner safely and that during the time the sample remained in his possession, it was not tampered with. The report of the Chemical Examiner Ext. PA clearly shows that the sample was received on the said date i.e. on 06.08.1994 from Dev Raj Constable No. 378, who has been examined as PW-2. It is also clear from this report that the seal on the sample tallied with the seal impression and was sent separately. Thus, the statement of the constable coupled with the report of the chemical examiner Ext. PA clearly proved that when the sample was received, the seals were intact. There is no requirement of law that the name of the official of the Office of the Chemical Examiner should have been stated by the Constable and it is surprising that learned Chief Judicial Magistrate was not aware of this basic requirement of law and had made his own observations in holding that necessary link evidence was missing which observation are palpably wrong.

The next ground as taken by the learned trial Court in disbelieving the prosecution story was that the statement of Home Gurad Constable, Raj Kumar and Gurdas Ram PW-5 revealed that the village was thickly populated and the passage where the accused was nabbed is frequented by people. This belies the statement of PW-5 Gurdas Ram that no independent witness was available despite efforts and does not appear to be plausible. The discussion made by the learned trial Court suggests that there was non-compliance of mandatory provisions of Section 100(4) Cr.P.C. or Section 165 Cr.P.C. in regard of search, learned trial Court should have discussed these provisions and should have mentioned that the explanation given by the Investigating Officer was not satisfactory.

The provisions of Section 100 Cr. P.C. in regard of joining of two independent witnesses apply mainly to the places of search of

premises. Even in the cases of personal search, those provisions are required to be complied with. The only explanation is that the Investigating Officer is to furnish reasonable explanation that the witnesses were not available who could be joined due to chance recovery and the said explanation can be considered by the Court and if found satisfactory, the same can be accepted. Section 165 Cr.P.C. also prescribes various steps to be followed for making a search. Recording of reasons is important in the matter of search and to ignore it is to ignore the material part of the provisions regarding searches. Investigating Officer has not given any explanation for not associating any independent witness at the time when the accused was apprehended. The statement of PW-1 Raj Kumar, Home Guard Constable and a member of raiding party shows that the village was thickly populated and many persons were passing through the place which was a common path. PW-5 Gurdas Ram, Investigating Officer also admitted that there was a common path and many persons used to pass and village was thickly populated. Therefore, no reasonable explanation was given by the Investigating Officer for non-compliance of mandatory provisions of Section 100(4) Cr. P.C. and, as such, the final findings recorded by the learned trial Court holding that the guilt of the respondent was not proved in accordance with law, do not call for an interference by this Court. On the basis of evidence this finding cannot be said to be perverse, and, as such, are not liable to be set aside.

In view of the discussion, there is no merit in the appeal filed by the State of Himachal Pradesh and the same is liable to be dismissed, which is dismissed accordingly.

(V. K. Ahuja),
Judge

February 29th, 2008
(brb)

