

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

**Cr. A No. 354 of 1995**

**Decided on : August 31, 2009**

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**State of H.P**

**...Appellant.**

**Versus**

**Rikhi Ram**

**...Respondent.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**The Hon'ble Mr. Justice Surinder Singh, Judge.**

**Whether approved for reporting?<sup>1</sup> No.**

**For the Appellant:      Mr. Ramesh Thakur, Assistant  
Advocate General.**

**For the Respondent:    Mr. N.K. Thakur, Advocate.**

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**Surjit Singh, Judge( Oral )**

State has appealed against the judgment dated 25<sup>th</sup> November, 1994 of learned Sessions Judge, Chamba, whereby respondent Rikhi Ram, who was charged with and tried for an offence, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, for allegedly possessing 1.500 Kgs of Charas, has been acquitted.

**2.** Case of the prosecution, which led to the trial of the respondent, may be stated. On 1.11.1993 at 3 PM, when PW7 ASI Bansi Lal alongwith PW-3 Excise Inspector Beli Ram and one Radha Krishan, was present at Tunuhatti barrier, he saw that the respondent, who was travelling by a bus, which had been stopped at the said barrier for checking, got down from the bus and tried to move backwards. On suspicion he

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**Whether reporters of the local papers may be allowed to see the judgment?**

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was overpowered. He told PW-7 ASI Bansilal that he was having Charas. PW7 ASI Bansilal gave him option to be taken to a gazetted officer for search, but the respondent offered to be searched on the spot by the said ASI. A photographer was called from Bakloh, telephonically. Photographs of the appellant were taken after making him raise his shirt and coat etc. and remove his pants. As per photographs Exts. P1, P2 and P3, he had tied some stuff, wrapped in a piece of cloth, around his waist. On search of that piece of cloth, Charas was found, which weighed 1.500 Kgs. One sample weighing 10 grams was separated and sealed in a parcel. Report of search and seizure was prepared and sent to Police Station Dalhousie, where case was formally registered, vide FIR Ext. PG. Sample parcel was sent to Chemical Examiner, who opined the same to be Charas, as it contained 25.78% of resin.

**3.** Prosecution examined PW-7 ASI Bansilal, PW-3 Excise Inspector Beli Ram and PW-2 Swaran Singh, to prove the allegation of recovery of Charas from the respondent.

**4.** Learned trial Court observed that independent witnesses were available to PW-7 ASI Bansilal, as there were many shops and residences around the place, where the search was conducted, but despite that he did not associate anybody from those shops or residential houses. Learned trial Court also noticed some inconsistencies in the testimony of PW-3 Excise Inspector Beli Ram and PW-7 ASI Bansilal, and

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ultimately concluded that the case of the prosecution was not proved, beyond reasonable doubt.

**5.** We have heard the learned Assistant Advocate General as also the learned counsel for the respondent and perused the record.

**6.** We find a material contradiction in the earliest version recorded by PW-7 ASI Bansi Lal, in the form of report Ext.PF, which was sent to Police Station for registration of the case, and his testimony in the Court as PW-7 as to the circumstances, which led to the suspicion and search of the respondent. According to the testimony of ASI Bansi Lal, made as PW-7, when the respondent was apprehended and his body was casually touched to ascertain if he was carrying any contraband, something hard, wrapped around his waist was felt by him, but in report Ext. PF there is no mention of any such casual search. Instead it is recorded that as soon as the respondent was apprehended he told that he was carrying Charas with him and thereafter option was given to him whether he wanted to be searched in the presence of some gazetted officer or on the spot.

**7.** PW-3 Excise Inspector Beli Ram though testified that he was present on the spot and the search of respondent was conducted in his presence, yet an overall reading of his statement suggests that he might not have been present on the spot. For example, when asked if the SHO was also present on the spot, he stated that he did not know. If he were on the spot, he could have answered the question in the

affirmative or in the negative. He is signatory to memo. Ext. PD, whereby the respondent was allegedly informed by PW-7 ASI Bansi Lal that possessing of Charas was an offence, punishable with 10 years imprisonment and a fine of Rs.1,00,000/-, but he stated that the respondent had not been informed that his act was punishable in the aforesaid manner. This fact also suggests that probably he was not present on the spot.

**8.** Testimony of PW-2 Swaran Singh also makes the prosecution version doubtful. According to PW-7 ASI Bansi Lal and PW-3 Excise Inspector Beli Ram, bus reached the spot around 3 PM and that thereafter the respondent was apprehended and it was noticed that he was carrying Charas, which he had wrapped around his waist and after that a photographer was called from Bakloh, a place situated at a distance of 5 kilometres. PW-2 Swaran Singh says that he reached the spot, on being called by the police, telephonically at 3 PM and took photographs Exts. P1 to P-3. He could not have reached the spot at 3 PM, when according to PW-7 ASI Bansi Lal and PW-3 Excise Inspector Beli Ram, respondent was apprehended at 3 PM and thereafter casual search was conducted and he (the respondent) was questioned and only thereafter the photographer was called.

**9.** Some provisions of Narcotic Drugs and Psychotropic Substances Act had also not been complied with. For example, provision of Section 50 of the said Act had not been complied with in letter and spirit, inasmuch as the

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respondent had not been apprised that he had a right to be searched in the presence of a Magistrate or a gazetted officer, but was only given an offer that in case he so desired, he could be taken to a gazetted officer for conducting his search. Further, Special Report was not sent by PW-7 ASI Bansi Lal to his superior officer, as per requirement of Section 57 of the said Act.

**10.** In view of the above stated position, we do not consider this to be a fit case for interfering with the judgment of acquittal. Hence, the appeal is dismissed.

**(Surjit Singh), J**

**August 31, 2009(ss)**

**(Surinder Singh), J**