

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

**Cr. Appeal No. 69 of 2015.**

**Reserved on: June 29, 2016.**

**Decided on: June 30, 2016.**

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Raj Kumar

Versus

Narcotics Control Bureau

.....Appellant.

.....Respondent.

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*Coram*

***The Hon'ble Mr. Justice Rajiv Sharma, Judge.***

***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.***

***Whether approved for reporting? <sup>1</sup> Yes.***

**For the appellant:** Mr. G.R.Palsra, Advocate.

**For the respondent:** Mr. Ashwani Pathak, Sr. Advocate with Mr. Sandeep K. Sharma, Advocate.

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**Justice Rajiv Sharma, J.**

This appeal is instituted against the judgment dated 26.11.2014, rendered by the learned Special Judge-II, Mandi, H.P., in Sessions trial No. 9/2013, whereby the appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offence punishable under Sections 8, 20 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ND & PS Act), has been convicted along with the co-accused Pawan Kumar. Accused Raj Kumar was sentenced to undergo rigorous imprisonment for a term of ten years along with fine of Rs. 1,00,000/- and in default of payment of fine, he was further ordered to undergo simple imprisonment for a period of one year under Section 29 of the ND & PS Act. Accused Pawan Kumar alias Lucky Sharma was sentenced with rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/- and in

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<sup>1</sup> | <sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

default of payment of fine to undergo simple imprisonment for a period of one year for commission of offence under Section 20(b)(ii)(C) and 29 of the ND & PS Act.

2. The case of the prosecution, in a nut shell, is that Intelligence Officer Karamveer Singh, NCB Sub Zone, Mandi, received a secret information. The grounds of belief were reduced into writing vide Ext. PW-5/J. The secret information was sent to Superintendent, NCB Chandigarh vide memo Ext. PW-5/K. The Superintendent, NCB Chandigarh asked him to constitute a raiding party. Raiding party was constituted. Two independent witnesses, namely, Narain Singh and Jai Lal were also associated. At 7:20 AM, two persons were seen coming from Katindhi side. They were stopped. Accused Pawan Sharma was carrying a bag of red and blue colour on his shoulder. The accused were apprised of their legal right to be searched either before a Magistrate or a Gazetted Officer vide Ext. PW-5/A and Ext. PW-5/A-1. The accused gave their willingness to be searched by the NCB team. During search of the bag, one polythene bag was recovered from the bag which was containing finger shape brown substance packed in a transparent polythene. The substance was found to be charas. It weighed 1kg. 300 grams. The recovered charas was taken into possession vide memo Ext. PW-2/A. Two samples of 25 grams each were separated from the recovered charas and the same was kept in polythene packet and sealed and thereafter it was wrapped in paper envelope. The samples were marked as Mark A-1 and Mark A-2. The remaining bulk was also packed in polythene bag which was also heat

sealed and put in a cloth parcel. It was marked as Lot A. The packing material and the bag of the accused were sealed in a separate marked cloth and it was marked as Lot-P. The I.O. affixed four seals on Mark A-1, A-2 each and three seals on Lot-A and Lot-P, each. The statements of the witnesses were also recorded under Section 67 of the ND & PS Act. The contraband was produced and handed over to Office In-charge Godown at NCB Chandigarh against receipt Ext. PW-5/G. The chemical examiner's report is Ext. PW-1/A. The investigation was completed and the challan was put up before the Court after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as six witnesses. The accused were also examined under Section 313 Cr.P.C. According to them, they were falsely implicated. The learned trial Court convicted the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. G.R.Palsra, Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. Ashwani Pathak, Sr. Advocate, for the NCB, has supported the judgment of the learned trial Court dated 26.11.2014.

5. We have heard the learned counsel for both the sides and have also gone through the judgment and records of the case carefully.

6. PW-1 V.K.Sharma, testified that he was serving as Chemical Examiner, Grade-II in CRCL, Pusha New Delhi. On 21.12.2012, he received forwarding letter written by Superintendent, NCB Chandigarh along with sample parcel, seal, NCB form in duplicate in the Crime case

No. 35/2012 dated 19.12.2012. He chemically examined the sample and issued report Ext. PW-1/A.

7. PW-2 R.L.Negi, testified that he was posted at Mandi from April, 2011. On 19.12.2012, Karamveer telephonically called him to the office and disclosed that he has received a secret information. The raiding party was constituted by associating him, IO Varinder Singh, IO Rahul and others. In the raiding party, two independent witnesses, namely Narain Singh and Jai Lal were also associated. The naka was laid at about 1 Km from Katindhi towards Mandi on the main road. At about 7:15 AM, two persons were coming from Katindhi side. One of them was carrying a bag with him. Both of them disclosed their identity. I.O. apprised the accused about the information that they were carrying contraband. The I.O. issued notice under Section 50 of the ND & PS Act. The accused gave their consent to give their search to I.O. Karamveer Singh. During search one polythene bag was recovered from the bag which was containing finger shape dark brown substance. The substance was checked and it was found to be charas. It weighed 1kg. 300 grams. Two samples of 25 grams each were drawn. Sampling proceedings were completed. The bulk charas was marked as Lot-A. Notices were issued to the accused under Section 67 of the ND & PS Act. In his cross-examination, he deposed that the independent witnesses were associated on Katindhi road near Shiv Mandir. They were walking on the road. They had laid naka at Katindhi at 6:45 AM. The log books of their vehicles were maintained regularly. He

admitted that there are Judicial Magistrates and Executive Magistrates posted at Mandi and many Gazetted Officers reside in Mandi town.

8. PW-3 Jai Lal testified that NCB officials called him to their office for work and obtained their signatures on the papers. He and Narain Singh used to work as labourers in Ram Nagar, Mandi. He was declared hostile and cross-examined by the learned Special Public Prosecutor, NCB. He denied that he along with Narain Singh was present near Shiv Mandir from where Katindhi leads from Mandi. He denied that the IO Karamveer along with NCB officials came there and stopped their vehicle. He denied that they both were associated as witnesses in the raiding party. However, the fact of the matter is that he has admitted his signatures on memo mark "X". He denied that one of the accused was holding bag in his hand. He denied that on search of the bag, charas was found. He denied that NCB team had taken into possession charas vide Ext. PW-2/A. He denied his signatures on memo Ext. PW-2/A. However, he has admitted his signatures on parcel sample Lot-A-1 and Lot-A-2. He also admitted that parcel Lot-P and Lot-A were also signed by him. He also deposed that four parcels bear the signatures of witness Narain Singh. He admitted his signatures on Panchnama Ext. PW-2/B. He admitted that he has signed the statement of accused Pawan Kumar as witness and accused Raj Kumar also in red circle. The arrest memo and Jamatalashi were also signed by him. Witness Narain Singh has died. Mark X-1 was also signed by him. In his cross-examination by the learned defence counsel, he deposed that documents and parcels were prepared and signatures were obtained in the

office. He has studied up to 5<sup>th</sup> standard. He knows Hindi. He did not know English though he used to sign in English.

9. PW-4 Ramesh Kumar deposed that he carried sample mark A-1 to CRCL, Pusha New Delhi. He proved report Ext. PW-4/B.

10. PW-5 I.O. Karamveer Singh testified that he received secret information from the informer. He apprised the Superintendent, NCB Chandigarh about this information. He was asked to constitute a raiding party. He constituted the same. Two independent witnesses were also associated. Naka was laid. At about 7:20 AM, two persons were noticed coming from Katindhi side. They were stopped. Accused Pawan Kumar was carrying a bag of red and blue colour on his shoulder. The accused were apprised of their legal right to be searched either before a Magistrate or a Gazetted Officer vide Ext. PW-5/A and Ext. PW-5/A-1. Accused consented to be searched by the NCB team. The bag was searched. It contained charas. It weighed 1kg. 300 grams. Sealing proceedings were completed on the spot. He obtained signatures of independent witnesses on the documents. On 19.12.2012 Lot-A, Lot-P and sample packets Mark-A-1 and Mark-A-2 were handed over to In-charge Godown at NCB Chandigarh against receipt Ext. PW-5/G. In his cross-examination, he deposed that he has reached his office at 5:15 AM. Superintendent S.K. Singh had not visited Mandi on 18.12.2012 to 20.12.2012. Volunteered that he was holding the additional charge of Sub-Zone, Mandi. He sent Ext. PW-5/J information to Superintendent through Fax. He had not attached the receipt of the fax in the Court file. No other document was

sent through fax to Chandigarh. Sh. S.K. Singh made endorsement over Ext. PW-5/J at Chandigarh on 19.12.2012.

10. PW-6 DSP, CBI, S.K.Singh deposed that he was holding the additional charge of Chandigarh zone in the month of December, 2012. On 19.12.2012, he was at Chandigarh. I.O. Karamveer Singh from Mandi intimated him about the secret information against the accused through telephone. He had authorized him to constitute raiding party and conduct the investigation. Raiding party was constituted. He made endorsement vide Ext. PW-6/A on written information Ext. PW-5/J. In his cross-examination, he deposed that he received telephonic information early in the morning at about 5:30 AM.

11. The accused were seen coming from Katindhi side in the early hours on 19.12.2012. Accused Pawan Kumar was carrying a bag of blue and red colour on his shoulder. Both the accused were apprised of their legal right to be searched either before a Magistrate or a Gazetted Officer vide Ext. PW-5/A and Ext. PW-5/A-1. However, they consented to be searched by the NCB team. The bag was searched. It contained charas. It weighed 1kg. 300 grams. All the codal formalities were completed on the spot.

12. PW-5 I.O. Karamveer Singh has sent the information to the Superintendent, NCB Chandigarh vide Ext. PW-5/J on 19.12.2012. PW-6 DSP, CBI, S.K.Singh made the endorsement on Ext. PW-5/J vide Ext. PW-6/A, whereby the raiding party was constituted. There is no illegality or infirmity in Ext. PW-5/J and Ext. PW-6/A. The reasons of belief were

reduced into writing by PW-5 I.O. Karamveer Singh. PW-3 Jai Lal, independent witness has not supported the case of the prosecution in its entirety, however, the fact of the matter is that he has admitted his signatures on memo Mark-X, Mark X-1, Parcel Lot-P and Lot-A as well as Lot-A-1 and Lot A-2. Another independent witness Narain Singh has expired. He has also signed as a witness the statements of accused Pawan Kumar and Raj Kumar in red circle. The arrest memo and Jamatalashi were also signed by him in red circle. He has also deposed that Narain Singh has also signed the documents.

13. PW-1 V.K.Sharma has proved report Ext. PW-1/A. According to this report, the contraband was found to be charas. Thus, the prosecution has proved its case against the accused beyond reasonable doubt and there is no occasion for us to interfere with the well reasoned judgment of the learned trial Court dated 26.11.2014.

14. Accordingly, there is no merit in this appeal and the same is dismissed.

( Rajiv Sharma ),  
Judge.

June 30, 2016,  
(karan)

( Chander Bhusan Barowalia ),  
Judge.