

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMPM No.1781 & 1784 of 2015

Date of Decision: February 29, 2016

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State of H.P.

....Petitioner.

Versus

Chet Ram @ Chettan

....Respondent.

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*Coram:*

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P.S. Rana, Judge.

For the petitioner : Mr. V.S. Chauhan, Additional Advocate General, and Mr. J.S. Guleria, Assistant Advocate General.

For the Respondent : None

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Sanjay Karol, Judge.

CRMP(M) No.1781/2015

For the reasons set out in the application, delay of 54 days in filing the application for leave to appeal, which, in my considered view, has sufficiently been explained, is condoned. Application stands disposed of.

CRMP(M) No.1784/2015

2. State has filed the present petition, under the provisions of Section 378(3) of the Code of Criminal

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Procedure, seeking leave to appeal against the judgment dated 3.7.2015, passed by Special Judge, Mandi, District Mandi, Himachal Pradesh, in Sessions Trial No.15/2012, titled as *State of Himachal Pradesh v. Chet Ram alias Chettan*, whereby accused-respondent Chet Ram (hereinafter referred to as the accused), stands acquitted of the charge for having committed offence, punishable under the provisions of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter after referred to as the Act).

3. In relation to FIR No.24/2012, dated 2.2.2012 (Ex. PW-6/B), registered at Police Station, Sadar (Mandi), Himachal Pradesh, accused Chet Ram was charged to face trial, for having committed offence, punishable under the provisions of Section 20 of the Act.

4. Briefly stated, case of the prosecution is that on 2.2.2012, when a police party comprising of ASI Ram Lal (PW-8), HHC Dhameshwar (PW-6), LHC Narpat Ram (PW-5), HC Krishan Kumar and Constables Kashmir Singh and Narender Kumar, had laid a naka at Kainchi Mod on NH-21, at about 4.45 pm, a Bus (Anuj Travels), enroute Kullu to Bilaspur, was stopped for checking. During the

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course of checking of passengers and their luggage, accused, who was occupying Seat No.11, on seeing the police party, got perplexed, which raised suspicion that he might be carrying stolen articles. The police party requested the Driver, Conductor and other passengers of the Bus to join investigation, but they refused. Accused was made to alight from the Bus. Thereafter, the drivers and conductors of the vehicles, which crossed the place, were also requested to join investigation, but they also refused. The place being secluded, LHC Narpat Ram and Constable Narender Kumar were associated as witnesses. The accused was apprised of his statutory rights, who vide Memo (Ex.PW-5/B) consented to be searched by the police party on the spot. During personal search of the accused, two packets (Ex.PW-2 & P-3) were recovered from the shoe worn by him, which contained 600 grams of Charas (Ex. P-4). The packets containing Charas were wrapped in a cloth parcel (Ex.P-1) and sealed with nine seals of seal impression 'A'. NCB form (Ex.PW-4/B) was prepared. Ruka (Ex.PW-6/A) was sent through Constable Dhameshwar, on the basis of which FIR No.24/2012 (Ex.PW-6/B) was registered at Police Station, Sadar

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(Mandi), Himachal Pradesh. Case property alongwith documents were taken into possession vide Memo (Ex.PW-5/D). After completion of proceedings on the spot, accused alongwith the case property was produced before SHO Surender Pal (PW-7), who resealed the case property with six seals of seal impression 'C' and entrusted the same to the HHC Thakur Singh, who entered the same in the Malkhana Register. The case property alongwith sample seals, NCB form and other documents, were sent through HHC Rashal Singh (PW-2) to the Chemical Laboratory. After the receipt of the report of the Chemical Examiner (Ex. PX) and on completion of investigation, which, prima facie, revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

5. Based on the testimonies of witnesses and the material on record, trial Court acquitted the accused of the charged offence. Hence, the present petition for leave to appeal by the State.

6. Mr. V.S. Chauhan, learned Additional Advocate General, has taken us through the record of trial Court, including testimonies of the prosecution witnesses.

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7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offence.

8. In *Prandas v. The State*, AIR 1954 SC 36, Constitution Bench of the apex Court, has held as under:

“(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.c., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.c. in an appeal from an order of acquittal has been stated in – ‘Sheo Swarup v. Emperor’, AIR 1934 PC 227 (2) at pp.229, 230 (A), in these words:

“Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the

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Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice." "

9. Undisputedly, recovery of the contraband substance stands effected from the person of the accused, i.e. from the shoes worn by him.

10. It is the common case of LHC Narpat Ram, HHC Dhameshwar Singh and ASI Ram Lal that prior to the search of the accused, he was informed of his statutory rights and his consent obtained vide Memo (Ex.PW-5/A). Perusal of the said Memo reveals that the accused was given an option of being searched by the Investigating Officer. Now, this is totally illegal and against the settle principle of law, as laid down by the Apex Court in *Man*

*Bahadur v. State of Himachal Pradesh*, (2008) 16 SCC 398.

11. Further, police officials (PW-5, PW-6 and PW-8) want the Court to believe that on 2.2.2012, at a place known as Kainchi Mod, NH-21, recovery of the contraband substance from the conscious and exclusive possession of the accused stood effected. Now, significantly, there is no justifiable explanation for not associating any independent witness. Though ASI Ram Lal does state that the place was secluded and no independent witness was available, but we do not find this statement to be correct, for the accused was found travelling in a Bus, in which not only there were passengers but also driver and conductor. We also do not believe the testimony of the police official that the said persons refused to join investigation, for the reason that no action with regard to the same, was taken against them. Names of such persons have also not been disclosed. Significantly, the police had laid a Naaka on the National Highway. Recovery stood effected at 4.45 p.m., during broad day light, from a transport vehicle in

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which accused was travelling. The story appears to be unbelievable.

12. Hence, trial Court, in my considered view, rightly acquitted the accused. There is no error apparent on the face of record or illegality or perversity, resulting into miscarriage of justice, in the findings returned by the trial Court, warranting interference by this Court.

As such, present petition for leave to appeal, being without any merit, is dismissed and disposed of.

( Sanjay Karol),  
Judge.

February 29, 2016<sub>(sd)</sub>

( P.S. Rana )  
Judge