

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

**Cr. Appeal No. 157 of 2013**

**Decided on : 30.11.2017**

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**Lakhwinder Singh and others**

**...Appellants**

**Versus**

**State of H.P.**

**...Respondents**

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**Coram**

**Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting? yes

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**For the appellants: Mr. Hamender Chandel,  
Advocate.**

**For the respondent : Mr. R.S. Thakur, Addl.  
A.G. for the respondent-  
State.**

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**Sureshwar Thakur, Judge (oral)**

The instant appeal stands directed by the accused/convict against the judgment rendered by the learned Special Judge, Sessions Division at Rampur Bushahr, in Sessions trial No. 11AR-3 of 2010/2013, whereupon, he returned findings of

conviction against the accused/convict in respect of charges framed under Section 20 (b) (ii) (B) of the NDPS Act and under Section 29 of the Act AND consequently sentenced them to undergo three years rigorous imprisonment each AND to pay a fine of Rs. 10,000/- each and in default they were sentenced to undergo simple imprisonment for one year each.

2. The facts relevant to decide the instant case are that on 9.1.2010 ASI Jagat Singh of Police Station, Anni alongwith other police officials was going for traffic checking and also for patrol duty towards Kamand side on official vehicle No. HP-34A-3830 at 6 AM. When the police party reached near Tapari rain shelter then they stopped one car coming from Kanad side having registration No. PB-12B-3523, in which five persons and a driver were sitting. The driver of the car showed registration certificate to ASI Jagat Singh. Then ASI inquired from the driver and other persons about the reason

for coming from Anni side in the early hours, then passengers and driver of the car failed to give satisfactory answer. The police party asked about the antecedents of all the occupants of the car. The police party suspected that all the occupants who were residents of Punjab State are smuggling narcotic substance in the car. Since the vehicle was stopped at an isolated place in a forest, so there was no possibility of joining any local witness while conducting the search of the accused. The Station House Officer associated HC Gulab Chand No. 202 and C. Mukesh Kumar No. 121 as witnesses. The police party apprised the accused persons about their legal rights to be searched before the Gazetted Officer of the Executive Magistrate. All the accused persons showed their intention to give their personal search to the police present at the spot. The consent memo was also prepared. The police officials also gave their personal search to the accused persons. During the search of the car, the police party found

one green coloured envelop underneath the front seat. When the police officials opened that envelop, they found marble shaped black coloured substance wrapped in plastic wrapping paper. The police party came to know that alleged black coloured substance was charas. The charas was weighed with the help of electronic scale and it was found to be 500 grams. The charas was again put in the same plastic envelop and thereafter wrapped in a cloth. The parcel was sealed with six seals of seal impression "T". The vehicle along with its documents and the case property were taken into possession by the police, recovery and seizure memo to this effect was also prepared. The samples of the seal were taken on pieces of cloth and seal after use was entrusted to HHC Gulab Chand. The Investigating Officer completed legal formalities at the spot and thereafter prepared Rukka and handed over the same to C. Mukesh Kumar No. 121 with the direction to take the same to police station. FIR was

registered on the basis of rukka and thereafter investigation was conducted by the ASI Jagat Singh. The Investigating officer has also prepared the site plan and recorded the statements of the witnesses. The accused were arrested and information regarding their arrest was given to their relatives telephonically. The case property and accused were produced before SHO, P.S. Anni. The SHO released the pullinda with seals of seal impression "A". The samples of seal were taken on piece of cloth. Thereafter, the case property was handed over to MHC at 12:30 PM by SHO. The MHC sent the case property for chemical analysis to FSL, Junga on 10.1.2010. It was also revealed during the investigation that accused persons purchased the charas at Mashnu Nallah. After completion of investigation and also after receiving the report of Forensic Science Laboratory, the SHO prepared the challan and presented the same in the Court.

3. On conclusion of investigations, into the offences, allegedly committed by the accused, a report under Section 173 of the Code of Criminal Procedure was prepared and filed in the Court concerned.

4. The accused were charged by the learned trial Court for their committing offence(s) punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act. In proof of the charge, the prosecution examined 13 witnesses. On conclusion of recording of prosecution evidence, the respective statement(s) of the accused under Section 313 of the Code of Criminal Procedure, were, recorded by the trial Court, wherein each of the accused claimed innocence and pleaded false implication in the case, however, they did not lead any evidence in defence.

5. On an appraisal of evidence on record, the learned trial Court, recorded findings of conviction against the accused/appellants herein.

6. The accused/appellants are aggrieved by the judgment of conviction recorded by the learned trial Court. The learned Counsel appearing for the accused/appellants, has, concertedly and vigorously contended qua the findings of conviction recorded by the learned trial Court, standing, not, based, on a proper appreciation, by it, of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by it, of the material on record. Hence, he contends qua the findings of conviction being reversed by this Court in the exercise of its appellate jurisdiction and theirs being replaced by findings of acquittal.

7. On the other hand, the learned Additional Advocate General has with considerable force and vigour, contended that the findings of conviction recorded by the Court below, standing based, on a mature and balanced appreciation, by it, of evidence on record and theirs not necessitating interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

9. The Investigating Officer alongwith other police officials, while on patrol duty, stopped car, bearing No. PB-12B-3523, coming from Kamand side, car whereof apart from its driver, was occupied by five persons. Upon the Investigating Officer making search of the car, he effectuated therefrom recovery(s), of, the item(s) of contraband reflected, in F.I.R borne, in Ext. PW2/E. The police officials, who stepped into the witness box, have, in tandem with the recital(s) borne, in Ext. PW2/E, hence rendered testifications; (a) obviously their testification(s) ARE bereft of any inter se contradictions vis-à-vis the testifications rendered by the Investigating Officer concerned; (b) besides their testifications ARE also bereft of any visible taint(s) of any intra

se contradictions, occurring, in their testifications borne in their respective examinations-in-chief and in their respective cross-examinations; (c) thereupon, with hence their testifications being bereft of any stark inter se or intra se contradictions; (d) hence render their testifications being amenable to imputation of implicit reliance thereon; Even though minimal contradictions, occur, in their respectively rendered testifications, vis-à-vis the inter se distance, of, Kamand from the place whereat the relevant recovery(s), were effectuated, being about one k.m., yet the aforestated inter se minimal contradictions, cannot, undermine the efficacy(s), of the testifications rendered, by the police prosecution witnesses, especially with respect, to the crucial *factum probandum* borne in Ext. PW-2/E. However, no independent witness were associated by the police officials, in the relevant

proceedings conducted by the Investigating Officer concerned, yet when for all the hereafter ascribed reasons, this Court concludes, of, the prosecution, not, efficaciously proving the charges framed against the accused; (i) thereupon the effect(s), of, the hereabove imputations, of reliance by this Court vis-à-vis the inspiring, testifications rendered by the police prosecution witnesses is omnibusly effaced, (ii) contrarily, the non-joining, of, independent witnesses in the relevant proceedings, despite, their evident availability in proximity vis-a-vis the relevant site of occurrence, rather, aggravate(s) the deep pervasive hereafter vitiation(s) imbuing the relevant proceedings, conducted by the Investigating Officer concerned.

10. Furthermore, with the police patrol holding a Naka at place near rain shelter Tapri, near Kamand, also when arrival of the car

whereon the accused were aboard, inviting suspicion of the Investigating Officer concerned, thereupon, his holding apt reasons to believe from his personal knowledge AND his having suspicion, of the relevant car carrying contraband is statutorily well-founded, besides, his thereafter proceeding to hold search thereof, IS subject to the hereinafter reasons also valid. The provisions of sub-Section (1) of Section 42, of, the Act, stand extracted hereinafter:

“Section 42 in The Narcotic Drugs and Psychotropic Substances Act, 1985.

1[42. Power of entry, search, seizure and arrest without warrant or authorisation.—

[\(1\)](#) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intellegence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or

constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

- [\(a\)](#) enter into and search any such building, conveyance or place;
- [\(b\)](#) in case of resistance, break open any door and remove any obstacle to such entry;
- [\(c\)](#) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has

reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

[\(d\)](#) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

[\(2\)](#) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

For making determination(s), of, the Investigating Officer meteing compliance, with, the mandate of the hereinabove extracted provisions of the Act, it is imperative to bear in mind the hereinafter trite factum(s) (i), of, uncontrovertedly, the search, of the relevant car occurring at 6 a.m, on 9.1.2010; (i) thereupon with obvious prevalence thereat of darkness, given, the respective apt testification(s), borne, in the relevant cross-examination(s), making graphic disclosure(s), of, darkness prevailing thereat, (ii) thereupon with Sub section (1), of, Section 42 of the NDPS Act (hereinafter referred to as “the Act”) mandating, of, the Investigating Officer concerned, only, between sun rise and sun set, being, without warrants, hence statutorily enabled to make valid ingress(s) in the building, conveyance or a place; (ii) thereupon, with the relevant car being a conveyance, and its search, visibly occurring, in the intergnum inter se sun set and

sun rise, whereafter he effected recovery(s), of contraband therefrom, renders enlivened, the, mandate, of, the second proviso to Section 42. (iii) Therein it stands mandated, of, the Investigating Officer concerned, upon, his holding tangible reasons to believe, that if time, is, evidently, consumed in his obtaining valid search warrants/authorization(s), for his, in the interregnum inter se sun set and sun rise, (i) hence holding a valid search, of, the relevant car, (ii) thereupon, it sequelling, concealment(s), of, evidence or purveying latitude vis-à-vis the accused , for theirs fleeing from the site of occurrence, (iii) thereupon, alone the Investigating Officer concerned being statutorily empowered, to, even without holding, a valid search warrant and even without an apposite valid authorization, to, hence carry a valid search of the relevant car, (iv) especially in the interregnum inter se sun set and sun rise, by

his/her, making ingress(s) into the relevant conveyance.

11. In aftermath, the essential statutory condition(s) precedent, for the Investigating Officer concerned, to, in the interregnum inter se sun set and sun rise, even without, valid warrant(s)/authorization(s), hence make, lawful ingress(s) into the conveyance; (i) is, reiteratedly comprised in the factum, of, immense consumption of time, sequelling the ill consequence(s), of concealment of evidence, (ii) AND, of, the accused being hence purveyed latitude, to, flee from the site of occurrence. However, with all the prosecution witness(es) in their respective testification(s), voicing, with unanimity of the accused, not, making any attempt(s) to flee, thereupon no concomitant conclusion can also be generated, of their occurring, any possibility, of concealment(s), by them, of the relevant item(s) of contraband (iii)

conspicuously, with only upon evident satiation, by, the prosecution of a) their being likelihood, of, the accused fleeing from the site of occurrence; (iv) AND there being possibility, of, concealment(s) by them, of the relevant item of contraband, hence validly empowering the Investigating Officer concerned, to even without his holding valid authorization(s) or search warrants, hence make ingressions(s) onto the relevant vehicle for the relevant purpose, especially, even in the interregnum interse sunrise and sunset, for his hence therefrom retrieving the relevant item(s) of contraband, (v) whereas, with the aforesaid relevant statutory ingredients, for, the Investigating Officer concerned, being validly empowered, to, in the interregnum interse sunrise and sunset, make valid ingressions in the relevant vehicle, for, the relevant purpose, without, his holding the apposite search warrants or authorization,

remaining, for reasons aforesaid grossly amiss, (vi) nor his recording the statutorily enjoined apposite reasons in writing, (vii) thereupon the ingress(s) made into the relevant vehicle, by the Investigating Officer concerned (viii) in the interregnum interse sunset and sunrise; (ix) without, his holding search warrants or valid authorization, rather his making the relevant search(s), is rendered construable to beget infraction, of, the aforesaid apt mandatory statutory provisions (x) provision whereof enjoin strict compliance therewith AND any departure therefrom, visits, ill consequences upon the prosecution (xi) reiteratedly with hence there being no evident possibility, of concealment of contraband by the accused, nor there being any possibility of theirs fleeing, from the site of occurrence, (xii) thereupon, contrarily, despite, the imperative statutory conditions, attractable hereat, embodied in Sub Section (1) of Section 42

of the Act, remaining evidently unsatiated hereat, thereupon his suo moto, without holding the apposite search warrants or authorization(s), hence making ingress(s) into the car AND is effecting therefrom, recovery(s) of contraband, though, memo borne Ext. PW1/A (xiii) does eminently per se constitute gross violation, of, the mandatory statutory provisions, borne in the second proviso, to Section 42 of “the Act”. The effect, of evident want, of, mandatory strict compliance therewith, by the Investigating Officer, hence renders all the recitals borne in Ext.PW-1/A, to, beget entrenched vitiatory stains. Thereupon, this Court is constrained to conclude, of the prosecution miserably failing, in proving the charges against the accused, also is coaxed, to render a conclusion, of, the Investigating Officer concerned, by sheer stratagem, planting the case property in the car.

12. Nowat, with PW-7, making a disclosure in his testification, of, a thickly inhabited locality existing, in proximity, of, the site of occurrence AND his also testifying, of, no efforts being made by the Investigating Officer concerned, to associate their inhabitants, in the relevant proceedings, when stand construed, in coagulation with the afore-referred vitiation(s), permeating the prosecution case, (i) thereupon render their non-association(s) in the relevant proceedings, to hence generate skepticism. Even though, mere non-association of independent witnesses, in the relevant proceedings, despite their evident availability in proximity vis-à-vis the site of occurrence, perse does not, render the prosecution case, to beget stains, of pervasive vitiations,(ii) yet when for reasons aforestated, with entrenched vitiatory stains gripping the relevant proceedings, thereupon for erasing the effects of all vitiations, rather gripping the

prosecution case (iii) it was incumbent, upon, the Investigating Officer concerned to, in the relevant proceedings, hence associate independent witnesses, especially, when they were evidently available, in close, proximity to the site of occurrence. Reiteratedly, their association, would, have removed all stains aforesaid, imbuing the prosecution case, (iv) contrarily their non-association, aggravates all the deep vitiatory stains permeating the prosecution case. Consequently, the apt non-association of independent witnesses, despite, their evident availability in proximity, to, the site of occurrence, rather gives accelerated momentum, to inferences, of, a) the Investigating Officer concerned, holding slanted and skewed investigation(s), b) his contriving AND inventing the factum of his effectuating recovery(s), from, car bearing No. PB-12B-3523, c) thereupon the effect(s) of consistent testimonies rendered, by

the prosecution witnesses also loose their respective vigor and tenacity.

13. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court has not appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned appellate Court suffers from a perversity or absurdity of mis-appreciation and non-appreciation of evidence on record.

14. The appeal is allowed. The impugned judgment is quashed and set aside. The accused is acquitted. Case property be destroyed after the expiry of the period of limitation, for filing an appeal. Fine amount, if deposited by the accused be forthwith refunded to them. Personal and surety bond(s) be forthwith discharged.

**(Sureshwar Thakur)**  
**Judge**

**November 30, 2017**  
(Kalpana)

