

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Appeals No. 252 & 253 of 2017
Reserved on: 15.03.2018
Decided on: 29.03.2018

Cr. Appeal No. 252 of 2017:

Rahul KumarAppellant.
Versus
The State of H.P.Respondent.

Cr. Appeal No. 253 of 2017:

Raj Kaur @ RanoAppellant.
Versus
The State of H.P.Respondent.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

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

¹ *Whether approved for reporting?*

For the appellant(s): Mr. B.L. Soni, Advocate.

For respondent: Mr. Vinod Thakur, Mr. Sudhir Bhatnagar, Additional Advocates General with Mr. J.S.Guleria and Mr. Bhupinder Thakur, Deputy Advocates General.

Chander Bhusan Barowalia, Judge.

The present appeals have been preferred by the appellants/accused/convicts (hereinafter referred to as “the

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

accused”) laying challenge to judgment, dated 04.02.2017, passed by learned Special Judge, Hamirpur, H.P., in Sessions Trial No. 20 of 2015, whereby the accused persons were convicted for the offence punishable under Section 20(ii)(c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as “the ND&PS Act”).

2. The factual matrix, as per the prosecution story, may succinctly be summarized as under:

On 24.04.2015, at about 10:45 p.m., a police party was on routine Highway patrol duty and a *nakka* was laid on Super Highway at a distance of 100 meters from Police Post Jahu. The police party started checking the vehicles and around 11:24 p.m. a white Santro Car, having registration No. PB10AJ-9504, which was coming from Bhambla side and going towards, Bhota, was signaled to stop for checking. There were two occupants in the vehicle. Accused Rahul Kumar was driving the vehicle and accused Raj Kaur @ Rano was sitting on the front passenger seat. On asking, the accused persons could not show the documents of the vehicle, so the vehicle was impounded by the police under Section 207 of the Motor Vehicles Act, 1988, vide infringement report No. 0371735, dated 24.04.2015. Police personnel conducted search of the vehicle in presence of the accused persons and the official witnesses. The

search yielded to recovery of a light blue colour carry bag, which was kept in the dicky, near the speaker. The bag was checked and the same was found stuffed with a black colour substance, which on burning and smelling was found to be *charas*. The *charas* was in the form of small sticks and pancakes. An electronic scale was brought from Police Post Jahu and on weighment *charas* was found to be 1.5 kgs. The police completed sealing formalities and NCB form, in triplicate, was filled in. Facsimile seal was taken at serial No. 8 of NCB-1 form, in triplicate, and the seal was handed over to Constable Dinesh Kumar for safe custody. The sealed parcel, containing carry bag and contraband, was taken into possession in presence of official witnesses, viz., Constable Dinesh Kumar and Constable Daler Singh. Photographs, from the digital camera, were also clicked. After completion of search, recovery and seizure formalities, *rukka* was sent to Police Station Bhoraj, through HHG Satish Kumar, for registration of FIR, whereupon FIR was registered against both the accused. SHO, Police Station Bhoranj was requested to depute a Lady Constable for further proceedings. SHO deputed Lady Constable Santosh Kumari and she was sent to the spot. The accused persons were arrested and spot map was prepared. The statements of the witnesses were also recorded. Subsequently, police personnel alongwith the accused persons went to Police

Station, Bhoranj, and the accused persons were handed over to SHO, Mukesh Kumar. SHO conducted resealing proceedings and sample seal was taken on a separate piece of cloth. SHO also filled the relevant columns of NCB-1 form, in triplicate. Parcel, containing contraband, was handed over to HC Subhash Chand for safe custody. Resealing certificate was also issued and an entry was made in Daily Station diary, vide GD Entry No. 9(A) dated 25.04.2015. Entries were also made, qua the deposit of the sealed parcel, in *Malkhana* Register No. 19 at serial No. 43/674. On 27.04.2015, the case property alongwith relevant documents were sent to Forensic Science Laboratory, Junga, for chemical analysis. Report, under Section 57 of the ND&PS Act, through Constable Daler Singh, was sent to SDPO, Barsar, by ASI Vijay Kumar, qua which an entry was made at serial No. 4, dated 27.04.2015, in the Special Reports Register. Investigation qua the vehicle, in which the accused persons were transporting the contraband, was done and it was found to be owned by accused Tarsem Singh. Chemical analysis report revealed the presence of cannabiniods, including the presence of tetrahyrocannabinol and the microscopic examination indicated the presence of characteristic cystolithic hairs. *Charas* was found to be present in the exhibit and the quantity of purified resin, as found in the exhibit, stated to be '*charas*' is 23.63% w/w/, thus the exhibit

was found to be extract of 'cannabis' and sample of '*charas*'. After completion of the investigation, *challan* was prepared and presented in the Court.

3. The prosecution, in order to prove its case, examined as many as fifteen witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C., wherein they pleaded not guilty and claimed to be tried.

4. The learned Trial Court, vide impugned judgment dated 04.02.2017, convicted the accused persons Rahul Kumar and Raj Kaur @ Rano for the offence punishable under Section 20(ii)(c) of the ND&PS Act and sentenced them to undergo rigorous imprisonment for a term of twelve years each and to pay a fine of ₹1,00,000/- (rupees one lac) and in default of payment of fine, they were further ordered to undergo simple imprisonment for a term of six months, hence the present appeal preferred by the accused persons Rahul Kumar and Raj Kaur @ Rano.

5. The learned counsel for the appellants has argued that the appellants are innocent and have been falsely implicated in this case. He has argued that no recovery was effected from the conscious and exclusive possession of the appellants. He has argued that as per the prosecution story the alleged material was recovered from the dicky of the car and it was seized by the police.

The appellants were neither having knowledge about the contraband nor the contraband was recovered from them, so they be acquitted after setting aside the judgment of the learned Trial Court, which is passed on the basis of surmises and conjectures and the prosecution has failed to prove the case against the accused. He has further argued that the learned Trial Court without appreciating the fact that the prosecution has failed to prove the guilt of the accused persons beyond the shadow of reasonable doubt convicted the accused persons. The prosecution also did not examine any independent witness. Conversely, the learned Additional Advocate General has argued that the contraband was recovered from the conscious and exclusive possession of the appellants and the judgment of conviction and sentence passed by the learned Trial Court is as per law. Thus, the appeal be dismissed.

6. In rebuttal, the learned Counsel for the appellants has argued that as no independent witness has been examined by the prosecution and the appellants did not have knowledge of contraband, so they be given benefit of doubt and be acquitted and the appeal be allowed.

7. In order to appreciate the rival contentions of the parties we have gone through the record carefully.

8. Before discussing the prosecution evidence in depth few

vital aspects of the prosecution case needs discussion. On 24.04.2015, at about 11:00 p.m., police personnel had set up a *nakka* on Super Highway near Jahu. At about 11:24 p.m. they intercepted a white Santro Car, having registration No. PB-10AJ-9504, and the accused persons Rahul Kumar and Raj Kaur @ Rano were its occupants. The accused persons, on being asked, could not produce the documents of the vehicle and when the vehicle was searched 1.5 kgs of *charas* was recovered from the dicky of the vehicle. In the wake of the above circumstances, as portrayed by the prosecution, it was a chance recovery during midnight on a highway. In the present case, admittedly no independent witnesses were examined, but as the recovery was effected during odd hours of night and that too on a highway, there were bleak chances of procuring independent witnesses. Therefore, in the case in hand only official prosecution witnesses have been examined and now their evidence is to be analyzed on the touchstones of truthfulness and veracity. It is settled law of criminal jurisprudence that conviction can be based on the testimony of official witnesses and it is not necessary that in each and every case, public persons must be joined in investigation.

9. There are two pillars to the edifice of the prosecution story. First, the statements of the official prosecution witnesses and

second is the documentary evidence, which have come on record. The members of the patrol duty, on the relevant night, were HC Anupam Sharma, Constable Dinesh Kumar, Constable Daler Singh, HHG Sudesh Kumar, HHG Satish Kumar and HHG Ranbir Singh. Out of these persons, Constable Dinesh Kumar (PW-1), Constable Daler Singh (PW-2), HHG Satish Kumar (PW-3) and HC Anupam Sharma (PW-14) were examined by the prosecution.

10. PW-1, Constable Dinesh Kumar, deposed that on 24.04.2015, during the period from 11:00 p.m. to 02:00 a.m., he alongwith HC Anupam Sharma, Constable Daler Singh, HHG Satish Kumar, HHG Sudesh Kumar and HHG Ranbir Singh laid a *nakka* on Super Highway, near Police Post Jahu. At about 11:24 a.m., they intercepted a white car, having registration No. PB-10AJ-9504, which was signaled to stop. There were two occupants in the vehicle and one was a lady. They, on being asked, did not produce documents of the vehicle, so the vehicle was impounded under Section 207 of the M.V. Act. The driver divulged his name as Rahul Kumar, resident of House No. 347, Ward No. 25, Muhalla Patti Muhabat Ki, P.S. South City, Tehsil and District Moga, Punjab, and the lady disclosed her name as Raj Kaur @ Rano, resident of Muhalla Sadan Bali Wasti, P.S. South City, Moga, district Moga, Punjab. He has further deposed that a blue colour carry bag was recovered from

the dicky, near the speaker and on checking the same, it contained some substance, which was in the shape of sticks and chapatti. On smelling the substance was found to be *charas*. Constable Daler Singh brought digital scale from Police Post, Jahu and the *charas* alongwith the carry bag was weighed and found to be 1.5 kgs. As per the version of this witness, *charas* alongwith the carry bag was sealed in a cloth parcel by affixing nine seals of impression 'K'. NCB form, in triplicate, was prepared and the seal impression was taken separately on NCB form. Impressions of seal 'K' were separately taken on a piece of cloth, which is Ex. PW-1/A, which bears his signatures and the signatures of HC Anupam Sharma and also the signatures of the accused persons. He has further deposed that seal after its use was handed over to him and HC Anupam Sharma prepared *rukka*, which was sent through HHG Satish Kumar, to Police Station Bhoranj for registration of a case. Photographs were also taken and site plan was prepared. On 25.04.2015, at about 04:00 a.m., HHG Satish Kumar came on the spot alongwith the case file and Lady Constable Santosh Kumari. His statement was recorded, the accused persons were arrested and taken to Police Station. This witness, in his cross-examination, has deposed that prior to checking the vehicle of the accused persons, 4-5 vehicles were checked, but they did not *challan* any of them. He denied that

at a distance of 200-250 meters from the *nakka* there is *abadi*. He admitted that the I.O. did not made any effort to associate any independent witness. As per this witness, personal search of both the accused persons were conducted after the recovery of the *charas*.

11. PW-2, Constable Daler Singh, reiterated the version, as deposed by PW-1, Constable Dinesh Kumar. He deposed that he was asked by I.O. to bring digital scale from Police Post, Jahu, so he brought the same. As per this witness, *charas* alongwith the carry bag was weighed and found to be 1.5 kgs. This witness, in his cross-examination, has admitted that about 300 meters from the spot there is one under construction electricity sub station, green valley school and *abadi*. As per this witness, I.O. tried to associate independent witnesses, but no one was present there. PW-3, HHG Satish Kumar, also reiterated the versions, as deposed by PW-1 and PW-2, so there is no variance noticed in his deposition. This witness, in his cross-examination, has deposed that he is not aware about the proceedings undertaken by the Investigating Officer after the vehicle was *challaned* under the Motor Vehicles Act. He feigned his ignorance that who had prepared the parcel, Ex. P-1, and in what manner. As per this witness, at a distance of 70 meters there is electric sub-station, Green Valley School and other *abadi* surrounding the Police Post. However, the Investigating Officer did

not make any effort to associate any independent witness. When he returned from Police Station, Bhoranj, alongwith the case file, all the police personnel were on the spot.

12. Another important witness in the case in hand is PW-14, HC Anupam Sharma (Investigating Officer). As per the deposition of PW-14, on 24.04.2015, around 10:45 p.m., he alongwith Constable Dinesh Kumar, Constables Daler Singh, HHG Sudesh Kumar, HHG Satish Kumar and HHG Ranbir Singh, was on routine Highway patrol duty towards Jahu etc. He has further deposed that qua patrol duty *Rapat* No. 24, *Rajnamcha* dated 24.04.2015, which is, Ex.PW-6/A, has been entered. *Nakka* was laid about 100 meters from Police Post Jahu and in between 11:00 p.m. to 2:00 a.m. They checked vehicles during this period and about 11:24 p.m. a white Santro car, having registration No. PB-10AJ-9504 was intercepted, which was coming from Bhambla and going towards Bhota. The vehicle was stopped and it was being driven by a male and a female was also sitting in the vehicle. He asked for the documents of the vehicle, but the driver failed to produce the same, so the vehicle was impounded under Section 207 of the M.V. Act and to this effect infringement report and *challan* are Ex. PW-14/A-1 and Ex. PW-14/A-2, respectively. He has further deposed that male divulged his name as Rahul Kumar son of Balwinder Singh, resident of Ward No.

25, House No. 347, Patti Muhabatan Ki, P.S. City Moga, District Moga and female disclosed her name Raj Kaur @ Rano, daughter of Jasbir Singh, resident of Near Science College, Jeevan Basti, Jagroan, District Ludhiana (accused No. 1 and 2, respectively). He asked the accused persons to take their belongings from the vehicle, but they responded that there is nothing in the vehicle. He searched the dicky of the vehicle and found a carry bag, which was kept near the sound speaker. The bag was checked and found containing black colour substance, which was in the form of small sticks and *chapaties*. On smelling and burning the recovered stuff was found to be *charas*, so he sent Constable Daler Singh (PW-2) to Police Post, Jahu for bringing digital weighing scale. On weighment the contraband was found to be 1.5 kgs. As per this witness, the vehicle was searched on the spot in presence of police personnel and the accused persons. He, after putting the recovered contraband in a cloth parcel, sealed the same by affixing nine seals of impression 'K'. NCB-1 form, in triplicate, Ex. PW-14/B, was filled in and facsimile seal impression 'K' was taken on NCB-1 form, in triplicate. Sample seal was separately kept in a cloth, which is Ex. PW-1/A, and after its use, it was handed over to Constable Dinesh Kumar (PW-1). Sealed parcel alongwith relevant documents was taken into possession and vehicle was also seized vide common recovery and

seizure memo, Ex. PW-1/B, in presence of Constables Dinesh Kumar (PW-1) and Daler Singh (PW-2). During the proceedings, photographs, Ex. PW-12/A-1 to Ex. PW-12/A-13 were also clicked. *Rukka*, Ex. PW-14/C, was sent through HHG Satish Kumar (PW-3) to Police Station, Bhoranj, for registration of FIR and consequent thereto FIR, Ex. PW-9/A, was registered. He telephonically requested SHO, P.S. Bhoranj for deputing a Lady Constable. He prepared the spot map, Ex. PW-14/D, and recorded the statements of the official witnesses, except the statement of HHG Satish Kumar. When Lady Constable Santosh Kumari (PW-4) reached around 03:30 a.m. the accused persons were arrested vide arrest memos, Ex. PW-14/E and Ex. PW-4/A. At about 04:00 a.m. HHG Satish Kumar (PW-3) returned on the spot and his statement was also recorded. Subsequently, he alongwith the accused persons, case property and police personnel proceeded to Police Station, Bhoranj, in a private vehicle. Constable Dinesh Kumar (PW-1) drove the vehicle of the accused persons to Police Station, Bhoranj and they reached there at 05:10 a.m. The accused persons, case property and other relevant documents were presented before SHO Inspector Mukesh Kumar, Police Station, Bhoranj. SHO handed over to him resealing certificate, which is Ex. PW-9/C. He also carried the personal search of the accused persons in Police Station, Bhoranj. After taking

remand of the accused persons, case file was handed over to ASI Vijay Kumar, Incharge Police Post, Jahu, for further investigation.

13. PW-14 has further deposed that on 13.07.2015 the case file was again handed over to him by ASI Vijay Kumar for ascertaining and tracing the owner of the vehicle. Thus, on 14.07.2015, he made a communication with District Transport Officer, Ludhiana, vide letter, Ex. PW-14/F, and the vehicle was found registered in the name of Tarsem Singh son of Gurdev Singh, resident of 1453/14, Janta Nagar, Gill Road, Ludhiana. He visited the address and met one Kulwant Singh, son of Sarsa Singh, who divulged that he has purchased House No. 1453/14 from previous owner Gurdev Singh. He recorded the statement of Kulwant Singh (PW-5). He also obtained a report from Manjeet Kaur, Councilor, Ward No. 66, Ludhiana, and also recorded her statement. Then, he returned and handed over the case file to SHO, Police Station Bhoranj. As per this witness, he could not associate independent witnesses at the time of search and recovery, due to odd hours. This witness, in his cross-examination, has deposed that on the spot also personal search of the accused persons was carried out to ascertain whether they are carrying any weapon or not. Prior to the arrest of the accused persons, their search was carried out. He again stated that personal search was carried out after the arrest of the accused

persons. As per the testimony of this witness, personal search of the accused was not carried out in his presence and he also feigned his ignorance that any copy of arrest memo was supplied to the accused persons or not. He did not make any effort to associate any independent witness, as the *charas* was recovered per chance, so he did not find it incumbent to associate independent witnesses.

14. PW-4, Lady Constable Santosh Kumari, deposed that on 25.04.2015, at about 02:15 a.m., she was informed by MHC, Police Station Bhoranj that accused persons have been nabbed near Police Post, Jahu, on the highway. She reached on the spot at 03:30 p.m. and was associated in the investigation. In her presence personal search of accused Raj Kaur was conducted, qua which personal search memo was prepared. Vide memo, Ex. PW-4/A, which bears her signatures, accused Raj Kaur was apprised the grounds of arrest by the Investigating Officer and her father was informed about the arrest. Statements of the witnesses were recorded in her presence. Thereafter, accused persons were taken to Police Station, Bhoranj. This witness, in her cross-examination, has deposed that she visited the spot in her personal vehicle, which was being driven by her *devar*. She did not go to Police Post, Jahu on that day. PW-6, Shri Kulwant Singh, deposed that he had purchased House No. 1453 in the year 2007 from Shri Gurdev Singh and Tarsem Singh (accused)

is son of Gurdev Singh. He has further deposed that after selling his house he went to Barnala and later he returned to Ludhiana. PW-6, Constable Ashwani Kumar, deposed that copy of *Rapat* No. 24, *Rojnamcha*, dated 24.04.2015, is correct, as per original record, which is Ex. PW-6/A and he has prepared the same.

15. PW-7, HHC Mahinder Singh, brought the original record to the Court, which pertained to GD entry No. 3(A), dated 25.04.2015, copy of which is Ex. PW-7/A-1, copy of GD entry No. 8(A), dated 25.04.2015, copy whereof is Ex. PW-7/A-2, copy of GD entry No. 9(A), dated 25.04.2015, Ex. PW-7/A-3 and copy of GD entry No. 11(A), dated 27.04.2015, Ex. PW-7/A-4. As per this witness, aforesaid documents are correct as per the original record. PW-8, HHC Sanjay Kumar, deposed that on 27.04.2015, MHC Subhash, Police Station Bhoranj, vide RC No. 83/15, handed over him a sealed parcel, which was bearing nine seals of impression 'K' and three seals bearing impression 'A' alongwith docket, copy of FIR, copy of seizure memo, NCB forms, in triplicate, and sample seals "K" and "A". He safely deposited the case property on the same day at SFSL, Junga and receipt was handed over to MHC. PW-9, Inspector Mukesh Kumar, the then SHO Police Station, Bhoranj, deposed that on 25.04.2015, at about 3:10 a.m., HHG Satish Kumar (PW-3) came to police station with *rukka*, whereupon FIR, Ex. PW-9/A, was

registered. Thereafter, the case file was given to HHG Satish Kumar. On the same day, at about 05:10 a.m., HC Anupam (PW-14) came to the police station alongwith the accused persons and the case property. The case property was a sealed parcel, having nine seals of impression 'K', containing 1.5 kgs of *charas*. NCB form, in triplicate, alongwith sample seal having impression 'K' was also presented before him. He resealed the parcel by affixing three seals of impression 'A' and facsimile seal was taken on a separate piece of cloth, which is Ex. PW-9/B. He also filled in the relevant columns of NCB form and the case property was handed over to MHC for safe custody. He issued resealing certificate, which is Ex. PW-9/C.

16. PW-10, HC Subhash Chand, deposed that on 25.04.2015, Inspector Mukesh Kumar (PW-9) and HC Anupam Sharma (PW-14) deposited with him a sealed parcel, bearing nine seals of impression 'K' and three seals of impression 'A', containing 1.5 kgs of *charas*, NCB-1 form, in triplicate, sample seals 'K' and 'A' and vehicle No PB-10AJ-9504 alongwith its key. He made apt entries qua the aforesaid case property at Sr. No. 43/674 in *malkhana* register No. 19, copy whereof is Ex. PW-10/A. He has further deposed that on 27.04.2015, vide RC No. 83/15, Ex. PW-10/B, the case property, except the vehicle, alongwith copy of seizure memo and copy of FIR was sent to SFSL, Junga, through LHC

Sanjay Kumar (PW-8). After deposit of the case property, receipt was handed over to him. He also updated column No. 12 in NCB-1 form, in triplicate. He has further deposed that on 16.05.2015 the case property alongwith the FSL report, Ex. PX, was received and to this effect an entry is on Ex. PW-10/A. PW-11, HC Karam Singh, Reader to SDPO, Barsar, deposed that on 26.04.2015, at about 02:15 p.m., Constable Daler Singh (PW-2) came with Special Report, which was sent by Incharge, Police Post, Jahu. SDPO, Barsar, received the same and it was handed over to him for making entry in the special Reports Register. The Special Report is Ex. PW-2/A and requisite entry was made at Sr. No. 4, dated 27.04.2015, copy whereof is Ex. PW-11/A. PW-12, Shri Virender Kumar, Photographer, deposed that on 31.05.2015, ASI Vijay Kumar (PW-13), gave him a digital camera alongwith the memory card for developing photographs. He got developed photographs, Ex. PW-12/A-1 to Ex. PW-12/A-13 and certificate under Section 65-B of the Evidence Act, is Ex. PW-12/B.

17. PW-13, ASI Vijay Kumar, deposed that on 26.04.2015, investigation was handed over to him by SHO, Police Station, Bhoranj. He prepared special report, Ex. PW-13/A, and sent the same to SDPO, Barasr, through Constable Daler Singh (PW-2). He also recorded the statements of the official witnesses and after receipt of FSL report, Ex. PX, prepared *challan* and presented the

same in the Court. PW-15, Shri Surinder Bhandari, Junior Assistant, DTO Ludhiana, Punjab, brought the registration record of vehicle having registration No. PB-10AJ-9504. The vehicle was registered in the name of Tarsem Singh son of Shri Gurdev Singh, resident of 1453/14, Janta Nagar, Gill Road, Ludhiana. DTO report, in this regard, is Ex. PW-14/G.

18. After exhaustively discussing and analyzing the evidence, which has come on record, undisputedly, the present case is of a chance recovery and the recovery was effected during odd hours of night, so the possibility of associating independent witnesses at that time was subtle. In ***Ajmer Singh vs. State of Haryana, (2010) 3 Supreme Court Cases 746***, the Hon'ble Supreme Court, vide para 20, has held as under:

“20. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The Court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.”

Thus, the non-association of independent witnesses by the police

cannot at all be said to be fatal to the prosecution case. Now, the statements of official prosecution witnesses and other link witnesses need examination on the touchstone of credibility and veracity.

19. As per the testimony of PW-1, Constable Dinesh Kumar, on 24.04.2015, he alongwith HC Anupam (PW-14), Constable Daler Singh (PW-2), HHG Satish Kumar (PW-3), HHG Sudesh Kumar and HHG Ranbir Singh had laid a routine *nakka* near Police Post, Jahu, on Super Highway from 11:00 p.m. to 02:00 a.m. (25.02.2015). They, at about 11:24 p.m., stopped a white car, having registration No. PB-10AJ-9504, which was coming from Bhambla side. There were two occupants in the vehicle, a male (driver) and a female. On being asked, the driver could not produce documents of the vehicle, thus vehicle was impounded under section 207 of M.V. Act. Driver disclosed his name as Rahul Kumar son of Shri Balwinder Singh, Ward No. 25, House No. 347, Muhalla Patti Muhabat Ki, Police Station south City, Tehsil and District Moga (Punjab) and the lady disclosed her name as Raj Kaur @ Rano daughter of Jasbir Singh, resident of Muhalla Sadan Bali Wasti, Police Station South City, Moga, district Moga (Punjab). The vehicle was searched and a blue colour carry bag was recovered from the dicky, which was kept near the speaker. The bag was checked in presence of the accused persons and found containing some substance, which was in the

shape of sticks and *chapatti*. The substance, on smelling and tasting was found to be *charas*. Thereafter, Constable Daler Singh (PW-1) was sent to Police Post, Jahu, and he brought digital scale. The contraband, on weighment, alongwith the carry bag was found to be 1.5 kgs. The recovered contraband alongwith the carry bag was sealed in a cloth parcel and sealed with nine seals having impression 'K' and NCB form, in triplicate, was prepared. PW-1 has further deposed that sample seal was taken on a separate piece of cloth, which is Ex. PW-1/A, which bears his and the signatures of Constable Daler Singh (PW-2), HC Anupam Sharma (PW-14) and that of the accused persons. Seal after its use was handed over to him for safe custody. Investigating Officer, HC Anupam Sharma (PW-14) prepared *rukka* and sent the same to Police Station, Bhoranj, through HHG Satish Kumar (PW-3) for registration of a case. Photographs were also clicked and Investigating Officer prepared the site plan. As per the version of PW-1 at about 04:00 a.m. on 25.04.2015 HHG Satish Kumar (PW-3) returned to the spot with a case file and Lady constable Santosh Kumari. The accused persons were arrested and apprised the grounds of arrest. Subsequently, the accused persons alongwith the case property were taken to Police Station Bhoranj. Thus, the testimony of PW-1 fully inspires confidence and there is nothing to disbelieve his testimony.

20. PW-2, Constable Daler Singh, deposed that on 24.04.2015, he alongwith HC Anupam (PW-14), Constable Dinesh Kumar (PW-1), HHG Sudesh Kumar and HHG Ranbir Singh laid a *nakka* near Police Post, Jahu, on Super Highway from 11:00 p.m. to 02:00 a.m. (25.02.2015). He has reiterated the version of PW-1 by deposing that at about 11:24 p.m. a white car, having registration No. PB-10AJ-9504, came from Bhambla side and was signaled to stop. There were two occupants in the car, viz., driver (male) and a female. They could not produce the documents of the vehicle, so the vehicle was impounded under the M.V. Act. The driver disclosed his name as Rahul son of Shri Balwinder Singh, Ward No. 25, House No. 347, Muhalla Patti Muhabat Kee, Police Station South City, Tehsil and District Moga (Punjab) and the lady disclosed her name as Raj Kaur @ Rano daughter of Jasbir Singh, resident of Muhalla Sadan Bali Wasti, Police Station South City, Moga, District Moga (Punjab). Search of the vehicle was conducted by the Investigating Officer and a blue carry bag was recovered, which was kept in the dicky near the speaker. In presence of the accused persons, the bag was checked and found containing some substance in the shape of sticks and *chapatti*. The recovered substance, on smelling by Investigating Officer, was found to be *charas*. Investigating Officer sent him to Police Post, Jahu, and he brought digital scale. The contraband was

weighed alongwith the carry bag and found to be 1.5 kgs. He has further deposed that carry bag was sealed in a cloth parcel with nine seals of impression 'K' and NCB form, in triplicate, was prepared. Seal impression 'K' was also taken on the NCB form and sample seal was taken separately on a piece of cloth, Ex. PW-1/A, which bears his and the signatures of Constable Dinesh Kumar (PW-1), HC Anupam Sharma (PW-14) as well as the accused persons. Seal, after its use, was handed over to Constable Dinesh Kumar (PW-1). Investigating Officer (PW-14) prepared *rukka*, which was sent to Police Station Bhoranj, through HHG Satish Kumar (PW-3), for registration of a case. Investigating Officer also clicked photographs and prepared the site plan. At about 04:00 a.m. on 25.04.2015 HHG Satish Kumar returned to the spot with a case file and Lady Constable Santosh Kumari. He has further deposed that accused persons were arrested and apprised the ground of their arrest. Subsequently, the accused persons alongwith the case property were taken to Police Station, Bhoranj. PW-2 has identified parcel, Ex. P-1, carry bag, Ex. P-2 and *charas*, Ex. P3, in the Court, which were allegedly recovered from the accused on the spot. He has further deposed that on 26.04.2015 he was given Special Report, Ex. PW-2/A, by the Investigating Officer, which he handed over to SDPO, Barsar and his statement in this respect was recorded by the

Investigating Officer on 31.05.2015.

21. PW-3, HHG Satish Kumar, has also reiterated the versions, of PW-1 and PW-2, so now only the statement of PW-14, Investigating Officer Anupam Sharma, needs to be looked into. The statement of this witness has already been examined at length in earlier part of this judgment. We find nothing in the statement of PW-14 to disbelieve his version, rather his statement is fully corroborated by other official prosecution witnesses.

22. After exhaustively discussing the evidence, which has come on record, we find that the present case is of chance recovery, thus the provisions of Section 50 of the ND&PS Act are not attracted. The learned counsel for the appellants has placed reliance on a judgment of this Court rendered in ***Deep vs. State of H.P., 2016(1) Criminal Court Cases 625 (H.P.) (DB)***, wherein it has been held that the purpose of joining independent witnesses at the time of arrest, search and sealing process is to inspire confidence that all codal formalities were completed on the spot at the time of arrest, and sealing process, in the absence of same no reliance can be placed on the search and seizure. Relevant paras of the judgment (supra) are reproduced hereunder:

“25. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubt for the

commission of offence under Section 20 of the N.D & P.S., Act, since the mandatory provisions have not been complied with and the manner in which the case property was taken out and re-deposited, coupled with the fact that no independent witnesses, though available were associated.

26. *Accordingly, in view of the analysis and discussion made hereinabove, the appeals are allowed. Judgment of conviction and sentence dated 4/5.1.2011, rendered by the learned P.O. Fast Track Court, Mandi, H.P., in Sessions Trial No. 16 of 2009, is set aside. Accused are acquitted of the charges framed against them by giving them benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to them. Since the accused are in jail, they be released forthwith, if not required in any other case."*

However, keeping in view the fact that in the case in hand it is of chance recovery, that too during the odd hours of night on a highway and also keeping in view the ratio laid by Hon'ble Supreme Court in **Ajmer Singh vs. State of Haryana (2010) 3 Supreme Court Cases 746**, as discussed above, the independent witnesses cannot be found at all places and at all times, thus the obligation to associate public witnesses during search, sealing process and arrest of the accused is not absolute. We, in wake of the facts that it was a chance recovery effected during odd hours of night and in the course

of routine traffic checking, are satisfied that search, recovery of contraband, sealing of contraband and arrest etc. are not vitiated for the reason that independent witnesses were not associated. We also, after taking due care and caution in evaluating the evidence of official prosecution witnesses, find that the evidence, which has come on record, inspires confidence and thus believable.

23. In view of what has been discussed hereinabove, the appeals are without merits, as the statements of the prosecution witnesses, which have been exhaustively discussed hereinabove, inspire confidence. The non-joining of independent witnesses, which were not available during odd hours of night, cannot be said to be fatal to the prosecution case, as the recovery was effected during late hours of night, public witnesses could not be expected there. The statements of the official prosecution witnesses inspire confidence and the other relevant material, which has come on record, proves the case of the prosecution beyond the shadow of reasonable doubt. The evidence of the official prosecution witnesses and other material, which has come on record, unambiguously establish that the prosecution has proved the guilt of the accused persons beyond the shadow of reasonable doubt. Thus, as the prosecution has proved the guilt of the accused persons beyond the shadow of reasonable doubt, we find no infirmity in the judgment of conviction passed by

the learned Trial Court. The appeals are without merits, deserve dismissal and are accordingly dismissed.

24. In view of the above, the appeals, so also pending application(s), if any, stand(s) disposed of.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

29th March, 2018
(virender)