

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA
Cr. Appeal No. 542 of 2017
Reserved on: 24.10.2019
Decided on: 29.02.2020.

Budh RamAppellant

Versus

State of Himachal PradeshRespondent

Coram:

Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹ Yes.

For the appellant : Mr. Ajay Kochhar, Advocate.

For the respondent : Mr. Narinder Guleria, Additional
Advocate General.

Jyotsna Rewal Dua, Judge.

Instant appeal has been preferred against the judgment dated 30.05.2017, passed by learned Special Judge-II (Additional Sessions Judge), Kullu, in Sessions Trial No.122 of 2014, arising out of FIR No.23 of 2014, dated 26.02.2014, whereunder accused who has been held guilty of possessing 950 grams charas recovered from vehicle and 6.750 Kg. charas recovered from his house, stands convicted for having committed offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'NDPS' Act in short), and has been

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

sentenced to undergo rigorous imprisonment for a term of 10 years.

2. The prosecution case is that:-

2(i) On 26.03.2014, at around 6.30 p.m., a police party comprising of Sub Inspector Ramesh Prasher (PW-11), Sub Inspector Bhupender Pal (PW-5), HHC Harnam Singh (PW-6) and Constable Ranjeet Singh (PW-8), laid a *Nakka* at Seund, District Kullu. A Scorpio vehicle bearing registration No.HP-34-C-1685, being driven by the accused, coming from Manikaran side, was stopped by the Investigating Officer SI Ramesh Prasher (PW-11). Observing the accused as perplexed, the Investigating Officer SI Ramesh Prasher felt it necessary to search the vehicle.

2(ii) At the same time, an auto rickshaw bearing No.HP-05-0701, came from 'Sharsadi' towards Bhuntar side, being driven by Rajeev Kumar (PW-1). This auto rickshaw was stopped and its driver was associated as an independent witness along with SI Bhupender Pal (PW-5).

2(iii) Before conducting the search of the vehicle, the Investigating Officer gave his personal search vide memo Ext.PW-1/A, duly signed by two independent witnesses as well as the accused. During search, the diesel tank of the offending

vehicle was found cut and covered with an iron plate topped with a mat and from the resultant space created therein, three packets wrapped with khakhi coloured cello tape were recovered. On opening these packets, black round shaped substance, wrapped in transparent polythene wrapper, was found. On detection, this substance was found to be charas-cannabis. The recovered charas, on being weighed, was found to be 950 grams.

2(iv) Recovered charas, along with wrappers, was put inside a cloth parcel. This parcel (Ext. PW-1/C), was sealed with six seal impressions of seal 'T'. The sample of seal was taken on separate piece of cloth (Ext. PW-1/B.) The parcel was duly signed by the accused, SI Ramesh Prasher (PW-11) and the independent witnesses. NCB-I form in triplicate (Ext. PW-4/D) was filled. The seal was embossed on it and thereafter, it was handed over to Rajeev Kumar (PW-1). Spot map (Ext. PW-11/A) and Rukka (Ext. PW-8/A), prepared by the Investigating Officer, were handed over to Constable Ranjeet Singh (PW-8), along with NCB-1 form in triplicate, the sample seal and the case property, for submitting the same to Police Station State CID, Bharari, District Shimla.

2(v) The accused in police custody was interrogated by SI Ramesh Prasher (PW-11). During interrogation, the accused made a disclosure statement (Ext. PW-1/D) under Section 27 of the Indian Evidence Act to the effect that he had also kept charas in his home at Hathithan which is exclusively within his knowledge and he can get it recovered by identifying the place where the same has been kept. The disclosure statement was recorded in presence of PW-1 Rajiv Kumar, PW-5 SI Bhupender Pal. This information was conveyed by the Investigating Officer PW-11 SI Ramesh Prasher through his cell phone to Deputy Superintendent of Police, CID Mandi, Manohar Lal (PW-10). The Deputy Superintendent of Police, Manohar Lal (PW-10), informed SI Ramesh Prasher that he was in the area and would reach the spot.

2(vi) Dy. S.P. Manohar Lal (PW-10) met the police party. PW-2 Hira Lal was associated as an independent witness. The house of the accused at Hathithan was searched on the basis of the disclosure statement of the accused. The police recovered nine packets wrapped with khakhi coloured cello tape from the lowest shelf of almirah kept inside his house. On opening the packets, the contraband/charas was found

therein wrapped with transparent polythene, weighing 6.750 Kg.

2(vii) The charas so recovered from the house of the accused on the basis of his disclosure statement, was put in a cloth parcel and sealed with 12 impressions of seals 'T', after taking the seal from PW-1 Rajeev Kumar. The NCB-1 forms in triplicate were filled. The impression of seal 'T' was embossed on it. The possession of contraband was taken vide seizure memo Ext. PW-1/E, in presence of witnesses PW-1 Rajeev Kumar and PW-2 Hira Lal. The recovered charas along with NCB-1 form in triplicate, sample seal etc., were sent through PW-6 HHC Harnam Singh to Police Station State CID, Bharari, District Shimla. Spot map Ext. PW-2/B was prepared. The accused was arrested vide arrest memo Ext. PW-11/C.

2(viii) During investigation, the driving licence of accused Ext. PW-11/E, was taken into possession. The Investigating Officer SI Ramesh Prasher (PW-11), prepared a special report Ext. PW-3/A (original being Ext. PW-11/D), which was sent through fax to Deputy Superintendent of Police. On receipt of this special report, PW-3 HC Anil Kumar, made entry in the register vide abstract Ext. PW-3/B. The endorsement of Dy. S.P. CID Crimes, on the special report is Ext. PW-3/C. On

26.03.2014, at around 10.35 p.m., Rukka Ext. PW-4/A was received through fax in Police Station State CID, Bharari. The same was handed over to PW-4 HC Prakash Chand (MHC) by PW-7 SI Rajinder Singh Chauhan for registration of the case, on the basis of which, FIR Ext. PW-4/B was registered against the accused.

2(ix) On 27.03.2014, PW-4 HC Prakash Chand, received cloth parcel sealed with six impressions of seals 'T'. He re-sealed the same with three seal impressions of seal 'S', containing 950 grams charas. The other parcel received by HC Prakash Chand (PW-4) on same day, sealed with twelve impressions of seals 'T', was resealed with seal 'S' containing 6.750 Kg. charas. The reseal certificate Ext. PW-4/F was made at entry No.190 in the register and deposit was made in Malkhana. On 27.03.2014, PW-4 MHC Prakash Chand, sent the aforesaid two parcels along with other documents, to SFSL, Junga, through PW-9 HHC Bhagat Ram. On his return, the receipt was handed over to PW-4 MHC Prakash Chand. PW-6 HHC Harnam Singh, on receipt of the case property, deposited the same in Police Station State CID, Bharari, with PW-7 Inspector Rajinder Singh, who resealed the cloth parcels and completed the codal formalities. The samples were subjected

for examination at SFSL, Junga and as per SFSL report Ext. PW-4/C, the samples were found to be that of charas.

3. The accused was found to be in exclusive and conscious possession of 950 grams of charas in the vehicle as well as 6.750 Kg. charas in his house. Accordingly, he was charged for the commission of offence punishable under Section 20 of the NDPS Act, to which, he pleaded not guilty and claimed trial. The prosecution examined eleven witnesses and also produced documentary evidence in support of its case. After recording statement under Section 313 Cr.P.C., the accused also produced defence evidence. His defence was of false implication in the case and that no recovery was effected either from his house or from the vehicle in question.

Learned Trial Court, after appreciating the evidence and material brought on record, convicted the accused for the offence punishable under Section 20 of the NDPS Act, and sentenced him to undergo rigorous imprisonment for 10 years. Being aggrieved, the accused has preferred the instant appeal.

4. We have heard Sh. Ajay Kochhar, learned counsel for the accused and Sh. Narinder Guleria, learned Additional

Advocate General for the State and have gone through the record.

Learned counsel for the accused contended that the evidence led by the prosecution is neither trustworthy nor inspires confidence. It is full of contradictions. On the basis of such evidence, accused cannot be held guilty. He further contended that the search and alleged recovery of contraband from the accused was effected after the sunset and before the sunrise. There is non-compliance of provisions of Section 42 of the NDPS Act and in the facts and circumstances of the case, this non-compliance will be fatal to the prosecution case.

5. Following aspects are noticeable about time and place of Nakka:-

PW-1 Rajeev Kumar, stated that on 26.3.2014 his auto rikshaw was stopped by police party, at around 07.00 p.m., near Hathithan. PW-5 Sub Inspector Bhupender Pal, puts the time of *Nakka* at 6.30 p.m. at 200 Mtrs. toward Manikaran at Seund. In cross-examination, he stated that he does not remember whether the sun had set at that time or not. PW-6 HHC Harnam Singh, while supporting the stand of PW-5 SI Bhupender Pal stated that the vehicle was stopped at 06.00 p.m. This witness has stated that they had no prior

information about the contraband and that they had checked 4-5 vehicles before searching the vehicle in question. PW-8 C. Ranjeet Singh, stated that vehicle in question was the first one to be checked on that day. He corroborates the stand of PW-5 SI Bhupender Pal and PW-6 HHC Harnam Singh in respect of proximate time and place of *Nakka*. This witness stated that sun had just about set at the time of carrying out the search. PW-11 Investigating Officer Ramesh Prasher, in this regard stated that the police party had checked 4-5 vehicles before checking the vehicle in question. He further stated that it was not dark at 06.30 p.m. at the spot. Some of the prosecution witnesses stated that after carrying out the search, the documents were prepared inside the vehicle using light of vehicle as well as lights of mobile phone. The fact remains that the incident is of late March when sun does not set that early and it does not become dark so early in the evening.

6. In respect of the recovery of contraband from the vehicle of accused, the version of independent witness, PW-1 Rajeev Kumar, who was declared hostile, is that at the time of stopping of his auto rickshaw by the police, he was informed that charas had already been recovered from the accused; vehicle was not searched in his presence; denied witnessing

any recovery of charas; he has also denied witnessing personal search given by the Investigating Officer. This witness has also stated that all the documents were prepared in the office of Superintendent of Police, Kullu. Overall, the statement of this witness is not coherent, wherein, at times, he has practically admitted the entire prosecution case but later on denied. The fact remains that this witness has admitted his signatures on various documents including Ext. PW-1/A, prepared by the police and signed by other witnesses as well as by the accused. He has also admitted that weight of recovered charas was 950 grams. He has admitted that Scorpio Vehicle in question was there on National Highway. Accused and police party were also there. He has also admitted the photographs of the spot Ext.B-1 to B-13. PW-5 SI Bhupender Pal, has supported the entire case of prosecution regarding search of the vehicle driven by the accused as well as recovery of contraband/charas measuring 950 grams from it after observing all codal formalities. PW-6 HHC Harnam Singh and PW-8 C. Ranjeet Singh, have corroborated the entire case put forth by the prosecution, in respect of search and seizure of 950 grams charas from vehicle in question driven by the accused.

7. It is the case of the prosecution that after recovery of 950 grams charas from the vehicle, the accused while in police custody, gave a disclosure statement under Section 27 of the Indian Evidence Act Ext. PW-1/D, to the effect that charas was also lying in his house and he can get it recovered, whereafter, search of the house of the accused was carried out, which resulted in further recovery of 6.750 Kg. Charas-contraband. Whereas, learned defence counsel submitted that there are various inconsistencies and contradictions in the statements of witnesses, which safely lead to the inference that accused did not record any disclosure statement. Learned defence counsel contended that SI Ramesh Prashar (PW-11), though had statedly informed Dy. S.P. Manohar Lal by 07.00 p.m. that the accused had made a disclosure statement (Ext.PW-1/D), yet, in the statement of Dy. S.P. (PW-10), recorded under Section 161 Cr.P.C, there is no mention of any such disclosure statement. It may be noticed here that Dy. S.P. (PW-10) was not the Investigating Officer. Mere non-mentioning of disclosure statement of the accused by Dy. S.P. (PW-10) in his statement under Section 161 Cr.P.C., cannot advance the case of the accused.

PW-1 Rajeev Kumar declared hostile, though has not supported the stand of prosecution in respect of confessional statement having been given by the accused in his presence, however, he has specifically admitted having put his signatures on the disclosure statement of the accused (Ext.PW-1/D), prepared by the police, when accused made such statement. PW-5 SI Bhupender Pal stated that disclosure statement was made on the spot by the accused after Rukka was sent. He further stated that this confessional statement was recorded before the arrest of the accused. All other prosecution witnesses have stood by prosecution case in this regard.

Learned defence counsel next contended that accused cannot be considered under arrest at the time of making alleged disclosure statement as he was formally arrested much later, therefore, disclosure statement, can not be considered having been made validly. Learned Additional Advocate General refuted this argument by asserting that accused was in police custody and in our opinion also, justly relied upon **(2010) 3 SCC 56, titled Vikram Singh and Others vs. State of Punjab**, wherein, the Hon'ble Apex

Court, held that Section 27 of the Indian Evidence Act talks about custody of a person-accused of an offence and it is not essential that such an accused must be under formal arrest. Relevant extracts of the judgment (supra) are reproduced hereinafter:-

“39. *Section 27 of the Evidence Act reads as under:*

"27. *How much of information received from accused may be proved - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

A bare reading of the provision would reveal that a "person must be accused of any offence" and that he must be "in the custody of a police officer" and it is not essential that such an accused must be under formal arrest."

40. *The expression, "accused of any offence" in Section 27, as in Section 25, is also descriptive of the person concerned i.e. against a person who is accused of an offence, Section 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be*

untainted and is therefore declared provable insofar as it distinctly relates to the fact thereby discovered. Even though Section 27 is in the form of a proviso to Section 26, the two sections do not necessarily deal with evidence of the same character. The ban imposed by Section 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By Section 27, even if a fact is proved to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered. By Section 26, a confession made in the presence of a Magistrate is made provable in its entirety.

41. *Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with 'Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal arrest on the 15.2.2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused in an offence at the time of their apprehension on the 14.2. 2005.*

42. *Some argument has been raised by Mr. Jaspal Singh as to whether (even assuming that Section 27 of the Evidence Act could not be applied to the facts of the present case) yet the conduct of the appellants when the raid had been carried out in the house of Darshan Kaur by Sub-Inspector Jeevan Kumar was such as would be a material circumstance in terms of Section 28 of the Evidence Act. We are of the opinion that in the light of the*

above findings, we are not called upon to examine this aspect of the matter.”

8. Learned defence counsel argued that the statement of Dy. S.P. Manohar Lal (PW-10), Investigating Officer S.I. Ramesh Prashar (PW-11) and Driver Murari Lal (DW-1), when read conjointly, lead to an inference that Dy.S.P. (PW-10), was not there in Hathithan area by chance, rather police party had prior information of some contraband haul being there in the area though the Investigating Officer Ramesh Prashar (PW-11) and other prosecution witnesses maintained that Dy. S.P. Manohar Lal (PW-10), was there in the area by chance and since police had prior information, therefore, the procedure prescribed under the law was required to be followed, which has not been followed in the instant case.

The Dy. S.P. Manohar Lal (PW-10), as per his statement, had started from his CID Office Mandi, in his official vehicle on 26.03.2014, at around 11-12 noon, for some official work, whereas, as per his driver Murari Lal (DW-1), they started from Mandi at around 09.40 a.m. Be that as it may be, it has come in the evidence that Dy.S.P. Manohar Lal (PW-10), had not gone to any other place, but only came to Hathithan.

It is the version of the Investigating Officer Ramesh Prashar (PW-11) that he informed the Dy. S.P. about the disclosure statement at around 07.00 p.m. It is, therefore, probable that Dy. S.P. had some prior information of some haul of contraband at Hathithan, and for which purpose, he might have left Mandi by 11-12 noon. The probable fact of the police having some prior information about some contraband at Hathithan area in general, does not advance the case of the accused in any manner. Further, it neither disproves the alleged recovery of charas from vehicle of the accused as nor it disproves alleged recovery of charas from the house of the accused at Hathithan. No violation of procedure causing prejudice to the accused has been brought to the notice.

It is contended that the Investigating Officer Ramesh Prashar (PW-11), during the examination-in-chief, did not state anything about the dog and dog handler being there with the Dy. S.P.. However, in cross-examination, he has admitted that Dy.S.P. was accompanied by a dog and the dog handler. Dy. S.P. Manohar Lal (PW-10), has himself admitted in his cross-examination the fact that he drove from Mandi with a dog squad. From the facts of the case, an inference

perhaps at best can be drawn that the police had prior information about presence of contraband in the area in question in general, yet, it cannot be lost sight of the fact that 950 grams charas was recovered from the vehicle of the accused and 6.750 Kg. Charas was recovered from his house. The police and prosecution witnesses had no enmity with the accused. The police had no prior information that accused would possess 950 grams charas in the offending vehicle and 6.750 Kg. Charas would be there in his house.

9(i). Independent witness PW-1 Rajeev Kumar, declared hostile, has denied search as well as recovery of charas from the house of accused. His version is that charas was not recovered in his presence from the house of the accused. His version is that he was taken to accused's house not from the spot but from the office of Superintendent of Police, Kullu. He stated that he was informed in S.P. Kullu's office that some contraband has been recovered by the police with the help of a dog squad and for that purpose his presence is required. It is also his statement that he alongwith one Budh Ram were taken to the house of accused where SDM and other police officials were also there. He deposed that the charas was

already there when they reached the house. This witness has admitted the photographs clicked there by the police party, wherein, he, Budh Ram and accused are visible alongwith police officials. He has also admitted that sealed parcel containing 6.750 Kg. Charas was taken into possession vide memo Ext.PW-1/A, which bears his signatures.

Hira Lal (PW-2), the other independent witness, has deposed that charas was already kept in one room when he went inside house of the accused and that police officials in civil dress as well as family members of accused were also there; accused was not there in the house at that time. He denies that accused got charas recovered from the house in his (PW-2) presence. This witness was declared hostile. In his cross-examination, this witness admitted that accused was from his village. He has also admitted his signatures on sample seal (Ext.PW-1/B). He has also admitted his signatures over seizure memo (Ext.PW-1/A).

PW-5 SI Bhupender Pal, corroborated the entire prosecution case and stated that in presence of independent witnesses, PW-1 Rajeev Kumar and PW-2 Hira Lal, the accused after opening the godrej almirah in his home, took out nine

packets from the lower two drawers, which contained the contraband/charas, it's weight was measured as 6.750 Kg.

PW-6 HHC Harnam Singh, stood by prosecution case and stated that the house of accused was searched at the instance of accused and during the search, it is the accused, who opened the godrej almirah and took out nine packets of contraband from the lower two drawers; found to be charas, weighing 6.750 Kg.

Dy. S.P. Manohar La (PW-10), deposed that while on way from Mandi to Kullu on official duty, he received a call from the Investigating Officer Ramesh Prashar about recovery of 950 grams charas from vehicle driven by accused Budh Ram and further requesting him to come to accused's house at Hathithan as accused had disclosed about possessing charas in his house also. Whereafter, he went to accused's house at Hathithan, met with the Investigating Officer, the police and two independent witnesses. Accused in custody took them to his house. He opened one Godrej Almirah with the key and then opened lower two sheleves of the Almirah, where charas was found.

The Investigating Officer SI Ramesh Prashar, (PW-11), corroborated the entire prosecution case and stated that accused took out the keys and opened the almirah from where, the contraband was recovered, which measured 6.750 Kg.

9(ii). Learned defence counsel argued that the manner of searching house of accused as well as manner of effecting recovery of contraband from his house has been projected differently by the prosecution witnesses. Though there are small variations in the statements of prosecution witnesses in respect of manner of search and effecting recovery of contraband from the house of accused, however, the variations are minor in nature and pale into insignificance when statements of all the witnesses are read conjointly.

In ***(2018) 2 SCC 342, titled as State of Himachal Pradesh vs. Trilok Chand and Another***, the Hon'ble Apex Court held that court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Contradictions in the statements of witnesses are fatal for the case, though minor discrepancies or variance in

their evidence will not disfavour. Relevant extract from the judgment is reproduced hereinafter:-

“12. Going by the number of discrepancies in the prosecution case coupled with the contradictory statements by prosecution witnesses, the entire prosecution story vitiates and leads for discrediting its version. Contradictions in the statement of the witnesses are fatal for the case, though minor discrepancies or variance in their evidence will not disfavour (see: State of H.P. Vs. Lekh Raj). Considering the circumstances of the case on hand, it can be said that the discrepancies are comparatively of a major character and go to the root of the prosecution story. We cannot therefore ignore them to give undue importance to the prosecution case. It is well settled that the Court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the stated evidence [See: Sukhdev Yadav v. State of Bihar].”

All the prosecution witnesses have stated that 6.750 Kg. Charas was recovered from the house of the accused at the instance of accused.

10(i). Accused has pleaded innocence. His defence is that he was called from his home by HHC Harnam Singh on 26.3.2014 at about 4 P.M.; he was informed that during checking of a vehicle, its driver fled away after parking of the vehicle at some distance from Nakka; the documents in vehicle were found to be in the name of his son; one packet

was found near the vehicle; accused was asked about his son; accused informed police that his son had not been home for the last two days; his phone number was also coming out as untracable; search was conducted jointly by the accused and police, but his son could not be found; at that stage, photographs were managed by police near Hathithan with Rajeev Sood; where after, he was taken to S.P. Kullu office by I.O. Ramesh Prashar and all the proceeding was conducted there; at S.P. Kullu office the I.O. was in conversation with someone about large quantity of charas recovered; at around 8.30 p.m., I.O. disclosed that Dy.S.P. had recovered around 7 kg. of charas in a grass shed adjoining his (accused's) house with the help of a dog squad; where after, he (accused) was taken to his house; the Dy. S.P. and other officials along with charas were already there, when accused was brought to his home. In support of his defence, accused has examined Murari Lal (DW-1), driver of Deputy Superintendent of Police Manohar Lal (PW-10). This witness proved the Log Book of the vehicle HP-07A-0321. As per the entry in the Log Book (Ext.D-1), the vehicle left CID Office, Mandi, at 09.40 a.m. on 26.03.2014 and returned there at 11.30 p.m. The witness admitted the presence of dog squad in the vehicle. Though the independent

witnesses, PW-1 Rajiv Kumar and PW-2 Hira Lal, were declared hostile and were cross-examined, however, law in respect of appreciating the testimonies of such witnesses is well settled. Hon'ble Apex Court in **(2019) 8 SCC 333**, titled **Sudru versus State of Chhattisgarh**, relying upon **Bhajju versus State of M.P. (2010) 4 SCC 327**, has again reiterated the well settled principle that evidence of hostile witness can be relied upon by the prosecution version. Merely because a witness has turned hostile, the same does not render his evidence or testimony as inadmissible in trial and as such conviction can be based upon such testimony, if it is corroborated by other reliable evidence.

In **(2016) 10 SCC 506**, titled **Raja and others versus State of Karnataka**, the Apex Court observed that the evidence of hostile witness cannot be altogether discarded and as such it is open for the Court to rely on the dependable part of such evidence which stands duly corroborated by other reliable evidence on record.

In **(2015) 2 SCC 662**, titled **Selvaraj @ Chinnapaiyan versus State represented by Inspector of Police**, the Apex Court has observed that in a situation/case,

wherein, the witness deposes false in his/her cross-examination, that itself is not sufficient to outrightly discard his/her testimony in examination-in-chief. The Court held that a conviction can be recorded believing the testimony of such witness given in examination-in-chief, however, such evidence is required to be examined with great caution.

In **Ashok alias Dangra Jaiswal** versus **State of Madhya Pradesh, (2011) 5 SCC 123**, has held as under:-

“the seizure witness turning hostile may not be very significant by itself, as it is not an uncommon phenomenon in criminal trial particularly in cases relating to NDPS Act.”

Even as per the version of declared hostile independent witness, PW-1 Rajiv Kumar, it stands admitted by him that:-

- Scorpio vehicle bearing No.HP-34C-1685 was on National Highway at the relevant time and place on the day in question;
- Accused was also there with the vehicle;
- Search was given by the Investigating Officer to the accused;

- Farad Ext.PW-1/A was prepared by the police, signed by the accused and other police officials, which also bear his signatures;
- Charas recovered from the vehicle weighed 950 grams;
- Parcel, containing contraband, was sealed with seal impression of seal 'T';
- Parcel of charas was taken into possession by the police vide memo Ext.PW-1/C;
- Taking possession of the vehicle alongwith documents had also been admitted;
- Signatures on the disclosure statement Ext.PW-1/D had been admitted alongwith the fact that the same was prepared by the police when the accused gave his such statement;
- Signature on sealed parcel containing 6.750 Kg. Charas taken into possession vide memo Ext.PW-1/A has also been admitted;

- Visiting house of accused has also been admitted;
- Photographs taken by the police on the spot have been admitted showing therein the independent witness Hira Lal (PW-2), accused and the police officials;
- Association in search and seizure proceedings in the house of accused has been admitted;
- Witness has nowhere complained of any threat or intimidation by the police;
- It is not stated by him that he ever complained against false implication of accused;

It is not the statement of PW-1 Rajiv Kumar that he was threatened by the police. It is not stated by him that he signed the documents under any intimidation or that documents were falsely prepared. This witness has signed the documents with full knowledge of the contents. It is not his case that he complained about his having been forced to sign the documents or that he signed the same without reading.

Therefore, in accordance with the law laid down by Hon'ble Apex Court, the part of inconsistent statement of this witness has to be discarded.

10(ii). Similarly, Hira Lal (PW-2), independent witness, admitted that accused Budh Ram is resident of his village. He has also admitted his signature in sample seal Ext.PW-1/B. Association in search and recovery proceedings in the house of accused has been admitted. Association in search and seizure proceedings in the house of accused has been admitted by this witness and has nowhere complained of any threat or intimidation by the police. It is not stated by him that he ever complained against false implication of accused.

11. It is settled proposition of law that sole testimony of the police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case.

There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise trustworthy. Rule of prudence may require more careful scrutiny of their evidence.

Wherever, the evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, can form basis of conviction and absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force.

No material contradictions or inconsistencies have emerged on record on material particulars of the case in the statements of SI Bhupender Pal (PW-5), HHC Harnam Singh (PW-6), Constable Ranjit Singh (PW-8), Deputy Superintendent of Police Manohar Lal (PW-10) and SI Ramesh Prasher (PW-11), which could have rendered their depositions unworthy of acceptance. There was no necessity for the police officials to falsely implicate the accused. It is not the defence of the accused that there was any prior animosity of police officials with him.

Learned trial Court was justified in observing that defence of the accused has not been probablized. There is link evidence on record that the charas was sealed and had been sent for chemical analysis. The Chemical Examiner has

found the sample parcel intact. The report of Chemical Examiner ExtPW-7/C is perse admissible in evidence under Section 293 Cr.P.C. The prosecution has established its case on record against the accused.

Though it can be said that Deputy Superintendent of Police (PW-10), had probably some knowledge in general about possibility of some contraband being there in Hathithan area, but, in the instant case, the police had no prior information of the accused either dealing with or possessing the contraband. The police party had laid siege at Seund, stopped the vehicle of the accused, recovered 950 grams charas from the vehicle of the accused and thereafter disclosure statement of the accused was recorded under Section 27 of the Indian Evidence Act, which further led to recovery of 6.750 Kg. charas from his house.

12. Learned counsel for the accused has argued that in the facts of the case compliance of provisions of Section 42 of the NDPS Act was required to be made, however, the Investigation Officer has not complied with the same. He has relied upon **Latest HLJ 2009 (H) page 774 State vs. Man Singh; SLC 2002 (3) Page 156 Avtar Singh vs. State;**

2011 (8) SCC Page 130 Rajinder Singh Vs. State of Haryana; 2016 (14) SCC page 35 Darshan Singh vs. State of Haryana; 2016 (11) SCC Page 687 State of Rajasthan vs. Jagraj Singh alias Hansa; 2013 (2) SCC Page 502 Kishan Chand vs. State of Haryana; 2009 (11) SCC Page 225 State of Punjab vs. Gurnam Kaur and others; 2002 (2) Siml. L.C. Page 431 Lacopo Lombardi vs. State of Himachal Pradesh; and Latest HLJ 2010 (HP) 39 Deepak Kumar and others vs. State of H.P.

These authorities are not applicable to the case in hand. In the instant case, it has come on record from the evidence of the prosecution witnesses that the search of the vehicle was effected on 26.03.2014 at around 6.30 p.m. Sun does not set so early in the evening in late March. Search of house was carried out during night hours. On the basis of disclosure statement of accused Deputy Superintendent of police Manohar Lal (PW-10), already in the area, was informed about this disclosure statement. The house was searched in presence of the Deputy Superintendent of police. For carrying out search between sunset and sunrise, the officer had to record the grounds of his belief, which were to be forwarded

within 72 hours to the immediate superior officer. Regarding compliance to provisions of Section 42 of NDPS, Act, it has been held by the Hon'ble Apex Court in **(2009) 8 SCC 539**, titled as **Karnail Singh vs. State of Haryana** that non compliance with provisions of Section 42, may not vitiate the trial, if it did not cause any prejudice to the accused. It was also held therein:-

“35. (d) While total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of Section. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

In **(2018) 9 SCC 708**, titled as **SK. Raju Alias Abdul Haque alias Jagga vs. State of West Bengal**, the Hon'ble Apex Court has held as under:-

“11. In *Krishna Kanwar v State of Rajasthan*, a two judge Bench of this Court considered whether a police officer who had prior information was required to comply with the provisions of Section 42 before seizing contraband and arresting the appellant who was travelling on a motorcycle on the highway. Answering the above question in the negative, the Court held: (SCC pp. 615-16, para 16)

“ 16.....Section 42 comprises of two components. One relates to the basis of information i.e.: (i) from personal knowledge, and (ii) information given by person and taken down in writing. The second is that the information must relate to commission of offence punishable under Chapter IV and/or keeping or concealment of document or article in any building, conveyance or enclosed place which may furnish evidence of commission of such offence. Unless both the components exist Section 42 has no application. Sub-section (2) mandates, as was noted in *Baldev Singh* case that 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 forthwith send a copy thereof to his immediate official superior. Therefore, sub-section (2) only comes into operation where the officer concerned does the enumerated acts, in case any offence under Chapter IV has been committed or documents etc. are concealed in any building, conveyance or enclosed place.

12. An empowered officer under Section 42(1) is obligated to reduce to writing the information received by him, only when an offence punishable under the Act has been committed in any building, conveyance or an enclosed place, or when a document or an article is concealed in a building, conveyance or an enclosed place. Compliance with Section 42, including recording of information received by the empowered officer, is not mandatory, when an offence punishable under the Act was not committed in a building, conveyance or

an enclosed place. Section 43 is attracted in situations where the seizure and arrest are conducted in a public place, which includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public."

In **(2016) 11 SCC 687**, titled as **State of Rajasthan vs. Jagraj Singh alias Hansa**, the Hon'ble Apex Court, held as under:-

"10. The NDPS Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. This Court had occasion to consider the provisions of NDPS Act in large number of cases. This Court has noted that the object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. This Court in *State of Punjab vs. Balbir Singh*, 1994 (3) SCC 299, in paragraph 15 has made the following observations:

"15....The object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. Therefore these provisions make it obligatory that such of those officers mentioned therein, on receiving an information, should reduce the same to writing and also record reasons for the belief while carrying out arrest or search as provided under the proviso to Section 42 (1). To that extent they are mandatory. Consequently the failure to comply with these requirements thus affects the prosecution case and therefore vitiates the trial."

The Hon'ble Apex Court in **(2013) 2 SCC 212**, titled as **Sukhdev Singh vs. State of Haryana**, held as under:-

“15. Section 42 can be divided into two different parts. First is the power of entry, search seizure and arrest without warrant or authorisation as contemplated under sub-section (1) of the said section. Second is reporting of the information reduced to writing to a higher officer in consonance with sub-section (2) of that section. Sub-section (2) of Section 42 had been a matter of judicial interpretation as well as of legislative concern in the past. Sub-section (2) was amended by the Parliament vide Act 9 of 2001 with effect from 2nd October, 2001. After amendment of this sub-section, the words ‘forthwith’ stood amended by the words ‘within 72 hours’. In other words, whatever ambiguity or leverage was provided for under the unamended provision, was clarified and resultantly, absolute certainty was brought in by binding the officer concerned to send the intimation to the superior officers within 72 hours from the time of receipt of information. The amendment is suggestive of the legislative intent that information must reach the superior officer not only expeditiously or forthwith but definitely within the time contemplated under the amended sub-section (2) of Section 42. This, in our opinion, provides a greater certainty to the time in which the action should be taken as well as renders the safeguards provided to an accused more meaningful. In the present case, the information was received by the empowered officer on 4th February, 1994 when the unamended provision was in force. The law as it existed at the time of commission of the offence would be the law which will govern the rights and obligations of the parties under the NDPS Act.”

13. In the instant case, the police had no prior information that accused was in possession of the contraband. The recovery effected from his house, in presence of Deputy Superintendent of Police Manohar Lal (PW-10), was based upon disclosure statement of accused. Defence of prejudice has not even been pleaded by the accused. Though as observed earlier, the facts of the case do point out that Deputy Superintendent of Police Manohar Lal (PW-10), perhaps had some prior information about contraband being there in Hathithan area, but, not that accused was in possession of the same either in his vehicle or in his house.

It has been held by Hon'ble Apex Court that if there had there been any negligence on the part of the investigating agency or omissions etc., which resulted in defective investigation, it casts a legal obligation upon the Court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Mere reason of defective investigation, need not necessarily result in the acquittal of the accused. In **(2012) 9**

SCC 532, titled **Gajoo** versus **State of Uttarakhand**,

Hon'ble Apex Court held as under:-

“19. A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court.....”

20. In regard to the defective investigation, this Court in the case of *Dayal Singh and Others. v. State of Uttaranchal* [2012 (7) SCALE 165] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:-

“27. Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P. ((1972) 3 SCC 613], this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of Dhani Singh @ Shera & Ors. v. State of Punjab [(2004) 3 SCC 654], held:-

‘5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.’

28. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar [AIR 1999 SC 644], enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the

designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In *Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors.* [(2006) 3 SCC 374], the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that:

'42. Legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play.

30. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in the case of *National Human Rights Commission v. State of Gujarat* [(2009) 6 SCC 767], held as under:

‘6... “35 ... The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the ‘majesty of the law’. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.”

32. In *State of Karnataka v. K. Yarappa Reddy* [2000 SCC (Crl.) 61], this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the Investigating Officer could be put against the prosecution case. This Court, in Paragraph 19, held as follows:

‘19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a

guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.'

33. *In Ram Bali v. State of Uttar Pradesh [(2004) 10 SCC 598], the judgment in Karnel Singh v. State of M.P. [(1995) 5 SCC 518] was reiterated and this Court had observed that:*

'12...In case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective'.

34. *Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or*

designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

35. *This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab [2004 CrI.LJ 28], the Court, while dealing with discrepancies between ocular and medical evidence, held:*

'8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.'

36. *Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.*

'34... The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms

of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. {Plz. See Madan Gopal Kakad v. Naval Dubey & Anr. [(1992) 2 SCR 921: (1992) 3 SCC 204]}."

*In (2010) 5 SCC 91, titled **Abu Thakir and others versus State of Tamil Nadu**, Hon'ble Apex Court held as under:-*

"37. This Court in State of Karnataka Vs. K. Yarappa Reddy (1999) 8 SCC 715 held that "even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. ... Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit the investigating officer's suspicious role in the case". The ratio of the judgment in that case is the complete answer to the submission made by the learned senior counsel for the appellants."

*In (2010) 9 SCC 567, titled **C. Muniappan and others versus State of Tamil Nadu**, Hon'ble Apex Court held as under:-*

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the

investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide Chandra Kanth Lakshmi v. State of Maharashtra, AIR 1974 SC 220; Karnel Singh v. State of Madhya Pradesh, (1995) 5 SCC 518; Ram Bihari Yadav v. State of Bihar, AIR 1998 SC 1850; Paras Yadav v. State of Bihar, AIR 1998 SC 644; State of Karnataka v. K. Yarappa Reddy, AIR 2000 SC 185; Amar Singh v. Balwinder Singh, AIR 2003 SC 1164; Allarakha K. Mansuri v. State of Gujarat, AIR 2002 SC 1051; and Ram Bali v. State of U.P., AIR 2004 SC 2329)."

*In (2007) 13 SCC 530, titled **Paramjit Singh***

*alias **Mithu Singh** versus **State of Punjab**, Hon'ble Apex*

Court held as under:-

"18. A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation."

*In (2003) 6 SCC 73, titled **Visveswaran** versus*

***State Rep. By S.D.M.**, Hon'ble Apex Court held as under:-*

"12. It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by Courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity

in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved.”

What emerges from the ratio laid down by Hon'ble the Apex Court in the aforesaid judgments, is that defective or faulty investigation or any procedural irregularity in conducting investigation will not be fatal to the prosecution if the case of prosecution is otherwise proved. It is only for the Court to be circumspect while evaluating evidence on record.

14. In view of above discussion, the ratio of law cited above, coupled with the facts & circumstances of the case and also having regard to the oral as well as the documentary evidence brought on record, the prosecution has proved its case against the accused beyond reasonable doubt. We find no error in the impugned judgment dated 30.05.2017, passed by learned Special Judge-II (Additional Sessions Judge), Kullu (H.P.). Accordingly, the appeal is dismissed. The pending miscellaneous application(s), if any, shall also stand disposed of.

(Dharam Chand Chaudhary)
Judge

February 29, 2020.
(Yashwant)

(Jyotsna Rewal Dua)
Judge