

High Court Of Himachal Pradesh

Criminal Appeal No. 515 Of 1999

Judgment Date:

06-09-2010

The State Of H.p.

..Petitioner

Kundan Lal

..Respondent

Bench:

{HON'BLE JUSTICE R.B. MISRA , HON'BLE JUSTICE V.K. SHARMA, JJ. }

Citation:

LQ/HimHC/2010/1733 ;

R.B. Misra

1. The presence of accused-respondent could not be ensured despite issuance of non bailable warrants. However, Shri M.A. Khan, Advocate, has been requested to assist this Court as Amicus Curiae and he has agreed to the same. Accordingly, Shri M.A. Khan, Advocate, has assisted this Court in response to the submissions made on behalf by Shri Rajinder Dogra, Additional Advocate General, for the appellant-State.

2. The present criminal appeal has come up for consideration after leave to appeal under Section 378(3) of the Code of Criminal Procedure has been granted in reference to the impugned judgment and order dated 04.08.1999, passed by the learned Special Judge, Solan, District Solan, in Sessions Case No. 6-S/7 of 1999, acquitting the alleged accused under Section 20 of the Narcotic Drugs and Psychotropic Substances, Act.

3. Prosecution case is that police officials while on patrol duty, apprehended the accused-respondent in association with two independent witnesses and on his personal search 200 grams of charas was recovered from his jacket. Rukka was sent by S.I./S.H.O. and two samples, each 25 grams, of charas were separated and sealed. Thereafter, the samples were sent for chemical examination and the accused-respondent was charged for the offences under Section 20 of the Narcotic Drugs and Psychotropic Substances, Act.

4. In order to prove its case, prosecution examined as many as six witnesses, whereas, accused through his statement under Section 313 Cr.P.C. denied the prosecution case.

5. Sant Ram and Satish Kumar were associated by the police officials in the raiding party as independent witnesses and from the search of the jacket of the accused-respondent charas, rapped in a white coloured polythene bag, was recovered. The search was made in reference to a secret information received by the police party. However, the search was made only by apprising the accused-respondent that whether he wants to be

searched by the police officer or by others, on agreeing the accused-respondent was searched.

6. From the scrutiny of the prosecution witnesses and the material on record, it appears that before making the search, accused-respondent was not apprised that he has a right to be searched by a Gazetted Officer or Magistrate or by the same police officer and only apprising him that he is to be searched is not the compliance of mandatory requirement of Section 50 of the NDPS Act.

7. Two independent witnesses are also silent on the aspect that the searching police party had apprised the accused-respondent of his right of being searched, as such, non-compliance of mandatory requirement of Section 50 of the NDPS Act makes the prosecution case doubtful.

8. In view of the inconsistencies, contradictions and improbabilities in the prosecution case, learned Special Judge has rightly arrived at the finding that the prosecution has failed to prove its case beyond reasonable doubt. In our considered view, lack of mandatory requirement under Section 50 of the NDPS Act and non-support of the independent witnesses makes the prosecution case doubtful. The prosecution has failed to bring home the guilt against the accused-respondents. In these circumstances, criminal appeal being devoid of merit is dismissed.

9. The Court appreciate the efforts made by Mr. M.A. Khan, Advocate, in assisting the Court on behalf of accused-respondent as Amicus Curiae.

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