

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRA-S-1248-SB-2004
Reserved on: 14.07.2023
Pronounced on: 02.08.2023

Mahender Pal

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Bobby Girdhar, Advocate as Amicus Curiae.

Mr. Rajat Gautam, Addl. A.G., Haryana.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
334	23.12.2002	GRP, Faridabad	20 of NDPS Act

Sessions Case	16 of 2003, Special Judge, Faridabad
No.	Date of decision: 18.05.2004

1. The petitioner, who stands convicted by the Special Judge, Faridabad for possessing 2 kg and 200 grams of charas, which amounts to the commission of an offence punishable under Section 20 of NDPS Act, had come up before this court by filing the present appeal in the year 2004.
2. In nutshell, the prosecution's case is that the constables patrolling in a train stumbled upon a tin box and found that the accused owned it. After that, they took the accused out of the train on suspicion and informed the

superior officers. Such superior officers also associated Excise and Taxation Officer in whose presence, they opened the tin box, in which there was a hidden layer beneath it, from where they recovered two Kg and two hundred grams of charas. After that, the investigator took two samples of fifty grams each, affixed his seal impression and sent the samples for testing to Forensic Science Laboratory, which found the samples to be of charas. Since the offence was cognizable and non-bailable, investigator arrested the accused on the date of recovery and subsequently, after completing the investigation, launched prosecution against him by filing a report under Section 173 Cr.P.C. At the time of framing of the charges, the appellant did not plead guilty and claimed to be tried.

3. During the trial, the prosecution examined HC Manjit Singh as PW-6, who had initially stumbled upon the convict. Mahender Lal Katyal, ETO as PW-4, SI/SHO Maya Ram as PW-3, HC Ved Parkash as PW-1, who had kept the parcel and other formal witnesses. In the statement recorded under Section 313 Cr.P.C., the stand of the accused was that although the clothes as well as the tin box belonged to him but the charas recovered from it did not belong to him and no such charas was recovered from the tin box. The trial Court found the prosecution's evidence convincing and convicted and sentenced the appellant as captioned above.

4. Feeling aggrieved, the appellant filed the present appeal and during the pendency of the appeal, the appellant's sentence was also suspended on completion of 04 years, 05 months, and 05 days of sentence as is gathered from custody certificate dated 18.04.2023.

5. I have heard legal aid counsel for the appellant and Mr. Rajat Gautam, Additional Advocate General, for the State of Haryana and have gone through the record.

6. The most prominent prosecution witness is PW-6 HC Manjit Singh,

who testified that on 23.12.2002, he and his colleagues were discharging their duties in Mangla Express, and the train had started from Nizamuddin Railway Station in New Delhi and was bound for Mathura. During the journey of train, they started checking its compartments and noticed the appellant, who was sitting on a tin box. They enquired from him about the contents in the tin box, but he could not give any satisfactory answer. On this, the police officials got suspicious about the appellant concealing something in the said tin box. When the train reached the Railway Station, at Faridabad, they handed over the accused along with the tin box to PW-3 SHO Maya Ram. In the cross-examination, PW-6 HC Manjit Singh admitted that the compartment was general, and it was full beyond its capacity and around 10 to 20 people were even standing in the compartment. He further admitted that in normal circumstances, the people who are standing can sit on anything they find including the tin box. However, in the statement recorded under Section 313 Cr.P.C, in answer to question No. 3, the accused stated that the clothes in the tin box belonged to him, whereas there was no charas in the tin box. Thus, the initial plea of defence, in which they tried to disconnect the box from accused does not hold any substance because the accused had himself given the statement under Section 313 Cr.P.C, and such answers can always be considered in view of sub-section (4) of Section 313 CrPC.

7. PW-3 SHO Maya Ram, to whom the accused along with the tin box was handed over, testified that on getting the instructions about the accused and tin box, he was there with one Narender Singh, Excise Inspector and one Ajit Singh, Excise Inspector. In addition, he had also called one ETO Mahender Lal Katyal (PW-4). In the presence of PW-4 Mahender Lal Katyal, PW-6 HC Manjit Singh, they opened the tin box and found that the tin box had a sealed layer at the bottom. When they opened the said tin box, they noticed some clothes in the box and below that there was a hidden layer. When they broke that hidden layer, they recovered the charas in the shape of sticks (*Batti*). On weighed, the charas was of two Kg

and two hundred grams. Out of which, the investigator took two samples of fifty grams each and resealed the samples as well as the charas with seal 'MR'. In the Court, the case property was produced, and the tin box was exhibited as P-4, whereas samples were exhibited as P-1 and P-2 and their residue as P-3.

8. At the time of arrest of the accused, the investigator had also recovered a railway ticket from the accused which is exhibited as P-5 which was taken into possession vide recovery memo Ex.PE. After that, the SHO sent the case property for deposited with in the Police Malkhana within store through constable Mohan Singh and Ruqa was exhibited as Ex.PA.

9. The prosecution also examined PW-4 Mahender Lal Katyal, Excise &Taxation Officer, he testified in the identical term of that SHO. The prosecution gave up other independent witnesses, namely,Ajit Singh and Narender Singh, Excise Inspector as unnecessary.

10. Although the prosecution did not examine constable Manmohan Singh through whom the SHO had sent the case property along with ruqa for depositing before the Malkhana. Although, the prosecution did not examine Manmohan Singh but as per PW-1 Ved Parkash, constable Manmohan Singh had brought a ruqa and the case property took before him on the same date, wherein the seals were intact. PW-1 Ved Parkash further testified that he had sent the samples for testing to FSL through constable Ajit Singh. The prosecution examined said constable Ajit Singh as PW 2 and he testified that he had carried the samples which were duly sealed with seal 'MR' to Madhuban. The report of the laboratory was also tendered in evidence as Ex.PH.

11 As per the report of FSL Ex.PH, two samples were received on 30.12.2002 through constable Ajit Singh and the samples had three seals of 'MR' and the weight of samples were of 47 gramsand they had tested for

charas. The laboratory also noticed the presence of Tetrahydrocannabinol (THC). As per section 20 of NDPS Act, dealing in NDPS Act makes out an offence in the following terms:

Substance Name	Cannabis and cannabis resin/ Charas/ Hashish
Quantity detained	2.2 Kg
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	220.00%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	23
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Cannabis and cannabis resin
Other non-proprietary name	CHARAS, HASHISH
Chemical Name	EXTRACTS and TINCTURES OF CANNABIS
Small Quantity	100 Gram (i.e. equivalent to 0.1 Kg)
Commercial Quantity	1000 Gram (i.e. equivalent to 1 Kg)

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.20 & S.2(iii) NDPS Act, S.O.821(E)
dated	11/14/1985
Sr. No.	S.2(iii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.2(iii) “cannabis (hemp)” means— (a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish; (b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may

	be known or designated; and (c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom; (iv) “cannabis plant” means any plant of the genus cannabis; S. 2(viii b)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means— (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;
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12. Counsel for the appellant submits that when the samples were taken, they were put in a plastic box, whereas, when it was received by the laboratory, the box had changed, and it was malaltic container. However, State counsel submits that malaltic is a form of plastic and being the laboratory, there were more particular about referring the material of plastic with the exact chemical name which was malaltic. It is not that the charas samples were put in a plastic container and tempered with and changed it with some other container, but it is only the difference in describing the quality of plastic which would not make any difference whatsoever and it cannot be said that the samples were tampered with. Needless to say, that, the laboratory noticed the seals were intact and even then, the remaining case property was produced before the Court, the seals were intact.

13. The link evidence is complete because prosecution after use had handed over the seal to ETO and further there was no need to reseal the case property because the investigator himself was SHO and as such Section 55 of the NDPS Act did not come into operation.

14. The case of the prosecution is that the police party did not have any prior information about the accused carrying charas. It was the unusual behavior that made the patrolling police suspicious of the said person carrying some contraband. Resultantly, the police captured him, and on his search detected the charas. Thus the present case is based on chance recovery. However, the NDPS Act does not define chance recovery. Therefore, the procedure and safeguards in cases of chance recovery, laid down by the Hon'ble Supreme Court, in its landmark holding, *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299, shall follow.

15. Since the police did not seize the charas from the person of the accused, as such, they were under no obligation to comply with the mandatory requirements of section 50 of the NDPS Act. Thus section 50 of the NDPS Act shall not apply and the law is no more *res integra*. A three-member bench of the Supreme Court, in *State of H.P. v. Pawan Kumar*, (2005) 4 SCC 350, holds:

“18. There is another aspect of the matter, which requires consideration. Criminal law should be absolutely certain and clear and there should be no ambiguity or confusion in its application. The same principle should apply in the case of search or seizure, which come in the domain of detection of crime. The position of such bags or articles is not static and the person carrying them often changes the manner in which they are carried. People waiting at a bus stand or railway platform sometimes keep their baggage on the ground and sometimes keep in their hand, shoulder or back. The change of position from ground to hand or shoulder will take a fraction of a second but on the argument advanced by learned Counsel for the accused that search of bag so carried would be search of a person, it will make a sharp difference in the applicability of Section 50 of the Act. After receiving information, an officer empowered under Section 42 of the Act, may proceed to search this kind of baggage of a person which may have been placed on the ground, but if at that very moment when he may be about to open it, the person lifts the bag or keeps it on his shoulder or some other place on his body, Section 50 may get attracted. The same baggage often keeps changing hands if more than one person are moving together in a group. Such transfer of baggage at the nick of time when it is about to be searched would again create practical problem. Who in such a case would be informed of the right that he is entitled in law to be searched before a Magistrate or a Gazetted Officer? This may lead to many practical

difficulties. A statute should be so interpreted as to avoid unworkable or impracticable results. In Statutory Interpretation by Francis Bennion (3rd Edn.) para 313, the principle has been stated in the following manner:

"The Court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong."

16. Given the settled law, the investigating officer was not under any legal obligation to extend the offer, as contemplated u/s 50 of the NDPS Act, to the accused. After careful appreciation of the entire evidence, application of law and judicial precedents, the findings returned by the trial Court, convicting the accused, are based on the correct and complete appreciation of testimonies of prosecution witnesses. It does lead to an irresistible conclusion of the guilt of the accused, beyond reasonable doubts. There is no error in the judgment of conviction.

17. The above discussions lead to a definite conclusion that the charas which was recovered from the tin box, its possession is proved to be with the appellant. Given above the present appeal is dismissed, and the order dated 29.10.2007 suspending the sentence is recalled.

**(Anoop Chitkara),
Judge**

02.08.2023

Jyoti-II

Whether speaking/reasoned: Yes

Whether reportable: No.