

**(2009) 04 P&H CK 0370**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 1310-SB of 2002

Nashib Singh @ Nasiba

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** April 29, 2009

**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20

**Citation:** (2010) 1 RCR(Criminal) 360

**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J

**Bench:** Single Bench

**Advocate:** Jatinder Singh, Amicus Curaie, for the Appellant; S.S. Mor, D.A.G., Haryana, for the Respondent

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**Judgement**

Kanwaljit Singh Ahluwalia, J.

Nashib Singh @ Nasiba son of Bhana has preferred the present appeal. He was convicted by the Court of Additional Sessions Judge, Jind u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as, 'the Act') and was sentenced to undergo rigorous imprisonment for 7 years and 6 months and to pay a fine of Rs. 10,000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for two years.

2. SI Virender Singh had sent ruqa Ex.PD to the police station on the basis of which formal FIR Ex.PD/1 bearing FIR No. 197 dated 4.10.2001 was registered at Police Station Sadar, Narwana under Sections 20/61/85 of the Act. In ruqa Ex.PD, it was stated by SI Virender Singh that he along with his companion officials was present at Tohana turning Narwana in a Government jeep for patrolling and prevention of crime, when a secret information was received that one Nasiba son of Bhana Ram resident of Sulhera has boarded in a bus from Narwana bound for Tohana. The secret information so received further revealed that Nasiba is habitual of selling Sulpha (Charas) and in case he is arrested, heavy recovery can be effected. The

police party headed by SI Virender Singh reached near Bus Stand Dharodi where they saw a person holding a bag in his right hand. The person so suspected, on seeing the police started walking briskly and stood behind the wall of school. On interrogation, he disclosed his name as Nashib Singh @ Nasiba. He was holding a bag containing a contraband. Therefore, a notice u/s 50 of the Act was served upon him calling upon him to get himself searched before a Magistrate or a Gazetted Officer. The accused exercised his option and gave consent to be searched before a Gazetted Officer. Sukhdev Singh, DSP, Narwana was requisitioned to come present at the spot. Thereafter, necessary procedure regarding search, seizure and recovery was completed and 750 grams of Sulpha (Charas) was recovered from the appellant. Matter was investigated. Report u/s 173 Cr.P.C. was submitted.

3. The appellant was charged by the Special Judge, Jind to the effect that on 4.10.2001 in the area of Village Kanha Khera Dharodi, he was found in possession of 750 grams of Charas without any permit or licence and thereby he has committed the offence u/s 20 of the Act.

4. Before evidence of witnesses is taken note of, it will be pertinent to note that vide report Ex.PJ, Forensic Science Laboratory, Madhuban examined the sample and held the same to be Charas (Cannabis).

5. Prosecution examined SI Jai Singh as PW-1. He stated that on 4.10.2001 he was posted as SHO, Police Station Sadar, Narwana. On that day, Ravinder Singh SI, CIA Staff produced the case property, two sample parcels containing 50 grams charas in each sample and the accused before him. He had put his seal and directed SI Ravinder Singh to deposit the same in the Malkhana. ASI Ram Chander appeared as PW2. He deposed regarding search, seizure and the recovery effected from the appellant. He further testified that notice Ex.PB u/s 50 of the Act was served upon the appellant and he replied vide Ex.PB/1 that his search be effected before a Gazetted Officer. Sukhdev Singh, DSP in whose presence recovery was effected appeared as PW3. Investigating Officer Virender Singh appeared as PW4 and he deposed regarding various details regarding search, seizure and recovery. HC Manphool Singh and HC Rajinder Singh appeared as PW5 and PW6 and tendered their affidavits Exs.PG and PH respectively to prove the link evidence. Thereafter, prosecution evidence was closed. All incriminating evidence was put to the accused u/s 313 Cr.P.C. The appellant stated that he has been falsely implicated and nothing was recovered from him.

6. In the present appeal, no body has caused appearance on various dates for the appellant, therefore, Mr. Jatinder Singh was appointed as amicus curiae.

7. Mr. Jatinder Singh appearing for the appellant has stated that only police officials have deposed against the appellant. No independent witness was joined, therefore, prosecution case is bound to fail. He has further stated that in the present case Section 42 of the Act has not been complied with as no information was sent to the

higher officials. It has been further submitted that place of recovery was near the bus stand and various persons were present there but no effort was made to join any one.

8. Mr. S.S. Mor appearing for the State has stated that since a secret information was received that the appellant was coming from Narwana to Tohana on a bus, therefore, there was every possibility that appellant could have escaped in case the police party had not proceeded to the spot at once. Therefore, there was no necessity to comply with Section 42 of the Act. It has been further stated that in the present case search was effected in the presence of PW3 Sukhdev Singh DSP and the police officials had no enmity with the appellant.

9. I have given thoughtful consideration to the submissions advanced by counsel for the parties. In the present case, testimony of PW3 Sukhdev Singh, PW2 Ram Chander and PW4 Virender Singh inspire confidence. The testimony is free from blemish of contradictions, discrepancies and improvements. Therefore, it is not necessary that independent witness should have been joined.

10. At this stage, Mr. Jatinder Singh has stated that in the present case recovery was effected in the year 2001. The appellant had already suffered a protracted trial of about 8 years. It has been further submitted that recovery effected was non commercial and prosecution has failed to prove any case pending against the appellant. Mr. Mor has stated that he has verified and there is no other case registered against the appellant before registration of the present case or thereafter.

11. Taking into consideration the protracted trial and the antecedents, the sentence awarded upon the petitioner is reduced from 7-1/2 years rigorous imprisonment to 3 years rigorous imprisonment. However, the sentence of fine is maintained. With this modification, the present appeal is disposed off.