

State of Himachal Pradesh - Appellant @HASH Sunder Singh

Court: High Court of Himachal Pradesh

Date of Decision: June 22, 2016

Acts Referred: Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, Section 42(1), Section 42(2), Section 50, Section 51

Citation: (2016) ILRHP 2130

Hon'ble Judges: Sanjay Karol and Ajay Mohan Goel, JJ.

Bench: Division Bench

Advocate: Mr. V.S. Chauhan, Addl. Advocate General with Mr. Vikram Thakur, Dy. Advocate General, for the Appellant; Mr. Anand Sharma, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mr. Ajay Mohan Goel, J. - The present appeal has been filed by the State against judgment dated 15.10.2008 passed by the Court of learned

Special Judge, Kullu in Sessions Trial No. 7 of 2008, vide which the learned Trial Court has acquitted the accused for the commission of offence

under Section 20 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (in short the ""Act"").

2. In brief, the case of the prosecution was that ASI Jagat Singh along with HC Purshotam Lal, HC Hira Singh, Constable Sohan Singh and

Constable Bhader Singh were on patrolling and ""Naka"" duty at Sumo Ropa, District Kullu. On 14.11.2007, at around 2:30 a.m., a vehicle was

coming from Manikaran towards Bhuntar. When driver of the said vehicle saw police party, he stopped the same at some distance of the ""Naka

and tried to run away. On suspicion, he was overpowered by the police party. On enquiry, he disclosed his name as Sunder Singh. Constable

Bhader Singh was sent in search of local witnesses. A bag was recovered from the front seat of said vehicle. As no local person was found,

accordingly, HC Purshotam Lal and Constable Bhader Singh were associated and on search 4Kg 500 grams charas was recovered from the said

bag. Besides this, a money belt, one passport, identity card, digital camera, ATM card and a scale was also found in the said bag. Samples were

taken from the recovered charas and these samples as well as bulk charas were sealed. Rukka was sent to Police Station through HC Hira Singh

for registration of the case. Thereafter, investigation was carried in the matter and on receipt of Chemical Examiner, challan was put up in the

Court. Charge was framed against the accused under Section 20 of the NDPS Act and accused pleaded not guilty and claimed trial.

3. In order to substantiate its case, prosecution, in all, examined eight witnesses. Whereas, accused has also examined one witness in defence.

4. PW1, Purshotam Ram, has corroborated the story of prosecution. He has deposed that driver of the vehicle bearing registration No. HP-34A-

3672 disclosed his name as Sunder Singh son of Hukam Singh. He further deposed that one bag was found lying in front of the seat by the side of

the driver and he could not give any satisfactory reply about the bag. There being a suspicion that the bag may be containing some contraband,

constable Bhader Singh was sent in search of local witnesses. He also deposed that interception was done on the road which was isolated place

and Bhader Singh came after about 25 minutes and told that he knocked one or two doors but due to cold and odd hours nobody came out. In

these circumstances, Investigating Officer, ASI Jagat Singh, associated him i.e. PW1 and Constable Bhader Singh, as witnesses in the process of

search. He (PW1) personally searched accused Sunder Singh vide memo Ext. PW1/A. Thereafter, bag was searched and in the central pocket of

the bag, 20 packets of charas along with ""Batinuma"" charas were found wrapped with polythene. As per him, in the bag there were two wrapping

papers, one cello tape and in the third pocket there was a money belt of cloth, which was of cozy colour and inside there was a passport, one

ATM and one identity card and 15 photographs. Digital camera, scale and 4 Euros in the denomination of 50 each were also found in the said bag.

The recovered charas was weighed with electronic scale and on weighing the same, it was found to be 4 Kg 500 grams. Two samples of 25 grams

each were taken and thereafter the same was wrapped in polythene and put in cloth and was sealed with 4 impressions of seal ""T"". Remaining

charas along with other articles were put in the same bag and sealed with seal impression ""T"". Thereafter, the sample charas, remaining charas and

vehicle along with RC, driving licence were taken into possession, vide recovery memo Ext. PW1/B. This witness was declared as a hostile.

5. PW2, Manoj Kumari, has also corroborated the story of prosecution. She has deposed that on 14.11.2007 Inspector SHO Partap Singh

deposited three sealed parcels, out of which one parcel was having eight impressions of seal along with two sealed parcels containing four seals

impressions. All parcels were sealed with seal ""T"" and ""C"" having four impressions each. Along with case property, sample seals of ""T"" and ""C"" ,

NCB forms in triplicate and photocopy of seizure memo and other documents of case FIR No. 659 were deposited. To this effect, she made entry

of case property received by her in Malkhana Register at Sr. No. 314 dated 14.11.2007 and on the same day, she handed over one parcel along

with sample seals of T and C, NCB form in triplicate along with other documents to LHC Sunil Kumar vide RC No. 306 of 2007 for depositing

the same in FSL, Junga, which was deposited by him on 15.11.2007 and receipt of the same was handed over to her.

6. PW3, Nirat Singh, deposed that he was posted as Reader to Dy. SP Kullu and on 14.11.2007 ASI Jagat Singh gave special report in case FIR

No. 659 to Hardesh Kumar, Addl. SP at 6 O'clock, who made an endorsement on the report and handed over the same to him. He made entry

in the Special Report Register at Sr. No. 32 on the same day.

7. PW4, Constable Mehar Chand, deposed that he was posted at PP Jari and brought original Rapat Rojnamcha from 5.7.2007 to 5.10.2007.

PW5, Inspector SHO Partap Singh, deposed that on 14.11.2007 at 7:05 a.m. in the morning, case was registered on receipt of Rukka and FIR

Ext. PW5/A was registered at the police station. He also made endorsement on the Rukka, Ext. PW5/B. On the same day at 10:30 a.m ASI Jagat

Singh produced case property which was one big parcel and two small parcels, (the bigger parcel was sealed with seal impression T with eight

impressions and small parcel with four seals each of impression T), NCB forms and the accused. He resealed the bigger parcel with eight seals of

impression C and small parcel with four impressions of C. He also filled concerned columns of the NCB form. He also took sample seals Ext.

PW5/B and issued certificate Ext. PW5/E and handed the case property along with NCB form in triplicate to MHC Manoj Kumari and accused

was put in custody.

8. PW6, Constable Hira Singh, has, inter alia, deposed that on 14.11.2007 he along with other persons was on petrol duty at Suma Ropa Jungle.

At 2:30 a.m. one vehicle came from Manikaran and on noticing police party, the driver stopped the vehicle at some distance and tried to run away.

He was overpowered by ASI and his whereabouts were enquired. He disclosed his name as Sunder Singh. The registration number of the vehicle

was read in torch light to be HP 34-A-3672. He could not give any satisfactory reply regarding his travelling in the late night. One bag was kept in

front seat of the vehicle and he could not give any satisfactory reply regarding the bag. On suspicion, PW-Bhader Singh was sent to bring local

independent witness but after some time he returned and told that no independent witness was available. Thereafter, ASI gave his personal search

to accused in front of witness vide Ext. PW1/A which was signed by him. Bag kept in the vehicle was searched and there were 20 plastic bags,

cello tape, wrapping paper and ""Battinuma"" charas were recovered from it.

9. PW7, ASI Jagat Singh, has also deposed to this effect only. He mentioned that he took search of the vehicle and checked the bag which was in

the vehicle.

10. PW8, LHC Sunil Kumar, has deposed that he was posted in Police Station, Sadar Kullu. On 14.11.2007, MHC PS Sadar handed over to

him parcel of charas along with documents and RC, vide Ext. PW2/B and he deposited the same at FSL, Junga and handed over the receipt to

MHC vide Ext. PW2/C. The case property remained intact in his custody.

11. Defence has examined one Chander Pal as DW1. He has deposed that in the year 2007 he was Vice President of Gram Panchayat, Kasol.

On 13.11.2007 he had gone to his in-laws house at village Meteura. While he was coming back approximately at 12:00 at night, one Parshotam of

Jari Police Chowki met him on the road, outside the Police Chowki and told him that they want lift in his vehicle. They were 4-5 persons including

Thanedar. After some time they reached Sanjha Chulha and asked him to park his vehicle and told him that they had received some complaint and

want to go on checking and asked him to accompany them. They went to the house of Sunder Singh where said Sunder Singh was sleeping and he

was woken up. They reached his house at about 12:30 at night. Thereafter, brother of accused was called telephonically and house of accused

was searched. Nothing was found from his house. Thereafter, his shops were searched but nothing was found in the shops. A document was

prepared in which his signatures were obtained that nothing was recovered. Besides him, Shyam Singh and one police person signed the

document. Thereafter, police said that they had definite information about the possession of contraband. There was a khokha below the shop of

the accused. They made enquiries about the khokha and accused stated that khokha belongs to Nepali who comes off and on. Police party broke

the lock and recovered one bag which was black in colour and on checking, recovered ""Batinuma"" charas from the said bag. Thereafter, police

talked with their superiors and then SHO and one more person went to the house of accused and brought some documents, camera from there.

There was one vehicle standing in front of the house of accused and on inquiry, accused told them that the vehicle belongs to his friend Chuni Lal

and said Chuni Lal keeps the key of the vehicle in his shop. Police asked him to accompany them to Kullu for enquiry and told him to drive the

vehicle and they went to Kullu and he get back to his house.

12. On the basis of material produced on record by the prosecution, the learned Trial Court came to the conclusion that the prosecution had failed

to prove compliance of provisions of Section 42(1) and 42(2) and Section 50 of the NDPS Act and further in the opinion of the learned Trial

Court the version put forth by the defence was probable and accordingly the learned Trial Court gave benefit of doubt in favour of the accused and

acquitted him.

13. Mr. V.S. Chauhan, learned Addl. Advocate General has argued that the judgment of acquittal passed by the learned Trial Court was perverse

and, in fact, the learned Trial Court had erred in acquitting the accused for commission of offence under Section 20 of the NDPS Act. He further

argued that learned Trial Court had discarded the testimony of prosecution witnesses on account of untenable reasons and in the absence of any

proof of enmity, no reason whatsoever has been assigned by the learned Trial Court for discarding the version of the official witnesses. According

to him, the learned Trial Court wrongly held that there was no compliance of provisions of Section 42(1), 42(2) and Section 50 of the NDPS Act,

in fact, according to him, the learned Trial Court erred in not appreciating that in the facts of the present case, the provisions of Section 42(1),

42(2) and 50 of the NDPS Act were not attracted at the time of interception of the vehicle. There was no prior information regarding charas being

kept in the vehicle and it was a case of chance recovery. The learned Trial Court has miserably failed to appreciate this very important aspect of

the matter, therefore also, according to him, the judgment passed by the learned Trial Court was perverse and liable to be set aside. He further

argued that the learned Trial Court erred in coming to the conclusion that before searching the vehicle, the Investigating Officer ought to have given

option to the accused as required under Section 50 of the NDPS Act. As per him, the learned Trial Court ignored the fact that it was not a case of

personal search of the accused. He further submitted that the learned Trial Court had also erred in placing implicit reliance on the version of

accused that, in fact, the charas was recovered from khokha near the house of accused. According to him, the so-called version of accused was

totally uncorroborated and was not substantiated by any material produced on record by the defence. According to him, in the absence of a case

of animosity or enmity put fourth by the accused, there was no occasion for the police to have planted a case under the NDPS Act against the

accused and that too with such a heavy quantity of charas. Learned Additional Advocate General further argued that the learned Trail Court had

erred in not appreciating that there were minor contradictions in the testimony of police witnesses and it was satisfactorily explained by the

prosecution as to why no independent witness was associated by the police. He further, submitted that learned Trial Court ignored the cogent and

trustworthy evidence of the prosecution witnesses and acquitted the accused by relying upon minor trifling contradictions which, in fact, had no

bearing as far as the veracity of the case of the prosecution was concerned. Therefore, he submitted that the judgment under challenge was liable

to be set aside and the accused deserved to be convicted for the charge alleged against him.

14. Mr. Anand Sharma learned counsel for the respondent on the other hand submitted that the appeal filed by the State had no merit in it at all.

According to him, there was neither any perversity nor any other defect in the judgment passed by the learned Trial Court vide which it had

acquitted the accused by giving him benefit of doubt. Mr. Sharma strenuously argued that the learned Trial Court had rightly come to the

conclusion that the prosecution had failed to prove its case against the accused beyond reasonable doubt. According to him, the entire case against

the accused was a concocted version which story has been cooked up just to frame the accused. The accused had not been nabbed while running

from the car as alleged by the prosecution and he, in fact, was taken from his house in a totally illegal manner by the prosecution. Mr. Sharma

further argued that the contradictions in the testimony of police witnesses were glaring. According to him, there was no cogent and satisfactory

explanation coming forth from the prosecution as to why no independent witness was associated with the search and seizure by the police.

According to him, the reason as to why no independent witness was associated was that the story put forth by the prosecution was a false story

and the events had not been taken in the manner in which they have been narrated by the prosecution.

15. We have heard learned counsel for the parties and also gone through the records of the case minutely. We have also perused the judgment

passed by the learned Trial Court.

16. The learned Trial Court has held that in the present case the mandatory provisions of Section 41(1), 42(2) and 50 of the NDPS Act were

required to be complied with. The learned Trial Court has held that on account of the non-compliance of the said mandatory provisions, the trial

stands vitiated. In this regard, the learned Trial Court has placed reliance upon the judgment passed by this Court in *Ms. Shriki Ravit v. State of*

H.P., 2002(2) *Shim. L.C.* 276 and the judgment of Hon'ble Supreme Court in *Mohinder Kumar v. State, Panaji, Goa*, (1998) 8 SCC 655.

17. We are afraid that the conclusions arrived at by the learned Trial Court in this regard are not sustainable in law. It is not the case of the

prosecution that they had any prior information that the vehicle in which the accused was travelling was carrying some contraband. The case of the

prosecution is that policy party had laid a Naka and the car being driven by accused came from Manikaran side and when the driver of the car

saw the Naka, he stopped the car and tried to run away. The driver was apprehended by the police party. A bag was found lying inside the car

and on search of the said bag revealed that it was containing charas. Thus, it is evident that this is a case of chance recovery. The Hon^{ble}

Supreme Court in *Mohinder Kumar v. State, Panaji, Goa*, (1998) 8 SCC 655 was dealing with a matter where police party alighted from the

vehicle and reached the house and noticed two persons sitting in the verandah of that house and as soon as they saw the policy party, they

hurriedly entered the house. This aroused the suspicion of the Sub-Inspector whereupon he and policy party went to the house and directed the

two accused persons to stay where they were and asked the Head Constable to alert the others and to arrange for Panchas. On the arrival of the

Panchas, he and his companions entered the house and questioned the accused persons. He saw a white plastic bag lying by the side of the

accused and on search he found that the bag contained two polythene packets of charas like substance. It was in these facts that the Hon^{ble}

Supreme Court has held as under:-

3. In the instant case, the facts show that he accidentally reached the house while on patrolling duty and had it not been for the conduct of the

accused persons in trying to run into the house on seeing the policy party he would perhaps not have had occasion to enter the house and effect

search. But when the conduct of the accused persons raised a suspicion he went there and effected the search, seizure and arrest. It was,

therefore, not on any prior information but he purely accidentally stumbled upon the offending articles and not being the empowered person, on

coming to know about the accused persons being in custody of the offending articles, he sent for the panchas and on their arrival drew up the

panchnama. In the circumstances, from the stage he had reason to believe that the accused persons were in custody of narcotic drugs and sent for

panchas, he was under an obligation to proceed further in the matter in accordance with the provisions of the Act. Under Section 42(1) proviso, if

the search is carried out between sunset and sunrise, he must record the grounds of his belief. Admittedly, he did not record the grounds of his

belief at any stage of the investigation subsequent to his realising that the accused persons were in possession of charas. He also did not forward a

copy of the grounds to his superior officer, as required by Section 42(2) of the Act because he had not made any record under the proviso to

Section 42(1). He also did not adhere to the provisions of Section 50 of the Act in that he did not inform the person to be searched that if he

would like to be taken to a Gazetted Officer or a Magistrate, a requirement which has been held to be mandatory. In Balbir Singh case, it has been

further stated that the provisions of Sections 52 and 57 of the Act, which deal with the steps to be taken by the officer after making arrest or

seizure are mandatory in character. In that view of the matter, the learned counsel for the State was not able to show for want of material on

record, that the mandatory requirements pointed out above has been adhered to. The accused is, therefore, entitled to be acquitted.

18. In our considered view, the facts of the present case are entirely different from the one which the Hon"ble Supreme Court was dealing with in

the above mentioned case. Therefore, the learned Trial Court has erred in relying upon the said judgment while coming to the conclusion that there

was violation of the mandatory provisions of Section 42(1), 42(2) and 50 of the NDPS Act.

19. In the present case, the judgment of this Court in Ms. Shriki Ravit v. State of H.P., 2002(2) Shim. L.C. 276, is also no more good law in

view of the subsequent judgments of the Hon"ble Supreme Court. In State of Himachal Pradesh v. Sunil Kumar, (2014) 4 SCC 780, the

Hon"ble Supreme Court has held as under:-

18. It is true that Sunil Kumar behaved in a suspicious manner which resulted in his personal search being conducted after he disembarked from

the bus. However, there is no evidence to suggest that before he was asked to alight from the bus, the police officers were aware that he was

carrying a narcotic drug, even though the Chamba area may be one where such drugs are easily available. At best, it could be said that the police

officers suspected Sunil Kumar of carrying drugs and nothing more. Mere suspicion, even if it is "positive suspicion" or grave suspicion cannot be

equated with "reason to believe". These are two completely different concepts. It is this positive suspicion, and not any reason to believe, that led

to the chance recovery of charas from the person of Sunil Kumar.

19. Similarly, the positive suspicion entertained by the police officers cannot be equated with prior information. The procedure to be followed

when there is prior information of the carrying of contraband drugs is laid down in the Act and it is nobody's case that procedure was followed, let

alone contemplated.

20. We are not in agreement with the view of the High Court that since the police officers had a positive suspicion that Sunil Kumar was carrying

some contraband, therefore, it could be said or assumed that they had reason to believe or prior information that he was carrying charas or some

other narcotic substance and so, before his personal or body search was conducted, the provisions of Section 50 of the Act ought to have been

complied with. The recovery of charas on the body or personal search of Sunil Kumar was clearly a chance recovery and, in view of Baldev

Singh, it was not necessary for the police officers to comply with the provisions of Section 50 of the Act.

20. The Hon'ble Supreme Court in Union of India v. Major Singh and other, (2006) 9 SCC 170, has held as under:-

3. The High Court has recorded the acquittal on two counts; firstly, the provisions of Section 50 of the Act and secondly, under Section 42(2) of

the Act have not been complied with. So far as Section 50 of the Act is concerned, in the present case, the same shall have no application as the

search and seizure was made from a truck and not from the person of any of the accused persons. This question has been examined by a three-

Judge Bench of this Court in State of H.P. v. Pawan Kumar in which it has been categorically laid down that search of a bag, briefcase or any such

article or container which is being carried by a person is not search of a person, as such the provisions of Section 50 of the Act would not apply in

case search and seizure is not made from the person of the accused. In the present case, as the search and seizure have not been made from the

person of the accused but from the truck, the provisions of Section 50 of the Act shall have no application.

4. Turning now to Section 42(2) of the Act, in this regard, it may be stated that from the prosecution case and evidence it would be clear that the

search and seizure was made of a public carrier at a public place and 127 bags of poppy straw (opium) were seized from a public carrier. This

point is also concluded by a judgment of this Court in State of Haryana v. Jarnail Singh in which it has been categorically laid down that if a public

conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to

Section 42 for searching the vehicle between sunset and sunrise. In the case in hand the search was made of a public conveyance at a public place

between sunrise and sunset. Therefore, the provisions of Section 42(2) of the Act shall have no application to the case. This being the position, the

High Court was not justified in acquitting the respondents and the trial court was quite justified in convicting them.

21. In view of the above, in our considered view, the findings returned by the learned Trial Court to the effect that trial stood vitiated for non-

compliance of provisions of 42(1), 42(2) and 50 of the NDPS Act are not sustainable in law.

22. Now we will deal with the other aspects of the matter.

23. Perusal of statement made by the accused under Section 313 Cr.P.C. reveals that, his stand therein was that, he never met police along with

vehicle No. HP34A-3672 at Sumo Ropa Jungle at 2:30 a.m. on the night of 14.11.2007. According to him, it was on the intervening night of

13.11.2007 and 14.11.2007 at around 12:15 a.m. when police came to his house along with Chander Pal and searched his house and shops. As

nothing incriminating was found there, they searched one khokha adjoining to his shop which was situated on Government land, from where they

recovered one bag which was containing charas. Thereafter, police brought digital camera, ATM card, photographs, passport etc. from his house

and falsely implicated him in the case. DW1, Chander Pal, has corroborated the version of accused by entering into the witness-box. His cross-

examination reveals that the truthfulness of this witness has not been impinged by the prosecution. His statement seems to be cogent and

trustworthy.

24. As per the prosecution, after accused-Sunder Singh was apprehended and on search 4 Kg 500 grams charas was recovered from the bag,

they took search of the house of accused but nothing incriminating was recovered from there and thereafter PW7 along with accused and case

property came to Police Station Kullu. On the other hand, as we have discussed above, the defence of the accused was that the entire story put

forth by the prosecution is a concocted one. In fact, police party first searched the house of the accused, as it was having prior information about

contraband and thereafter the shops of the accused were searched. When nothing incriminating was found either in the house or the shops, they

break open the lock of an abandoned khokha owned by one Nepali or the charas was recovered there. In order to substantiate this contention,

the accused has relied upon the testimony of DW1, who also happens to be the Vice President of Gram Panchayat, Kasol. Ext.DA is the copy of

recovery memo, the same has been signed by DW-Chander Pal, as a witness. Therefore, his presence at the time of preparation of Ext. DA is not

in dispute. Incidentally, Ext. DA was not appended with challan by the prosecution, though it was their case that house of accused was searched

by them and nothing incriminating was found in the house of the accused. A perusal of Ext. DA demonstrates that, it is not mentioned therein that

before carrying search of the house of accused, they had already apprehended the accused and charas already stood recovered from the bag

which he was carrying in his house and it was thereafter that the police was carrying out search of the house of accused. In our considered view,

this gives credence to the defence of the accused that, in fact, the police officials took lift in DW-1's vehicle, as they were having prior information

that some incriminating substance was in the house of accused and thereafter they searched the house and shops of the accused, where nothing

incriminating was found and after that, one khokha which is constructed on the Government land situated close to the house and shops of the

accused was also searched and recovery was effected from there. All these facts cast a serious doubt on the prosecution case whereas they give

veracity to the version of the defence and this possibility cannot be ruled out that the version of the defence may be a probable version.

25. Even as far as the factor of not associating independent witness is concerned, the same also creates serious doubt over the truthfulness of the

case of prosecution because the prosecution witnesses have admitted this fact that one NHPC store is situated close to Suma road where Naka

was put by the police and the said store remains open throughout night and security guard was also on duty. Besides this, it has also come on

record that there are few houses and two hotels situated on the side of the road at some distance from where the Naka was put, but no effort was

made to associate the independent witness and the so-called assertion on behalf of the prosecution witness (Bhader Singh) that he knocked one or

two doors but due to cold weather and odd hours nobody came out does not seem to be plausible.

26. There is no dispute that the version of the prosecution can be proved on the basis of testimony of police officials alone, however, it still remains

a fact that in those cases where it is apparent that independent witnesses could have been associated but the police party does not make any

serious efforts to associate independent witnesses and further it is not able to substantiate as to why no independent witness was associated with

search and seizure then all these circumstances create serious doubt on the story of the prosecution.

27. In our considered view, in the present case, there are lots of inconsistencies and contradictors in the case put forth by the prosecution. The

prosecution has not associated any independent witness to corroborate its case and its case hinges on the testimonies of police witnesses itself. The

statements of these police witnesses are neither cogent nor trustworthy nor do they seem to be truthful. There are lots of contradictions in the

statements of PWs which have not been satisfactorily justified by the prosecution.

(a) PW1, HC Purshotam Ram, has mentioned that the patrolling party was consisting of five persons i.e. he, ASI Jagat Singh, Constable Hira

Singh, Constable Sohan Singh and Constable Bhader Singh, however, according to PW6 Hira Singh the police party consisted of Purshotam Ram,

Bhader Singh, Sohan Singh and he himself.

(b) Similarly, PW6, Hira Singh, has stated that Naka was put two places between Jari and Soma, whereas PW7-Jagat Singh has said that no

other Naka was put up except one where the accused was apprehended.

(c) As already pointed out, PW1 has admitted in his cross-examination that before Soma road just ahead of Soma there is NHPC store and

security guard is also deputed on duty around the clock. He also admitted that there are 5-6 houses and two hotels on side of the road. This

witness further states that the original seal which was given to him has been lost by him.

(d) Further according to PW1, out of the seized contraband, two samples of 25 grams each were taken. PW8, LHC Sunil Kumar, has mentioned

in his deposition that the seized samples along with other documents were deposited at FSL, Junga by him.

(e) According to PW8, he took one sample of 50 grams. Ext. PW2/D is the copy of NCB form in which it is mentioned that one sealed sample 25

grams charas sent to Director, FSL, Junga vide RC No. 306 of 2007. These are also major contradictions in the story of the prosecution which

have not been satisfactorily explained by them.

28. This Court is not oblivious to the effect that discrepancies do creep in the testimonies of witnesses on account of passage of time that elapses

between the occurrence of the event and the date on which the witness deposes. However, keeping in view the fact that in the present case no

independent witness has been associated by the prosecution, these contradictions do gain importance.

29. It is well settled principle of criminal jurisprudence that more stringent the punishment, more heavy is the burden upon prosecution to prove

offence. No independent witness has been associated by the police and the police witnesses have not been able to satisfactorily prove the case of

the prosecution.

Therefore, keeping in view what we have discussed herein above, though we set aside the findings returned by the learned Trial Court with regard

to the compliance of mandatory provisions of Section 42(1), 42(2) and 50 of the NDPS Act, however, we uphold the judgment of acquittal

passed by the learned Trial Court on other grounds which we have discussed in the judgment above and accordingly the present appeal is

dismissed and the judgment of acquittal passed by the learned Trial Court is confirmed. Bail bonds, if any, furnished by the accused are

discharged.