



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4085 of 2013.

Reserved on: 07.03.2026.

Date of decision: 24.03.2026.

State of Himachal Pradesh ...Appellant.

Versus

Pandav Ram ...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Appellant. Mr. Raj Negi, Deputy Advocate General.

For the Respondent: Mr. Vinay Thakur, Advocate.

Vivek Singh Thakur, Judge

State has preferred this appeal against judgment dated 30.04.2013, passed by Special Judge, Chamba, District Chamba, H.P. in Sessions Trial No. 16/12, titled as State of Himachal Pradesh vs. Pandav Ram in Case FIR No. 246/11, dated 02.10.2011, registered in Police Station, Sadar Chamba, District Chamba, H.P., under Section 20 of Narcotic Drugs and Psychotropic Substance Act, 1985 (in short 'NDPS

¹ *Whether the reporters of the local papers may be allowed to see the judgment?*



Act'), whereby respondent-Pandav Ram has been acquitted of charge, framed against him.

2. Prosecution's case is that on 02.10.2011, at 8:30 P.M., police party headed by ASI Kuldeep Chand (PW-8) along with investigation kit, electronic weight measuring balance and search light, consisting of PSI Harish Kumar (PW-1), HC Ramesh Chand, No. 27, C. Naresh Kumar, No. 585 and C. Vinod Kumar, No. 485 left the Police Station, Sadar Chamba at 8:30 P.M. in Government vehicle No. HP73-0919, driven by constable driver Vishal Kumar, No. 492 left the Police Station Sadar Chamba for patrolling and *nakabandi* in the Town Chamba, Hardaspura, Karian etc. by recording GD entry No. 33(A) dated 02.10.2011 (Ext. PW3/A).

3. Police party reached at Zero Point Bharmour Chowk, Chamba at about 9:15 P.M. and on noticing respondent Pandav Ram, sitting inside rain shelter along with bag, PW-8 ASI Kuldeep Chand asked the driver to stop the vehicle and thereafter, police party alighted from the vehicle. On seeing the police coming towards rain shelter, person started walking briskly towards Hardaspura, which caused suspicion and, therefore, PW-8 with the help of other accompanying police officials nabbed him. On inquiry, he could not explain the reason for his



movement on seeing the police party. On asking, he disclosed his name as Pandav Ram with parentage and place of residence. According to PW-8, he questioned the respondent about the material being carried by him in the bag in his possession and PW-8 became suspicious that respondent might be carrying some contraband in his bag and, therefore, bag was required to be searched. Respondent was informed about his legal right to have his personal search as well as the bag in presence of either Magistrate or Gazetted Officer. The respondent opted for personal search by the police personnel.

4. According to prosecution, as it was odd time, therefore, no independent witness was available and the Investigating Officer associated PSI Harish Kumar (PW-1) and HC Ramesh in search and seizure process. After taking consent of the respondent on consent memo (Ext. PW1/A), which was also signed by both the witnesses as well as respondent. Thereafter, I.O. ASI Kuldeep Chand, PSI Harish Kumar and HC Ramesh offered their personal search to respondent Pandav Ram. In this regard, memo (Ext. PW1/B) was prepared, which was also signed by the witnesses as well as the respondent. Respondent was brought to the rain shelter along with bag in his hand. The bag, having two laces, was opened wherefrom one corduroy trouser and one cloth bag, containing



polythene were found. Polythene was opened, which contained cylindrical shaped brown coloured hard substance.

5. On smelling and on the basis of experience, the hard substance was identified to be Charas. After taking out weights and measures from I.O. kit, Charas was weighed and found to be 400 grams. Thereafter, Charas was put in polythene and polythene was put in cloth bag. Corduroy pant and cloth bag were put in the bag, having two laces. Bag was put in cloth parcel, which was stitched and sealed with five impressions of seal 'K'. Sample impression of seal 'K' was taken on separate piece of cloth (Ext. PW1/C), which was also signed by the witnesses as well as PW-8. Respondent had also appended his signature on the parcel. Thereafter, NCB form was filled in triplicate and seal 'K' was affixed thereon. Seal 'K' after use was handed over to PSI Harish Guleria (PW-1). With respect to seizure of contraband, seizure memo (Ext. PW1/D) was prepared, which was signed by PSI Harish Kumar and HC Ramesh. Respondent had also appended his signature thereon.

6. After completing search and seizure process, ruqua (Ext. PW8/A) was prepared at about 10:25 P.M. and was sent to Police Station through PW-2 HHC Naresh Kumar, No. 585. On receiving ruqua, after registration of FIR No. 246/11 (Ext. PW7/A) at 10:40 P.M., endorsement



(Ext. PW7/B) was made thereon. Spot map (Ext. PW8/B) was prepared by ASI Kuldeep Chand (PW-8). Statements of witnesses were recorded and respondent Pandav Ram, for existence of prima-facie case against him, was arrested, after registration of FIR.

7. After completing investigation, PW-8 ASI Kuldeep Chand along with police officials returned to Police Station, Sadar and produced respondent Pandav Ram, who was confined in lock-up and case property and other documents including memo of arrest and record of information of arrest given to his relative, were handed over to SI/Additional SHO Piar Chand. Piar Chand in turn, resealed the case property with seal 'T'. Three impressions of seals were taken separately on piece of cloth, whereas in the NCB form (Ext. PW7/E), sample of seal 'T' was not taken. The case property was handed over to MHC Pawan Kumar (PW-7), which was entered at Sr. No. 604 of Malkhana Register No. 19. Extract of Malkhana Register has been produced as Ext. PW7/C.

8. On 04.10.2011, PW-7 MHC Pawan Kumar handed over the case property along with sample seal, NCB form in triplicate, copies of seizure memo, FIR and docket to HHC Ramesh Kumar (PW-11) to SFSL Junga, vide RC No. 154/11, dated 04.10.2011 (Ext. PW7/D). PW-11 HHC Ramesh Kumar after depositing the case property at SFSL Junga,



handed over the receipt to PW-7 MHC Pawan Kumar on his return, with information that case property could not be deposited in SFSL till 10.10.2011, as SFSL was closed on account of Dussehra and local holidays w.e.f. 06.10.2011 to 09.10.2011. During this period, HHC Ramesh Kumar deposited the case property in Police Station Kandaghat, regarding which daily diary reports were recorded in Police Station Kandaghat, which are Ext. PW7/F, Ext. PW7/G, Ext. PW7/H and Ext. PW7/J. Case property was deposited in SFSL, Junga on 10.10.2011. Special report (Ext. PW5/B) was prepared on 04.10.2011 and sent to S.P. Chamba through C. Ram Chand (PW-9), who delivered the same to PW-5 HC Subhash Chand, Reader to the Superintendent of Police. On completion of investigation and receiving the SFSL report (Ex. PX), case file was handed over to SHO for presentation of challan. PW-6 SHO Kailash Walia prepared the challan and presented the same in the Court.

9. On finding prima-facie material against the respondent, Special Judge framed charge against the respondent on 19.04.2012, under Section 20 of NDPS Act, for having been found in exclusive and conscious possession of 400 grams of Charas without any licence or permit.



10. Respondent was subjected to trial. Prosecution has examined 11 witnesses, to prove its case. Thereafter, statement of respondent Pandav Ram was recorded under Section 313 of Cr.P.C. No evidence in defence has been led by respondent Pandav Ram.

11. Out of six members of police party, three have been examined as witnesses, i.e., PW-1 PSI Harish Kumar, PW-2 HHC Naresh Kumar and PW-8 ASI Kuldeep Chand, Investigating Officer. HC Ramesh, C. Vinod Kumar and driver, C. Vishal Kumar have not been examined.

12. It is admitted case that no independent witnesses were associated in search and seizure process. The explanation given by the Investigating Officer is that during odd hours, no independent witness was available. The contraband alleged to be recovered on 02.10.2011 from the respondent at Zero Point Bharmour Chowk, Chamba. As per prosecution, recovery was made after 9:15 P.M.

13. It is settled law that police officials are also to be relied upon like other witnesses and being police officials, their depositions do not become unreliable only on account of being police personnel. However, in absence of independent witness, their depositions have to be scrutinized with due care and caution. Further, that because conviction can be on the basis of statement of official witnesses, but it does not give any licence to



the Investigating Officer or police not to make any effort to associate independent witness, despite possibility of availability of independent witness.

14. In present case, PW-1 PSI Harish Kumar has stated that since it was odd time, therefore, no independent witness was available. In cross-examination, he has denied that in and around Zero Point Bharmour Chowk, traffic keeps on plying 24 hours. He expressed his ignorance about existence of a shop of Sukeja towards Hardaspura at starting point of Julakhari Mohalla, population whereof is 5,000. According to this witness, police officials stayed on the spot about three hours. He expressed his ignorance about plying of HRTC bus services from Bus Stand at 9:30 P.M. for Pathankot as well as departure of HRTC bus services for Jammu at 10:30 P.M., for Pathankot at 10:45 P.M. and for Amritsar at 11:30 P.M. According to this witness, during conducting proceedings of three hours, i.e., from 9:15 P.M. to 12:15 A.M., about 12-15 vehicles crossed through Zero Point Bharmour Chowk. He has stated that they did not stop any vehicle, because consent memo and personal search had already been completed with further self statement that vehicle started crossing Zero Point Bharmour Chowk after 9:30 P.M. when proceedings with regard to preparation of consent memo and



personal search memo had already been completed. According to him, ASI Kuldeep Singh (PW-8) had suddenly asked to stop the vehicle. He has stated that he did not see the respondent, as to on which bench, he was sitting with self statement that respondent was noticed by PW-8 Kuldeep Singh. Seal 'K' was handed over to this witness, but the same was not produced in the Court with explanation that during shifting the quarter, the seal might have misplaced somewhere. He expressed his ignorance about signing of NCB form in triplicate apart from Investigating Officer, but he has not noticed the Investigating Officer appending his signature on NCB form. He has stated that Investigating Officer had asked him to look around, if any independent witness was available there. No one was even there. Further, that they did not make any effort to find out independent witness, but only looked around in the nearby.

15. PW-1 PSI Harish Kumar has denied that within the radius of 20 to 25 meters of Zero Point Bharmour Chowk, there is thick habitation and residential houses. According to him, Julakhari Mohalla is situated at a distance of 100-150 meters away from Zero Point Bharmour Chowk and Mohalla Dharog is at a distance of 300-400 meters from Zero Point Bharmour Chowk. S.P. office through shortcut is at a distance of 150-200 meters. He has admitted that there is a shop of Sardarji very near to Zero



Point Bharmour Chowk, which remains open till 10:00 P.M., but when the respondent was nabbed, it was Sunday and, therefore, no shop including that of Sardarji was opened. According to him, HHC Naresh Kumar went with ruqua on foot.

16. PW-2 HHC Naresh Kumar, No. 585 in examination-in-chief has reiterated the prosecution's case with submission that he delivered the case file to Investigating Officer at Zero Point Bharmour Chowk after registration of FIR at 00.05 midnight on 03.10.2011 and, thereafter, he remained with the Investigating Officer, who took the respondent and case property to the Police Station along with other officials. This witness has admitted that there is a State Bank of Patiala at Julakhari Mohalla and a Global Fruit Corner and one shop of one Sardar at Zero Point Bharmour Chowk. This witness remained on the spot till 10:25 P.M. and according to him, during proceedings till 10:25 P.M., no passerby crossed through, however, 5-7 light motor vehicles had crossed through. He has stated that Investigating Officer did not make any effort to stop the vehicle, which passed through, but Investigating Officer had asked to look around for any independent witness, but no one was seen nearby. This witness has admitted that S.P. Office is at a distance of 150 meters through shortcut. Dharog Mohalla is at a distance of 300 meters and



Government offices are at a distance of 50 meters and Mohalla Julakhari is at a distance of 100 meters from Zero Point Bharmour Chowk. According to this witness, police party did not go anywhere to arrange any local witness, but confined themselves only at the spot. According to this witness, after conversation of five minutes, Investigating Officer had told the respondent that he was required to be searched personally along with his bag.

17. PW-8 ASI Kuldeep Chand has also reiterated the prosecution's story in examination-in-chief. In cross-examination, he has admitted that Zero Point Bharmour Chowk is mostly used as entry and exit point from Chamba Town and to leave for Bharmour, and there is a shop of Sukeja with further qualification that he did not know Sukeja, but market is at a distance of 30 meters from Zero Point Bharmour Chowk. He expressed his ignorance about building of Ved Prakash Kapoor, adjoining to the shop of Sukeja, but has admitted that there was a building. According to him, distance of Julakhari Mohalla from Zero Point Bharmour Chowk is more than 50 meters. He has admitted that traffic flow remains for 24 hours at Zero Point Bharmour Chowk, but sometimes there is no traffic. He has admitted that population of Julakhari Mohalla may be 5,000. He has stated that he had asked police officials to look out



for independent witness at Zero Point Bharmour Chowk with direction to arrange local witness, if any, vehicle or passerby comes across, but he did not see any witness in the nearby. According to him, after return of PW-2 C. Naresh Kumar, they remained on the spot for 15-20 minutes and he recorded statement of C. Naresh and completed the formalities with regard to arrest of the accused.

18. PW-11 HHC Ramesh Kumar had received the case property on 04.10.2011 for depositing it in SFSL, Junga, vide RC No. 154/11, but he deposited the same on 10.10.2011. He has explained with the help of rapats Ext. PW7/F to Ext. PW7/J, the cause of depositing the case property with SFSL Junga on 10.10.2011 that he received case property on 04.10.2011, reached at Shimla on 05.10.2011 at 10:30 P.M. and went Junga on 06.10.2011 and, thereafter, because of holiday, case property could not be deposited. He went to Police Station Kandaghat, where he reached at around 11:00 P.M. He deposited the case property on that day and received it on 07.10.2011 and again visited SFSL Junga and thereafter, he came to know that office will remain close on account of Dussehra holidays till 10.10.2011 and, therefore, he again deposited the case property in Police Station Kandaghat at 1:30 P.M. and thereafter, received it on 10.10.2011 and deposited in SFSL Junga. According to



Ext. PW7/F, on 06.10.2011, case property was deposited in Police Station Kandaghat by PW-11 at about 8:10 A.M., whereas according to this witness, he reached there at 11:00 P.M.

19. Where this witness kept the case property on 4th and 5th October, has not come on record. In RC No. 154/11 (Ext. PW7/D), there is no mention of date and time of handing over the case property to PW-11 HHC Ramesh Kumar.

20. Contraband is alleged to have been recovered from the bag being carried out by respondent. As nothing was recovered from the respondent from his person, therefore, provisions of Section 50 of NDPS Act are not applicable in present case and, therefore, we are not evaluating the validity and legality of consent memo prepared under Section 50 of NDPS Act. **[See Ranjan Kumar Chaddha vs. State of Himachal Pradesh, AIR 2023 Supreme Court 5164].**

21. It is settled that non association of independent witnesses for non availability, keeping in view the odd hours or secluded place of recovery of contraband, is not fatal to the prosecution's case, but at the same time, it is also well settled that joining/association of independent witnesses is not a mere formality, which can be dispensed with in all eventualities.



22. In present case, alleged recovery has been effected in October, 2011 at 9:15 P.M. in a town where market and habitation, State Bank of Patiala, office of Superintendent of Police are located at a distance of 50 to 200 meters. It has also come on record that there was timing of buses plying from Bus Stand Chamba crossing through Zero Point Bharmour Chowk at 9:30 P.M., 10:30 P.M., 10:45 P.M. and 11:30 P.M. to various stations, i.e., Jammu, Pathankot and Amritsar.

23. According to prosecution witnesses, no vehicle crossed till completion of proceedings. However, Investigating Officer has admitted that there is sufficient traffic on Zero Point Bharmour Chowk, but on that day, there was no traffic, whereas according to PW-1 during that time about 12-15 vehicles crossed from Zero Point Bharmour Chowk, but they did not stop any vehicle. PW-1 and PW-2 have also stated that they were directed to look for independent witnesses at Chowk, but not to stop the vehicle or arrange any local witnesses from surrounding area. According to PW-2 also, 5-7 light motor vehicles crossed from the spot, but the Investigating Officer did not make any effort to stop the vehicle, which pass through. Investigating Officer himself has stated that he had asked the police officials to look for the independent witnesses at the Chowk itself, but not from the area around the spot.



24. From the aforesaid facts and circumstances, location of the spot and timings of the recovery, it is evidently clear that no effort was made to join/associate independent witnesses. It is not a case where Investigating Officer had tried to join independent witnesses, but witnesses were not found, rather it is a case where no effort was made to join independent witnesses, despite existence of local market near the spot and also some vehicles had crossed from Zero Point Bharmour Chowk at the relevant point of time. Therefore, conduct of police party, including the Investigating Officer, creates doubt about the conduct of Investigating Officer, as for reasons best known to the police party, no serious effort for joining and associating independent witnesses in search and seizure process was made. It is also not natural that on seeing a person, sitting in rain shelter at 9:15 P.M., when there were timing of the buses available from Chamba to various stations, the vehicle was stopped by the Investigating Officer in front of the rain shelter.

25. Police personnel in deposition in the Court have stated that on seeing the respondent in rain shelter, ASI Kuldeep Chand (PW-8) asked the driver to stop the vehicle and on seeing the police alighting from the vehicle, respondent left the rain shelter and started running towards Hardaspura along with a carry bag in his hand, whereupon



suspicion had arisen and respondent was nabbed and inquired. In ruqua (Ext. PW8/A), a different story has been narrated with statement that when vehicle reached near Zero Point Bharmour Chowk, when PW-8 ASI Kuldeep Chand noticed a person fleeing from rain shelter on seeing the police vehicle, whereupon PW-8 Kuldeep Chand asked the driver to stop the vehicle immediately and after stopping the vehicle, the police party alighted and apprehended the respondent. There is variance in the story, though appears to be minor, but in the given facts and circumstances, the different stories raise suspicion regarding nabbing and apprehending the respondent and, therefore, prosecution's story is doubtful.

26. It is also apt to notice that PW-2 HHC Naresh Kumar left the spot with ruqua at 10:25 P.M. and FIR was registered at 10:40 P.M., but PW-2 HHC Naresh Kumar came back to the spot along with case file at 12:05 A.M. The Police Station was at a distance of two kilometers and it took 20 minutes to PW-2 to arrive at Police Station, but while returning, he took more than one hour. It again creates doubt with respect to veracity of the witnesses, regarding the manner in which the events happened.

27. It is also apt to notice that there is also tampering in intimation and memo of arrest in the date as well as timing. By overwriting



the document, time of arrest has been modified as 12:20 A.M. on 03.10.2011.

28. It is also noticeable that seal was handed over to PW-1 PSI Harish Kumar, who is a police official, but he did not produce the same in the Court. He is not a common man, but is a Sub Inspector in the Police Department and he is well aware about the importance of production of seal in the Court, which was handed over to him by the Investigating Officer. Though, he has stated that he can produce the same in the Court after search, but the seal was never produced in the Court. He further stated that Investigating Officer did not instruct him to produce the seal in the Court, but only told him not to give the seal to anyone. The explanation for not producing the seal is unbelievable. Non production of seal may not be fatal for the prosecution in normal circumstances, unless prejudice is established to have been caused to the accused for non production of the same. However, in present case, this fact becomes a serious lapse, particularly when the seal was handed over to the Probationary Sub Inspector and no effort was made by the Investigating Officer to join independent witnesses, despite possibility of availability of such witnesses.



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29. It is settled law that when there is a doubt, benefit has to be extended to the accused. Respondent has been acquitted by the Trial Court, which has fortified presumption of innocence in his favour. The State has failed to point out cogent, convincing and reliable evidence to rebut the said presumption.

30. Though, Trial Court has also considered judgment passed in **Sunil Kumar vs. State of H.P., reported in 2010(1) Shim. LC 192** for acquitting the accused, but the said judgment stands overruled in case **State of HP vs. Mehboob Khan and etc., 2014 Cri. LJ 705** and, therefore, we are not in agreement with Trial Court for relying upon ratio of **Sunil Kumar's case** for acquitting the respondent. However, for other grounds discussed herein before, appeal preferred by the State is liable to be dismissed and accordingly dismissed.

31. Appeal disposed of in aforesaid terms along with pending applications, if any.

**(Vivek Singh Thakur),
Judge.**

**(Ranjan Sharma),
Judge.**

24th March, 2026
(Susheel)