

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 182 OF 2013**

Jagat Singh

Appellant(s)

VERSUS

State of Uttarakhand

Respondent(s)

J U D G M E N T

JUDGMENT

Abhay Manohar Sapre, J.

1) This appeal is filed against the final judgment and order dated 18.11.2011 of the High Court of Uttarakhand at Nainital in Criminal Jail Appeal No. 4 of 2010 whereby the High Court dismissed the appeal

filed by the appellant herein upholding the order dated 15.01.2010/19.01.2010 passed by the Special Judge(N.D.P.S.Act)/Additional Sessions Judge/IVth Fast Track Court, Dehradun in Special Sessions Trial Case No. 30 of 2006 convicting the appellant under Section 8/20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”) and sentenced him to undergo rigorous imprisonment for a period of ten years and a fine of Rs. 1 lakh, in default of payment of fine, to undergo further simple imprisonment of two years.

2) **Brief facts:**

On 28.05.2006, on receiving information that a person is coming with contraband item from Tyuni to Kalsi, a team of Special Task Force consisting of Sub-Inspector Ved Prakash Thapliyal (PW-1), Sub Inspector Davender Singh (PW-2), Head Constable

Bhawan Singh with Constables, Nagesh Pal, Vijender Singh, Mahender Singh and Harshvardhan along with Driver Dhanveer Patwal proceeded in a vehicle bearing No. UA07-L 1777. When they reached near Chakbhool, they saw the appellant coming with white plastic bag suspecting that he is carrying contraband intercepted him. On receiving the information from the police party, Dinesh Chander Rawat, Deputy Superintendant of Police(PW-5), a Gazetted officer, also reached at the spot. After search being made, it was found that the appellant was carrying 9.300 kgs. of Cannabis(Charas). After taking 100 gm. out of that, the contraband item was sealed in different pack and remaining more than 9 kg. was sealed separately. FIR was registered against the appellant at the Police Station, Kalsi on 28.05.2006 at 9 p.m. as Crime No. 22 of 2006 for the offence punishable under Section 8/20

of the NDPS Act. PW-6 investigated the crime and after completion of investigation, submitted the charge sheet against the appellant.

3) After examination from forensic laboratory, the item was found as contraband item Cannabis (Charas). The Special Court (N.D.P.S.Act), after hearing the parties on 05.10.2006, framed charge of offence punishable under Section 8/20 of N.D.P.S. Act.

4) Prosecution examined the witnesses. However, no evidence in defence was adduced.

5) The Trial Court, after hearing the parties, by judgment/order dated 15.01.2010/19.01.2010 in Special Sessions Trial No. 30 of 2006, found the appellant guilty of charge of offence punishable under Section 8/20 of N.D.P.S. Act and sentenced him

to undergo imprisonment for a period of 10 years and a fine of Rs. One lakh.

6) Aggrieved by the said judgment of the Trial Court, the appellant through Superintendent of District Jail, Dehradun, filed an appeal from jail being Criminal Jail Appeal No. 04 of 2010 before the High Court.

7) The High Court, by impugned judgment dated 18.11.2011, dismissed the appeal and affirmed the judgment/order passed by the Trial Court.

8) Aggrieved by the said judgment, the appellant has filed this appeal by way of special leave before this Court.

9) Heard Mr. Rajeev Maheshwaranand, learned counsel appearing as Amicus Curiae for the appellant and Mr. Dinesh Kumar Garg, learned counsel for the respondent.

10) Mr. Rajeev Maheshwaranand, learned counsel for the appellant (accused) while assailing the legality and correctness of the impugned order argued only one point. According to him, while making the search from the appellant with a view to find out as to whether the appellant was carrying any contraband, the prosecution failed to ensure compliance of the mandatory requirements of Section 42 read with Section 50 of the NDPS Act. It was his submission that no compliance much less compliance in letter and spirit of the requirement of these Sections was made as explained by this Court in several cases while effecting search from the appellant and this being a fatal infirmity in the case of prosecution, the appellant's conviction deserves to be set aside on this ground alone. It is this submission, learned counsel for the appellant elaborated in his arguments.

11) In reply, learned counsel for the respondent while supporting the view taken by the two Courts below urged that no case is made out to interfere in the impugned order. It was his submission that both the Courts have rightly dealt with the issue on facts and in law including the one argued here and hence the impugned order, which has rightly resulted in appellant's conviction, does not call for any interference.

12) Having heard the learned counsel for the parties and on perusal of the record of the case we find no merit in the appeal.

13) The High Court dealt with the issue in paragraphs 6 to 9 as under,

“(6)I have gone through the documentary and oral evidence on record and found that it has nowhere come on the record that at the time when the accused was intercepted by police there were public men

witnessing the incident. As such, there was no occasion on the part of the policemen to get the recovery memo signed from the witnesses of public. Otherwise, also normally the public is reluctant to be witnessed in such kind of cases.

(7) Attention of this Court is drawn to the contradictions found in the statements of prosecution witnesses. Reference is made to the statement of PW1 Sub-Inspector Ved Prakash Thapliyal and PW-5 Dinesh Chander Singh Rawat. PW1 Sub-Inspector Ved Prakash Thapliyal has stated that the weights brought by the constable were of 5 kilogram, 2 kilogram, 1 kilogram, half kilogram, 200 gram and 100 gram. On the other hand (PW5) Dinesh Singh Rawat has stated that the weights of kilogram, 100 gram and 50 gram etc. were brought. In the opinion of this court such contradictions are minor in nature and on its basis the prosecution story can not be disbelieved. It is pertinent to mention here the quantity of Cannabis said to have been recovered from the accused is nine times more than the minimum commercial quantity, which could not be a planted one. Another contradiction pointed out by learned Amicus Curiae is that in the statement of PW1 Ved Prakash Thapliyal, 18.05 hours is said to be the time of arrest, while in the recovery memo it is mentioned as 18.45 hours. The statement made by the witness appears to have been made on 19.11.2007, and the incident relates to 28.05.2006, as such after a period of more than one year, a minor discrepancy in the time of arrest, can not be said to be material to doubt the prosecution story, it is pointed out that when the recovery is made PW5

Deputy Superintendent of Police Dinesh Singh Rawat (a Gazetted Officer) was called, and this fact itself indicates that prosecution story can not be doubted lightly particularly in view of all the fact that the quantity of Cannabis is 9.300 kilograms.

(8) In the above circumstances, having considered submissions of learned counsel for the parties, and after going through the lower court record, this court does not find any illegality or wrong appreciation of evidence made by the trial court.

(9) Therefore, the conviction and sentence recorded by the trial court requires no interference. Accordingly, the appeal is dismissed.”

14) Perusal of the relevant portion from the impugned order quoted supra would go to show that the appellant did not urge the point before the High Court which he has urged here. Be that as it may, it has otherwise no substance.

15) We find from the record of the case that the recovery of contraband was made from the appellant in the public place. In this view of the matter, the case

in hand fell under Section 43 of the NDPS Act. So far as compliance of Section 50 is concerned, the prosecution proved that PW-5-who was a gazzetted officer, was called and then in his presence the recovery of contraband was made from the appellant.

16) We thus find that the compliance of Section 50 was made in letter and spirit as provided therein and, therefore, no fault can be found in ensuring its compliance.

17) In the light of these two material issues, which were proved by the prosecution by proper evidence, the two Courts below, in our opinion, rightly held that the prosecution was able to prove their case beyond the reasonable doubt against the appellant and hence the appellant had to suffer conviction as awarded by the Trial Court. We, therefore, concur with the finding

of the two Courts which, in our view, does not call for any interference in this appeal.

18) Learned counsel then urged that since the concerned officials did not record the secret information, which they claimed to have received for making search from the appellant and hence non-recording of such information is fatal to the case of prosecution.

19) We find no merit in the submission because the information received was recorded as a fact in the record. In this view of the matter, this submission is factually incorrect and hence rejected.

20) Learned counsel then urged some points relating to facts. Similarly some points were so technical that they do not need any mention nor elaboration. We were, therefore, not impressed by any of these

submissions. These submissions are, therefore, rejected being devoid of any merit.

21) In the light of foregoing discussion, we find no merit in the appeal. The appeal thus fails and is accordingly dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[ASHOK BHUSHAN]

New Delhi,
June 29, 2016

JUDGMENT