

[2022 LiveLaw \(SC\) 173](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; M.M. SUNDRESH, JJ.
FEBRUARY 09, 2022

THE STATE OF HIMACHAL PRADESH
VERSUS
KARUNA SHANKER PURI

CRIMINAL APPEAL NO.912/2010 WITH Criminal Appeal No.219 /2022 [@ SLP(CrI) No. 1541/2014 (II-C)] Criminal Appeal Nos.234-236/2022 [In SLP [CRL.] Nos.1165-1167/2014 @ SLP(CrI) Nos.1164-1167/2014] CrI.A. No. 1083/2016 (II-C) CrI.A. No. 1062/2011 (II-C) CrI.A. No. 1192/2010 (II-C) CrI.A. No. 1063/2011 (II-C) CrI.A. No. 2207/2010 (II-C) CrI.A. No. 1085/2016 (II-C) CrI.A. No. 1090/2016 (II-C) CrI.A. No. 1092/2016 (II-C) CrI.A. No. 1084/2016 (II-C) CrI.A. No. 1089/2016 (II-C) CrI.A. No. 1088/2016 (II-C) CrI.A. No. 1091/2016 (II-C) CrI.A. No. 107/2017 (II-C)

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 21 - The quantity of the neutral substance is not to be excluded and to be taken into consideration along with the actual content of the weight of the offending drug while determining small and commercial quantities.

For Appellant(s) Mr. Himanshu Tyagi, AOR Mr. Abhinav Mukerji, AOR

For Respondent(s) Mr. Mahabir Singh, Sr. Adv. Ms. Preeti Singh, AOR Mr. Sunklan Porwal, Adv. Ms. Soumya Dwivedi, Adv. Mr. Dinesh Kumar Bhati, Adv. Mr. Veerendra Kumar, Adv. Mr. Dinesh Kumar Garg, AOR Mr. Rameshwar Prasad Goyal, AOR Mr. Ritesh Agrawal, AOR Mr. Parmanand Gaur, AOR Mr. S.L. Gupta, Adv. Mr. Ashutosh Sharma, Adv. Ms. Gunjan Sharma, Adv. Mr. Kuldeep Singh Tomar, Adv. Mr. Neeraj Srivastava, Adv. Ms. Shalu Sharma, AOR Mr. Chander Shekhar Ashri, AOR Mr. Anil Shrivastav, AOR Mr. Sunil Kumar Verma, AOR Ms. Asha Gopalan Nair, AOR Mr. Amit Anand Tiwari, AOR Ms. Nidhi, AOR

ORDER

CRIMINAL APPEAL NO.912/2010, SLP(CrI) No. 1541/2014, CrI.A. No. 1192/2010, CrI.A. No. 1063/2011, CrI.A. No. 12 1085/2016, CrI.A. No. 1090/2016, CrI.A. No.1092/2016, CrI.A. No.1091/2016, CrI.A. No.107/2017, Criminal Appeal No.2207/2010, Criminal Appeal No.1089/2016 & Criminal Appeal No.1088/2016

Leave granted in SLP [CrI.] No.1541/2014.

It is stated by both the counsels for the appellant and the accused that the matters were kept aside in terms of the order dated 12.09.2018 to await the judgment in *Hira Singh & Anr. v. Union of India & Anr.* case which judgment has now been delivered and reported as **Hira Singh & Anr. v. Union of India & Anr.- (2020) SCC Online SC 382**. This Court has opined on the issue whether the actual content of the weight of the offending drug is to be considered or whether as a whole procedure has to be looked into on the basis of the larger objective of the Narcotic Drugs and Psychotropic Substances Act to opine as under:

“65. In view of the above and for the reasons stated above, Reference is answered as under:

(I) The decision of this Court in the case of *E. Michael Raj* (supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II) In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the Narcotic Drugs or Psychotropic Substances;

(III) Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O.1055(E) dated 19.10.2001;

(IV) Challenge to Notification dated 4 18.11.2009 adding “Note 4” to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No.5218/2017 challenging the aforesaid notification stand dismissed.”

The effect of the aforesaid is that the quantity of the neutral substance is not to be excluded and to be taken into consideration along with the actual content of the weight of the offending drug while determining small and commercial quantities.

The aforesaid being the position and the appeals being allowed by the High Court predicated only on a view to the contrary without examination of the merits of the appeal, there is no option but to set aside the impugned judgment and remit the matter back to the High Court for consideration of the appeal on merits keeping the aforesaid judgment in mind.

We may further note the submissions of learned counsels for the respondent(s) that the number of respondents may have served substantive part of sentence and if there are no other cases subsequently brought against them, the High Court may consider confining the sentence to the period undergone. This would be an aspect to be examined by the High Court but is naturally dependent on the minimum sentence to be imposed.

We call upon the State to place a chart qua all the accused i.e. whether they are charged with any other cases in this behalf for the High Court to be able to take a call in the matter.

The appeals are allowed in the aforesaid terms leaving parties to bear their own costs.

Criminal Appeal Nos.234-236/2022

[In SLP [CRL.] Nos.1165-1167/2014 @ SLP(Cr) Nos.1164- 1167/2014]

Leave granted.

We have heard learned counsel for parties.

The impugned order of acquittal reversing the judgment of the High Court was predicated on a dual reasoning:

a) The sample originally sent was not accepted but was subsequently accepted but it was not disclosed as to what objections were put by the laboratory and whether these were with respect to the seal on the sample parcels or any discrepancy in documents so sent to them or there were any other reason which compelled the lab not to accept the sample parcels.

b) The *charas* sample which was examined both for qualitative and quantitative test would not meet the principles laid down in respect of

quantification of the drug, an aspect we may note stands covered by the judgment in **Hira Singh** (supra) opining that in the case of seizure of a mixture, the quantity of neutral substance is not to be excluded and to be taken into consideration along with the actual content of weight of the offending drug while determining the small or commercial quantity.

We have remitted the connected matters in view of the aforesaid judgment on the second aspect. However, the present case is slightly different case because the acquittal based on two separate grounds of the first grant of acquittal would still stand.

The aforesaid being the position, we dismiss the appeals leaving parties to bear their own costs.

CRIMINAL APPEAL NO.1083/2016

We have heard learned counsel for parties.

Learned counsel for the respondent sought to distinguish this case from the orders passed in Criminal Appeal No.912/2010 today on the basis that the application of the State Government to lead additional evidence was disallowed by the High Court.

On the other hand, learned counsel for the State has drawn our attention to para 9 of the impugned order to say that the only aspect which weighed while allowing the appeal was that the earlier view that the contraband substance so recovered in the present case cannot be said to be charas and that aspect stands now overruled with the judgment in **Hira Singh** (Supra) as the quantity of neutral substance has to be included.

We are in agreement with the submission of learned counsel for the State that the present matter will also have to be remitted back to the High Court for consideration in terms of the judgment except that the High Court having rejected the application for adducing additional evidence, that aspect is not permitted to be agitated again.

The appeal is allowed in the aforesaid terms leaving parties to bear their own costs.

CRIMINAL APPEAL NO.1062/2011

The appeal was tagged with some connected appeals which have been dealt with us by our order passed in Criminal Appeal No.912/2010 and

connected matters today remitting the same based on the judgment of this Court in **Hira Singh** (supra). However, it has been rightly pointed out by learned counsel for the appellant that the said aspect which no more survives 8 is one of the reasons for acquittal of the respondent. The other reason was that the independent witnesses turned hostile and the testimony of the police witnesses did not seem to inspire confidence. We have perused the judgment in this behalf of the High Court and cannot say that this is a case where the acquittal by the High Court should be turned into one of conviction, applying the parameters for such a legal position.

The appeal is accordingly dismissed leaving parties to bear their own costs.

CRIMINAL APPEAL NO.1084/2016

We have heard learned counsel for parties.

Insofar as the offence under the Indian Forest Act is concerned while convicting the owner and the driver (both of whom are deceased) the other two persons were acquitted including the respondent before us as mere passenger. Insofar as the NDPS Act is concerned, no doubt the acquittal is predicated only on the legal view which now stands reversed in the judgment of **Hira Singh** (supra). However, the important aspect is the concurrent findings whereby it has been opined that there was no evidence of the appellant and the other accused having knowledge of the transportation and violation of the Rules.

The aforesaid being the position, we are not inclined to remit this matter back for reconsideration in view of the judgment in **Hira Singh** (supra). The appeal is dismissed leaving parties to bear their costs.

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