

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, KISHTWAR.

Present: S. L. Lalhal.

<u>File No.</u>	<u>Date of Institution</u>	<u>Date of Decision.</u>
01/Special	17.03.2016.	01.07.2020.
Case No. 1/2016, CNR No. JKKI01-000025-2016.		

State Vs. Puran Chand S/o Kanth Ram,
R/o Bal Mandir Palmar, Tehsil Kishtwar.
...Accused.

Case FIR No. 13/2016 of Police Station Kishtwar,
Offence under Section 8/20 NDPS Act.

Present:

Mr. Irshad Ahmed PP for the State/U.T of J&K

Advocate I.J. Charak for the accused.

J U D G M E N T

1. Brief facts of the prosecution case are that on 19.01.2016 ASI Ghulam Hussain sent a docket to the Police Station Kishtwar through SG Ct. Rajesh Kumar for lodging FIR alleging therein that on the said date he alongwith HC Abdul Qayoom, HC Anchal Singh, SG Ct. Rajesh Kumar and Follower Sandeep Kumar was performing his Naka checking duty at Giri Nagar Naka point and during this at about 3.30 PM one person came from Bindraban side towards Kishtwar on foot having a bag with him and on seeing the Police party the said person tried to abscond, on which he (ASI Ghulam Hussain) became suspicious and so the said person was apprehended who disclosed his name as Puran Chand S/o Kanth Ram R/o Palmar, (i.e. the present accused) and on searching bag of the said person,

two Polythene bags each containing about 3 to 4 kgs (i.e. total about 7 kgs) Charas like powder was recovered from the said Polythene bags.

2. On the receipt of this docket, case FIR No. 13/2016 for commission of offence under Section 8/20 NDPS Act was registered in Police Station Kishtwar and investigation of the case was handed over to SI Anchal Rana.

3. During investigation said SI/IO Anchal Rana prepared the Site Plan, seized the recovered contraband and recorded the statements of the prosecution witnesses under Section 161 Cr.P.C and weight of the Charas like recovered powder was got conducted and the weight of Charas like powder containing in one Polythene bag came out to be 4 kgs and in the other Polythene bag came out to be 3 kgs i.e. the total weight of the Charas like powder recovered from the possession of the accused in both the Polythene bags came out to be 7.00 kgs. The samples of the Charas like powder from both the Polythene bags were marked as 'B1', 'B2' and 'C1', 'C2' and after getting the said packets re-sealed from the Executive Magistrate were sent for chemical analysis to FSL Jammu. The statement of ASI Ghulam Hussain was also got recorded under Section 164-A Cr.P.C and after completion of other legal formalities the Challan against the accused for commission of offence under Section 8/20 NDPS Act was produced in this Court on 17.03.2016.

4. The accused was charged for commission of offence under Section 8/20 (b) (ii) (c) NDPS Act on 01.04.2016. The accused denied the allegations contained in the charge and claimed to be tried and so the

prosecution was directed to produce evidence in support of its case. The prosecution has produced and examined the following witnesses, a brief resume of whose depositions are also reproduced as under:-

PW-1 Ghulam Hussain ASI has deposed that accused is known to him. On 19.01.2016 at about 3.30 PM he alongwith other Police personnel was performing his Naka duty at Giri Nagar and during this accused Puran Chand came from Bindraban side towards Kishtwar on foot having a bag on his shoulder. They called the accused but he stopped and tried to go back due to which they became suspicious and they apprehended the accused. Thereafter they checked the bag of the accused and two Polythene bags containing Charas like powder were recovered from the said bag. Thereafter he sent a docket to the Police Station Kishtwar through SG Ct. Rajesh Kumar for lodging FIR under Section 8/20 NDPS Act. Thereafter SI Anchal Singh Rana came on spot from Police Station Kishtwar and he handed over the recovered material to said SI. IO prepared the seizure memo of the seized material and thereafter said IO came back to Kishtwar and brought one 'Tarazoo' (weighing machine) for weighing the recovered material and on weighing the recovered material (i.e. recovered Charas like powder) the weight of the said material contained in one Polythene bag came out to be 4.00 Kgs and in the other Polythene bag came out to be 3.00 Kgs and thereafter 200 grams sample were separated from the each Polythene bag and 2/2 packets of 100 grams each were prepared from the said 200/200 gramsof said Charas like powder. In this way four packets of samples were prepared. The seizure memo was impressed with seal impression "N". He has seen the seizure

memo appended with the file. He has also seen the docket appended with the file and its contents are correct. He identify his signatures on the docket which is exhibited as ExPw-AQ. The seizure memo appended with the file also bear his signatures and its contents are correct and it is exhibited as ExPw-AQ-1. The seized material was shown to the witness in the Court and he identified the same. His statement was recorded in the Court under Section 164-A Cr.P.C. He has given the same statement under Section 164-A Cr.P.C which he has given in the Court. He has seen his statement recorded under Section 164-A Cr.P.C appended with the file and its contents are correct. He identify his signatures on the said statement and it is exhibited as ExPw-AQ-2. Seizure memo is already exhibited as ExPw-2/A.

On cross-examination by the defence counsel he has deposed that he has gone on Naka duty alongwith other Police officials in the morning, however, he does not remember the time of going to Naka duty. As Republic Day was approaching, so he has laid the Naka on the date of occurrence and was checking the vehicles. Police Station Kishtwar have laid Nakas according to the prevailing situation from Kishtwar upto Giri Nagar, however, he does not remember how many Nakas were laid upto Giri Nagar. On the date of occurrence he was posted in Police Station Kishtwar. On the date of occurrence they were checking the vehicles but they have not challaned any vehicle. There is no habitation near the place of Naka, however, two houses were located at some distance and there was also one forest depot at a distance of about 20 meters from the Naka point. Forest employees remain present in the forest depot, however, no

forest employee was present at the time of occurrence at the forest depot. There are no shops near the Naka point. Residential houses were situated at a distance of 200/300 meters away from the place of occurrence but no body reside in the said houses. The said houses are in dilapidated condition. There is one hotel/tea stall near the place of occurrence on a 'Pulley' (small bridge) but the same was closed. There is also one Kiryana shop near 'Pulley' (small bridge) but the said shop was also closed. He does not know why the said shop was not opened. There are 2/3 houses near the said hotel/Kiryana shop. He has seen the accused from a distance of about 30 meters which was at a small distance from the forest depot. He has not conducted the weight of the Polythene bags containing Charas like powder at the time of its recovery from the accused. SI Anchal Rana has reached on spot at about 4.30 PM and he tried to get 'Tarazoo' (weighing instrument) but he could not get the same from any shop on spot and so he came back to Kishtwar. IO himself had brought the 'Tarazoo' (weighing instrument). He does not know from which shop IO has brought the 'Tarazoo' (weighing instrument). IO had come back on spot after about 15/20 minutes. They had conducted the weight of the recovered material on road. One Polythene bag was containing 4.00 Kgs and the other Polythene bag was containing 3.00 kgs, Charas like substance. The samples were prepared by IO. IO has also prepared the seizure memo in his and in presence of 6/7 other Police personnel. The signatures of Abdul Qayoom and Anchal Singh were taken on the seizure memo. IO has sealed the recovered material. IO has taken the seized material alongwith the ring to the Police Station. IO has conducted the whole proceedings on the spot in

about 1½ hours. It is not correct that the bag which was recovered from the accused was given to the accused by them (Police personnel). The recovered material was of black/black brown colour. Docket ExPw-AQ is in his hand writing. He has written in the said docket that the recovered Charas like material is about 7.00 kgs. He has not mentioned the colour of the recovered material because he has not opened the recovered material at that time and only the bag of the accused was opened which was containing two Polythene bags and the colour of the Charas containing in the Polythene bags was black brown (Naswari). The photographs which are appended with the file were taken by the IO and the colour of recovered material in one such Photo is green and the colour of recovered material in the other Photo is brownish. Green coloured material was not recovered from the accused. IO has recorded the statement of Abdul Qayoom and Anchal Kumar. His statement was not recorded by the IO. When he has given his statement before the Magistrate he was remembering the date of occurrence, however, he has not given the date of occurrence before the Magistrate. However, he has mentioned 5/6 days before 26th January as the date of occurrence. His statement was recorded before the Magistrate after about one month as he was transferred and posted in Padaryna Police Post. He does not know how many persons' statements were recorded by the IO. He has not prepared any other document except the docket. IO has not prepared the Site Plan with his consultation, however, he was present on spot. He has come back from Naka duty at about 6.00 PM.

PW-2 HC Anchal Singh has deposed that accused is known to him. He was posted in Police Station Kishtwar from January to March 2016 and on 19.01.2016 he was performing Naka duty at Giri Nagar and their Incharge was ASI Ghulam Hussain. They had gone on Naka duty at 10.00 AM and HC Abdul Qayoom, Constable Rajesh Kumar and Constable Sandeep Kumar were also with them. At about 3.00 PM accused came from Bindraban side towards Kishtwar having a bag with him and on seeing them (Police party) the accused tried to abscond but he was apprehended by the Police Naka party. On enquiry the accused disclosed his name as Puran Chand and when his bag was searched one small bag containing Charas came out from the said bag. They went to the nearby shopkeeper and weight of the bag was got conducted and it came out to be about 7.00 Kgs. Samples of about 100/100 grams were taken from both the bags and were sent for chemical analysis to the Laboratory. The seizure memo of the recovered Charas was prepared on spot. He has heard the contents of the seizure memo and its contents are correct. The seizure memo bear his signatures and it is already exhibited as ExPw-AQ-2. He has also heard the contents of re-seizure memo (i.e. Der-zabti) appended with the file and its contents are correct, it also bear his signatures and it is already exhibited as ExPw-2/A. He has also heard the contents of seizure memo pertaining to 'Tarazoo' (weighing instrument) and its contents are correct. It bear his signatures and it is already exhibited as ExPw-2/B. He identify his signatures on his statement recorded under Section 161 Cr.P.C appended with the file and his signatures are marked as 'Mark A'. He has seen the recovered material in

the Court and it is the same material which was recovered from the accused.

On cross-examination by the defence counsel, he has deposed that they had come back from Naka duty at about 4/5 PM in the vehicle of the SHO. The other Policemen who were with him had also come back in the same vehicle. A welcome board of Kishtwar is installed near the place where they had laid the Naka and there are also some shops. They had conducted the weight of the seized material on one provision shop and at that time other officials of Naka party were present there. They had conducted the weight of the seized material at about 3.30 PM. They had also conducted the weight of 100/100 grams samples on the same shop. They had not obtained the signatures of the shopkeeper on whose shop the weight was conducted as he has refused to give evidence. He does not know the name of the said shopkeeper. The other Police men had conducted the checking of the accused. He does not know what was recovered from the accused. His statement was recorded in the Police Station on the next day of the occurrence. His signatures were taken on the seizure memo in the Police Station. He does not know where the signatures of other persons were taken. He does not know where ASI Ghulam Hussain was posted at the time of occurrence as he was not posted in the Police Station on the date of occurrence. The recovered material was of black colour. The investigation of the present case was conducted by SI Anchal Rana . SI Anchal Rana had come on spot at 3.00 PM. He does not know who has called him. He has given the same statement in the Police which he has given in the Court. Civil persons

reside around the place of occurrence. No civilian was cited as a witness in the present case.

PW-3 HC Abdul Qayoom has deposed that in the month of January 2016 he was posted in Police Station Kishtwar as Incharge Malkhana. On 19.01.2016 he was deputed on Naka duty at Giri Nagar and the Incharge of their Naka party was ASI Ghulam Hussain. One Follower and HCs Ghulam Hussain and Anchal were also present in the said Naka checking party. They were checking the vehicles on the Naka and during this at about 3.00 PM one person came from Bhanderkot side towards Kishtwar on foot having a bag on his shoulder. The said person was apprehended by ASI Ghulam Hussain and said ASI Ghulam Hussain enquired the name and address from the said person who told that he is resident of Kishtwar and the said person is the accused who is present in the Court but he does not remember his name. Two packets were recovered from the bag which the accused was carrying on his shoulder and the said packets were containing some powder like substance and on this ASI Ghulam Hussain prepared one docket and sent the same through one SG Constable to Police Station Kishtwar for lodging FIR. ASI Ghulam Hussain has seized the recovered powder like material and has prepared the seizure memo in this connection. He has seen the said seizure memo appended with the file and its contents are correct. The seizure memo bear his signatures and he identify his signatures on the seizure memo which is exhibited as ExPw-2. Thereafter SI Anchal Singh came on spot from the Police Station and one 'Der-zabti' (i.e. re-seizure memo) was prepared. He has seen 'Der-zabti' appended with the file and its contents

are correct. It bear his signatures in English and he identify his signatures on it. It is exhibited as ExPw-2/A. Thereafter SI Anchal Singh sealed the recovered material. The weight of the recovered material was conducted and the weight of the recovered material in one packet (Polythene bag) came out to be 4.00 kgs and in the 2nd packet (Polythene bag) came out to be 3.00 Kgs. The accused was brought to the Police Station. He has seen the seizure memo pertaining to 'Tarazoo' (weighing instrument) and its contents are correct. He identify his signatures on the seizure memo pertaining to 'Tarazoo' (weighing instrument) and it is exhibited as ExPw-2/B. The recovered material which was seized is seen by him in the Court. The ring with which the seized material was sealed was kept on his Superdnama by the IO and a Superdnama pertaining to the said ring was prepared. He has seen the Superdnama pertaining to the ring appended with the file and its contents are correct. It bear his signatures as a Superdar. The ring was produced by the witness in the Court which is annexed with the file. The two packets (i.e. Polythene bags) of the seized material which were seized on spot are seen by him and these are the same packets (Polythene bags) which were seized and sealed on spot and were marked as 'Mark B' and 'Mark C'. The samples of 100/100 grams of the recovered material are also seen by him in the Court and these samples were marked as 'Mark 'B1', 'B2', and 'C1', 'C2' on spot. His statement was recorded under Section 161 Cr.P.C.

On cross-examination by the defence counsel he has deposed that he and other officials of Naka party had laid Naka on the directions of SHO P/S Kishtwar. The naka point Giri Nagar falls within the jurisdiction of

Police Post Kuleed, however, 'Nafri' (i.e. Naka party) is deputed from the Police Station. They had laid a routine naka on the said date. There are two Kiryana shops and one Furniture shop near the place of naka. He had gone on the naka duty on the said date for the first time. There are residential houses at a distance of about 15 meters from the naka point and many vehicles and persons pass through the place where the naka was laid. When ASI Ghulam Hussain saw the accused he asked the accused to stop and on this the accused stopped and ASI apprehended the accused. They were also present on the spot. It is not correct that they had apprehended the accused tactfully because accused himself has stopped. He does not know what was the recovered powder like material. The weight of the seized material was not conducted on spot, however, ASI has written a docket to the Police Station. He does not know what was written in the said docket. They had sent the Follower to call the civilians on spot but they have refused by saying that they do not want to involve themselves in Court cases. However, he does not know in whose houses the said Follower has visited for calling. SI Anchal had reached on spot after about half an hour and he has prepared the documents but he does not remember what documents were prepared by him. When SI Anchal came on spot, he got the material from ASI Ghulam Hussain which was recovered by him and sealed the same. The sealing material was brought by SI Anchal. The ring was also brought by the SI Anchal. The ring was handed over to him in the Police Station on Superdnama. SI Anchal has conducted weight of the seized material in the Police Station with a 'Tarazoo' (weighing instrument) and after conducting the weight the

seized material was kept in the Malkhana with him (witness). Thereafter he was transferred and he has given the charge of the Malkhana to Bashir Ahmed. The seized material was kept in the Malkhana with him on 19th January and it was lying in the Malkhana and thereafter he has given charge of the Malkhana to Bashir Ahmed on 15th June. The recovered material was not opened after it was sealed at Giri Nagar. His statement was recorded by Police after about 10 days of the occurrence. He does not know whether the Incharge Naka party ASI Ghulam Hussain has informed the Incharge Police Post Kuleed about the present occurrence or not. SHO Sahib was present in the Police Station at the time of conducting the weight of the seized material, however, he does not know whether SHO Sahib has put his signatures on any document or not. On the date of occurrence SHO P/S Kishtwar was not on leave and he was present in the Police Station. He does not know whether Incharge Police Post Kuleed was on leave or not. They were four persons on the naka duty on the date of occurrence. He does not know what investigation was conducted after the date of occurrence.

PW-4 SG.Ct. Rajesh Kumar has deposed that he was posted in District Police Lines Kishtwar on 19.01.2016 and during those days Police personnel were deputed daily from District Police Lines Kishtwar to Police Station Kishtwar for duty. On the date of occurrence SHO P/S Kishtwar deputed one party for naka checking at Giri Nagar and in the said Naka party ASI Ghulam Hussain, HC Anchal Singh, HC Abdul Qayoom, Follower Sandeep Kumar were present. On the date of occurrence the said Police party conducted the checking of the vehicles

from 10.00 AM to 4.00 PM and during this, accused Puran Chand came from Bindraban side towards Kishtwar on foot and when the accused reached near naka point, ASI Ghulam Hussain saw him and said ASI Ghulam Hussain asked Anchal Singh and Abdul Qayoom to apprehend the accused. Thereafter ASI Ghulam Hussain checked the accused. The accused was having a bag on his shoulder and on checking the said bag, two white coloured Polythene bags containing Charas like material were recovered from the said bag. On this ASI Ghulam Hussain prepared one docket and sent the same to Police Station Kishtwar. He has taken the said docket to the Police Station Kishtwar and has handed over the docket to SHO P/S Kishtwar. Thereafter SI Anchal Singh Rana came on spot at the place of occurrence at Giri Nagar with him and he started proceedings on spot. He has remained busy in checking the vehicles and he does not know what proceedings were conducted by SI Anchal Singh on spot. His statement was recorded by the Police and he has given the same statement to the Police which he has given in the Court. The seized material was shown to the witness in the Court and he stated that it is the same bag and Charas which were recovered from the accused on the date of occurrence.

On cross-examination by the defence counsel, he has deposed that he was posted in District Police Lines Kishtwar from the year 2015 to June 2016. On the date of occurrence he, Follower Sandeep and two SPOs were deputed for duty to the Police Station. He does not know the names of said two SPOs. They were sent to naka duty by the SHO Police Station Kishtwar and they went on naka point in a vehicle. There are shops and houses near the place of naka point and many persons visit the

said shops in connection with shopping. However, these shops are situated at a distance of about one kilometer from the place of naka point. He does not remember how many vehicles were checked on the date of occurrence, however, they have not placed any Barricade. The naka point falls within the jurisdiction of Police Post Kuleed. There is no forest check post at the naka point. The accused was alone and he was having white coloured bag on his right shoulder. Accused was apprehended by ASI Ghulam Hussain and Head Constables Anchal Singh and Abdul Qayoom and thereafter accused was checked by ASI Ghulam Hussain. Nothing was recovered from the personal search of the accused, however, Charas was recovered from the bag of the accused. There was blue coloured Charas in the bag containing in both the Polythene bags. ASI Ghulam Hussain has told him that there is a Charas in the bag but he has no personal knowledge as to what was containing in the bag. The weight of the recovered material was not conducted in his presence. Some coloured material was seized in both the Polythene bags, however, seizure memo was not prepared in his presence. The defence counsel also showed photos of the accused and recovered material in the Court and the witness stated that the colour of the recovered material in one Polythene bag is green and in the 2nd Polythene bag is brown. He does not know from where and when the said photos were taken.

PW-5 Sandeep Kumar Follower has deposed that on 19.01.2016 he was posted in District Police Lines Kishtwar and from there he was deputed on a special duty to Police Station Kishtwar and from Police Station Kishtwar he was deputed to naka duty at Giri Nagar. His

Incharge was ASI Ghulam Hussain and alongwith them one Head Constable and one Selection Grade Constable were also present on the naka duty. Naka duty was started at 10.00 AM and they were checking the vehicles and in the meantime at about 3.00 PM one person came from Bindraban side towards Kishtwar on foot having a red coloured bag on his shoulder and the said person tried to flee on seeing them (i.e. Naka party) and on this their Incharge Naka directed them to apprehend him and when the said person was checked by the Incharge Naka, two Polythene bags were recovered from the bag of the said person and the said person told his name as Puran Chand R/o Palmar and the said persons is the accused who is present in the Court. Thereafter Incharge Naka sent Rajesh Kumar to Police Station Kishtwar and SHO came on spot and took away the accused with him. They were performing their naka duty and he has no knowledge what proceedings were taken thereafter. Later this witness has stated that SI Anchal Singh has recorded his statement on spot and except this he has no knowledge. He identify his signatures on his said statement. The said statement had been read over to him.

On cross-examination by the defence counsel, he has deposed that he is posted in District Police Lines Kishtwar since 2011. He was firstly appointed as SPO and now he is serving as a Follower. He was sent to Police Station Kishtwar under verbal orders and besides him, some other Police personnel had also come to the Police Station and one of them was Selection Grade Constable Rajesh Kumar. He does not remember the names of other Police personnel. He was sent to the Naka point from the Police Station on the date of occurrence. Before occurrence he has also

visited at Giri Nagar Naka point. There are many shops around the naka point and many persons reside near the naka point. The public was visiting the shops. He has no knowledge whether Giri Nagar naka point falls under the jurisdiction of Police Post Kuleed. No 'Nafri' from Kuleed Police Post was deputed on the naka point because a special naka was laid by the Police of Police Station Kishtwar. Naka also continued after the accused was apprehended. He and 2/3 other constables have apprehended the accused. Red coloured bag was carried by the accused on his shoulder. The weight of the recovered material was not conducted at the time of its recovery. Shop keepers were not called on spot. As soon as ASI Sahib informed SI Anchal Singh on phone he came on spot and thereafter Rajesh Kumar and Anchal Singh went back to the Police Station. ASI Ghulam Hussain has recorded his statement and only his signatures were obtained. He has no knowledge whether ASI has recorded the statement of any other person or not. He has not performed his naka duty at Giri Nagar after the occurrence. They were also challanning the vehicles at the naka point and were also conducting checking of the vehicles. Ghulam Hussain ASI was writing the challans and he has brought the Challan Book with him. The challans which were prepared/written by them on the date of occurrence, were produced by them in the Court and these were about 10/12 challans. No 'Tarazoo' (weighing instrument) was brought in his presence from the shopkeepers and only some documents were prepared. Perhaps the weight of the recovered material was conducted in the Police Station. It is not correct that accused was apprehended at some where else. He has conducted the search of the accused and the accused was not

having any weapon with him at that time. He has not seen the accused before the occurrence. He does not remember the name of the father of the accused. He has not made entry in the 'Roznamcha' (Daily Diary) of his going back to the District Police Lines as he has gone to the District Police Lines from the Naka point straight way. He has not seen seized bags and Polythene bags in the Court which were seen by him on the date of occurrence.

PW-6 Jaffer Hussain SPO has deposed that he does not remember the date but at about 8.00 PM IO has taken 'Tarazoo' (weighing instrument) to the shop of Puran Chand and at that time he was with him and 'Tarazoo' was handed over to tea stall owner Puran Chand. The contents of Superdnama pertaining to 'Tarazoo' appended with the file are correct and it bear his signatures in English. It is exhibited as ExPw-J.H.

On cross-examination by the defence counsel he has deposed that accused is not known to him. IO has given 'Tarazoo' (weighing instrument) to him in the Police Station for giving the same to Puran Chand. He has no knowledge when 'Tarazoo' was brought to the Police Station. There were no weights with the 'Tarazoo' as it was an Electronic balance. He and Ashok have gone to hand over 'Tarazoo' and IO was also with them. Superdnama was prepared in the Police Station. Owner Puran Chand and his 3/ 4 customers and one servant were present on the shop. He has seen the accused in the Police Station. He has no knowledge what is the case against the accused.

PW-7 Ashok Kumar has deposed that in the year 2016 he was posted as SPO in Police Station Kishtwar. SI Anchal Rana had given one 'Tarazoo' (weighing instrument) to Puran Chand at his tea stall in his presence and the said 'Tarazoo' was given on Superdnama of Kewal Singh servant of said Puran Chand tea stall owner on the shop of Puran Chand and one Superdnama was prepared in this connection on the tea stall shop by the said SI Anchal Rana. He has put his signatures on the Superdnama. He has seen Superdnama ExPw-J.H appended with the file and its contents are correct. He identify his signatures on the Superdnama which is already exhibited as ExPw-J.H. Jaffer Hussain SPO has also put his signatures on the Superdnama.

On cross-examination by the defence counsel he has deposed that at present he is posted in Traffic Police. He has no knowledge for what purpose 'Tarazoo' (Balance/weighing instrument) was brought. The said 'Tarazoo' was brought by Jaffer Hussain SPO and it was returned back at 8.30 PM. 'Tarazoo' (Balance) was brought in the Police Station by Jaffer Hussain SPO about one hour before its return at 8.30 PM. The superdnama was prepared on the tea stall shop and the signatures of the servant of the shop keeper were obtained on the superdnama. He has no knowledge why S.I Anchal Rana has brought the 'Tarazoo' (Balance).

PW-8 Bashir Ahmed Constable has deposed that he is posted in Police Station Kishtwar for the last 7/8 months. The accused who is present in the court is known to him, however, he does not know his name. Charas was recovered from the accused and one ring was kept by SI Anchal Rana on the superdnama of HC Abdul Qayoom in his presence on

27.01.2016. The said ring was of brass metal and word “N” was inscribed on the said ring. A superdnama was prepared in this respect and he has put his signatures as a witness on the superdnama pertaining to the said ring. He identify his signatures on the said superdnama and the contents of the superdnama are correct which is already exhibited as ExPw-2/6.

On cross-examination by the defence counsel he has deposed that his statement was recorded on 27.01.2016 and the superdnama was also prepared on 27.01.2016. Before 27.01.2016 the said ring was lying with SI Anchal Rana. The ring was given on the superdnama of Abdul Qayoom and Abdul Qayoom was Incharge of the Malkhana Kishtwar during those days.

PW-9 Suresh Kumar constable has deposed that on 27.01.2016 he was posted in Police Station Kishtwar and SI Anchal Rana has given one ring of brass metal on the superdnama of HC Abdul Qayoom. He has seen the superdnama appended with the file which is already exhibited as ExPw-2/6. The contents of the said superdnama are correct and it bear his signatures.

On cross-examination by the defence counsel he has deposed that the accused is known to him. He has no knowledge from where SI Anchal Rana has brought the said ring, however, word “N” was inscribed on the said ring. Abdul Qayoom Superdar had kept the said ring in the Malkhana. SI Anchal Rana has sealed packets with the said ring. Superdar has put his signatures on the superdnama. He has not seen the said ring in

the Court. The ring was kept on superdnama on 27.01.2016 and up to the said date the said ring was lying with SI Anchal Rana.

PW-10 Kewal Singh has deposed that he was an employee on the shop of Puran Chand Tea Stall owner and the said shop is situated in front of Police Station Kishtwar. Anchal Sahib of the Police Department came to him and took 'Tarazoo' (weighing instrument) from him for conducting weight. The said 'Tarazoo' was an Electronic 'Tarazoo' and the said Anchal Sahib prepared seizure memo in this connection. He has seen seizure memo pertaining to 'Tarazoo' and it bear his signatures and the contents of the seizure memo pertaining to 'Tarazoo' are correct and it is exhibited as ExPw-2/B. The contents of superdnama pertaining to 'Tarazoo' are correct. He identify his signatures on the superdnama which is already exhibited as ExPw-J.H.

On cross-examination by the defence counsel he has deposed that he himself has given 'Tarazoo' to the Police. SI Anchal Sahib was already known to him and 'Tarazoo' was taken from him at about 4.00 PM. Some Police officials were also with him. He has put his signatures on the seizure memo and superdnama pertaining to 'Tarazoo' in the Police Station.

PW-11 Aziz Mohd has deposed that accused is not known to him. In the month of January 2016 he was posted as Naib Teshildar Executive Magistrate Ist Class at Headquarter Kishtwar and on 20.01.2016 SI Anchal Rana of Police Station Kishtwar produced four sealed packets marked as "Mark B1, B2, and C-1, C-2" for re-sealing in case FIR No.

13/2016 under Section 8/20 NDPS Act. He has re-sealed the said packets and one authority letter was sent to the Director FSL Jammu. He has put his seal impression on the authority letter and also attested the same. He has seen the authority letter bearing No. 141-JC dated 20.01.2016 appended with the file and its contents are correct. He identify his signatures on the said authority letter and it is exhibited as ExPw-AM. The seized material was shown to him and he has stated that it is the same material which was re-sealed by him and the witness identified his signatures on the same.

On cross-examination by the defence counsel he has deposed that he does not remember the date of re-sealing the packets. There were 2-3 other Police officials with the said SI. The prepared authority letter was brought by the Police. The Police has requested him to re-seal the packets which were already sealed. He has no knowledge what was contained in the packets as they were already sealed. He has no knowledge with what seal the Police has sealed the said packets.

PW-12 Pawan Abrol who was examined through Video Conferencing has deposed on examination-in-chief by PP that he had received two sealed packets from Dy.S.P HQ Kishtwar through Inspector Ravi Kant. The said exhibits were found sealed and had reached him with 10 and 09 seals intact. The exhibits which the Police had marked as exhibit B-1 and C-1 were further marked by him as exhibit P-108/2016 and exhibit P-109/2016 and each were weighing 100 grams. The seal was opened and the contents of the exhibits were examined by him under his immediate custody till the examination was completed. The exhibits were subjected

to various chemical tests, microscopical and chromatographic examinations and the result was as under:-

“Charas was detected in the exhibits No. P-108/2016 and P-109/2016. The report bear his seal and signatures and it is exhibited as ExPw-PA.”

On cross-examination by the defence counsel he has deposed that he had examined the sample on 09.02.2016. He does not remember whether any other sample was examined by him on the said date or not. He had received the samples on 28.01.2016 and the samples had remained in his custody till 09.02.2016. The report was prepared on the same date on which the samples were examined by him. The report number was given by the Directorate office. Greeish black colour powder material was found in the sample. There was no need of mentioning percentage as the whole material was detected as Charas. However, he has not specifically mentioned in the report that the whole material was detected as Charas. It is correct that if tetrahydrocannabinol is found in a stuff in excess to 25% then it is ‘Ganja’. It is not necessary that tetrahydrocannabinol if more than 25% and below 40% is Charas. He had examined the sample microscopically and found that Charas was present and so there was no need of mentioning the quantity of the Charas. It is true that ‘Bhang’, ‘Charas’ and ‘Ganja’ are drived from the same plant i.e. cannabis plant and these three products can be differentiated by chemical test i.e. Paramino Phenol test. It is correct that tetrahydrocannabinol is the only active regent in all the above three products. Charas is made from stem and leaves, Ganja is made from female flowering shoots and Bhang is made

from seed and flowering shoots. He has not mentioned the said characteristics in his report but the same has been noted in his work sheet which is lying in FSL.

PW-13 S.I. Anchal Rana has deposed that in the year 2016 he was posted in Police Station Kishtwar and on 19.01.2016 investigation of the case FIR No. 13/2016 was handed over to him by the then SHO. He has gone on the spot and prepared the Site Plan. The Site Plan appended with the file bear his signatures and its contents are correct. It is exhibited as ExPw-AR. He has not taken 'Tarazoo' (weighing instrument) with him on spot and so he returned back to the Police Station and took one electronic 'Tarazoo' from shopkeeper Kewal Singh. He prepared the seizure memo of the said 'Tarazoo'. He identify his signatures on the seizure memo pertaining to 'Tarazoo' which is already exhibited as ExPw-2/B. He went back on spot and when he again reached on spot ASI Ghulam Hussain handed over one bag containing two Polythene bags in which Charas like powder was containing. He conducted weight of each Polythene bag and the weight of one Polythene bag came out to be 4.00 Kgs and out of this he made two samples of 100/100 grams. The weight of the 2nd Polythene bag came out to be 3.00 Kgs and he also made two samples of 100 grams each from the said Polythene bag. He prepared the packets of the said samples and these were respectively marked as "B-1, B-2 and C-1, C-2". The said packets were sealed with a ring and prepared "Der-Zabti" (i.e. re-seizure memo). "Der-Zabti" appended with the file bear his seal and signatures and its contents are correct. It is already exhibited as ExPw-2/A. He recorded the statements of prosecution witnesses on

spot and thereafter he took accused, recovered material and 'Tarazoo' (Balance/weighing instrument) to the Police Station and the recovered material was kept in the Malkhana. Thereafter 'Tarazoo' was kept on the superdnama of Kewal Singh. He identify his signatures on the superdnama pertaining to 'Tarazoo' and its contents are correct. It is already exhibited as ExPw-J.H. He recorded the statements of Kewal Singh and SPOs Jaffer Hussain and Ashok Kumar. On the next day he got re-sealed the packets which were marked as "B-1, B-2 and C-1, C-2" from Executive Magistrate and obtained authority letter from the said Executive Magistrate. He kept the seal ring on the superdnama of HC Abdul Qayoom and prepared superdnama pertaining to the said ring. He has seen superdnama appended with the file and it bear his signatures and its contents are correct. It is already exhibited as ExPw-2/6. He recorded the statement of Superdar and two other witnesses. He sent the samples "B-1 and C-1" to FSL Jammu through Ravi Kant Inspector. FSL report was received on 13.02.2016 and offence under Section 8/20 NDPS Act was proved against the accused Puran Chand. He also got the statement of the prosecution witness ASI Ghulam Hussain recorded under Section 164-A Cr.P.C on 25.02.2016 and finalised the challan on the same day which was prepared by the SHO.

On cross-examination by the defence counsel, he has deposed that he has got the investigation of the case at about 4.30 PM and thereafter he went on spot on the same day. He had first of all prepared the Site Plan. He has not indicated the road which leads towards Pochhal in his Site Plan. The said road is situated at a distance of about 300 meters

from the naka point. He has also not mentioned the sign board of “welcome to Kishtwar” in his Site Plan. One road also leads towards District Jail but he has not indicated the said road in his Site Plan. He has prepared the Site Plan on spot and not in the Police Station. When he had come back to bring ‘Tarazoo’ at that time Head Constables Abdul Qayoom and Anchal Singh were with him and HC Abdul Qayoom is the same person on whose superdnama he has kept the seal-ring. The recovered material was lying with ASI Ghulam Hussain upto the time of his bringing ‘Tarazoo’ on spot. ASI Ghulam Hussain has written in the docket that the total material is 7.00 Kgs. The colour of the recovered material in one Polythene bag was light green and in the other bag it was black green. The light green material was 4.00 Kgs and black green material was 3.00 Kgs. Both the Polythene bags were white coloured and he has prepared four packets of samples from both the Polythene bags and thereafter the said packets were sealed with a ring impression and the said ring was lying with him from 19th January to 27th January. The seized material was handed over to Incharge Malkhana Bashir Ahmed and he was not a member of the Naka/patrolling party. Abdul Qayoom Head Constable was also the Incharge of the Malkhana, however, the said Abdul Qayoom was member of the Naka/patrolling party. Abdul Qayoom Incharge Malkhana is a Head Constable and Bashir Ahmed Incharge Malkhana is a Constable. Bashir Ahmed Constable is a witness to the Superdnama pertaining to the ring. He has obtained the signatures of Incharge Malkhana Bashir ahmed as a witness on the superdnama pertaining to ring. He has not cited any resident from near the place of occurrence as a witness and all the

witnesses are Police officials. Police Post Kuleed is a Picket and not a Police Post. He does not remember who was the Incharge of the said Police Post at that time. He has not informed the Police of Police Post Kuleed about the present case as they had gone from the concerned Police Station. The weight of the recovered material was conducted on spot and not in the Police Station. The statement given by the PSO in the Court that the weight of the seized material was conducted in the Police Station is not correct. He has come back from the spot at about 8.00/8.30 PM. The statements given by SPOs Jaffer Hussain and Ashok Kumar that the Superdnama was prepared in the Police Station is not correct. He had not investigated any case under NDPS Act before the present case. The statement of prosecution witness ASI Ghulam Hussain under Section 164-A Cr.P.C was got recorded after about one month of the date of occurrence i.e. on 25.02.2016. He has not filled any CFSL form for sending the same to the FSL. He has sealed the sample packets and produced the same before Executive Magistrate for re-sealing and Executive Magistrate has re-sealed the said packets with his official seal. The samples were kept in the Malkhana after re-sealing and were sent to FSL Jammu after 08 days and the said material was lying with Incharge Malkhana PW-3 Abdul Qayoom and Constable Bashir Ahmed. He has not mentioned as to where he has prepared superdnama and seizure memo pertaining to 'Tarazoo'. He has given the ring on superdnama to HC Abdul Qayoom in the Police Station. The seizure memo and recovered material was given to him by ASI Ghulam Hussain but said Ghulam Hussain has not mentioned the colour of the seized material in his seizure memo. He has also not mentioned the colour

of the recovered material in his "Der-Zabti" (Re-seizure memo). He has not mentioned the colour of the recovered material in the charge sheet. He was posted as S.I. and at that time Afzal Wani was the SHO of Police Station Kishtwar and ASI Ghulam Hussain was also posted in the Police Station Kishtwar. The statement of only one prosecution witness was got recorded under Section 164-A Cr.P.C and the statements of other prosecution witnesses were recorded by him. The ring was kept on superdnama one day before sending the material to FSL.

5. The prosecution evidence was closed on 30.05.2019. The statement of accused under Section 342 Cr.P.C was recorded on 03.07.2019. As the accused was not acquitted in terms of Section 273 Cr.P.C, so he was called upon to enter his defence and lead defence evidence in his defence. The accused has produced and examined two witnesses, a brief resume of whose depositions are also reproduced as under:-

DW-1 Roop Chand has deposed that accused is known to him. The accused was arrested by Police from Kaun Gawari Palmar. One person namely Kunj Lal has died and when he alongwith other villagers of Palmar and accused were going to perform the funeral rites of the said deceased, Police came in one private vehicle and took the accused with them at about 10.00 AM. Police has not arrested the accused in any other criminal case till date.

On cross-examination by the PP he has deposed that the accused is not his relative and the accused reside at a distance of about

three kilometers from his village. He has come in the Court today to give evidence on the asking of the wife of the accused. He has not received any summon from the Court. He has not disclosed with any body in the funeral ceremony that accused has been taken by the Police.

DW-2 Ved Raj has deposed that accused is known to him. He has also deposed that his one relative namely Kunj Lal has expired and he and accused and other villagers were going to attend funeral rites of the said deceased at Bhanderkot and when they reached near Kaun Gawari, Police came in a small vehicle and took the accused with them and on the next day they came to know that the accused has been detained in connection with some Charas case. There was no Police case against the accused before the present case. The accused belong to a gentle family.

On cross-examination by the PP he has deposed that accused is not his relative but they belong to the same village. The accused is known to him from his childhood. He has come to give evidence in the Court on the asking of the wife of the accused. He has not received any summon from the Court. Roop Chand was also with him but they have not disclosed with any body that the accused has been taken by the Police.

6. The defence evidence was closed on 25.09.2019 and thereafter the case was posted for hearing final arguments.

7. I have heard the learned counsel for the accused and learned PP for the State/U.T. I have also gone through the evidence on record thoroughly and carefully.

8. The accused is charged for commission of offence under Section 8/20 (b) (ii) (c) NDPS Act and in order to support and substantiate the charge against the accused, the prosecution has examined 13 prosecution witnesses.

9. The prosecution version against the accused in brief is that on 19.01.2016 when ASI Ghulam Hussain alongwith HC Abdul Qayoom, HC Anchal Singh, SG Ct. Rajesh Kumar and Follower Sandeep Kumar were performing Naka checking duty at Naka Point Giri Nagar (Kishtwar), during this at about 3.00 PM, accused came from Bindraban side towards Kishtwar on foot having a bag with him and on seeing the Police party accused tried to abscond due to which the said ASI Ghulam Hussain became suspicious and so the accused was apprehended and on searching bag of the accused, two Polythene bags containing about 3 to 4 kgs (i.e total about 7 kgs) Charas like powder was recovered from the said Polythene bags and on conducting the weight of the said Charas like powder during investigation by the I.O, the total weight of the Charas like powder from two bags came to be 7 Kgs (i.e. 4 kgs from one bag and 3 kgs from the 2nd bag).

10. Therefore, as per the prosecution story ASI Ghulam Hussain, HC Abdul Qayoom, HC Anchal Singh, SG Ct. Rajesh Kumar and Follower Sandeep Kumar who were part of the Naka party and performing Naka checking at Naka Point at the time of alleged recovery of the Charas like powder from the present accused, are the most material witnesses to the recovery of the alleged Charas (i.e Charas like powder) from the possession of the accused. Thus the whole prosecution case depends upon

the statements of these five prosecution witnesses but there are major and glaring contradictions in the statements of these five prosecution witnesses which make the recovery of the Charas (i.e Charas like powder) from the possession of the accused at Naka point highly doubtful.

11. PW-1 Ghulam Hussain has stated in his statement that on 19.01.2016 at about 3.00 PM when he alongwith other Police personnel/men was performing his Naka duty at Giri Nagar, during this accused came from Bindraban side towards Kishtwar on foot having a bag on his shoulder and when the accused was called, he tried to go back due to which he became suspicious and they apprehended the accused and thereafter when the bag of the accused was checked, two Polythene bags containing Charas like powder was recovered from the said bag of the accused and thereafter he sent a docket to the Police Station Kishtwar through SG Ct. Rajesh Kumar for lodging FIR under Section 8/20 NDPS Act. He has also stated in his statement in examination-in-chief that SI Anchal Singh Rana came on spot from Police Station Kishtwar and he handed over the recovered material to said SI who prepared the seizure memo of the seized material and thereafter I.O came back to Kishtwar and brought one 'Tarazoo' (weighing instrument) for weighing the recovered material and on weighing the recovered material, the weight of the recovered material in one Polythene bag came out to be 4 Kgs and in 2nd bag it came out to be 3 Kgs and 200 grams sample were separated from the each Polythene bag and 2/2 packets of 100 grams each were prepared from the said 200/200 grams of said Charas like powder and in this way total four packets of sample were prepared and the seizure memo was sealed with seal

impression "N". On cross-examination by the defence counsel, he has stated that on the date of occurrence they were checking the vehicles but they have not challaned any vehicle. He has also stated in cross-examination that there is no habitation near the place of Naka. He has also stated in cross-examination that there are no shops near the Naka point and residential houses were situated at a distance of 200/300 meters away from the Naka Point but no body reside in the said houses as the same are in dilapidated condition. Later this witness has stated that there is one hotel/tea stall near the place of occurrence/Naka Point on a 'Pulley' (small bridge) and there is also one Kiryana shop near 'Pulley' (small bridge) but Kiryana shop and hotel/tea stall were closed on the date of Naka. This statement of PW-1 ASI Ghulam Hussain who was the incharge of the Naka party have not been supported and corroborated by PW-2 HC Anchal Singh, PW-3 HC Abdul Qayoom, PW-4 SG Ct. Rajesh Kumar and PW-5 Sandeep Kumar Follower who were part of the Naka party with PW-1 ASI Ghulam Hussain. There are major and glaring contradictions between the statement of PW-1 ASI Ghulam Hussain and PW-2 HC Anchal Singh, PW-3 HC Abdul Qayoom, PW-4 SG Ct. Rajesh Kumar and PW-5 Sandeep Kumar Follower.

12. PW-2 HC Anchal Singh has stated that the accused came from Bindraban side towards Kishtwar at 3.00 PM having a bag with him and on seeing the Police party the accused tried to abscond but he was apprehended by the Naka party and when the bag of the accused was searched, one small bag containing Charas was recovered from the bag of the accused. Thus PW-2 HC Anchal Singh has stated that only one bag

(small bag) containing Charas was recovered from the bag of the accused, whereas PW-1 ASI Ghulam Hussain has stated that two Polythene bags were recovered from the bag of the accused.

13. PW-2 HC Anchal Singh has also stated that when the bag of the accused was searched one small bag containing Charas was recovered from the bag of the accused and on this they went to the nearby shopkeeper and weight of the bag was got conducted. He has further stated on cross-examination that the weight of the seized material (i.e. Charas like powder) was conducted on one provision shop and at that time other officials of Naka party were also present on the said shop (i.e. on provision shop). He has also stated that civil persons reside around the place of occurrence (i.e Naka point) but no civilian was cited as a witness in the present case, whereas PW-1 ASI Ghulam Hussain has stated that when he has written a docket for lodging FIR thereafter SI Anchal Rana had come on spot but he came back to Kishtwar and brought one 'Tarazoo' (weighing instrument) for weighing the recovered material and the recovered material was weighed on spot and its total weight came out to be 7 Kgs. The PW-1 ASI Ghulam Hussain has further deposed on cross-examination that though there was one hotel/tea stall and one Kiryana shop near the place of occurrence near "Pullely" (small bridge) but the said hotel/shop were closed on that date(i.e. on the date of lying the Naka). The PW-2 HC Anchal Singh has stated on his cross-examination that there are some shops near the place of Naka Point and the weight of the recovered Charas like powder was conducted on one provision shop and at that time the other Police officials of Naka party were also present there.

14. Thus according to PW-1 ASI Ghulam Hussain there was only one hotel/tea stall and Kiryana shop near the place of occurrence but said tea stall and shop were closed on the date of their conducting the Naka and the weighing machine was brought by SI Anchal Rana and the weight of the recovered Charas was conducted by said SI Anchal Rana on spot, whereas, PW-2 HC Anchal Singh has stated that there were shops near the Naka Point and weight of the charas was got conducted by ASI Ghulam Hussain in presence of other Police men of the Naka party at the provision shop. Both these prosecution witnesses No. 1 and 2 are Police officials and they are literate and skilled witnesses and hence due to these major contradictions, the statements of these witnesses cannot be believed and relied upon.

15. Further PW-2 HC Anchal Singh has also stated in his cross-examination that they had not obtained the signatures of the shopkeeper on whose shop the weight of the recovered material was conducted as the shopkeeper has refused to give evidence. But PW-1 ASI Ghulam Hussain has stated that Kiryana shop and hotel/tea stall were closed on the date of recovery. He has not stated in his statement that the shopkeeper on whose shop weight of the recovered material was conducted has refused to give evidence. PW-2 HC Anchal Singh has also stated in his cross-examination that his statement was recorded in Police Station, whereas the I.O SI Anchal Rana has stated in his statement that the statements of the prosecution witnesses were recorded by him on spot. PW-2 HC Anchal Singh has also stated in his cross-examination that civil persons reside around the place of occurrence but no civilian was

cited as a witness in the present case. If the civil persons were residing near the place of Naka Point, then the question arises as to why no civilian was associated to the seizure memo and other proceedings by the Incharge Naka party PW-1 ASI Ghulam Hussain and by the investigating officer SI Anchal Rana.

16. PW-3 HC Abdul Qayoom has also stated in his cross-examination that there are two Kiryana shops and one Furniture shop near the Naka point and there are also residential houses at a distance of about 15 meters from the Naka point and many vehicles and persons pass through the place where the Naka was laid. PW-1 ASI Ghulam Hussain has stated that only one hotel/tea stall and one Kiryana shop are situated near the place of Naka point and the said tea stall and shop were closed on the said day and there are no residential houses near the place of Naka point but PW-3 HC Abdul Qayoom has stated that there were two Kiryana shops, one Furniture shop and residential houses near the place of Naka point. Further PW-1 ASI Ghulam Hussain has stated that on seeing the Police party the accused has tried to abscond due to which he became suspicious and so the accused was apprehended but PW-3 HC Abdul Qayoom has stated that when ASI Ghulam Hussain saw the accused he asked the accused to stop and on this the accused stopped and said ASI apprehended the accused. PW-3 HC Abdul Qayoom has stated that when the accused was stopped by ASI Ghulam Hussain, the accused stopped, whereas PW-1 ASI Ghulam Hussain has stated in his statement that on seeing the Police party the accused has tried to abscond. PW-3 HC Abdul Qayoom has also stated that the weight of the seized material was not

conducted on spot. He has further specifically stated on his cross-examination that SI Anchal Rana has conducted the weight of the seized material in the Police Station with a 'Tarazoo' (weighing instrument) and after conducting the weight of the seized material, the seized material was kept in the Malkhana with him. Thus if the statement of PW-3 Abdul Qayoom is to be believed, then weight of the seized material was not conducted on spot and it was conducted in the Police Station and if the statement of PW-1 Ghulam Hussain is to be believed then the weight of the alleged recovered Charas like powder was conducted on spot. This contradiction in the statements of PW-1 ASI Ghulam Hussain and PW-3 HC Abdul Qayoom thus also render the memos which are exhibited as ExPw.AQ-2 and re-seizure memo (i.e. Der-Zabti) which is exhibited as ExPw-2/A as unreliable.

17. PW-1 ASI Ghulam Hussain has stated that the weight of the recovered material was conducted by SI Anchal Rana on spot and PW-2 HC Anchal Singh has stated that the weight of the recovered material was conducted on one provision shop whereas PW-3 HC Abdul Qayoom has stated that the weight of the seized material was conducted in the Police Station. Thus there are glaring contradictions between the statements of all these three prosecution witnesses No. 1, 2 and 3 as to the conduct of weight of the alleged recovered Charas like powder from the possession of accused. Hence their statements are not trustworthy and cannot be believed.

18. PW-4 SG Ct. Rajesh Kumar has stated that the accused was having a white coloured bag on his shoulder, whereas PW-5 Sandeep

Kumar Follower has stated that the accused was having a red coloured bag on his shoulder. Hence there is a major contradiction in their statements regarding the alleged recovery of bag from the accused and this contradiction suggest that either these witnesses have not seen the bag being recovered from the accused and they are planted witnesses or they have not made the true statements in the Court. This contradiction in their statements also make the recovery of alleged bag containing Charas like powder from the possession of accused highly doubtful.

19. PW-4 SG Ct. Rajesh Kumar has also stated in his cross-examination that the weight of the recovered material was not conducted in his presence, whereas PW-2 HC Anchal Singh has stated that when the weight of the Charas was conducted on the Provision shop, all the Police officials comprising the Naka party (i.e. including PW Rajesh Kumar) were present there. PW-5 Sandeep Kumar Follower has also stated in his statement on cross-examination that the weight of the recovered material was not conducted at the time of its recovery. He has also stated that as soon as ASI Ghulam Hussain informed SI Anchal Rana, he came on spot and thereafter Rajesh Kumar and Anchal Rana went back to the Police Station. PW-5 Sandeep Kumar has stated on examination-in-chief that when Incharge Naka had sent Rajesh Kumar to Police Station Kishtwar, thereafter SHO came and he took away the accused with him. He has also stated on his cross-examination that perhaps weight of the recovered material was conducted in the Police Station. This witness has also not supported the prosecution case and the statement of PW-1 ASI Ghulam Hussain to the effect that the weight of the seized Charas was conducted

on spot after its recovery from the accused or documents were prepared on spot at the time of recovery. The statement of this witness thus also suggest that the investigation of the case is manipulated and fabricated.

20. PW-6 Jaffer Hussain and PW-7 Ashok Kumar are the witnesses to the Superdnama pertaining to 'Tarazoo' (weighing instrument) and they have only stated that one 'Tarazoo' was given on Superdnama of Kewal Singh, who was a servant of Puran Chand, tea stall owner, on the shop of Puran Chand situated near Police Station Kishtwar at 8.30 PM. They have also not supported the prosecution storey that the weight of the Charas like powder was conducted at 4.00 PM on spot. On his cross-examination PW-7 Ashok Kumar has stated that 'Tarazoo' which was given on Superdnama of Kewal Singh was brought to the Police Station from the shop of Puran Chand one hour before giving the same on Superdnama to Kewal Singh at 8.30 PM. This means that 'Tarazoo' was brought by the I.O SI Anchal Rana to Police Station at about 7.30 PM from the shop of Puran Chand and hence the Police version that SI Anchal Rana I.O has conducted weight of the recovered Charas like powder at 4.00 PM on spot stands falsified. If 'Tarazoo' (weighing instrument) was brought to the Police Station at 7.30 PM and returned back at 8.30 PM to the shopkeeper Puran Chand through his servant Kewal Singh, then the question arises how the said 'Tarazoo' can be said to be brought on spot at 4.00 PM for weighing the seized material. The statements of PW-6 Jaffer Hussain and PW-7 Ashok Kumar has falsified the prosecution version that the recovered material after its recovery was weighed on spot at 4.00 PM by SI Anchal Rana.

21. PW-8 Bashir Ahmed Constable and PW-9 Suresh Kumar have stated that the ring with which the recovered Charas was sealed was kept on the Superdnama of Abdul Qayoom on 27.01.2016. As per prosecution case, Charas like powder was recovered on 19.01.2016 and after taking the samples from the said Charas like powder, the sample packets and remaining Charas like powder were sealed with ring on 19.01.2016 on spot. The PW-3 HC Abdul Qayoom is stated to be present on the spot at the time of sealing the sample packets and remaining Charas like powder and therefore, if the samples and remaining Charas like powder were sealed with ring on spot on 19.01.2016, then why the ring with which the said sample packets and remaining charas like powder were sealed was not kept on Superdnama of HC Abdul Qayoom on spot on 19.01.2016 and why it was kept by I.O with him upto 27.01.2026. This also creates a doubt about the fairness and impartiality of the investigation being conducted by the Investigating Officer. The Investigating Officer has stated in his statement that on 19.01.2016, investigation of the case FIR No. 13/2016 was handed over to him by the then SHO and he went on spot and prepared the site plan. He has also stated that as he has not taken 'Tarazoo' (weighing instrument) on spot with him, so he returned back to Kishtwar from the Naka point Giri Nagar and took electronic 'Tarazoo' (weighing instrument) from Shopkeeper Kewal Krishan and thereafter conducted weight of Polythene bags containing Charas like powder on spot which came out to be 4 kgs in one bag and 3 kgs in the 2nd Polythene bag. Thus as per the statement of I.O he has returned from the Naka point to Kishtwar and taken 'Tarazoo' (weighing instrument) from Kishtwar to

the spot and thereafter conducted weight of the seized Charas like powder on spot but PW-2 HC Anchal Singh has stated that they had conducted weight of the seized material on one provision shop near Naka point and at that time other officials of the Naka party were also present there. PW-3 HC Abdul Qayoom has stated in his cross-examination that weight of the seized material (i.e. alleged recovered Charas like powder) was not conducted on spot. He has further stated on cross-examination that SI Anchal Rana has conducted weight of the seized material in the Police Station Kishtwar with the weighing instrument and after conducting weight of the seized material, the same was kept in the Malkhana. Thus the statement of I.O Anchal Rana is not supported and corroborated by PW-2 Anchal Singh and PW-3 Abdul Qayoom with regard to the conducting of weight of the seized Charas like powder on spot. Further I.O has stated that he has prepared the "Der-Zabti" (re-seizure memo) on spot and the signatures of the witnesses to the seizure memo were obtained on spot but PW-Anchal Singh has stated in his statement that his signatures were taken on the "Der-Zabti" (re-seizure memo) in the Police Station and his statement was also recorded in Police Station Kishtwar on the next day of the occurrence. Similarly PW-3 Abdul Qayoom has also stated that weight of the seized material was not conducted on spot and SI Anchal Rana has conducted weight of the seized material in the Police Station Kishtwar and after conducting weight of the seized material, the same was kept in the Malkhana with him. PW-3 Abdul Qayoom has also stated that his statement was recorded by the Police after 10 days of the occurrence, whereas I.O has stated that the statements of the prosecution witnesses

were recorded by him on spot. Thus there are also major contradictions between the statements of I.O and prosecution witnesses Anchal Singh and Abdul Qayoom and hence the statement of I.O also can not be believed and relied upon.

22. Thus there are major and glaring contradictions in the statements of the material prosecution witnesses as stated and discussed herein above and their statements cannot be believed and relied. In these circumstances I find that the prosecution has not been able to prove the recovery of Charas from the possession of accused at Naka point as well as other proceedings being conducted by the I.O on spot after the alleged recovery of Charas like powder from the possession of accused by leading cogent, dependable and reliable evidence.

23. The accused has also produced two defence witnesses namely Roop Chand and Ved Raj and both these defence witnesses have stated that one Kunj Lal has expired and when they alongwith present accused were going to attend funeral rites of the deceased at Bhanderkot and had reached at Kaun Gawari, Police had come there in a vehicle and took the accused by the Police with it. Both these defence witnesses have also stated that the accused has no criminal background. Thus the defence evidence produced by the accused show that the accused was picked up by the Police at Bhanderkot and he was not apprehended by the Police at Naka point. The defence evidence also indicate that the accused has no criminal background.

24. For the aforesaid reasons and circumstances I come to the conclusion that the prosecution has failed to prove guilt of the accused beyond reasonable doubt and hence the accused is entitled to the benefit of doubt.

25. Therefore, the present challan is dismissed and the accused is acquitted of the commission of offence for which he was charged in the present case. The accused is in judicial lock-up at District Jail Kishtwar and Superintendent District Jail Kishtwar is directed to release the accused from the said Jail forthwith, in case he is not required in any other case. The seized charas be destroyed after the period of appeal is over. The file be consigned to records after its due compilation under rules.

Announced.

01.07.2020.

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