

HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 89 of 2025

State of Uttarakhand

.....Appellant

Versus

Royer Nicole and another

.....Respondents

Present:-

Ms. Manisha Rana Singh, Deputy Advocate General with Mr. Pankaj Joshi, Assistant Advocate General for the State/appellant.

Mr. Raunak Pant, Advocate for the respondent no. 1.

Mr. D.K. Sharma, Senior Advocate assisted by Mr. Maneesh Bisht, Advocate for the respondent no. 2.

Coram: **Hon’ble Ravindra Maithani, J.**
 Hon’ble Alok Mahra, J.

Hon’ble Ravindra Maithani, J. (Oral)

The instant appeal is preferred against the judgment and order dated 30.08.2025 passed in Special Sessions Trial No. 19 of 2022, State v. Royer Nicole and another, by the court of Special Sessions Judge, Bageshwar. By it, the respondent Royer Nicole has been acquitted of the charge under Section 8 read with Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the Act”) and the respondent Roshan Lal has been acquitted of the charge under Section 8 read with 29 of the Act. The respondents shall hereinafter be referred to as the accused.

2. Heard learned counsel for the parties and perused the record.

3. According to the prosecution case, on 18.02.2022, PW 3 SSI Khasti Bisht was incharge of Women Helpline, Bageshwar. On that

day, she along with PW 6 Kundan Rautela, the incharge SOG, Bageshwar and constable Ramesh Singh, constable Santosh Singh, constable Rajesh Bhatt and other police personnel left the SOG Office, Bageshwar by Report No. 05 time 11:30 a.m. on a prior information that someone is bringing *Charas* from *Dhakuri Loharkhet* on DL number motorcycle and coming towards Bageshwar. When they reached at Saryu Bridge, Kapkot, they met PW 8 SI Vivek Chandra, PW 7 HC Rajendra Prasad and PW 4 Sharda Goswami from Kapkot. The police party searched each other. After a while, they spotted a motorcycle coming from Kapkot, which was being driven by a person wearing Helmet. The police personnel signalled that person to stop, but instead that person turned the motorcycle and tried to run away. That person was apprehended. She was the accused Royer Nicole. When she was questioned, she revealed that "I have *Charas* with me. This is why I started to run when I saw the police". She was told that she could get herself searched before a Magistrate or a Gazetted Officer, to which she agreed to be searched before a Gazetted Officer. Thereafter, PW 5 Ankit Kandari, Circle Officer, Police was informed. He also came at the spot and, according to the prosecution, from the bag, which the accused Royer Nicole was holding, *Charas* was recovered, which was 1.040 kgs. Recovery memo was prepared, which is Ex. P-17. Based on it, chik FIR, Ex. P-1 was recorded at Police Station Kapkot at 02:35 p.m. It is the further prosecution case that on being asked the accused Royer Nicole stated that she had purchased the *Charas* form one Pushkar. Based on the FIR, a case was lodged against the accuse Royer Nicole, GD extract of which is Ex. P-2.

4. It is the case of the police that at the spot, sample of the *Charas* was taken and arrest memo, specimen seal, inventory report,

Ex. P-14, Ex. P-15 and Ex. P-16, respectively were prepared. The recovered articles were sent for forensic examination, which confirmed that the recovered article is *Charas*. The Investigating Officer prepared the site plan of the place of recovery, which is Ex. P-24. After investigating, the Investigating Officer submitted a charge sheet against both the accused. It the basis of the case.

5. On 26.07.2022, charge under Section 8 read with Section 20(b)(ii)(C) of the Act was framed against the accused Royer Nicole and charge under Section 8 read with Section 29 of the Act was framed against the accused Roshan Lal.

6. In order to prove its case, the prosecution examined as many as 12 witnesses, namely, PW 1 CP Bina Sati, PW 2 HCP Hansa Dutt, PW 3 SSI Khasti Bisht, PW 4 Sharda Goswami, PW 5 Ankit Kandari, PW 6 Kundan Rautela, PW 7 HC Rajendra Prasad, PW 8 SI Vivek Chandra, PW 9 ASI Prem Ballabh Joshi, PW 10 SI Pratap Singh Nagarkoti, PW 11 SI Vandana Chauhan and PW 12 Vishal Pathak.

7. The accused were examined under Section 313 of the Code of Criminal Procedure, 1973. They have denied the prosecution case and stated that they have falsely been implicated.

8. In her defence, the accused Royer Nicole has examined DW 1 Pratap Singh Negi, the Reserve Inspector, Police Line, District Bageshwar.

9. After hearing the parties, by the impugned judgment and order, the accused have been acquitted of the charge levelled against them, as stated hereinbefore.

10. Learned counsel for the State submits that the prosecution has been able to prove its case beyond reasonable doubt; on 18.02.2022, the police had specific information that a person is bringing *Charas* from *Dhakuri Loharkhet* in DL number motorcycle; the SOG team led by PW 3 SSI Khasti Bisht, including PW 6 Kundan Rautela, Incharge SOG, Bageshwar reached at Saryu Bridge, Kapkot, where they met other persons of police team. Learned State Counsel submits that on 18.02.2022, in the presence of the witnesses, *Charas* was recovered from the accused Royer Nicole; all the documents were prepared on the spot; videography was also done, which has been proved; the witnesses have stated about it; seized article was immediately lodged at the *Maalkhana*; that has been stated by the witnesses; the recovered article was confirmed to be *Charas* by the Forensic Science Laboratory Report. She would submit that the court below has committed gross error in acquitting the accused. She has referred to the statement of the witnesses.

11. Learned counsel for the accused Royer Nicole submits that the entire case is false; there is no independent witness to the recovery; if the recovery was made at a place near Kapkot, the police had no occasion to call the Circle Officer, Police from Bageshwar because from the nearest place the Sub Divisional Magistrate or other Gazetted Officer could have been called. He would submit that so many documents were prepared by the police, but they did not bear any time. Referring to the statement of PW 4 Sharda Goswami, it is argued that, according to her, it took 6-7 hours time in entire proceeding and they returned at police station after 07:00 p.m., but it is argued that the FIR was lodged at 05:50 p.m., which itself falsifies the prosecution case. Moreover, it is argued that, according to the

prosecution, the police had left for search in a vehicle bearing Registration No. UK07 GA 2201, but DW 1 Pratap Singh Negi, who is the Reserve Inspector in Police Line, Bageshwar has proved the log book of the vehicle of 18.02.2022, which establishes that on that day, the vehicle did not run. It is argued that it totally falsifies the prosecution case.

12. On behalf of the accused Roshan Lal, it is argued that there is no evidence against him; merely based on a call made by the accused Royer Nicole to him, he has been implicated. It is argued that mere making a telephone call by an accused to a person, does not hold him guilty of an offence.

13. This is an appeal against acquittal. The scope in appeal in such matter is not much wide. The law on this point is well settled that if the view taken by the trial court is a possible view, the court in appeal should not upset such decision.

14. In the case of Jafarudheen and others v. State of Kerala, (2022) 8 SCC 440, the Hon'ble Supreme Court has adverted to this aspect and held that **"While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened"**

15. In the case of Jafarudheen (*supra*), in para 27, the Hon'ble Supreme Court has referred to the judgment in the case of N. Vijayakumar v. State of T.N., (2021) 3 SCC 687, and observed as follows:-

“27.N. Vijayakumar v. State of T.N. [N. Vijayakumar v. State of T.N., (2021) 3 SCC 687 : (2021) 2 SCC (Cri) 515] as hereunder : (SCC pp. 695-99, paras 20-21 & 23-24)

“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under : (SCC p. 432)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

16. Before the arguments are appreciated, it would be apt to examine as to what the witnesses have stated.

17. PW 1 CP Bina Sati was working at Police Station Kapkot when the FIR was lodged. She has proved the FIR, GD entries of other documents, which were entered in the police station.

18. PW 3 SSI Khasti Bisht has stated that on 18.02.2022, she along with other police officials, upon information having been

received, left the SOG office at 11:30 a.m. by GD report No. 5; when they reached at the designated place, they met the police force from Police Station Kapkot; they searched each other and thereafter they spotted a person coming on a motorcycle from Kapkot; when that person was signalled to stop, that person turned the motorcycle, but was apprehended; she was the accused Royer Nicole. This witness further states that the accused Royer Nicole then admitted that she has *Charas*, therefore, she wanted to run away; she was given option to get herself searched before a Magistrate or a Gazetted Officer and she agreed that the search may be made in the presence of the Gazetted Officer; thereafter, the documents were prepared and the Circle Officer, Police was informed, who came at the spot and in his presence, a bag from his shoulder was recovered, which contained *Charas* to the tune of 1.042 kgs.; the recovery memo, arrest memo, specimen seal, inventory memo, etc. were prepared. This witness has proved those documents as well as the recovered articles.

19. PW 4 Sharda Goswami, at the relevant time, was posted at Police Station Kapkot. She was also in the search team. In fact, she had searched the accused Royer Nicole. This witness has stated about the alleged recovery.

20. PW 5 Ankit Kandari was the Circle Officer, Police, Bageshwar on the date of incident. According to him, on 18.02.2022, at 02:10 p.m., he was informed by PW 3 SSI Khasti Bisht that a woman has been apprehended, who claims to have *Charas* with her. Thereafter, he reached at the place of incident and in his presence, when search was made, *Charas* was recovered from the accused Royer

Nicole. He has stated about the *Charas* and other documents allegedly prepared at the spot.

21. PW 6 Kundan Rautela was another witness, who was the incharge SOG at Bageshwar, who accompanied PW 3 SSI Khasti Bisht for search. He has corroborated the statement of PW 3 SSI Khasti Bisht.

22. Similarly, PW 7 HC Rajendra Prasad has also corroborated the statement of PW 3 SSI Khasti Bisht with regard to recovery.

23. PW 8 SI Vivek Chandra was posted as Sub Inspector in Police Station Kapkot on the date of incident. He has also corroborated the statement of PW 3 SSI Khasti Bisht with regard to recovery.

24. PW 9 ASI Prem Ballabh Joshi was the *Maalkhana Moharrir* in Police Station Kapkot on the date of incident. He has stated that the seized articles were lodged at the police station, which were in sealed condition. He has stated that on 19.02.2022, the articles were resealed by the Station House Officer. He also claims that thereafter the samples were sent for forensic examination and report of the forensic examination and other articles were lodged in the *Maalkhana*.

25. It is noted that PW 2 HCP Hansa Dutt was posted as *Sadar Maalkhana Moharrir* in *Sadar Maalkhana*, Bageshwar on 19.02.2022. He has also admitted that on 19.02.2022, the articles were lodged in *Sadar Maalkhana*.

26. PW 10 SI Pratap Singh Nagarkoti was posted as Station House Officer at Police Station Kapkot on the date of incident, when according to him, he had resealed the seized articles in this matter.

27. PW11 SI Vandana Chauhan was posted as Sub Inspector at Police Station Kapkot on 18.02.2022. She investigated the case. She has stated about the steps that have been taken in the case, prepared a site plan and sent those articles to the forensic science laboratory. She has procured 65B certificate under the Indian Evidence Act, 1872 with regard to the videography done at the spot and its entry in the case diary. This witness further stated that after investigating, she had submitted the charge sheet. PW 11 SI Vandana Chauhan has also stated that on 28.03.2022, name of the accused Roshan Lal also came into light. Therefore, he was arrested.

28. PW12 Vishal Pathak was the Nodal Officer in Vodafone. He has proved certain documents.

29. In defence, the accused Royer Nicole has examined DW 1 Pratap Singh Negi. He has stated that on 18.02.2022, Vehicle Registration No. UK07 GA 2201 did not run. The log book was blank for that day. He has proved the copy of the log book. According to him, as per the police record, on 18.02.2022, this vehicle bearing Registration No. UK07 GA 2201 did not run.

30. In the impugned judgment, the court below has taken various grounds for acquitting the accused, which include the following:-

- (i) On the date of incident, whatever documents were allegedly prepared, they did not bear any time. (para 4 of the impugned judgment)
- (ii) The accused Royer Nicole when allegedly arrested, she was not communicated in the language, which is known to her. (para 20 of the impugned judgment)
- (iii) In order to invoke the presumption under Sections 35 and 54 of the Act, the prosecution has to prove its case beyond reasonable doubt, which it failed to prove. (Para 22 & 23 of the impugned judgment)
- (iv) The signatures of the accused Royer Nicole were not obtained on various documents, which were allegedly prepared at the spot. (para 26 of the impugned judgment)
- (v) No independent witness was presented and even DW1 Pratap Singh Negi has stated that on the date of incident, the vehicle bearing Registration No. UK07 GA2201 did not run; log book is blank. (para 27 of the impugned judgment)
- (vi) It is a case of non compliance of Section 42 of the Act. (para 29 of the impugned judgment)
- (vii) It is a case of non compliance of Section 52 A of the Act. (Para 32 of the impugned judgment)

- (viii) The contradiction in the statement of PW3 SSI Khasti Bisht when she says that on the date of incident, she visited the police office, where she received order from the higher officer that a person is carrying *Charas*. Whereas, according to the court below, it is in contradiction to what is recorded in the recovery memo (para 34 of the impugned judgment).
- (ix) At the spot allegedly photography was done, but in none of the photographs, the accused Royer Nicole is seen.

31. It is true that there is no independent witness to the recovery, whereas, there was information much prior to the alleged recovery and the police proceeded from Bageshwar to a place near Kapkot where, alleged recovery was made. It may not be the sole ground to record an acquittal in a case of alleged recovery of *Charas*. But, multiple factors are relevant in the instant case, particularly, the running of the vehicle.

32. It is the specific case of the prosecution that on the date of incident i.e. on 18.02.2022, the police party left the SOG office in Vehicle No. UK07 GA2201. But, according to DW1 Pratap Singh Negi, who is a Senior Police Inspector, who deals with the Transport Department, submitted that on 18.02.2022, this vehicle did not run; there is no log book maintained for it; there is no run car dairy. It itself demolishes the prosecution case. In fact, the Court below has made reference to the judgment in the case of Prakash Singh v. State of

Himachal Pradesh in Criminal Appeal SLP No. 318 of 2024, and has quoted from the judgment as below:-

“7. It is the case of the prosecution that seizure and recovery was made from the appellant during that point of time, the Logbook clearly shows that the vehicle was travelling during relevant point of time towards a different destination. This is also the evidence of DW-1 and 2. DW-1 is the SHO and DW-2 was the driver of the official vehicle.

9. In our considered view, the said reasoning cannot be sustained in the eyes of law. There is no dispute with respect to the entries made, if that is the case, the very case of prosecution falls to the ground. We are dealing with the case where all the witnesses belonged to the police department and, therefore, there is no independent witnesses to support the case of the prosecution. Even the undisputed document marked and the statement given by the two police witnesses, do not support the case of the prosecution.”

33. If the vehicle did not run on the date of incident, how could the police reach from Bageshwar to the place of incident? It is in doubt.

34. During the course of arguments, learned State counsel has submitted that there is a GD entry, but it is not proved. It is not

on record. Even for the sake of arguments, it is presumed that there were some GD entries, how could it be proved that the vehicle had run? The prosecution could have produced the driver of the vehicle to prove that the vehicle was taken on that day to the place of occurrence. In fact, the prosecution did not much cross examine DW1 Pratap Singh Negi. He was simply asked in his cross-examination as to whether on the date of incident, regular driver was on leave or he was working? The prosecution has to establish, who was the driver? Who was driving the vehicle? But the prosecution has utterly failed.

35. Along with it, some more facts are to be seen.

36. As per the prosecution, various documents were prepared at the spot, which include, arrest memo Ex. P-14, specimen seal Ex. P-15, inventory report Ex. P-16, but they all bear the FIR number. How is it possible? Because, according to the GD Entry no. 39 of 5:15 p.m. of Police Station Kapkot, dated 18.02.2022 (Ex. P-2), after alleged recovery, the recovery memo, arrest memo, inventory report, etc., were lodged in the police station. Uptil then, the FIR number was not in existence. Who recorded the FIR number on these documents subsequently? This Court may, as a matter of caution, record that merely recording of FIR number in these documents may not be a ground for acquittal, but, here is a case where even the prosecution could not establish that they used Government Vehicle No. UK07 GA2201 to reach at the place of incident, which is admittedly at about more than 20 kms from Bageshwar. DW1 Pratap Singh Negi has proved that the police vehicle did not run on that day.

37. Insofar as, the case of Roshal Lal is concerned, prosecution has, in fact, no case. Merely based on the telephone call

made by the accused Royer Nicole, he has been made an accused. Admittedly, the accused Royer Nicole, when arrested, had told that she had brought *Charas* from Pushkar and that Pushkar is not before the Court. As stated, accused Roshal Lal was implicated merely because police found that the accused Royer Nicole had spoken to him on phone. It may not be a case proved against the accused Roshan Lal.

38. The court below has, in fact, extensively discussed various aspects of the matter. This Court may record that it is not a case of application of the provisions of Sections 42 and 52A of the Act. But, the Court below after extensive discussion of the evidence of all the witnesses has come to the conclusion that prosecution has failed to prove its case beyond reasonable doubt. This is a possible view and in appeal against acquittal, such finding cannot be reversed.

39. In view of the discussion made above, this Court is of the view that the court below has rightly acquitted the accused Royer Nicole and Roshan Lal for the charges levelled against them and the impugned judgment and order passed by the court below does not warrant any interference of this Court. Accordingly, the government appeal fails and deserves to be dismissed.

40. The government appeal is dismissed.

(Alok Mahra, J.)
22.12.2025

(Ravindra Maithani, J)
22.12.2025