

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRA No. 14/2019

**Reserved on: 29.07.2026
Pronounced on: 07.08.2026
Uploaded on: 07.08.2026**

Whether the operative part or full judgment
is pronounced: **Full judgment.**

1. State of J&K

Th. Station House Officer, Police Station,
Channi Himmat, Jammu.

.....Appellant(s)/Petitioner(s)

Through: Mr. P. D. Singh, Dy. AG.

Vs

1. Vikas Sharma

S/O Shanti Parkash, R/O Subash Nagar,
Jammu.

..... Respondent(s)

Through: Mr. Nitesh Sharma, Advocate vice
Mr. Anuj Malhotra, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. Through the medium of the present appeal, the judgment dated 17.11.2018 recorded by the Principal Sessions Judge, Jammu (for short the 'Trial Court') in case titled "State vs. Vikas Sharma", whereby the respondent was acquitted of the charges for commission of offence under Sections 8/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act), has been impugned by the appellant on the ground that the evidence produced before the trial court successfully established the commission of offence by the respondent, but the learned trial court has

not rightly appreciated the evidence. It is also contention of the appellant that the prosecution had proved recovery of the drugs from the respondent, but still the learned trial court, by appreciating the evidence wrongly, acquitted the respondent.

2. Mr. P. D. Singh, learned counsel for the appellant, submitted that the prosecution had successfully proved the respondent's conscious possession of the intoxicating capsules and injections, therefore, the learned trial court erred in acquitting the respondent.
3. *Per contra*, learned counsel for the respondent submitted that there is no evidence to establish that, after the alleged recovery of the capsules and injections from the respondent, the seized contraband was kept in safe custody. He further contended that there was an unexplained delay in sending the samples to the Forensic Science Laboratory (FSL) for chemical analysis.
4. Heard learned counsel for the parties and perused the record.
5. The story projected by the prosecution is that a docket (EXTP-4) was forwarded by Head Constable-Kali Dass to the Police Station, Channi Himmat on 26.06.2010, stating therein that at around 21.30 hours, one person was going from Kunjwani towards Narwal carrying a light blue coloured bag in his hand. When the bag was checked, it was found to be containing intoxicating capsules and injections. On receipt of this docket, FIR No. 82/2010 was registered with Police Station, Channi Himmat. In terms of order dated 05.04.2011, the appellant was charged for commission of offences under Sections 8/21 NDPS Act. After the charges

were framed against the respondent, the Prosecution examined PWs-Anil Kumar, Manu Ji Pandita, Kali Dass, Pawan Kumar Abrol, Suchinder Pal Singh and Karanjeet Singh.

6. As the judgment of acquittal has been impugned by the appellant, it needs to be observed that interference with the judgment of acquittal is warranted only when the judgment is perverse or the vital evidence has been ignored by the trial court while acquitting the accused or the opinion formed by the trial court is not possible or implausible. Only because other view, better than that of the learned trial court is also possible, on the same set of evidence led by the parties, the judgment of acquittal cannot be interfered with. (Refer *Bhupatbhai Bachubhai Chavda & another. v. State of Gujarat* reported in 2024 INSC 295 and *Chandrappa v. State of Karnataka* reported in 2007 (4) SCC 415].
7. Now, on the touch stone of the law laid by the Hon'ble Supreme Court in the judgements (supra), this Court will examine the prosecution evidence to determine whether the judgment passed by the learned trial court suffers from perversity, or whether the learned trial court ignored any vital piece of evidence while acquitting the respondent. This Court will also examine whether the opinion formed by the learned trial court, on the basis of the evidence led by the prosecution is possible and plausible one.
8. **PW-Anil Kumar** has stated that on 26.06.2010, he was posted as a Constable in Police Station, Channi Himmat. He knows the accused. He along with Kali Dass, SPO Ishtiaq Ahmed and driver SPO Joginder Singh had laid a naka near Stadium Morh on National Highway and was

checking the vehicles. The accused was coming from Kunjwani and going towards Narwal. The accused was stopped by Incharge Naka-Kali Dass. He was carrying a light blue coloured bag in his hand which was checked and on opening the said bag, capsules and injections were found. The Incharge Naka prepared a docket and handed over to him for taking the same to the Police Station. SHO came on spot and seized the capsules and injections from the accused. 5/5 injections and capsules were separated for FSL purpose and were again re-sealed. The remaining capsules and injections were taken by the SHO in the Police Station.

During cross-examination, he stated that his statement was recorded in the Police Station by the Investigating Officer when they left the place of Naka. When his statement was recorded by the Investigating Officer, Kali Dass and Ishtiaq were also there. There was no civilian on spot. It took 15 minutes to count the capsules. He has not seen the seized capsules and injections today in the court.

9. **PW-Manu Ji Pandita** deposed that, he and SHO, had gone in the Flying Squad vehicle and were checking the vehicles near stadium. The accused was coming from Kunjwani side having a bag in his hand. Head Constable-Kali Dass searched the accused and the bag. 08 packets of intoxicated capsules and Diazepam Injections were recovered from him and the same were seized. Capsules and injections were separately sealed in cloth and were resealed with ring. The ring was kept on his superdnama. He produced the ring in the court and proved the seizure memo. The said witness was not cross-examined.

10. **PW-Kali Dass** deposed that he knows the accused. On 26.062010, he was posted as Incharge Head Constable with Flying Squad and they were on naka duty. Constable-Anil Kumar, SPO Ishtiaq Ahmed and Driver-Joginder Singh accompanied him on the naka duty at Stadium Morh, National Highway. At around 0930 P.M. the accused was coming from Kunjwani side on foot and was going towards Narwal. On noticing the police party, the accused tried to flee but was apprehended. The accused was carrying a light blue coloured bag in his hand and on opening the said bag, capsules and injections were found therein. The number of capsules and injections was 111, 143 and 132. The total number of capsules and injections was 385. Thereafter, he prepared the docket and sent the same to Police Station through Anil Kumar. Investigating Officer came on spot and personal search of the accused was conducted. He proved the docket (EXTP-4). He also identified the signatures on the seizure memo.
- During cross-examination, he stated that he was Incharge of the Naka party. 3 to 4 Constables and SPOs were with him when they caught the accused. There were no shops around the place of occurrence, however, some people were present there when recovery was effected from the accused. Investigating Officer came on spot 10 to 15 minutes after the occurrence. Thereafter, the Investigating Officer took custody of the seized articles and the accused and proceeded to the Police Station.
11. **PW-Pawan Kumar Abrol** proved the report EXTP-12. During cross examination he stated that the letter sent by SDPO was not seen by him in the court. Packets which were received by him for examination have also

not seen by him today in the court. The mark of seal impression forwarded by the Magistrate and the police, have also not been seen by him today in the court.

12. **PW-Suchinder Pal Singh** has stated that on 26.06.2010 he was posted as SHO Police Station Channi Himmat. At about 2200 hours, Constable Anil Kumar produced the docket sent by Head Constable-Kali Dass before him. As per the docket, Kali Dass had recovered intoxicated capsules and injections from possession of the accused, which were kept in a light blue coloured bag. Capsules and injections were seized by him at 09.30 P. M. On the basis of said docket, FIR No. 82/2010 was registered under Section 8/21 of NDPS Act. He along with other police employees reached Stadium Morh, National Highway at 2220 hours and prepared the site plan. He seized 800 capsules of 100/100 in each packet, injection Diazepam 111 Nos. Injection Neorogesic 143 Nos. and Injections Phenargon 132 Nos. from a light blue coloured bag. He separated 5/5 capsules and 5/5 injections from each packet as samples and resealed them separately. All the seized material was handed over to Head Constable in the Police Station. As per investigation conducted by him accused was found involved under Section 8/21 NDPS Act.

During cross-examination, he stated that when they returned from Naka duty, the seized material was handed over to Munshi i.e. Head Constable of the Police Station. The samples were dispatched to FSL on 30.06.2010. On 26.06.2010, the seized material was handed over to Munshi and the samples were taken from Munshi for resealing and after re-sealing were

again handed over to Munshi. On 30.06.2010 samples were again taken from Munshi and deposited in the FSL Jammu. He expressed ignorance about the Incharge Malkhana, but stated that the Munshi was the then Incharge Malkhana.

13. **PW-Karanjeet Singh** has stated that on 11.08.2010 he was posted as SHO Police Station, Channi Himmat. Before his posting, investigation was conducted by SI Suchinder Pal Singh in case FIR No. 82/2010. The said SI completed the investigation. He, after receiving the FSL report, filed the charge-sheet in the court.
14. From a perusal of the evidence led by the prosecution, it is evident that the injections/capsules were allegedly recovered from the respondent and the samples were prepared on 26.06.2010 and as per the statement of PW Suchinder Pal Singh, the same were dispatched to FSL on 30.06.2010. He has also stated that after the seized material was handed over to Munshi, the samples were taken from Munshi for resealing and after re-sealing, were again handed over to Munshi and thereafter on 30.06.2010 were again taken from Munshi and deposited in the FSL Jammu. There is no documentary evidence on record to substantiate this fact.
15. In the present case, neither Malkhana Register has been produced before the learned trial court nor In-charge Malkhana has been examined by the prosecution to establish that after the material was seized on 26.06.2010, it was kept in safe custody in Malkhana. Moreover, it has also not been proved that the samples were taken from Munshi for re-sealing by the

Executive Magistrate and were again deposited and thereafter on 30.06.2010 they were taken from Munshi and were sent to FSL.

16. The link evidence in this case is absolutely missing. Even the Executive Magistrate, who re-sealed the samples has also not been examined by the prosecution. In a prosecution under the NDPS Act for illegal possession of the contraband, the prosecution is required not only to prove the possession of the contraband by the accused but also that from the date the contraband was recovered from the accused till the samples extracted therefrom, reached FSL, they were kept in safe custody, so as to negate any chance of tampering.
17. The learned trial court has taken note of this discrepancy in the prosecution evidence and has arrived at the conclusion that the prosecution has not been able to prove the link evidence.
18. Further, this Court finds that PW-Manu Ji Pandita, though was not cross-examined by the respondent, but he has made a statement contrary to the evidence of the other witnesses, who were present on spot, by asserting that on the day of occurrence, he along with SHO had gone in the Flying Squad vehicle and were checking the vehicles near the stadium, whereas PW-Anil Kumar, PW Kali Dass and PW-Suchinder Pal Singh have narrated the entirely different story, which causes a doubt in the prosecution case.
19. In view of the above, this Court is of the considered opinion that the view taken by the learned trial court while acquitting the respondent can neither

be termed perverse nor contrary to the evidence on record. The acquittal of the respondent, therefore, does not warrant any interference by this Court.

20. Accordingly, the present appeal is found to be without any merit and the same is dismissed, along with the connected application, if any.
21. The record of the learned trial court be returned forthwith against proper receipt.

(RAJNESH OSWAL)
JUDGE

Jammu
07.08.2026
Sahil Padha

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No

