

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 292 of 2021

Reserved on : 11.09.2026

Decided on : 29.09.2026

Uploaded on : 29.09.2026

State of Himachal Pradesh

...Appellant.

Versus

Sandeep

...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting? Yes

For the Appellant.

Mr. Raj Negi, Deputy Advocate General.

For the Respondent:

Ms. Swetima Dogra, Advocate vice Mr. Shriyek Sharda, Advocate, Legal Aid Counsel.

Bhupesh Sharma, Judge

This appeal has been filed by the State of Himachal Pradesh against the judgment of acquittal dated 22.06.2021 passed by learned Special Judge-III, Solan, District Solan, H.P., in Session Trial No.37ASJ-II/7 of 2018, titled as '*State of Himachal Pradesh Vs. Sandeep*', whereby the respondent

(herein after referred to as 'accused') has been acquitted of the charges under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The accused was sent to face trial for the commission of an offence punishable under Section 20 of NDPS Act, 1985, by SHO Police Station Kandaghat, District Solan, H.P., in Case FIR Number 50/18 dated 14.07.2018 under Section 20 NDPS Act. The accused was prosecuted for the said offence, and was acquitted by the learned Trial Court vide impugned judgment dated 22.06.2021 in Sessions Trial No.37ASJ-II/7 of 2018, titled as '*State of Himachal Pradesh Vs. Sandeep*'.

3. Briefly, the facts relevant for the disposal of this appeal, in short, are as under:

3(a) On 14.07.2018 at 6:15 PM near Sadhupul on Junga Road, Tehsil Kandaghat, District Solan, H.P., the accused was found in conscious and exclusive possession of 1 Kg of '*Charas*' (Cannabis).

3(b). On 13.07.2018 at 8:20 PM, a police party headed by SI Laiq Ram, Investigating Officer of SNCC (FU), left for routine night patrolling, law and order duty, and crime detection duty towards Wagnaghat, Dharampur, Solan, etc., from Police Station State CID, Shimla vide GD No.4 dated 13.07.2018 at 8:20 PM. He was accompanied by other police officials of State CID, i.e. HHC Balak Ram and HHC Dinesh Kumar. On 14.07.2018 at 6:15 PM, the police party while patrolling towards Sadhupul spotted the accused coming from Junga Road carrying a carry bag. The accused, on seeing the police officials, got flustered and turned around in order to flee from the spot. However, he was chased and apprehended, and thereafter the Investigating Officer, considering his suspicious conduct, carried out a search of the carry bag in his possession, leading to the recovery of 1 Kg of 'Charas'(Cannabis). The Investigating Officer, at the time of apprehension of the accused and subsequently during his search, associated independent witness Mukesh Thakur, and the proceedings were conducted in his presence and in the presence of HHC Dinesh Kumar. The contraband so recovered from the

conscious and exclusive possession of the accused was sealed in a cloth parcel after affixing 6 seals of impression 'H'. Sample seal impression 'H' was taken on a separate piece of cloth for the purpose of record and the seal 'H' after its use was handed over to HHC Dinesh Kumar. The Investigating Officer also filled the relevant columns of NCB-form in triplicate. Thereafter, the case property along with seal impression 'H', and NCB form in triplicate were taken into possession vide recovery and seizure memo in the presence of independent and official witnesses. The signatures of the accused and the witnesses were obtained on the said memo. The copy of the same was handed over to the accused free of cost. Thereafter, the Investigating Officer SI Laiq Ram scribed rukka and sent the same through HHC Balak Ram to Police Station Kandaghat, and in pursuance thereof, case FIR No. 50/2018 dated 14.07.2018 under Section 20 NDPS Act was registered at Police Station, Kandaghat against the accused. Thereafter, SI Laiq Ram prepared a spot map and recorded the statements of witnesses under Section 161 Cr.PC.

3(c). On 14.07.2018 at 09:30 PM, ASI Rajinder posted as Investigating officer at Police Station Kandaghat went to the spot along with HHC Balak Ram and met SI Laiq Ram and took over the further investigation of the case. The police party, after completing the investigation formalities, returned to Police Station Kandaghat, and thereafter re-sealing of the case property was carried out by affixing four seals of impression 'F'. This was conducted by HC Praveen Kumar No. 85 and he also filled the relevant columns of the NCB form in triplicate and issued a re-sealing certificate. The sample seal impression 'F' was taken on a separate piece of cloth for the purpose of record, and thereafter the case property was deposited in the Police Station Malkhana, regarding which a necessary entry was made at serial No.484. On 16/7/2018, the case property was handed over to ASI Rajinder for conducting inventory proceedings under section 52A NDPS Act and on 17/7/2018, the case property along with relevant documents was sent to State FSL Junga through Constable Jatinder Kumar . The Investigating Officer also sent the special report under section 57 NDPS Act through LC Reena

No.187 to the Supervisory Officer of Police Station Kandaghat, i.e Dy.S.P.(HQ), Solan. On 16.07.2018, the necessary entries were carried out in the Special Report Register by HC Rakesh No.77.

3(d) The case property, which was sent for chemical examination to State FSL and vide State Forensic Science Laboratory Report No.2305 NDPS Division 729/2018, and was found extract of Cannabis and sample of '*Charas*'.

3(e) Pursuant to the completion of investigation, the accused was found in exclusive and conscious possession of 1 Kg of '*Charas*' (Cannabis). Accordingly, he was found to have committed an offence punishable under Section 20 of NDPS Act and final report under Section 178(2) of Cr.P.C. was prepared and filed before learned Special Judge, Solan, District Solan, H.P. The accused was prosecuted in Sessions Trial No.37ASJ-II/ 7 of 2018, titled as '*State of Himachal Pradesh Vs. Sandeep*' by learned Special Judge-III, Solan, District Solan, H.P.

4. The accused was charged for the commission of an offence punishable under Section 20 of the NDPS Act, 1985, to which he pleaded not guilty and claimed trial vide order dated 07.08.2019.

5. The prosecution, in order to substantiate the allegations and accusations, against the accused examined ten witnesses. The independent witness of the recovery, Mukesh Thakur, was examined as PW-1, and the official witness of recovery, ASI Dinesh Kumar, was examined as PW-3. The other witness of fact is ASI Balak Ram, who was examined as PW-7, SI Laiq Ram, being the Investigating Officer, as PW-8 and ASI Rajinder, being the second Investigating Officer, as PW-10. HC Praveen Kumar No.85 MHC of Police Station, Kandaghat registered case FIR No. 50/2018 and also conducted the re-sealing of the case property. The other witnesses examined by the prosecution, i.e LC Reena No. 187 as PW-4, HC Rakesh Kumar No.77 as PW-5, and Constable Jatinder Kumar No.383 as PW-6, are formal in nature and were associated at various stages of the investigation to form link evidence.

6. The prosecution, apart from examining the aforesaid official witnesses has also heavily relied upon the documentary evidence placed on record, which was collected and produced against the accused during the course of investigation i.e. Recovery Memo (Ex.PW1/A), parcels (Exts. P1 & P2), Carry Bag (Ext.P3), Plythene Pieces (Ex.P4), Charas (Ex.P5), Sample Charas (Ex.P6), Sample of Seal (Ex.PW1/B), FIR (Ex.PW2/A), Endorsement (Ex.PW2/B), Signatures/endorsement (Ex.PW2/C), Re-sealing Certificate (Ex.PW2/D), Sample of Seal (Ex.PW2/E), Abstract of Malkhana Register (Ex.PW2/F), Copy of road Certificate (Ex.PW2/G), Special Report (Ex.PW4/A), Endorsement (Ex.PW4/B), Abstract of Register (Ex.PW5/A), Ruka (Ex.PW7/A), Spot Map (Ex.PW8/A), photographs (Exts. PW8/B1 to PW8/B5), Certificate U/S 65 of Indian Evidence Act (Ex. PW8/C), Statement of Mukesh Thakur U/S 161 Cr.P.C. (Ex.PW8/D), NCB Form (Ex.PW8/E), Application (Ex.PW10/A), Photographs (Exts.PW10/A-1 to PW-10A-18), Sample of Seal (Ex.PW10/B), Order of Ld. JMIC, Kandaghat (Ex.PW10/C), Certificate U/S 52A(3) of ND & PS Act (Ex.PW-10/

D), Inventory (Ex.PW-10/E), Certificate U/S 65(B) of Evidence Act (Ex.PW-10/F), Certificate U/S 65(B) of Evidence Act (Ex.PW-10/G), Rapat No.30 (EX.PW-10/H), Rapat No.4 (Ex.PW-10/J), Report of SFSL (Ex.PW-10/K), Statement of C. Jitender U/S 161 Cr.P.C. (Mark-DX) and Statement of HHC Balak Ram U/S 161 Cr.P.C (Mark-DY).

7. The substance of the prosecution case was put to the accused in his statement recorded under Section 313 Cr.PC, on 19.11.2020, wherein he has denied the prosecution case in its entirety by raising the defence of denial simpliciter and false implication at the behest of the Police.

8. The learned Trial Court after considering the material on record and hearing the parties, acquitted the accused for the offence punishable under Section 20 of the NDPS Act, 1985, vide impugned judgment of acquittal dated 22.06.2021, passed in Sessions Trial No.37ASJ-II/7 of 2018, titled as '*State of Himachal Pradesh Vs. Sandeep*'.

9. Feeling aggrieved and dissatisfied with the judgment of acquittal dated 22.06.2021, *passed in Sessions Trial No.37ASJ-II/7 of 2018, titled as 'State of Himachal Pradesh Vs. Sandeep'*, the State of Himachal Pradesh is in appeal before this Court on various grounds.

10. **GROUND OF APPEAL:**

- (i) *"That the impugned judgment passed by the Learned Trial Court is wrong on facts as well as on law, hence, liable to be set-aside.*
- (ii) *That the impugned judgment is based on hypothetical reasoning surmises and conjectures hence liable to be set-aside.*
- (iii) *That the Learned Trial Court has appreciated the evidence on record in a slipshod and perfunctory manner and has acquitted the accused person on the flimsy grounds.*
- (iv) *That the Learned Trial Court has not only failed to view the prosecution evidence in its proper perspective but at the same time has set unrealistic standards to evaluate the direct and cogent prosecution evidence. The reasoning of the Trial Court is manifestly unreasonable and unsustainable as there was warrant at all for the Trial Court to discard the well reasoned and consistent testimony of prosecution witnesses on material point.*

- (v) *That the Learned Trial Court has discarded the testimony of prosecution witnesses for untenable reasons in the absence of any proof of enmity no reasons what so ever have been assigned for discarding the version of official witnesses. The acquittal in this case is in disregard of material evidence on record and as such, the same is unreasonable, therefore, the impugned judgment is liable to be set-aside.*
- (vi) *That the Id. Trial Court did not appreciate the evidential value of PW-1 Mukesh Thakur, the independent witness; in right aspect. This witness has admitted the fact that he had put his signature over the recovery memo of the contraband at the time of the recovery of the same, from the accused. His presence at the spot is proved. However, he in the cross-examination of the could not state, as to how the recovery was affected. But this aspect is not sufficient to discard the entire statement of this witness, as it is always difficult for a layman to understand and depose about the way of recovery, make of document in technical aspect, especially in the case of ND&PS Act. He has proved the recovery as well as seizure memo, vide which the recovery of contraband, from the possession of accused was affected. Hence, the impugned judgment is liable to be set aside.*
- (vii) *That the Id. Trial Court while passing the impugned judgment has held that infact, there are material discrepancies in the statements of the official witnesses. Whereas, the keen study of the statements reveals that the contradictions are minor, rather, invariably*

happen to occur with the passage of time. Not even a single contradiction is there which may affect or vitiate the recovery of contraband from the possession of accused. The contradictions having been refereed by the Ld. Trial Court regarding departure to the spot and about other time variation, certainly, do not falsify the involvement of accused in commission of said offence. Hence, the impugned judgment is liable to be set aside.

- (viii) *That the Id. Trial Court has also held that there is contradiction regarding using of artificial light i.e., light of vehicle of torch light for recording the statements of the witnesses or whereas, natural light as some witnesses have stated that the statements were referred in the natural light where as the IO has stated that the light of vehicles were also used. In-fact the IO has specifically stated that the statements were recorded in the light of vehicle. The statements were recorded in the end of the investigation and by then, almost the proceeding at the spot was completed. So, the version of other witnesses that the proceedings were carried out in the natural light becomes tenable. Hence, the impugned judgment is liable to be set aside.*

- (ix) *That no other appeal or revision arising out of the impugned judgment has been filed either in this Hon'ble Court or in the Hon'ble Supreme Court of India."*

11. We have heard learned counsel for the parties and carefully gone through the material on record and the findings

recorded by the learned Trial Court while passing the impugned judgment dated 22.06.2021.

12. Learned Deputy Advocate General has strenuously argued that the learned Trial Court failed to appreciate the material evidence on record, leading to a miscarriage of justice. The official witnesses and the independent witness of search, recovery and seizure of the contraband in their respective statements have fully supported and corroborated the prosecution case, which clearly establishes complicity of the accused for being in exclusive and conscious possession of 1 kg of '*Charas (Cannabis)*'. Furthermore, there is no procedural lapse rendering the prosecution case vulnerable and unacceptable. The learned Trial Court while recording the judgment of acquittal failed to appreciate the evidence in the right perspective. Therefore, the findings recorded by the learned Trial Court are perverse and liable to be set aside, and the accused needs to be convicted.

13. Per contra, the learned counsel for the respondent defended the judgment of acquittal passed by the learned Trial

Court and submitted that there are material contradictions in the oral and documentary evidence adduced by the prosecution before the learned Trial Court. He also pointed out that although the Investigating Officer associated one independent witness, Mukesh Thakur (PW-1), allegedly during the entire proceedings, nevertheless he failed to support the prosecution case in material points and even his presence on the spot is disputed. Therefore, the Learned Trial Court has rightly discarded the evidence of the aforesaid witness along with the evidence of other official witnesses being conflicting on material points. The learned Trial Court, after due appreciation of oral and documentary evidence, has rightly acquitted the accused and the findings rendered therein warrants no interference.

14. Perusal of the record evidently shows that the learned Special Judge, on considering and evaluating the material and evidence, disbelieved the prosecution case on the basis of material contradictions and infirmities emerging on the record. The learned Trial Court did not accept the evidence of the official witnesses since there were material contradictions in their

respective statements on the material points, which rendered the entire prosecution case vulnerable and unacceptable. Having considered the entire material placed before the learned Special Judge, the allegations against the accused were not proved beyond reasonable doubt, consequently he was acquitted of the charges.

15. Since the present appeal has been filed against the judgment of acquittal, therefore, the scope of powers of the Appellate Court in the case of an appeal against acquittal needs to be considered before embarking upon the factual matrix.

16. The scope of the powers of the Appellate Court in case of an appeal against acquittal has been elaborately dealt with by the Hon'ble Apex Court in **Muralidhar alias Gidda & another vs. State of Karnataka reported in (2014) 5 SCC 730**, which reads as under :-

"10. Lord Russell in Sheo Swarup [1], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said,

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed:

"7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [3], Madan Mohan Singh [4], Atley [5] , Aher Raja Khima [6], Balbir Singh [7], M.G. Agarwal [8], Noor Khan [9], Khedu Mohton [10], Shivaji Sahabrao Bobade [11], Lekha Yadav [12], Khem Karan [13],

Bishan Singh [14], Umedbhai Jadavbhai [15], K. Gopal Reddy [16], Tota Singh [17], Ram Kumar [18], Madan Lal [19], Sambasivan [20], Bhagwan Singh [21], Harijana Thirupala [22], C. Antony [23], K. Gopalakrishna [24], Sanjay Thakran [25] and Chandrappa [26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such

conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

17. The Hon'ble Supreme Court in **Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471**, observed as under:-

“31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution.

[State of U.P. v. Sahai (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunchalam v. P.S.R. Sadhanantham (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana vs. Lakhbir]

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarized as follows:

31.2.1. Where the approach or reasoning of the High Court is perverse;

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. *[State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]* For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. *[State of U.P. vs. Shanker 1980 Supp SCC 489]*

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. *[State of U.P. v. Hakim Singh (1980)]*

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam vs. P.S.R. Sadhanantham (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of “implicit proof” rather than that of “proof beyond reasonable doubt” and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it necessary on the part of the prosecution to establish “motive”. [State of A.P. v. Bogam Chandraiah (1990) 1 SCC 445]

31.2.2. Where acquittal would result in gross miscarriage of justice;

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh 1989 Supp (1) SCC] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu (1983) 3 SCC 502]

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610].”

18. In **H.D. Sundara & others vs. State of Karnataka, (2023) 9 SCC 581**, the Hon’ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. The relevant portion of the above judgment is as under:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

9. Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under

challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken."

19. It is more than settled that the powers of Appellate Court while hearing the appeals against the acquittal are not unbridled. There is a clear caveat that in case the view arrived at by the trial Court is a possible one borne from the material on record, the same cannot be viewed differently, even if, there is a possibility of any other view. Reference in this regard can be made to the judgment passed by Hon'ble Supreme Court in

Jafarudheen and others vs. State of Kerala (2022) 8 SCC 440,

wherein it has been held as under:

“Scope of Appeal filed against the Acquittal:

25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, 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 analyzed. 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. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

20. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon’ble Supreme Court in **Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

“12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

21. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal. Further, if two views were possible on the basis of the evidence on record, the Appellant Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

22. The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In fact, it is a settled principle of criminal jurisprudence that the

more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused.

23. Keeping in view the above noted exposition, it appears that the view taken by the learned Special Judge is correct, considering the material and evidence adduced by the prosecution and which duly appreciated by the learned Trial Court. The judgment of acquittal dated 22.06.2021 cannot be faulted.

24. It is an admitted case of the prosecution that the accused was apprehended along with the contraband on 14.07.2018 at 06:15 PM near Sadhulpul on Junga Road, Tehsil Kandaghat, District Solan, H.P., A Police party headed by SI Liaq Ram (PW-8) was present on the spot along with other police officials HHC Balak Ram (PW-7) and HHC Dinesh Kumar (PW-3) on routine patrolling duty. The Police party apparently left the Police Station State CID, Shimla on 13.07.2018 at 08:20 PM vide GD No.4 dated 13.07.2018 (Ex.PW-10/J). The Police party headed towards Waknaghat, Kandaghat, Solan and Kasauli etc.

for routine patrolling and crime detection duty. As per the prosecution case, the Police during the course of the proceedings associated one independent witness Mukesh Thakur (PW-1). He was present throughout the proceedings and witnessed the apprehension of the accused, search of the Carry Bag and seizure formalities, therefore, it is apparent to go through the statement of this witness in order to ascertain the material facts emerging on record in the rukka (Ex.PW7/A).

25. Before advertizing to the evidence of the independent witness, Mukesh Thakur, examined as PW-1, it may be expedient to consider the contents of the rukka (Exhibit PW-7/A), which elaborates the sequence of events material to the prosecution's story.

26. Exhibit PW-7/A is a rukka scribed by SI Laiq Ram, examined as PW-8. The aforesaid document refers that on 14.07.2018, the police party, while patrolling near Sadhupul, apprehended the accused in possession of a carry bag, which was searched on suspicion, leading to the recovery of 1 Kg 'Charas'(Cannabis). The recovery of the contraband was

witnessed by the independent witness, Mukesh Thakur (PW-1), and the official witnesses, HHC Balak Ram (PW-7) and HHC Dinesh Kumar (PW-3).

27. PW-1 Mukesh Thakur, being the sole independent witness allegedly associated by the investigating officer during the course of proceedings, fails to support the prosecution case qua the recovery of the contraband from the possession of the accused in his presence. Although, he has admitted his presence on the spot, but has denied that the proceedings took place at 6:15 PM. He has also denied that the seizure and sealing of the case property took place in his presence, as reflected in the memo (Exhibit PW-1/A), which, although, bears his signature. Therefore, the sole independent witness has failed to support the prosecution case on the material aspects rendering prosecution case vulnerable.

28. The official witnesses, who remained associated during the course of proceedings, namely HHC Balak Ram examined as PW-7, HHC Dinesh Kumar examined as PW-3 and SI Laiq Ram being Investigating Officer examined as PW-8,

have, although, made efforts to support the prosecution case on all the material facts, but the careful scrutiny of their evidence leads to infer that there are material contradictions in their statements which renders the prosecution version suspicious and vulnerable, and same cannot be brushed aside. It may be necessary to point out the material contradictions in the prosecution evidence, which are sufficient to disbelieve and discard the complicity of the accused for being in possession of the contraband allegedly recovered.

29. The contradictions, which need to be highlighted are being dealt forthwith.

30 There are material contradictions in the evidence of the police officials regarding their movement and their presence at Sadhupul on 14.07.2018 at 6:15 PM. As per the copy of GD No.4 dated 13.07.2018 (Ex.PW-10/J), the police party headed by SI Laiq Ram (PW-8) left Police Station State CID, Shimla at 8:20 PM for patrolling and crime detection duty towards Wagnaghat, Kandaghat, Solan, Kasauli, etc. Apparently, nothing is emerging on the record regarding the proceedings carried out by the Police

party on the night of 13.07.2018 and forenoon of 14.07.2018 in pursuance of their departure from Shimla.

31. As per the evidence of SI Laiq Ram (PW-8), the Police party started from Solan on 14.07.2018 at 10:00 AM and went to Wagnaghat and thereafter towards Sadhupul. As per the evidence of ASI Balak Ram (PW-7), the Police party left from Shimla on 13.07.2018 and thereafter stopped at Wagnaghat, thereafter at Solan, and went to Kasauli and stayed for the night at Solan. On 14.07.2018, the police party assembled at Solan at 11:00 AM and started towards Sadhupul and set up a naka at the said place. Similarly, as per the evidence of ASI Dinesh Kumar (PW-3), they started from Bharari (Shimla) in the morning and proceeded towards Solan and Kandaghat.

32. Having considered the evidence of SI Laiq Ram (PW-8), ASI Balak Ram (PW-7), and ASI Dinesh Kumar (PW-3), there are material contradictions in their respective statements regarding the movement of the police officials on 13.07.2018 and 14.07.2018. The element of consistency is completely missing to establish their actual movement after they left from State CID

Police Station, Bharari (Shimla). Pertinently, PW-7 ASI Balak Ram has referred that the police party had set up a naka at Sadhupul. However, the aforesaid fact is completely missing from the evidence of the Investigating Officer, SI Laiq Ram (PW-8), and ASI Dinesh Kumar (PW-3). Furthermore, the rukka (Exhibit PW-7/A) also fails to mention the fact regarding the laying of a nakka by the police party at Sadhupul.

33. The other material contradiction observed in the present case regarding the time of apprehension of the accused and time thereof. As per the Ex.PW-7/A, the accused was apprehended at 6:15 PM near Sadhupul, however, the aforesaid fact is categorically disputed by the independent witness Mukesh Thakur (PW-1), who refers the time 3-3:30 PM on 15/16.07.2018. Apart from this, the time of apprehension of the accused as per the evidence of ASI Dinesh Kumar (PW-3) is 6:00 PM, whereas ASI Balak Ram and SI Liaq Ram have stated that he was apprehended at 6:15 PM.

34. There are also material contradictions in the evidence of the prosecution regarding the act of the accused on seeing the

Police party. Needless to emphasize that the Police party comprising of ASI Dinesh Kumar (PW-3), HHC Balak Ram (PW-7), and SI Laiq Ram (PW-8) were officials of State CID and they were moving in civil dress. Therefore, the prosecution case that the accused, on seeing the Police party, got flustered and tried to flee is hard to accept and believe. Since the Police party was apparently in civil dress, therefore, the accused had no reason, if at all, to flee from the spot on seeing them, since he had no reason to believe that he was being encountered by the police officials. As per the evidence of the independent witness Mukesh Thakur (PW-1), the accused had been nabbed by the police when he came on the spot. However, as per the evidence of the official witnesses, the accused was nabbed in the presence of the independent witness. Therefore, there is no consistency in the statements of the witnesses regarding the act and conduct of the accused on seeing the Police party. Furthermore, it is also not proved that the accused was actually nabbed in the presence of the independent witness.

35. There are also material contradictions regarding the time of delivery of the rukka and registration of FIR. As per the rukka (Exhibit PW-7/A), it was scribed at 7:30 PM and handed over to HHC Balak Ram (PW-7). As per the FIR (Ex.PW-2/A), it was registered at 21:07 hours i.e. 9:07 PM. As per the evidence of HC Pawan Kumar No.85 (PW-2), he received the rukka at the Police Station at 8:15 PM. There is nothing on record proving that HHC Balak Ram (PW-7) went to the police station in a vehicle, since the time gap of scribing the rukka and registration of FIR is about one and a half hours. Needless to mention that the distance between Kandaghat and Sadhupul is approximately 15 kilometers, and as per the evidence of HHC Balak Ram (PW-7), he took lift only for 4 kilometers. Therefore, it becomes difficult to believe that he reached the Police Station in the time gap as reflected in the rukka (Ex.PW-7/A) and the FIR (Exhibit PW-2/A).

36. Having considered the aforesaid material discrepancies, material contradictions and inconsistencies in the statements of the prosecution witnesses, the prosecution case is liable to be discarded since the aforesaid contradictions cannot

be brushed aside being material to the root of the case, therefore, prosecution evidence apparently does not inspire confidence and cannot be relied upon. Accordingly, the prosecution has failed to prove its case against the accused beyond reasonable doubt.

37. In view of the above, the present appeal fails and it is dismissed.

38. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of learned Registrar (Judicial) within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellants on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

39. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith.

40. The appeal is, accordingly, disposed of, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

29th September, 2026
(Kiran)