

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-1064-MA of 2015 (O&M)
Date of decision: 31.08.2015

State Chandigarh Administration, Chandigarh

...Applicant

Versus

Sunil

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Rajiv Sharma, APP,
for the applicant/appellant.

Jitendra Chauhan, J.

CRM-20757-2015

Heard.

Delay of 47 days in filing this application is condoned.

CRM-A-1064-MA-2015

By filing the present petition, under Section 378(3) of the Code of Criminal Procedure (for short 'the Cr.P.C.'), the applicant has assailed the order dated 20.01.2015, passed by the learned Special Judge, Chandigarh, acquitting the accused-respondent in case FIR No.84 dated 10.03.2012, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'Act'), at Police Station Sector 31, Chandigarh.

Learned APP for U.T. Chandigarh submits that the

prosecution has successfully proved its case against the accused-respondent. He was arrested from the spot. All the material witnesses have supported the prosecution case. The discrepancies, if any, are of trivial nature and thus, liable to be ignored. The CFSL report clearly proves that the contraband seized from the accused-respondent was charas.

Heard.

In his testimony, PW I0 SI Raghbir Singh, stated that the contraband recovered from the accused was reduced into two sample parcels and one parcel was made of the remaining charas. He had affixed his one seal impression bearing SK on each parcel. Similar statement has been made by HC Parwinder Singh, who is a recovery witness. On the contrary, SI Krishan Singh, while appearing as PW-3, has stated that sample parcels as well as the bulk parcel was produced before him and he had verified the case property. The sample parcels and bulk parcel were having two seals of SK affixed over the same i.e. seals of first investigating officer. This statement is contrary to the statement of the first investigating officer as SI Raghbir Singh stated that he had affixed only one seal impression on each of the parcels. Similarly, there are contradictions with regard to sending the sample for CFSL examination. PW5, Constable Madan Lal, has stated that the sample parcel were handed over to him for depositing with CFSL, Sector 36, Chandigarh was having two seals of SK and one seal of BS. It is again in contradiction to the

statement of SI Raghbir Singh. Furthermore, the CFSL report itself shows that there was only one seal of SK over the sample parcel. Therefore, the learned trial Court is right in holding that it cannot be said with certainty that the case property remained intact throughout.

Thus, the quality of evidence required to convict an accused for a criminal offence attracting the provisions of as stringent a law as the NDPS Act, is definitely missing in the present case and the benefit thereof, has to be given to the accused.

In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Accordingly, the leave to appeal stands declined.

Dismissed.

31.08.2015
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(JITENDRA CHAUHAN)
JUDGE