

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. A-1150-MA of 2015 (O&M)

DATE OF DECISION: 01.09.2015

State of Haryana

.....Petitioner

Versus

Chitranjan and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present:- Mr. Baljinder Singh Virk, DAG, Haryana.

DAYA CHAUDHARY, J.

The present application has been filed under Section 378 (3) Cr.P.C. for grant of leave to appeal against judgment of acquittal dated 10.11.2014 passed by learned Additional Sessions Judge, Hisar.

There is delay of 138 days in filing of the aforesaid application. Delay in the filing of application is condoned as per grounds mentioned in the application.

FIR No. 282 dated 16.5.2012 was registered under Section 20 of NDPS at Police Station City Hansi against accused-Chitranjan and Joginder. As per case of the prosecution on 16.5.2012, SI Vijay Kumar accompanied by ASI Virender Singh and Constable Rajender Singh were present at T-Point Radhika Mill near Kharar Chungi at Hansi for barricade duty. Two young boys were seen coming from the side of Hansi City on

their motorcycle. On seeing the police party, the driver of the motorcycle tried to turn back his motorcycle. On suspicion, both of them were apprehended along with their motorcycle. On interrogation, they disclosed their identity as Chitranjan and Jogender. The search was conducted upon them after giving them the option to be searched before a Magistrate or a Gazetted Officer. On search, nothing was recovered from the possession of Chitranjan, whereas, pink polythene containing Sulpha (charas) was recovered from the left pocket of trouser of Jogender. Two samples of 10 gms each were separated and remaining substance was found to be 120 gms on weighing, which was sealed with seal VK. After completing all the formalities, both the accused were produced before the Illaqa Magistrate. Their statements were recorded under Section 161 Cr.P.C. The samples were sent to FSL, which were found to be of charas. Challan was presented against both the accused. Charge was also framed under Section 20 of NDPS Act on 19.2.2013, to which they pleaded not guilty and claimed trial. After recording statements of the prosecution witnesses and defence witnesses both the accused were acquitted of the charge levelled against them by the trial Court vide its judgment dated 10.11.2014. The accused were acquitted of the charge by giving benefit of doubt as there were contradictions and discrepancies in the statements of the prosecution witnesses. There was delay in submitting special report to the Area Magistrate and no explanation was given by the prosecution. There was also delay of 12 days in sending the samples to the FSL, which was one of the grounds of acquittal and no explanation whatsoever was given by the prosecution to explain the delay.

Aggrieved by the judgment of acquittal, applicant-State of Haryana has filed the present application under Section 378 (3) Cr.P.C. for grant of leave to appeal against judgment of acquittal dated 10.11.2014.

Learned counsel for the applicant submits that the provisions of NDPS Act were fully complied with by the Investigating Officer. All the prosecution witnesses have also supported the case of the prosecution but still the accused have been acquitted of the charge. The contradictions and discrepancies were minor and are immaterial, which may occur with the passage of the time. Learned counsel further submits that the delay in sending sample has been made the ground of acquittal but the delay occurred due to assignment of different types of duties to the investigating agency.

Heard the arguments advanced by learned counsel for the applicant and have also gone through the judgment of acquittal and other documents available on the file.

A perusal of statements of prosecution witnesses shows that there are material contradictions and discrepancies, which doubts the prosecution version. Virender (PW-1) has stated in his cross-examination that there were no shops and houses near the place of occurrence, whereas, Vijay (PW-5) has stated in his cross-examination that shops were there at the place of occurrence. Similarly PW-1 has further stated that there was no liquor vend at the spot, whereas, PW-5 has stated that he does not remember whether any liquor vend was there at the spot or not. It is also not disputed that there was delay of 12 days in sending the samples to the FSL and no explanation whatsoever has been given by the prosecution. Not only delay was there in sending the samples but also in sending the special report to the Area Magistrate. The FIR in dispute was registered on 16.5.2012 at 7.30 pm, whereas, special report was submitted to the Area Magistrate at 8.00 am on 18.5.2012. The delay of more than 36 hours in sending special report to the Area Magistrate has not been explained by the prosecution. Even the person who delivered the special

report to Area Magistrate was not examined by the prosecution.

The discrepancies found in the statements of the prosecution witnesses coupled with the fact that there was delay in sending the samples as well as special report to the Area Magistrate makes the case of the prosecution doubtful, benefit of which goes in favour of the accused-persons.

In view of the facts as mentioned above, there is no illegality or infirmity in the judgment of the trial Court, which require any interference by this Court. The present application being devoid of any merit is hereby dismissed.

September 01, 2015
pooja

(DAYA CHAUDHARY)
JUDGE