

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

CRM-A-159-MA-2016 (O&M)

Date of decision : 11.08.2016

Union Territory of Chandigarh

...Applicant-Appellant

Versus

Ashok

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Toor, Addl. P.P.,
for the applicant/appellant-UT Chandigarh.

JITENDRA CHAUHAN, J. (Oral)

CRM-2839-2016

Heard.

For the reasons contained in the application, the same is allowed and delay of six days in filing the present special leave to appeal is condoned.

Main Case

This special leave to appeal has been filed against the judgment dated 05.10.2015, passed by learned Judge, Special Court, Chandigarh, whereby the accused-respondent was acquitted of the charges framed against him under Section 21 of the Negotiable Instruments Act (for short 'the Act').

The learned counsel states that the learned trial Court has ignored the factum of recovery of 60 grams of smack from the respondent and the statements of the prosecution witnesses, which fully establishes the case of the applicant-appellant.

I have heard the learned counsel and carefully perused the entire record on file.

The judgment of acquittal was passed by the learned trial Court after recording the defects and irregularities found in the investigation and procedure followed by the Investigating Officer. Firstly, the applicant-appellant did not join any independent witness as the alleged recovery was effected from the area i.e. village Dhanas, Chandigarh, which was thoroughfare during day time at 4.00 p.m. Secondly, neither the CFSL form was ever sent to the Laboratory nor the same was deposited with MMHC. Thirdly, there was an unexplained delay in sending the samples to the Chemical Examiner as the same was sent on 25.11.2013 while the alleged recovery was effected on 21.11.2013. Fourthly, a material contradiction was noticed in the statements of prosecution witnesses with regard to production of the case property and accused before SHO or Incharge as PW4-SI Mohan Singh had stated that they had gone to Incharge, whereas, PW7-HC Kulwant Singh had deposed that they had gone to SHO. Lastly, SI Balbir Singh was having seal of 'BS', whereas seal affixed by him was carrying impression 'AK'.

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.

Keeping in view the above, 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 respondent, this Court feels that learned Judge, Special Court, Chandigarh, has passed the impugned judgment dated 05.10.2015, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly, the special leave to appeal is declined.

Dismissed.

11.08.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No