

1241

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

CRA-S-99-SBA of 2006

Date of decision: September 28, 2017

State of Punjab

.....Appellant

Versus

Ajit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Ramandeep Sandhu, Sr. DAG Punjab.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by judgment dated 12.02.2005 passed by Judge Special Court, Ludhiana, in case SC No.175 of 07.10.2000, by which the Judge Special Court, Ludhiana recorded the order of acquittal of the respondent, appellant-State of Punjab has filed the present appeal against acquittal.

In support of the appeal, Mr. Sandhu vehemently argued that the first finding recorded by the trial Court about applicability of Section 50 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') is completely wrong and illegal inasmuch as there was no personal search contemplated to Section 50 of the NDPS Act and in fact, the accused was caught alongwith the contraband, which was in the *jhola* in his right hand. He cited decisions of the Supreme Court in the cases of **State of Himachal Pradesh versus Pawan Kumar** in Appeal (Crl.) No.222 of 1997 and

State of Rajasthan versus Bhanwar Lal, in Criminal Appeal No.375

of 2003, both decided on 08.04.2005.

In view of the law laid down by the Apex Court about the contention as has been made by learned State counsel, I find that the trial Court clearly committed an error in holding that Section 50 of the NDPS Act applicable. Mr. Sandhu is right in his submission and therefore, the finding to that effect will have to be reversed. Accordingly, the statutory finding is reversed.

The next contention raised by Mr. Sandhu is that the SHO had opened the parcel, but then he had sealed the same with his own seal. PW6 in his cross-examination had stated that, that was not so and therefore, the finding of fact is wrong. It is then seen from the reasons recorded by the trial Court that the prosecution story was riddled with serious discrepancies about the seal impressions on the docket. I quote the following portion from the reasons recorded by the trial Court about that aspect of the matter:-

“Further-more PW-4 C.Jasbir Singh and PW-5 Randhir Singh, IO are discrepant about the description of the seal impressions. For example, PW-4 C.Jasbir Singh has stated that the seal impressions were RS, DS and NS, whereas PW-5, SI Randhir Singh, IO has stated that the seal impressions were GS, NS and RS whereas the seal impressions on the docket are NS, GS and RS. SO the prosecution case appears to be doubtful on this score also.....”

I think, in my opinion, the trial Court was entitled to consider the material inconsistencies in the prosecution case in order to hold that the case by the prosecution was doubtful or that the benefit of

doubt could be extended to the accused in such a situation where the prosecution witnesses themselves have been giving different descriptions to the seal, namely PW-4 states it to be RS, DS and NS, whereas PW-5 states it to be GS, NS and RS.

Mr. Sandhu contended that it is not material discrepancy with the prosecution case. However, I do not agree. The prosecution must prove its case to the hilt and cannot take advantage of its own wrong. If the prosecution witnesses have created inconsistencies in the evidence of the prosecution, the prosecution must suffer and the accused cannot be asked to suffer. In that view of the matter, I do not think that the trial Court had made any mistake in the matter of appreciation of evidence and rejecting the prosecution case on the ground that inconsistency regarding seal was a major inconsistency. In that view of the matter, there is no reason for me to take another view of the matter or substitute the view taken by the trial Court.

Dismissed.

(A.B. CHAUDHARI)
JUDGE

September 28, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No