

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

CRM-A-1389-MA-2016 (O&M)

Date of decision : 03.04.2017

State of Haryana

...Applicant-Appellant

Versus

Jitender @ Sonu

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Mr. Saurabh Mohunta, DAG, Haryana

JITENDRA CHAUHAN, J. (Oral)

CRM-23333-2016

Heard.

Keeping in view the averments made in the application, the same is allowed. The delay of 116 days in filing the present special leave to appeal is hereby condoned.

Main Case

This special leave to appeal has been filed against the judgment dated 04.01.2016, passed by learned Addl. Sessions Judge (Exclusive Court), Jhajjar, whereby, the accused-respondent was acquitted of the charges framed against him under Section 20 of Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').

It is contended that the learned trial Court has erroneously acquitted the respondent on the grounds that there are contradictions in the statement of the witnesses and no independent witness was joined in the investigation. In fact the investigating officer had made the efforts for the same, but none came forward for the said purpose and there are no contradictions in the statement of the witnesses. Thus, the impugned judgment is liable to be set-aside.

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

In **State of UP Vs. Ram Sajivan and others**, 2010 (1) SCC 529, Hon'ble the Supreme Court of India, observed as under:-

*“In the case of **Raj Narain v. State of U.P. & Others** [Criminal Appeal Nos. 891-892 of 2002 decided on 18.09.2009], this Court reiterated the aforesaid view and held that even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. However, this Court will not hesitate to interfere with such order if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust.”*

Admittedly, no independent witness was joined the investigation, therefore, the case of the prosecution/petitioner depends solely upon the statement of the prosecution witnesses. However, there are material contradictions with regard to preparation of FSL form and sample seal. In his statement contrary to the case as alleged by the prosecution, PW11-ASI Naresh Kumar himself admitted that FSL form was not filled on

the spot. Moreover, PW-5 HC Mukesh Kumar deposed that PW-11 had not filled any FSL form. However, contrary to that, PW10-DSP Dheeraj Kumar stated that the same was filled on the spot. Further, the preparing of sample seal on the spot is also doubtful as PW6-SHO/SI Daya Chand has nowhere deposed that the sample seal along with the case property was also produced before him or that he affixed his own seal over it. The statement of PW6, before whom PW11-ASI Naresh Kumar had produced the accused along with recovery witnesses and parcels of case property, under Section 161 Cr.P.C. was not recorded. Moreover, it is settled proposition of law that the view taken by the Court should not be unsettled.

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 Addl. Sessions Judge (Exclusive Court), Jhajjar, has passed the impugned judgment dated 04.01.2016, after appreciating the entire facts and circumstances of the present case, there is no illegality or perversity in the judgment under challenge.

Accordingly the special leave to appeal is declined.

Dismissed.

03.04.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No