

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

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CRM-A No.1658-MA of 2017 (O&M)
Date of Decision: November 6th, 2017

State of Haryana

...Applicant

Versus

Balwinder Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Ms. Shubhra Singh, Additional Advocate General, Haryana,
for the applicant.

M.M.S. BEDI, J. (ORAL)

CRM No.24601 of 2017

For the reasons mentioned in the application, delay of 101 days
in filing the appeal is condoned.

Application stands disposed of.

CRM-A No.1658-MA of 2017

Aggrieved by the acquittal of respondent in a case of recovery of
65 kilograms of poppy husk which was allegedly recovered in presence of a
Gazetted Officer of the rank of Deputy Superintendent of Police, the applicant
has preferred the present application.

The trial Court while appreciating the evidence, arrived at a
conclusion that prosecution agency has not proved its case beyond shadow of
doubt, *inter alia*, on the following grounds:-

- (i) The recovery though having been effected in presence of D.S.P.
but the statement of D.S.P. under Section 161 Cr.P.C. was not
recorded during investigation.
- (ii) The involvement of the respondent in the case is improbable as
the registration of a criminal case under Punjab Excise Act

against the father of the respondent is indicative of the *mala fide* of the prosecution agency to involve the respondent and his father in two separate criminal cases on the same day.

(iii) The quantity of poppy husk recovered was initially shown to be 15 kilograms in Exhibit P-15 but later on it was converted into 65 kilograms in order to make it non-bailable and by bringing the quantity of recovery under commercial quantity.

State counsel has vehemently contended that the benefit of doubt has wrongly been granted to the respondent. Prosecution has proved its story beyond shadow of doubt and the findings of the lower Court giving benefit of doubt are not sustainable in the eyes of law.

Heard State counsel at length and gone through the judgment.

The story of the prosecution has been found doubtful not only on the basis of the weakness of the prosecution evidence produced but the respondent-accused has produced defence evidence regarding the statutory violation as well as the factual discrepancies by producing DW-1 Constable Kuldeep Singh, DW-2 EHC Harish Kumar and DW-3 Nachhatar Singh (Ex-Sarpanch of the village). DW-3 has established that the respondent and his father are active supporters of a particular political party for which reason both son and father are involved in the case. The recovery in presence of D.S.P. is not established as the Investigating Officer has committed a glaring error by not recording the statement of D.S.P. Dharamvir and Inspector/SHO Jagdish Rai.

After considering the facts and circumstances of the case, we are of the opinion that where the provisions of law provide stringent punishment, the standard of proof has to be absolutely beyond the shadow of doubt. In the

present case, there is neither any independent witness produced nor the investigation has been conducted in a proper manner, creating a doubt regarding the involvement of the respondent and the trial Court has rightly granted the benefit of doubt.

No ground for interference in order of acquittal passed by the lower Court rendered vide judgment dated 06.01.2017 is made out.

The application seeking leave to file appeal accordingly fails and is dismissed as such.

(M.M.S. BEDI)
JUDGE

November 6th, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No