

CRM-A-2415-MA-2016 (O & M)

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

CRM-A-2415-MA-2016 (O & M)
Date of Decision: 14.03.2017

State of Haryana

... Applicant

Versus

Pala Ram

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. B.S.Virk, DAG, Haryana,
for the applicant.

INDERJIT SINGH, J.

CRM-41168-2016

This is an application seeking condonation of delay of 293 days in filing the application for leave to appeal.

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 293 days in filing the application seeking leave to appeal, is condoned.

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Applicant-State of Haryana has filed this application under Section 378 (3) of the Code of Criminal Procedure, 1973 seeking permission for leave to appeal against respondent-Pala Ram challenging the impugned judgment dated 05.11.2015 passed by learned Additional

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Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra, in FIR No.117 dated 23.02.2014, under Section 20 of NDPS Act, 1985, registered at Police Station City Thanesar, vide which the respondent-accused was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that the impugned judgment passed by learned Special Judge, Kurukshetra, acquitting the respondent is contrary to law and facts and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal may be granted.

From the record, I find that challan was presented against the respondent-accused in FIR No.117 dated 23.02.2014, under Section 20 of the NDPS Act, 1985, registered at Police Station City Thanesar. The brief facts of the case, as noted down in the judgment passed by learned Special Judge, Kurukshetra, are as under:

“2. Briefly stating the allegations of the prosecution are that a police party headed by ASI Rohtash, had intercepted the accused near Kanda Chowk on the basis of suspicion and on search of the bag, being carried by him, the accused was found in possession of narcotic substance i.e. 4 kilograms Ganja. As per prosecution, the Investigating Officer conducted all the usual formalities, prescribed under the statute, on the spot as well as in the police station, such as preparation of seizure memo, the site plan of place of recovery, preparation of various other memos and recorded the

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statements of witnesses u/S 161 Cr.P.C. On completion of usual formalities of investigation, a report under Section 173 Cr.P.C. was prepared and presented in the court.”

On finding a prima facie case, the accused was charge-sheeted under Section 20 of the NDPS Act to which he pleaded not guilty and claimed trial.

Learned Special Judge, Kurukshetra, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 05.11.2015.

Aggrieved from the above said judgment, the present application seeking leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record especially the impugned judgment passed by learned Special Judge, Kurukshetra.

In the present case, affidavit Ex.P-25 has been filed by PW 10 Constable Om Parkash. Learned Special Court after going through this document held that the same is not on oath, therefore, it cannot be looked into. If this affidavit is ignored, then the link evidence is missing and the benefit will go to the accused. Learned Special Court also relied upon the law laid down by this Court in various judgments. If the said affidavit is not read into evidence being inadmissible and not being on oath, then link evidence is missing and if link evidence is missing, a reasonable doubt exists in the prosecution case qua the fact as to whether the sample has been tampered with or not. Therefore, the impugned

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judgment passed by learned Special Court is correct, as per evidence and law and, therefore, the same does not require any interference.

Therefore, finding no merit in the present application under Section 378 (3) Cr.P.C., the same is dismissed.

14.03.2017

parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No