

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

(221)

**CRM-A-1772-MA-2017 (O&M)
Decided on: November 08, 2017.**

State of Punjab

.... Appellant

Versus

Amrik Singh and another

..... Respondents

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

**Present: Mr. Sarabjit Singh Cheema, AAG, Punjab,
for the appellant-State.**

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

CRM-24926-2017

The miscellaneous application is allowed.

Delay of 118 days in filing the appeal is condoned.

CRM-A-1772-MA-2017

In a case of recovery of 52 kgs of poppy-husk from the respondents on the basis of a secret information received by the police party, they were tried and acquitted by the Special Judge, Bathinda on the ground that the provisions of Section 42 of the NDPS Act had not been strictly complied with and that the independent witness though joined, had not been examined during trial.

Learned counsel for the appellant-State has contended that provisions of Section 42 of the NDPS Act are not necessary to be complied but are directory in nature. In support of his contentions, he relies upon judgment in *Sajan Abraham Vs. State of Kerala, 2001 (3) R.C.R. (Criminal), 808.*

With the assistance of learned counsel for the appellant-State, we have gone through the judgment of said case.

In the said case, order of acquittal passed by the High Court had been upheld by the Apex Court rejecting the contention that Section 42 of the

NDPS Act could not be complied with on account of the fact that delay in trapping of the accused while complying provisions of Section 42 of the NDPS Act could have lead to the escape of the accused. No principle of law holding that provisions of Section 42 of the NDPS Act are not mandatory, has been laid down in the said judgment.

Another judgment in *State of Punjab Vs. Balbir Singh, 1994 Supreme Court Cases (3), 299*, referred by the learned State counsel, wherein the provisions of Section 52, 57, 41 and 44 were held to be not mandatory, has also been considered.

We do not find any force in the contention of learned counsel for the appellant-State that the provisions of Section 42 of the NDPS Act are not mandatory.

After going through the judgment passed by the trial Court, we do not find it a fit case for re-appreciation of evidence and arriving at a conclusion different than the conclusions arrived at by the trial Court.

No ground is made out for interference in the order of acquittal in a case of recovery of poppy-husk which was allegedly marginally higher than the non-commercial quantity.

Prayer for special leave to appeal is thus declined. The application is dismissed.

(M.M.S. BEDI)
JUDGE

November 08, 2017.
harsha

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No