

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1181-MA-2015 (O&M)
Date of Decision:- 14.3.2018

1. State of Punjab ... Applicant

Versus

Gurcharan Singh @ Bittu and another ... Respondents

2. CRR-4137-2014 (O&M)

State of Punjab ... Petitioner

Versus

Gurbachan Singh and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. P.P.S. Thethi, Additional Advocate General, Punjab.

Mr. Himanshu Puri, Advocate,
for respondent No.1 in CRR-4137-2014.

Ms. Mandeep Kaur, Advocate,
for Mr. D.S. Sandhu, Advocate,
for respondent No.2 in CRR-4137-2014.

M.M.S. BEDI, J.

This order will dispose of an application for special leave to appeal bearing No.CRM-A-1181-MA-2015 titled as State of Punjab Vs Gurcharan Singh @ Bittu and another filed by the State of Punjab against the acquittal of Gurcharan Singh@ Bittu and Balwinder Singh and Criminal Revision No.CRR-4137-2014 titled as State of Punjab Vs Gurbachan Singh and another against the order passed by the Judge Special Court, Kapurthala

dated 17.7.2014 closing the evidence of the prosecution for not producing the prosecution witnesses.

Miscellaneous application No.CRM-22483-2015 in CRM-A-1181-MA-2015 is allowed. In the interest of justice, delay of 65 days in filing of the application is condoned.

Miscellaneous application No.CRM-39005-2014 in CRR-4137-2014 is allowed. In the interest of justice, delay of 51 days in filing of criminal revision petition is condoned.

With the assistance of Mr. P.P.S. Thethi, Additional Advocate General, Punjab, we have gone through the facts and circumstances of the case. Gurcharan Singh @ Bittu and Balwinder Singh had been made accused on the basis of recovery of 7.5 kgs. of 'opium' from the house of Gurbachan Singh. The prosecution agency during the course of investigation arrived at a conclusion that abovesaid 'opium' had been placed by respondents Gurcharan Singh @ Bittu and Balwinder Singh in connivance with each other with an objective to falsely implicate Gurbachan Singh. Challan was not presented against Gurbachan Singh by the prosecution agency. The respondents were tried for offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and acquitted.

With the assistance of counsel for the parties, we have gone through the judgment of acquittal. The acquittal order has been passed on the basis of violation of statutory provisions of Section 42 of NDPS Act as well as non-compliance of Section 52-A of NDPS Act. The trial Court also formed an opinion that the respondents, having not been found in conscious possession of the contraband, deserved the benefit of doubt.

We have also considered the submissions of counsel for the State regarding the closure of evidence after giving fair opportunity to the prosecution. It is apparent that originally Balwinder Singh had not been challaned but against him the prosecution was sought by presenting supplementary challan, as such the trial of Gurcharan Singh and Balwinder Singh had been taken in hand by the trial Court. When the evidence was closed, six prosecution witnesses had already been examined against Gurcharan Singh.

Without going into the legality and propriety of the order closing evidence qua both the respondents, we are of the opinion that even if, the prosecutoin agency is able to establish the mis-chief of the respondents, still they cannot be convicted on the allegation of having possessed, sold, purchasesd, transported, imported or exported 'opium' warranting conviction under Section 18 of NDPS Act. The prosecution agency had never sought the trial of the respondents for offence under Section 29 of the NDPS Act.

In view of the abovesaid circumstances, we do not find any ground to interfere in the order of acquittal passed qua respondents or the order closing the evidence of the prosecution. The application for leave to appeal bearing No.CRM-A-1181-MA-2015 as well as Criminal Revision No.CRR-4137-2014, both are dismissed.

(M.M.S. Bedi)
Judge

14.3.2018

pankaj

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No

(Gurvinder Singh Gill)
Judge