IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.881-MA of 2018 (O&M)
Date of decision : July 30, 2018

State of Haryana **..... Applicant**

Versus

Roshan Singh @ Rosha @ Roshni **..... Respondent**

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Tanisha Peshawaria, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

CRM-16608-2018

There is delay of 71 days in filing the application for grant of leave to appeal.

For the reasons mentioned in the application, delay of 71 days in filing the application for grant of leave to appeal is condoned, subject to all just exception.

Application stands disposed of.

Main Case

This order will dispose of the application filed by the State of Haryana under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 26.09.2017 passed by learned Addl. Sessions Judge, Sirsa, whereby the accused-respondent was acquitted of the charges framed under Sections 15/16 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

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As per the prosecution case, on 05.08.2014, SI Jasvir Singh accompanied by fellow officer apprehended the accused-respondent while he was coming from village Dharampura side holding one plastic bag of white colour. He was apprised of his legal right of search in the presence of some gazetted officer or a Magistrate as required under Section 50 of the NDPS Act. However, the accused-respondent refused to exercise his right and reposed faith in police. During search of bag, three envelops, two of which were containing poppy straw and third envelop was containing 50 strips (10 tablets each) Minal 0.5 tablet were found. From two envelops, 100 gm. each poppy straw was separated. The remaining poppy straw on weighment was found to be 700 gm. in each envelop. From third envelop, two strips of tablets were separated as sample and sealed. Thereafter, the accused-respondent was produced before the S.H.O./Inspector Kulwant Singh, who verified the factum of the recovery. After investigation, challan was presented.

The accused-respondent was charge-sheeted for the commission of offence punishable under Sections 15 and 21 of the Act. After recording the prosecution evidence, the same was put to the accused-respondent in the statement recorded under Section 313 Cr.P.C. However, he did not lead any evidence in defence. After hearing the prosecution and the defence and going through the evidence, the learned Addl. Sessions Judge, Sirsa acquitted the accused-respondent.

Heard.

We have gone through the judgment of learned Addl. Sessions Judge, Sirsa.

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The learned Addl. Sessions Judge, Sirsa observed that it is admitted case of the prosecution that the contraband was produced before the learned Illaqa Magistrate for conducting inventory proceedings. The parcels were de-sealed and again re-sealed with the same seal 'OP'. The parcels were again opened for obtaining the opinion of DCO and was re-sealed with the same seal of 'OP', which goes to show that the seal was available with the Investigation Officer and was not deposited or given to the third person for safe custody. Therefore, the possibility of tampering cannot be ruled out. The same is the case regarding the poppy straw.

The learned Addl. Sessions Judge, Sirsa also noted that 50 strips of tablets were recovered but the batch number on each of the strip was never recorded. Therefore, after weighing the evidence of the prosecution, learned Addl. Sessions Judge, Sirsa held the case is not proved against the accused-respondent beyond all reasonable doubts.

We are of the view that on the basis of the discrepancies in the prosecution evidence as noted above, learned Addl. Sessions Judge, Sirsa, has held that the possibility of tampering with the case property is not ruled out. There were some other discrepancies also. The learned Addl. Sessions Judge, Sirsa has taken one of the two possible views. Therefore, no interference in the said judgment is called for. Consequently, the present application for grant of leave to appeal is dismissed. Accordingly the appeal also stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 30, 2018
sarita
Whether speaking / reasoned No
Whether Reportable: No

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