

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

CRA-D-707-DBA-2003 (O&M)

Date of Decision: 25.11.2019

State of Haryana

...Appellant(s)

Versus

Kashmir Singh

...Respondent(s)

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Vikrant Pamboo, DAG, Haryana for the appellant(s).

Mr. C.B. Goel, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case as per prosecution story are that, on 17.09.1999, a police party from Police Station Safidon led by ASI Krishan Kumar (for brevity 'the IO'), while being present at T-point Aftabgarh Assandh road in connection with patrolling and crime detection, observed accused Kashmir Singh alighting from a jeep which had come from Assandh side, however, on seeing the police party, he became perplexed and turned back and started going towards the fields. He was apprehended on the basis of suspicion. On being enquired, he disclosed his identity and other particulars. ASI Krishan Kumar suspected the accused to be in possession of some contraband, as such, he served him notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), apprising him of his right of search in the presence of a Gazetted Officer or a Magistrate. The accused,

however, reposed faith in ASI Krishan Kumar; accordingly, personal search of accused was conducted, which resulted in recovery of charas, wrapped in polythene from dub of the chadra, which he was wearing. 10 gms of contraband was separated as sample and on weighment, the residue was found to be 490 gms. Separate sealed parcels of the sample and residue were prepared, which were taken into possession. Ruqa was sent to the police station, on the basis of which, formal FIR was recorded. The necessary formalities were completed. On return to the police station, the IO produced the accused along with parcels and other documents before SI Jagat Singh, SHO of the said police station who verified the factum of recovery and affixed his own seal on the parcels, retaining seal with him. On his directions, ASI Krishan Kumar deposited the case property with MHC of the police station. Report under Section 55 of the Act was forwarded to DSP, Safidon. Parcel was sent to FSL and report there from in positive was received.

After completion of investigation and other formalities, the accused was sent up to face the trial. Challan against the accused was prepared and filed in the Court. He faced trial before Addl. Sessions Judge-II, Jind, who on conclusion thereof, acquitted him of the charge under Section 20 of the Act, which had been framed against him for alleged possession of 500 gms of charas without any permit or licence, vide judgment dated 27.03.2003.

Feeling aggrieved, the State has filed an application under Section 378 (3) Cr.P.C. for grant of leave to appeal against the judgment

of acquittal. That leave was granted and appeal was admitted and bailable warrants of arrest were issued against accused, vide order dated 26.08.2003. Accused was served and he put in appearance through counsel.

We have heard learned State counsel for the appellant and learned counsel for the respondent besides going through the record.

A perusal of the impugned judgment goes to show that the accused had been granted acquittal for the following reasons:-

- ❖ The recovery was effected from a busy place during day time and the police party remained at the spot for 3 ½ hours but no independent witness was joined despite easy availability.
- ❖ The sample was received in the office of Director, FSL, Madhuban on 24.09.1999 after a lapse of 08 days from the date of recovery.
- ❖ There was violation of mandatory provisions of Section 50 of the Act, inasmuch as the accused was not apprised of his right of search in the presence of Gazetted Officer or a Magistrate and as per notice given to accused Ex.PD, it had following thing “would you like to be searched by me (IO) or would like to be searched before Gazetted Officer or a Magistrate” which was not due compliance of Section 50 of the Act.

The impugned judgment is well reasoned, based upon proper appraisal of evidence and correct interpretation of law. Although, there is

possibility of taken another view in the matter.

In *State of Rajasthan vs Shera Ram @ Vishnu Dutta*,
(2012) 1 SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is

guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption of innocence; and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

We find that keeping in view the facts and circumstances of the case and especially the fact that the trial Court had advantage of observing demeanor of the witnesses and the judgment passed cannot be termed to be perverse or in violation of settled judicial position; it would not be proper to upset the judgment of acquittal passed by the trial Court. Therefore, we do not find any merit in the appeal and the same stands dismissed.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

25.11.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No

