

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

CRA-S-No.2416-SBA of 2006
DATE OF DECISION : 14th JANUARY, 2019

State of Punjab

.... Appellant

Versus

Iqbal Singh @ Jaspal Singh

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

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Present : Mr. H. S. Sullar, Deputy Advocate General, Punjab
for the appellant.

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A. B. CHAUDHARI, J.

1. Feeling aggrieved by the judgment and order of acquittal dated 21.02.2005, passed by the Judge, Special Court, Mansa, the State of Punjab presented this appeal in this Court qua reversal of the order of acquittal of respondent-Iqbal Singh @ Jaspal Singh.

2. Learned counsel for the State vehemently argued that the accused persons who were sitting in the cabin of the truck were deemed to have been in conscious possession of the contraband that was ultimately seized. All the more so the accused in their statement under Section 313 Cr.P.C. did not state that they were passengers while the trial court has not made any observation based on evidence. According to him the trial Court has given unnecessary importance to the minor contradictions which do not affect the prosecution case. He, therefore, submitted that in the wake of the fact that all the provisions of the Narcotics Drugs and Psychotropic Substances Act were being scrupulously followed, there was no occasion for the learned trial Judge

to make an order of acquittal. He, therefore, prayed for reversal of the judgment of acquittal.

3. With the assistance of learned counsel for the State we have gone through the evidence of PW-1 SI Harbans Singh. We quote the relevant portion of the judgment of the trial Court in which the observations regarding his evidence were made, which read thus:

“xxx.. PW-1 SI Harbans Singh have testified that he did not offer his search to the accused whereas PW-2 SI Paramjit Singh have testified that accused have searched Investigating Officer....xxx.

12. PW-1 SI Harbans Singh have admitted that the bags no.1 and 12 have no seals. Virtually seals are broken which are not visible. PW-1 SI Harbans Singh have testified that only four second samples have been produced in the Court. xxx.... xxx....
xxx....”

4. From the above evidence it is clear that right from the receipt of secret information during the completion of investigation HC Harbans Singh remained associated with the investigation. But since he was transferred to some other place, the chargesheet was filed by other officer. Nevertheless, in his evidence he candidly stated he conducted the investigation right from the beginning. Looking to the above evidence of SI Harbans Singh, we are satisfied that the case is wholly covered by the decision of Hon'ble the Supreme Court in the case of ***Mohan Lal Vs. State of Punjab*** reported as ***2018 AIR (SC) 3853***.

5. Apart from that what we find is that the trial Court has pointed out serious discrepancies in respect of the seals which were utilized for sealing articles seized by the police. It is not necessary for us to quote the exact discrepancies, since the trial Court has discussed about it *inter alia*, discrepancies regarding the seals etc. in the following paragraphs of the impugned judgment and order. We quote the extracted portion from those paragraphs in which there is discussion about the discrepancies.

“15. It is evident from the evidence and documents that Iqbal Singh accused neither is owner of the truck nor is driver. No cash money has been recovered from him. So he can be said at the most be a gratuitous passenger. xxx.... xxx.... xxx....xxx.... xxx.... xxx.... The seal was entrusted to Bhola Singh. There is only one seal on the case property. PW-1 have testified that seal was returned to him by Bhola Singh on the very next day of recovery, whereas the sample in this case has been sent to the office of Chemical Examiner on 9.9.2003 with only one seal of letters HS by the Investigating Officer and it has been received in the office of Chemical Examiner on 12.9.2003. The recovery has been effected, to have been shown, on 6.9.2003. During that period and there after also the entire case property and samples with only one seal

of Harbans Singh SI bearing letter HS remained with him and in his custody. he has not deposited in the malkhana so there is every chance of tampering with of the sample especially coupled with the fact that all the samples have not been produced in the Court and the case property produced in the Court is not having seals intact. During investigation as per testimony of PW-1 SI Harbans Singh the accused have disclosed that poppy straw was purchased by Sewa Singh so the accused can be said to be not in conscious possession of the same. xxx.... xxx.... xxx....

xxx.... xxx.... xxx....

25. There is no investigation with regard to the goods receipts recovered from the truck by way of which 18315 Kgs of Marble from Rajputana Chips Udyog, Madanganj, Kishangarh vide goods receipt Ex. PJ was being transported in Popular Carriers to Laxmi Iron Store, Batala Punjab on 4.9.2003 to connect the accused persons with transportation of marble from Rajasthan to Batala and concealing of the bags of poppy straw underneath the same.”

6. It is clear from the above and having examined evidence that the trial Court has made no error in recording the order of acquittal. The provision of NDPS Act being mandatory, strict compliance is required

but the trial Court had found that there were discrepancies. We do not think that in the order of acquittal we should interfere. It is well settled that the power of the High Court to intervene in the appellate jurisdiction against acquittal, is limited. The order of acquittal made by the trial Court giving benefit of doubt, to our mind, cannot be faltered. In the result we do not want to take the second view of the matter and find that the appeal is bereft of merit. Hence, we make the following order.

ORDER

- (i) The CRA-S-No.2416-SBA of 2006 is dismissed.

(A. B. CHAUDHARI)
JUDGE

14TH JANUARY, 2019
'raj'

(HARNARESH SINGH GILL)
JUDGE

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