

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

**CRM-A No. 2253-MA of 2016
Date of Decision: 05.04.2019**

Kewal Krishan

..... Appellant

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Sant Pal Singh Sidhu, Advocate
for the applicant/appellant.

JASWANT SINGH, J.

1. Present application has been filed under section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment dated 12.09.2016 passed by learned Special Court, Sangrur, whereby the trial Court has acquitted the respondent No. 2 (*Sarf Raj @ Jagga son of Babu*) of the charge under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short “NDPS Act”).

2. The facts as put forth by the prosecution are to the effect that on 07.11.2012 at about 12.30 P.M., A.S.I. Kewal Krishan of C.I.A. Staff alongwith fellow police officials were on patrolling duty and were checking the bad elements in the area of main road *Gurudwara Ha Da Nara* and were proceeding towards link road near Court Complex, Malerkotla. The moment police party reached 400 yards ahead from the main road, a person was seen coming who was carrying a plastic carry bag in his hand. On seeing the police party, that man got perplexed and started moving on the *Kacha path*.

On suspicion, that man was apprehended. Meanwhile, Babar Ali, a public

person, arrived at the spot, who was joined in the police party. The identity of the apprehended person was verified and that person disclosed his name as ***Sarf Raj @ Jagga son of Babu***. A.S.I Kewal Krishan gave his introduction to the accused and told him that it was suspected that he was carrying some contraband in the bag and its search was to be conducted. He apprised the accused of his legal right to be searched in the presence of Gazetted Officer or Magistrate, but the accused reposed confidence upon him. The consent statement of the accused was reduced into writing. The search of the bag was being carried by the accused led to the recovery of 100 vials of *Rexcof* each containing 100 mls syrup. Two samples were separated and the remaining contraband of 98 vials containing 9800 mls of *Rexcof* syrup were sealed with the seal bearing impression 'KK'. The sample seal was also prepared and the seal after use was handed over to A.S.I. Avtar Singh. The incriminating articles were taken into possession vide separate recovery memo.

3. On completion of investigation, challan against the accused was presented in the Court. Copies of documents relied upon by the prosecution as envisaged under Section 207 of “the Code”. were supplied to the accused. From the perusal of the report under Section 173 of “the Code” and the documents on record, a *prima facie* case punishable under Section 22 of the NDPS Act was made out against the accused, who was, accordingly, charge-sheeted therein by the trial Court, to which, he pleaded not guilty and claimed trial.

To strengthen its case against the respondent/accused, the prosecution has examined as many as six (06) witnesses besides producing documentary evidence, which are as under:-

“ *ASI Kewal Krishan as PW-1, ASI Avtar Singh as PW-2, C Darshan Singh as PW-3, HC Inderjit Singh as PW-4, Inspector Davinder Singh as PW-5 and HC Amar Singh as PW-6.*

4. On completion of prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded by the trial Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent/accused were put to him and he pleaded his innocence and false implication. The accused also led defence evidence. He examined DW1 Sarabjit Singh, DW2 HC Manjit Singh, DW3 HC Ram Dass and DW4 HC Dalwinder Singh.

5. It has been contended by learned counsel for applicant-appellant that recovery of the contraband was effected by A.S.I Kewal Krishan in the presence of other police officials witnesses and all the witnesses of the prosecution have testified in a fairly satisfactory manner on all the material aspects of the case. As per the opinion of the Chemical Examiner, the contents of the parcel were that of illicit drug. The oral and documentary evidence adduced on record proves and establishes the guilt of accused/respondent No. 2 against the respondent beyond the shadow of reasonable doubt. At last, he has prayed for acceptance of application for grant of leave to file the instant appeal.

6. We have heard counsel for the applicant and have also gone through the record very carefully.

At the time of recovery, one *Babar Ali*, an independent witness was joined but during the course of trial, he was not examined by the prosecution, as such, the case of the prosecution hinges upon the deposition

of the official witnesses only, but the deposition of official witnesses cannot be viewed with distrust or suspicion merely because of their official status until or unless there are cogent ground therefor. There is no provision of law, which requires the presence of independent witnesses at the time of search of a suspect and the recovery proceedings cannot be termed to be unreliable on the score that no independent witness was joined at the time of recovery or, if joined, has not been examined during the course of trial. At best, it will be a circumstance, which will cast a stringent duty upon the court to scrutinize the evidence with more care and caution. As such, in the instant case, the non-examination of independent witness namely Babar Ali, who was initially associated in the raiding party, without assigning any proper and plausible reasoning by the prosecution creates a doubt in the authenticity of the case of prosecution. The case of the prosecution has been totally brushed aside by the defence by examining its defence witnesses, those who in an assertive manner have testified that Investigating Officer of the case did not do his duty honestly, for which two years of service of Investigating Officer, A.S.I Kewal Krishan and also of recovery witness, Head Constable Harjinder Singh has been forfeited and in the appeal the Inspector General of Police has reduced it to one year on temporary basis. Further, we have also noticed that trial Court is right in observing that strict compliance of Section 50 of the Act, has not been done by the prosecution, besides there is non-compliance of section 57 of the Act. On the basis of the evidence available on the record, it can be said that the false case has been planted by the Investigating Officer on the accused and apparently the defence has proved this factum by producing CCTV footage before the trial Court. There is also lack of sufficient evidence to indicate that case property

was not tampered within the *Malkhana* and consequently, it cannot be safely concluded that contents of the parcel was of illicit drug. All the documents appears to have been prepared, as observed by the trial Court, in same and similar ink of pen goes to show that documents were not prepared on the alleged spot rather the same were prepared in same span of time by sitting in the police station to manufacture a false story. As such, the flaws and lacunas in the case of prosecution has rendered the case of prosecution doubtful.

7. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgement of acquittal is not justified. If the view taken by the trial Court is a possible view, even if two views are equally balanced, it need not result in interference by the Appellate Court in the Judgment of the trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's

entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

8. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, had rightly observed in the impugned judgment and held that the prosecution had failed to prove its case against the respondent beyond any reasonable doubt. Thus, no case is made out for any interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

The **application** is without any merit and, therefore, **dismissed**.

Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

April 05, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>