

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.10962 of 2015
and
Criminal Misc. No.A-591-MA of 2015

.....

Date of decision:17.01.2019

U.T., Chandigarh

...Applicant

v.

Jitender Singh Thakur

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajive Vij, Advocate for Mr. G.S. Wasu, Additional P.P. for
the applicant-U.T.

Mr. Mohit Garg, Advocate for the respondent.

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Inderjit Singh, J.

Cr. Misc. No.10962 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 184 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-591-MA of 2015:

The applicant-U.T., Chandigarh has filed this criminal miscellaneous application under Section 378(4) Cr.P.C against Jitender Singh Thakur-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 16.4.2014 passed by learned Judge Special Court, Chandigarh, whereby the accused-respondent has been acquitted of the charge as framed against him in case FIR No.158 dated

15.4.2011 registered for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') at Police Station Sector 34, Chandigarh.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 16.4.2014 passed by learned Judge Special Court, Chandigarh, which is likely to succeed on the grounds mentioned therein. It has been stated that the impugned judgment of acquittal passed by the learned Special Judge, Chandigarh is unsustainable in law and the same is liable to be set aside on the strength of the grounds taken in the appeal. It has been stated that by passing the impugned judgment dated 16.4.2014 miscarriage of justice has been done. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant-State to file appeal.

From the record, I find that challan had been presented by the Police of Police Station Sector 34-A, Chandigarh against Jitender Singh Thakur for the offence under Section 20 of the Act. The brief facts of the case as noted down by learned Judge Special Court, Chandigarh, in his judgment dated 16.4.2014 are as under:-

“As per prosecution story, on 15.4.2011 SI Gurdev Singh along with HC Suresh Kumar, C. Vijay Kumar and C. Balwan Singh went for patrolling duty in official vehicle No.CH01-G1-6344 and when they present near Kothi No.3364, Sector 32-D, Chandigarh, at about 6.50 P.M., the accused who was holding a polythene was seen coming from the front side and on seeing the police, he turned back and started walking on fast pace,

whereupon he was apprehended. Upon search of the polythene carried by him, it was found containing a charas, for which the accused failed to produce any licence or permit. Upon weighing, the said charas was found to be 66 grams, out of which two samples of 25 grams each were taken out which were put into plastic container and thereafter, they were converted into sealed parcel of white cloth and the residue was put in the same polythene and it was transmitted into plastic container, which was converted into parcel of white cloth and then all the three parcels were duly sealed with seal of GS at two places. Separate sample seal of impression GS was prepared and seal after use was handed over to HC Suresh Kumar. The entire case property was taken into possession vide recovery memo which was attested by HC Suresh Kumar. Thereafter, ruqa was sent to the police station on the basis of which formal FIR was recorded and message was sent for calling 2nd IO, upon which SI Pardeep Kumar reached the spot, to whom the accused along with sample parcels and case related documents, were handed over. SI Pardeep Kumar prepared rough site plan at the instance of SI Gurdev Singh. Accused was arrested and personally searched and a memo in this respect was prepared. After coming back to the police station, SI Pardeep Kumar produced the accused along with case property before SHO Inspector Kirpal Singh, who after verifying the contents, sealed the case property with his seal impression CS and also prepared

his sample seal and thereafter, the SHO got deposited the case property with MMHC Paramjit Singh and the accused was sent behind the police lock up. Thereafter, further investigation was ensued and on completion of investigation, challan was presented in the Court for trial.”

On finding a *prima facie* case, charge against accused-respondent was framed for the offence under Section 20 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 HC Paramjit Singh MMHC, PW-2 SI Gurdev Singh, PW-3 HC Yashpal, PW-4 Bhagat Singh, Senior Scientific Officer, CFSL, PW-5 C. Satya Pal, PW-6 HC Ranbir, PW-7 SI Pardeep Kumar, PW-8 HC Suresh Kumar and PW-9 Inspector Kirpal Singh and closed its evidence.

At the close of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and confronted with the evidence of the prosecution, but he denied the correctness of the same and pleaded himself as innocent and false implication.

After appreciating the evidence, the accused was acquitted by the learned Judge Special Court, Chandigarh, vide judgment dated 16.4.2014. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

I have heard learned counsel for the applicant-U.T., Chandigarh and learned counsel for the respondent and have gone through the record.

From the record, I find that the findings given by the learned

Judge Special Court, Chandigarh, are as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below.

In the present case, as per the prosecution version, the Police party of SI Gurdev Singh along with HC Suresh Kumar, Constable Vijay Kumar and Constable Balwan Singh went for patrolling duty in official vehicle. In this case, Roznamcha has been produced. As per the Roznamcha, SI Gurdev Singh left the Police Station along with Constable Balwan Singh for patrolling duty and there is no mention of Head Constable Suresh Kumar. This fact of the prosecution version is doubtful. HC Suresh Kumar has appeared as the recovery witness and he has also attested the recovery memo but as per DDR he had not gone with SI Gurdev Singh for patrolling purposes on that day. Furthermore, as per the Investigating Officer SI Gurdev, SHO visited the spot after 15 minutes of the occurrence and remained at the spot for 5 to 7 minutes. He also stated that he had given intimation to DSP B.S. Negi after effecting recovery and the DSP and SHO left the spot in their respective vehicles. Whereas PW-8 HC Suresh Kumar had categorically stated in his cross-examination that SHO and DSP did not come present at the spot. Similarly, PW-9 SHO/Inspector Kirpal Singh categorically stated in his cross-examination that he had not visited the spot and that he has no knowledge as to whether DSP South visited the spot or not.

The learned trial Court also discussed other discrepancies in the evidence. A perusal of the record shows that a reasonable doubt exists and

the witnesses are contradictory on material points which creates a reasonable doubt in the prosecution version. The accused-respondent has rightly been acquitted by giving him the benefit of doubt. In no way, these findings can be held as perverse. The findings have been given by the trial Court after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

January 17, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No