

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

CRM-A-2309-2019 (O&M)

Date of Decision: 12.12.2019.

State of Punjab

.....Applicant/Appellant

VS.

Hardeep Singh @ Deepa and another

.....Respondents

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri.**

**Present : Mr. Bhupender Beniwal. AAG Punjab
for the appellant-State.**

JITENDRA CHAUHAN.J.

This is an application for leave to appeal against the judgment dated 17.01.2019 passed by Judge, Special Court, SBS Nagar, vide which the accused/respondents were acquitted of the charge in FIR No.158 dated 03.11.2017 registered under Section 22 of Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short “the NDPS Act”) at Police Station Balachaur, District SBS Nagar.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. Brief facts of the prosecution case are that on 03.11.2017, ASI Sodhi Singh alongwith ASI Jarnail Singh, HC Pawan Kumar, C Narinder Singh, C Rajesh Kumar and C Kuldeep Singh were going from Balachaur towards Village Majari on official vehicle, being driven by HC Prem Kumar, in connection with patrolling duty and checking of suspected persons. When the police party

reached at Ghamour bypass Balachaur, two persons were seen coming from Majari side on motorcycle bearing registration No.PB-32-S-6889. On seeing the police party, they became perplexed and tried to turn back. They were apprehended by the Investigating Officer with the help of other police officials. On the asking by the police, driver of motorcycle disclosed his name as Hardip Singh @ Deepa son of Major Singh, resident of Village Kaulgarh, PS Balachaur and the person on the pillion disclosed his name as Amarjit Singh son of Som Nath, resident of Village Khandupur, PS Balachaur. The Investigating Officer disclosed his identity regarding name, rank and posting to them and also told that he suspects some contraband substance in their possession. Their search and that of their motorcycle is to be conducted. He also apprised them that they have a legal right to get their search conducted in the presence of any gazetted officer or a Magistrate but they reposed confidence in him and consent statements of both the accused were recorded separately. Thereafter, Investigating Officer conducted search of Hardip Singh @ Deepa, which led to recovery of intoxicant material wrapped in plastic envelope from the right pocket of pant worn by him. On weighing, said intoxicant material came to be 300 grams and its parcel was prepared and same was sealed by the IO with his seal bearing impression SS and then the IO conducted search of Amarjit Singh, which led to recovery of intoxicant material wrapped in plastic envelope from the right pocket of pant worn by him. On weighing, said intoxicant material came to be 250 grams and its parcel was also prepared and same was also sealed by the IO with his seal bearing impression SS. The accused could not produce any

licence or permit to keep the said intoxicant material. Ruqa was sent to police station and on the basis of such intimation, formal FIR was registered. Accused were arrested and investigation was initiated. Statements of the witnesses were recorded. "

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court.

Charge under Section 22 of the NDPS Act was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 HC Surinder Pal, PW-2 HC Lekh Raj, PW-3 SI Sodhi Singh, Investigating Officer, PW-4 ASI Jarnail Singh, PW-5 Inspector Suvinder Pal Singh, PW-6 Sharanjit Singh, RC Clerk, PW-7 Rajesh Kumar Sharma and closed the evidence.

The statements of accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment dated 17.01.2019, acquitted accused/respondents of the charges framed against them.

Feeling dissatisfied with the impugned judgment, the present appeal has been filed by the State of Punjab.

It is contended by the learned State counsel that accused-respondents were found in conscious possession of the intoxicant substance which was found to be Diacetylmorphine. The accused were caught on the spot and there is presumption that the accused were in conscious possession of narcotic substance. The prosecution had proved on record that the sealed parcels of the case property were intact. Recovery of 300 gms and 250 gms of intoxicant substance containing Diacetylmorphine was effected from the conscious possession of the accused.

We have heard the learned State counsel and have gone through the case file very carefully.

The learned trial Court has acquitted the respondent on the following grounds:-

- 1. The provisions of Section 50 of the NDPS Act were not complied with as the recovery was effected from the right pocket of pants of both the accused. The joint offer made to both the accused had caused prejudice to them.*
- 2. No independent witness was joined. No action was taken against those who refused to join as witness.*
- 3. The complainant and the investigating officer are the same person.*

We have gone through the case file carefully and find that the judgment of acquittal does not suffer from any perversity and has been rightly passed in the given set of facts. Though, it is a case of recovery of 300 gms and 250 gms of intoxicating substance from the

accused but there is violation of Section 50 of the NDPS Act. The recovery was alleged effected from the right pocket of pants of the accused but still no valid offer of personal search before a Gazetted Officer was made to the accused.

In Arif Khan @ Agha Khan vs. State of Uttarakhand 2018(2) R.C.R. (Criminal) 931, it was held by Hon'ble the Supreme Court as under:-

“23. Their Lordships have held in Vijaysinh Chandubha Jadeja (supra) that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. (See also **Ashok Kumar Sharma v. State of Rajasthan, 2013(2) R.C.R.(Criminal) 1 : 2013 (2) SCC 67** and **Narcotics Control Bureau v. Sukh Dev Raj Sodhi, 2011(3) R.C.R.(Criminal) 370 : 2011 (6) SCC 392**).”

The place of recovery was a thoroughfare but no independent witness was joined in the recovery proceedings. No action has been taken against the persons who had refused to join the police party. There is no reason to differ from the view taken by the learned trial Court.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (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 unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in his favour; first the 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.

In *Anil Kumar Gupta vs. State of U.P.* 2001(2) RCR (Criminal) 292 SC it was held as under:-

“This Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions".

(emphasis supplied)

11. This Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one

supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice".

In the instant case, the findings recorded by the learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Otherwise also, there is delay of 08 days in filing the instant appeal. There is no plausible explanation for condonation of delay.

Thus, the application seeking condonation of delay as well as the application seeking leave to appeal are hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

12.12.2019.
SN

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