

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-A-1851-2019 (O&M)
Date of Decision: 04.12.2019

State of Punjab

... Applicant

vs.

Kashmiri Lal @ Sheera

.. Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. A.A.Pathak, Additional Advocate General, Punjab.

JITENDRA CHAUHAN, J.(ORAL)

The present application has been filed under Section 378 (3) of Code of Criminal Procedure by State of Punjab seeking leave to appeal against the judgment of acquittal dated 10.01.2019 passed by Judge Special Court, Jalandhar, vide which accused/respondent was acquitted in FIR No. 81 dated 29.05.2015 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') registered at Police Station Bhogpur, Jalandhar.

Brief facts of the case as noticed in the judgment passed by the trial Court in Paragraph No. 2 are reproduced as under:

“The brief prosecution version is that on 29.05.2015, while ASI Premjit Singh (Investigating Officer, hereinafter referred as IO) was posted at Police Station Bhogpur, Jalandhar. On that day, he alongwith HC Jaswinder Singh and other police officials were going on patrol duty on private car from PS Bhogpur towards village Behramshrishta via mettled road. When the police party reached near the turning of village Jandir, then accused Kashmiri Lal was spotted by the police party coming on foot from the side of village

Behramshrishta on the mettled road. On seeing the police party accused became nervous and he tried to turn back, but on suspicion he was apprehended by IO with the help of the police party. IO verified the identity of accused.

Then IO disclosed his identity, rank and place of posting to the accused and further told the accused that he suspect some intoxicant substance in his possession for which his search is required to be conducted. IO further apprised the accused regarding his legal right to get search conducted from gazetted officer or magistrate but the accused reposed confidence in IO and consent memo of accused was prepared. Before conducting search of accused, IO tried to join the independent witness but nobody was ready to join.

Then IO conducted the search of accused in the presence of the police party and from the back pocket of trouser worn by accused, one polythene was recovered, which was found containing intoxicant powder. Then IO took out two samples of 5 grams each and remaining on weighing came out to be 125 grams which were put into the plastic containers and reduced into parcels and IO sealed the case property with his seal PS. Form M29 was prepared by IO at the spot and he affixed his seal PS directly on it. The seal after use was handed over to HC Jaswinder Singh. All the above said parcels were taken into police possession.

Then IO sent ruqa to the police station through PHG Gurdeep Singh on the basis of which FIR was registered by SI Pritam Singh. IO prepared rough site plan with correct marginal notes. Accused was arrested in this case and his personal search was conducted. From personal search of accused ₹350/- were recovered which were taken into police possession. IO recorded the statements of witnesses at the spot.”

After investigation and on receipt of report of Chemical Examiner, challan/charge-sheet was presented in the Court. Charge under Section 22 of the Act was framed against the accused to which he pleaded not guilty and claimed trial.

In order to prove its case, prosecution had examined PW1-Constable Raman Kumar, PW2-Inspector/SHO Bharat Masih, PW3-MHC Gurjit Singh, PW4-ASI Premjit Singh (Investigating Officer), PW5-HC Jaswinder Singh and closed its evidence.

Statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused. Accused denied the same and pleaded false implication. No evidence in defence was led by the accused.

After appraisal of the evidence, learned trial Court vide judgment dated 10.01.2019, acquitted the accused/respondent of the charge framed against him.

Thus, the present application seeking leave to appeal against judgment dated 10.01.2019 has been filed before this Court.

It is contended by learned State counsel that it is the case of chance recovery and as such commercial quantity cannot be presumed to have been planted without any reason. Prosecution has sufficiently explained the reason for non joining of independent witness.

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

- (1) There was breach of mandatory provision of Section 50 of the Act as no proper offer for making search was made to the accused. Thus offer made stood vitiated in view of stringent provisions of the Act;

(2) The place of recovery was a thoroughfare. Still no independent witness was joined by the Investigating Officer; and

(3) The explanation furnished by the Investigating Officer for non joining of independent witness was found to be not satisfactory as he could not tell the names of the persons who refused to join as independent witness.

The judgment passed by the trial Court cannot be said to be perverse or illegal. There is no fallacy in the impugned judgment. We have no reason to differ with the view taken by the trial Court. Even otherwise also, no plausible explanation has been put forth for condoning the delay.

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 ***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 mis-appreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

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

(JITENDRA CHAUHAN)
JUDGE

(VIVEK PURI)
JUDGE

04.12.2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No