

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

**CRM-A No. 1790 of 2019 (O&M)
Date of Decision: 29.11.2019**

State of Punjab

..... Appellant

Versus

Lucky

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. H.S. Grewal, Additional Advocate General, Punjab
for the applicant-appellant/State.

JASWANT SINGH, J.

CRM No. 23501 of 2019

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **57 days** in filing the criminal appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **57 days** in filing the application for grant of leave to criminal appeal is condoned.

Application stands **disposed of** accordingly.

CRM-A No. 1790 of 2019

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 Criminal Appeal against the judgment of acquittal dated 07.02.2019 passed by learned Judge, Special Court, Jalandhar, whereby respondent-Lucky has been acquitted of the charges under **Sections 22, 61, 85 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 21.11.2014 at about 08.50 A.M., the **respondent/accused (Lucky)** was found in his conscious possession of 271 grams of intoxicant powder (Diphenoxylate Hydrochloride), without any license or permit. On 21.11.2014, police party headed by *S.I. Prithi Raj* along with other police officials was on patrolling duty from *Philaur to Ganna Pind* in detection of criminals. The police party reached near the turn of village *Bhenni* and in the meantime, one person was seen coming on the foot from the side of village *Bhenni*, but on seeing the police party, he became nervous and started to re-track. On suspicion that man was apprehended and he was interrogated and on interrogation, he disclosed his name as **Lucky son of Balvir Chand**, resident of village *Ganna Pind*. *Sub Inspector Prithi Raj* gave his introduction to the accused and told him that it was suspected that he was carrying some contraband in his possession and his search was required 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. Investigating Officer also tried to join independent witnesses, but all the independent persons showed their reluctance to be witness in the police proceedings. The Investigating Officer conducted the search of the accused in the presence of other police officials and on search, one polythene envelope was recovered from the right pocket of the shirt/*kapri* worn by the accused and thereby the Investigating Officer found the intoxicant powder wrapped in the polythene envelope. The Investigating Officer separated two samples of 5 grams each from the bulk of the intoxicant powder and the same were converted into sample parcels. On

weighment of remaining contraband, it came to be 261 grams of intoxicant powder. The Investigating Officer sealed the parcels by putting his seal under the impression 'PR' and all the parcels were taken into police possession. Seal after use was handed over to *Head Constable Ashwani Kumar*. *Form M-29* was filled on the spot. *Ruqa* was transmitted to the police station and on the basis of which, formal F.I.R. was registered. The accused was arrested and rough site plan of the place of recovery was prepared. The statement of prosecution witnesses was recorded. Accused was produced before *Inspector/SHO Harinder Singh*, who verified the facts and sealed the parcels with seal bearing impression 'HS'.

It is further alleged case of the prosecution that on 22.11.2014 when the accused was in the police custody and he was interrogated by the police, during interrogation, he suffered the statement that he had kept concealed the intoxicant powder wrapped in polythene envelope underneath of bricks near the Canal bridge and he can get the same recovered. The accused got effected the recovery of contraband as per his disclosure statement. The Investigating Officer after getting the recovery of the contraband, opened the polythene envelope and it was found that some intoxicant powder was available in the envelope. On weighment, it came to be 10 grams. Investigating Officer separated one parcel of 5 grams of intoxicant powder out of bulk and the same was converted into parcel. Investigating Officer took back his seal which was handed over to *Head Constable Ashwani Kumar* on the last date and put his seal on these parcel under the impression 'PR'. The samples were transmitted in the lab of the chemical examiner and on completion of other necessary formalities of

Court.

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 Cr.P.C. were supplied to the accused, free of cost. From the perusal of the report under section 173 Cr.P.C. 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, the prosecution has examined as many as *five (05)* witnesses besides producing documentary evidence, which are as under:-

“ Ct. Balak Ram (sample carrier) as PW-1, HC Ashwani Kumar (recovery witness) as PW-2, HC Jaswant Lal (MHC) as PW-3, Inspector Harinder Singh (SHO) as PW-4 and SI Prithi Raj (Investigating Officer) as PW-5.

On completion of prosecution evidence, the statement under Section 313 Cr.P.C. was recorded 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.

On the basis of weak evidence produced by the prosecution against the respondent, he has been acquitted of the charges for the commission of offences.

3. We have heard the learned counsel for the State (applicant-appellant) and have also gone through the paper-book very carefully with

his assistance.

It is admitted case of the prosecution that initially the recovery of contraband was effected from the personal search of the accused. Undoubtedly, the polythene envelope containing intoxicant powder was recovered from the right pocket of the *shirt/kapri* worn by the accused.

We are of the view that **Section 50** of the NDPS Act applies only in case a person is intended to be searched. The Section comes into play when person has to be searched. As such, it was incumbent upon the authorized Officer of the police to inform to the respondent/accused with regard to his right to be searched of his person in the presence of a Gazetted Officer or Magistrate. It is obvious that the Arresting Officer has failed to apprise the accused/respondent of his legal right to be searched before a Gazetted Officer or Magistrate. There is clear cut non-compliance of the mandatory provision of Section 50 of the NDPS Act and it renders the search wholly illegal. The effecting of other recovery of the contraband on the basis of disclosure statement of the respondent/accused is totally insignificance in the wake of the fact that initial recovery of contraband is illegal and is not in accordance with the provision of the NDPS Act, 1985. As such, the Lower Court has rightly disbelieved the case of the prosecution and has rightly given the benefit of doubt to the respondent/accused.

4. 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

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 judgment 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.

5. 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, has rightly held that the prosecution has failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case

view of the trial Court is hereby affirmed and is maintained.

The instant **application** is without any merit and, therefore, **dismissed**. Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

November 29, 2019
'dk kamra'

(SANT PARKASH)
JUDGE

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