

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

CRM A-1875-2019
Date of Decision:-03.12.2019

State of Punjab ... Appellant
vs.

Manpreet Singh @ ManiRespondent

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

Present:- Mr. Bhupinder Beniwal, Assistant Advocate General,
 Punjab.

Mr. Jagdeep Singh, ASI-in person.

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Jitendra Chauhan, J.(Oral)

State of Punjab has preferred an application under Section 378(3) of the Code of Criminal Procedure seeking leave to file an appeal against the judgment of acquittal dated 30.04.2019 passed by learned Judge (Special Court), Fatehgarh Sahib in case titled as State Versus Manpreet @ Manni bearing FIR No. 149 dated 05.09.2014 registred under Section 22 of the N.D.P.S. Act at Police Station Khamanon.

The brief facts of the case as contained in paragraph No. 2 of impugned judgment dated 30.04.2019 are as under:-

“2. Brief facts of the case are that on 05.09.2014 Investigating Officer ASI Harbans Singh alongwith police party were present at canal bridge of village Panjkoha in connection with routine patrolling and checking of bad elements, when at about 06.00 p.m., police party saw a person was coming on foot from the side of village Panjkoha and on suspicion he was apprehended by Investigating Officer with the help of police party. Upon Inquiry, accused disclosed his name as Manpreet Singh @ Mani son of Jagroop Singh besides other particulars. Investigating Officer disclosed his identity to accused regarding his rank and posting and told that he has suspicion that accused had

some contraband in his possession and Investigating Officer showed his intention to conduct the search of the accused. Investigating Officer further apprised him about his legal right to get conducted his search in the presence of gazetted officer or magistrate and could be called at the spot and accused could be produced before gazetted officer or magistrate. Accused reposed confidence with Investigating Officer got recorded his consent memo. Efforts were made by Investigating Officer to join the independent witness but none obliged by showing their inability. Investigating Officer conducted the search of the accused and same led to recovery of 4 pouches of phenotil tablets from right pocket of his trouser each pouch containing 100 tablets and 4 pouches of Diatil tablets from left pocket of his trouser each pouch containing 100 tablets. Investigating Officer separated two samples of one pouche each of phoenotil tablets was prepared and remaining 2 pouches converted into a bulk parcel and two samples from 1/1 pouch each of phenotil tables were separated prepared and remaining two pouches of phenotil tablets were converted into a bulk parcel. Then Investigating Officer put his seal bearing impression 'HS' on all the parcels and sample seal chit and form number 29 was partly prepared. Seal after use was handed over to C Baljinder Singh. All the recovered contraband and seal chit were taken into police possession vide separate recovery and same was witnessed by official witnesses and attested by Investigating Officer. Ruqa was sent through C. Harpreet Singh. FIR was registered by SI Hans Raj against accused. Rough site plan was prepared. Accused was interrogated and arrested vide ground of arrest cum intimation memo and personal search memo of the accused was prepared. Form no. 29 was prepared. Statements of witnesses were recorded. Upon reaching the police station, accused along with witnesses and case property was produced before ASI Kewal Singh. Upon due verification, ASI Kewal Singh affixed his seal bearing impression 'KS' upon the case property and sample chit, where after the case property was deposited with the MHC. On the next day, investigating officer took accused and case property from MHC and produced them before the concerned Magistrate and obtained the judicial remand of accused, whereafter case property except the sample and sample chit was deposited in the Judicial Malkhana. Upon receipt of report of FSL and upon completion of investigation, challan was presented into Court.”

Charge under Section 22 of the NDPS Act was framed against

the accused, to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW1 ASI Balkar Singh, PW2 C. Parwinder Singh, PW3 ASI Kewal Singh, PW4 C. Baljinder Singh and PW5 Harbans Singh and close the evidence.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in the prosecution evidence were put to him, to which he pleaded false implication.

No witness in defence was examined by the accused.

After hearing the learned counsel for the parties, the learned trial Court acquitted the accused from the charges levelled against him. Aggrieved against the aforesaid judgment of acquittal, the State of Punjab has preferred this application seeking leave to file an appeal.

In the impugned judgment the reasons recorded by the learned trial Court for the acquittal are briefly narrated as under:-

- (i) There was non compliance of Section 50 of the NDPS Act as the offer for personal search was not valid.
- (ii) That the Investigating Officer and complainant ASI Harbans Singh is the same person, therefore, the investigation conducted by Investigating Officer cannot be said to be a fair investigation, in pursuance to judgment of **Mohan Lal Vs. State of Punjab AIR 2018, Supreme Court 3853 (Crl. Appeal No. 1880 of 2011, decided on 16.08.2011).**
- (iii) That neither any independent witness was joined nor the names of the persons, who refused to joined as independent witness, were recorded by the Investigating Officer so much so 'Sarpanch' of the village, who is a public officer, was not called to attest the recovery memo.

Learned State Counsel submits that the respondent has been wrongly acquitted and the learned trial Court has failed to correctly appreciate the facts of the present case. The learned trial Court had

acquitted the accused mainly on the ratio of law laid down in case of **Mohan Lal Versus State of Punjab, AIR 2018 (SC) 3853.**

Learned State counsel further submits that Hon'ble the Supreme Court in **Criminal Appeal No. 2450-2451 of 2010, titled as Varinder Kumar Versus State of Himachal Pradesh** has held that the law laid down in Mohan Lal's case (supra) cannot be allowed to become a spring board for acquittal and the Investigating Officer and the informant can be the same police official. Learned State counsel further contends that the aforesaid judgment of Mohan Lal's (supra) is not applicable to the case in hand. He further submits that the learned trial Court has erred in holding that the provisions of Section 50 of the N.D.P.S. Act has not been complied with in the present case whereas PW5 ASI Harbans Singh Investigating Officer had given offer to the accused at the time of recovery and consent memo was also prepared, which was thumb marked by the respondent.

Heard.

There is no dispute about the proposition of law laid down in Varinder Kumar's case (supra), but the same is distinguishable on the facts of the present case.

Admittedly, there was no independent corroboration. No doubt it is true that merely for want of independent corroboration, the case of the prosecution cannot be thrown away outrightly, but where there is no independent corroboration, a heavy duty is cast upon the Court to appreciate the evidence of the prosecution meticulously. In the instant case, no plausible explanation has been furnished by the prosecution for non joining of independent witnesses.

The provisions of Section 50 of the N.D.P.S. Act are mandatory and cast onerous duty on the Investigating Officer to 'inform' the accused/suspect of his right to be searched in the presence of a Gazetted Officer or a magistrate. In '**Vijaysinh Chandubha Jadeja Vs. State of Gujarat**' 2010 (4) R.C.R. (Criminal) 911. Hon'ble the Supreme Court in para no. 22 of the judgment has observed as under:-

“22. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorized officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provisions.”

Hon'ble the Supreme Court in '**Arif Khan @ Agha Khan v. State of Uttarakhand** 2018 AIR (SC) 2123' in para nos. 23 and 24 has held 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*)

24. Keeping in view the aforementioned principle of law laid down by this Court, we have to examine the question arising in this case as to whether the prosecution followed the mandatory procedure prescribed under Section 50 of the NDPS Act while making search and recovery of the contraband "Charas" from the appellant and, if so, whether it was done in the presence of a Magistrate or a Gazetted Officer so as to make the search and recovery of contraband "Charas" from the appellant in conformity with the requirements of Section 50."

There is no proper compliance of the provisions of Section 50 of the NDPS Act inasmuch as the search of the accused/respondent was not conducted before any Gazetted Officer or a Magistrate. So, the benefit of doubt certainly goes in favour of the accused.

For the aforementioned reasons we are of the considered opinion that the prosecution has not been able to prove that the search and recovery of contraband i.e. 400 tablets of Phenotil and 400 tablets of diatil was made from the respondent in pursuance with the procedure prescribed under Section 50 of the N.D.P.S. Act. Since the compliance of the mandatory procedure prescribed under Section 50 of the Act is fatal to the case of the prosecution and in the present case we have found that the prosecution has failed to prove the compliance as required in law, the respondent is entitled to claim benefit and seek his acquittal.

Moreover, 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.”

In the instant case, there is no infirmity or illegality muchless perversity in the impugned judgment and the findings of the learned trial Court are hereby affirmed.

Consequently, the present application seeking leave to file appeal is hereby declined.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

03.12.2019
manoj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No