

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

**CRM-A-2240-2019 (O&M)
Date of Decision: 16.12.2019**

State of Haryana

... Applicant/Appellant

Versus

Paramjit Kaur @ Pammi

... Respondent

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present : Mr. Vivek Saini, D.A.G., Haryana
for the applicant/appellant.

JITENDRA CHAUHAN.J.(ORAL)

This is application under Section 378(3) of Code of Criminal Procedure for grant of leave against the judgment of acquittal dated 12.11.2018, passed by Judge, Special Court, Ludhiana vide which the respondent was acquitted in case FIR No.102 dated 01.06.2015 filed under Section 22 of NDPS Act, 1985 at Police Station Laddowal, Ludhiana.

Brief facts of the present case as noticed as noticed in paragraph No.2 of the impugned judgment are as under:-

“Briefly stated the facts of the present case are that on 01.06.2015, SI Swaran Singh of P.S. Laddowal alongwith L/C Avtar Kaur and other police was present at T-point of cremation ground situated in the revenue limits of village Kadian in official vehicle bearing no.PB-0-CB-5931 in connection with patrolling and checking duty. Then, one lady was seen while coming on foot from the

side metalled road, who was carrying heavy plastic bag of black colour in her right hand. On seeing the police party, the said lady became perplexed and she had tried to turn back, but SI Swaran Singh had apprehended the said lady with the help of L/C Avtar Kaur and his other fellow police officials on the basis of suspicion and asked her name and address, upon which, the said lady had disclosed her name as Paramjit Kaur @ Pammi wife of Balwinder Singh resident of Village Talwandi Kalan, District Ludhiana. Then, SI Swaran Singh had disclosed his identity, rank and place of posting to above said Paramjit Kaur @ Pammi. Then, SI Swaran Singh apprised said Paramjit Kaur @ Pammi that he has suspicion of some intoxicant substance in her plastic bag and its search is required to be conducted in this regard. At that time, SI Swaran Singh also apprised said Paramjit Kaur @ Pammi that she has legal right to get the search of her plastic bag from him (SI Swaran Singh) or from any Gazetted Officer or Magistrate at the spot or she can be taken before them, but said Paramjit Kaur @ Pammi had reposed her confidence upon SI Swaran Singh. Then, separate consent memo of above said Paramjit Kaur @ Pammi was prepared. On checking of the abovesaid plastic bag of Paramjit Kaur @ Pammi, intoxicant powder was recovered from the same. Then, two samples of 05 grams each of intoxicant powder were separated out and parcels of the same were prepared. On eight, the remaining intoxicant powder came as 105 grams. Then, parcel of remaining intoxicant powder was prepared. Then, both the sample parcels and one bulk parcel of intoxicant powder were sealed by SI Swaran Singh with his seal bearing impression "SS". Sample of seal and form no.29 were prepared separately. Seal was entrusted to HC Sukhjot Singh after its use. Then, above said parcels of case property, samples thereof, sample of seal and form no.29 were taken into police possession vide

separate recovery memo. As accused Paramjit Kaur @ Pammi failed to produce any permit or licence for keeping the above said intoxicant powder in her possession, so ruqa was drafted for registration of FIR under the NDPS Act and the same was sent to police station Laddowal, where the present case was registered. Accused Paramjit Kaur @ Pammi was arrested and the investigation was initiated, during which, rough site plan of the place of recovery with correct marginal notes was prepared and statements of witnesses were recorded. Then, accused Paramjit Kaur @ Pammi along with the case property was produced before ASI Daljit Singh officiating SHO P.S. Laddowal. On 02.06.2015, accused Paramjit Kaur @ Pammi and case property were produced before Ms. Shilpa Singh, Judicial Magistrate 1st Class (Duty) Ludhiana, for initiating proceedings u/s 52 – A of NDPS Act and then, accused Paramjit Kaur @ Pammi was put up in lock-up. After completion of necessary formalities of investigation, challan was prepared by SHO of P.S. Laddowal against accused Paramjit Kaur @ Pammi and was presented in the court.”

Upon presentation of final report under Section 173 Cr.P.C., charges under Section 22 of the NDPS Act, were framed against the accused, to which she pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Constable HC Sukhjit Singh as PW-1; SI Swaran Singh as PW-2; C. Anil Kumar as PW-3; HC Jarnail Singh as PW-4 and ASI Tarsem Lai as PW-5.

When examined under Section 313 Cr.P.C., the accused denied

implication. She opted not to lead any evidence in defence and closed the same.

After hearing learned counsel for the parties and perusing the record, learned trial Court acquitted the accused-appellant of the charges framed against her.

Hence, the instant application.

It is contended that the accused-appellant has been acquitted by learned trial Court on the basis of the law laid down by Hon'ble the Supreme Court in '**Mohan Lal Vs. State of Punjab, 2018(2) R.C.R. (Criminal) 931**', wherein, it has been held in the cases where the complainant himself is the investigating officer, it violates the constitutional right of the accused to have a fair trial. However, in the case of '**Varinder Kumar Vs. State of Himachal Pradesh**', Criminal Appeal No.2450-2451 of 2010, Hon'ble the Supreme Court has held that the decision of Mohal Lal's case cannot be applied retrospectively. Therefore, the accused is liable to be convicted on this ground alone. Further states that the delay of 57 days in sending the samples for chemical examination is not fatal inasmuch as the seals were intact when it reached the office of Chemical Examiner. Further, all the prosecution witnesses have fully supported its case, therefore, non-joining of any independent witness is also of no consequence.

Heard learned State counsel and perused the record.

It is not in dispute that Hon'ble the Supreme Court in Mohan Lal's case (supra) has held that the investigation stands vitiated in case the complainant and the investigator are one and the same person. However, in a subsequent judgment in Varinder Kumar's case (supra), it was clarified

that the the decision on Mohan Lal's case cannot be applied retrospectively. Now, the issue has been further referred to a larger bench of Hon'ble the Supreme Court in SLP (Criminal) Diary No.(S) 39528 of 2018, which is still pending adjudication. Be that as it may, the acquittal of the accused is not based on this solitary ground alone.

On perusal of the case file, it is noted that one important witness Lady Constable Avtar Kaur, in whose presence the alleged recovery and seizure was made from the accused, has not been examined, which makes the prosecution version doubtful. It has come on record that Lady Constable Avtar Kaur was member of the police party headed by PW-2 SI Swaran Singh, when accused Paramjit Kaur @ Pammi was apprehended and the alleged recovery of intoxicating powder was effected from her possession. However, this material witness has not been examined by the prosecution for the reasons best known to it. Therefore, an adverse inference is drawn against the prosecution.

Further, it is true that the non-joining of an independent witness alone is not a sufficient ground to discard the entire prosecution story. However, it is equally true that in such circumstances, the testimony of the official witnesses should be able to inspire confidence and trustworthy. In the present case, admittedly, no independent witness was joined. The Court feels that the accused being a young lady and Lady Constable Avtar Kaur being present at the spot ought to have effectively joined in the process of recovery. In this contest, non-examination of the sole lady Constable present at the spot at the time of recovery is a circumstance against the applicant.

Thus, besides the fact that the complainant and the investigator are one and the same person in the instant case, there are other material infirmities in the prosecution story which render it doubtful. The finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record which would warrant interference by this Court.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (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. In the cases of acquittal, there is double 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.

Similarly, in '***Anil Kumar Gupta Vs. State of U.P., 2011 AIR (SC) (Criminal) 922***, Hon'ble the Supreme Court has held as under:-

*“8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of the High Court is completely contrary to the decision of this Court in '**Ramesh Babulal Doshi v. State of Gujarat, 1996(3) R.C.R.(Criminal) 188 : (1996) 9 SCC 225**' which was followed by this Court in '**Dwarka Das & Ors. v. State of Haryana, 2002(4) R.C.R.(Criminal) 794 : (2003) 1 SCC 204**' The submission was that the High Court miserably failed to examine the reasons*

given by the trial Court for recording the order of acquittal.

9. Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances that on that fateful night, the appellant alone was in the company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.

10. In Ramesh Babulal Doshi, 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".

11. In Dwarka Das, 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".

12. In Chandrappa & Ors. v. State of Karnataka, 2007 (2) R.C.R.(Criminal) 92 : 2007(1) R.A.J. 841 : (2007) 4 SCC 415 this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappreciate, review and reconsider the evidence upon which the order of

acquittal is founded. But it is well established that if two views are possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.”

Moreover, there is delay of 77 days in filing the instant application for leave to appeal. No cogent reasons have been put forth for condoning the delay.

In view of the above, the instant application is dismissed on the ground of delay as well as on merits.

Leave declined.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

16.12.2019

ps-I

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