

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

**CRM-A-1842-2019 (O&M)
Date of Decision: 11.02.2020**

State of Punjab

.....Applicant/Appellant

VS.

Gurpreet Singh @ Gopi

.....Respondent

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

Present : Mr. A.A. Pathak, Addl. AG Punjab
for the appellant-State.

JITENDRA CHAUHAN.J.

CRM No. 23568 of 2019

For the reasons mentioned in the application which is duly supported by an affidavit, the delay of 15 days in filing the appeal is condoned and the application is allowed as prayed for.

Main case

This is an application for leave to appeal against the judgment dated 18.12.2018 passed by Judge, Special Court, Tarn Taran, vide which the accused/respondent was acquitted of the charge in FIR No.477 dated 27.12.2014 registered under Section 22 of Narcotic Drugs and Psychotropic Substances, Act, 1985 at Police Station City Tarn Taran.

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. Tersely put, the case of prosecution is that on 27.12.2014 at about

06.10 PM in the area of railway track Jandiala road, Tarn Taran, accused Gurpreet was found in conscious possession of 300 grams intoxicant powder containing salt "Diacetylmorphine" and without any license or permit by the police party headed by SI Amarjit Singh and consisted of ASI Lakhwinder Singh and other police officials were going from police post bus stand, Tarn Taran towards focal point, Mohalla Gokhalpura etc. On receipt of report from Chemical Examiner, Kharar and after the completion of all other necessary formalities of the investigation, the accused were challaned for having committed an offence punishable under Sections 22/61/85 of the Act. "

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

Charges 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 SI Amarjit Singh, PW-2 ASI Lakhwinder Singh, PW-3 HC Satnam Singh and PW-4 Inspector Nirmal Singh, SHO and closed the evidence.

The statement of accused Laddi under Section 313 Cr.P.C was 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 18.12.2018, acquitted accused/respondent of the charges framed against him.

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-respondent was found in conscious possession of the intoxicant powder which was found to be Diacetylmorphine. The accused was caught on the spot and there is presumption that the accused was 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 of intoxicant powder 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 hand of the accused.*
- 2. No independent witness was joined. No action was taken against those who refused to join as witness.*
- 3. The provisions of Sections 52-A and 57 of the NDPS Act were not complied with.*
- 4. There was delay of 18 days in sending the sample parcel to the office of Chemical Examiner at Khara.*

We have gone through the case file carefully and find that

the judgment of acquittal has been rightly passed in the given set of facts. Though, it is a case of recovery of 300 gms of intoxicating powder from the accused but there is violation of Section 50 of the NDPS Act. The recovery was allegedly effected from the right hand 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. The provisions of Section 52-A and 57 of the NDPS Act though

directory in nature, have not been complied with. The recovery is alleged to have been effected on 27.12.2014 but the sample was sent to the office of Chemical Examiner on 14.01.2015 i.e. after a gap of 18 days. There is no explanation for the same. 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.

Thus, the application seeking leave to appeal is hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

11.02.2020.
SN

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