

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

**CRM-A-1814-2019 (O&M)
Date of Decision: 11.02.2020**

State of Punjab

.....Applicant/Appellant

VS.

Prabhjit Singh @ Prabh

.....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. 23525 of 2019

For the reasons mentioned in the application which is duly supported by an affidavit, the delay of 68 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 07.01.2019 passed by Judge, Special Court, Amritsar, vide which the accused/respondent was acquitted of the charge in FIR No.120 dated 30.05.2014 registered under Sections 21 and 22 of Narcotic Drugs and Psychotropic Substances, Act, 1985 at Police Station Sultanwind, District Amritsar.

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. Brief facts of the prosecution version are that on 30.05.2014, at about 06:00 AM, ASI Raminderpal Singh of Police Station Sultanwind, Amritsar, alongwith other police officials were present at T-point 100 foot Road, Sultanwind Road Amritsar, in connection with patrolling and in search of bad elements, where a Hindu young person was seen coming from the side of village Sultanwind, who on seeing the police party got perplexed and after turning back started a brisk walk in haste manner and he bring out black polythene bag from the right pocket of his trouser and tried to throw the same. On the instructions of ASI Raminderpal Singh, HC Tejinder Singh caught hold the said person from his right forearm and then ASI Raminderpal Singh inquired about his whereabouts. Upon interrogation, the said person disclosed his whereabouts as Prabhjit Singh alias Prabh, aforesaid. Before checking the polythene bag which he was holding in his right hand, ASI Raminderpal Singh tried to join the public witness in his investigation but nobody became ready to join the investigation. Then ASI Raminderpal Singh in the presence of his aforesaid Police party checked the polythene bag of black colour and found intoxicant powder. After making arrangement for weighing the same, ASI Raminderpal Singh separated 10 grams intoxicant powder as sample and on measuring remaining intoxicant powder, the same became 190 grams powder. ASI Raminderpal Singh put the 10 grams intoxicant powder into a separate plastic container and converted the same into parcel and sealed the same with his seal bearing impression 'RS'. ASI Raminderpal Singh also put the remaining 190 grams intoxicant powder in separate plastic container and sealed with the same with his seal bearing impression 'RS'. ASI Raminderpal Singh also prepared his sample seal and form M29. ASI Raminderpal Singh took into possession the parcel of 10 grams intoxicant powder and parcel of 190 grams intoxicant powder along-with sample seal and form M29 into police possession by preparing a separate recovery memo, which was witnessed by HC Tejinder Singh and Ct. Simranjit Singh. ASI Raminderpal Singh further conducted the personal search of the accused Prabhjit Singh in accordance with the rules and during his personal search, six live cartridges of 32 bore were recovered from the left pocket of his trouser and one knife from his right waist and I also recovered one computerized weighing machine from the front pocket of shirt of accused Prabhjit Singh. ASI Raminderpal Singh converted six live cartridges of 32 bore into a parcel and sealed the same with his seal 'RS' and ASI Raminderpal Singh took into possession parcel of the six live cartridges by preparing another separate memo. ASI Raminderpal Singh also prepared the sketch of the knife and took the same into possession by preparing another memo. ASI Raminderpal Singh

also converted the computerized weighing machine into a parcel and sealed the same with his seal bearing impression RS and seal after use was handed over to HC Tejinder Singh. Then ASI Raminderpal Singh sent ruqa to the police station through PHG Joginder Singh, on the basis of which FIR was registered by HC Balwinder Singh. ASI Raminderpal Singh also prepared the rough site plan at the spot and recorded the statements of witnesses. He also formally arrested the accused in the present case and memo in this regard was prepared. "

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

Charges under Section 22 read with Section 8 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 Raminderpal Singh, PW-2 Tejinder Singh, PW-3 HC Bikramjit Singh and PW-3 Inspector SHO Arun Sharma (wrongly numbered) 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.

In defence, the accused had examined himself as DW-1 and the remaining evidence was closed by order of the Court.

After appraisal of evidence, the learned trial court vide impugned judgment dated 07.01.2019, 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 Alprazolam. 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 200 gms of intoxicant powder containing Alprazolam 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 pocket of trouser of the accused.*
- 2. No independent witness was joined. No action was taken against those who refused to join as witness.*
- 3. The complainant and the investigating officer are the same person.*

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 200 gms of intoxicating powder from the accused but there is violation of Section 50 of the NDPS Act. The recovery was alleged effected from the right pocket of

trouser of the accused but still de 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. 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 reappraising 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