

Sr. No.226

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

**CRM-A-2512-2019 (O&M)
Date of Decision: 04.02.2020**

State of Punjab

... Applicant/Appellant

Versus

Mangat Singh alias Mangi

... Respondent

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
CORAM:- HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Mr. A.A.Pathak, Additional A.G., Punjab
for the applicant-State.

JITENDRA CHAUHAN, J.

This is an application for leave to appeal against the judgment dated 16.03.2019 passed by Judge, Special Court, Jalandhar, vide which the accused/respondent was acquitted of the charge in FIR No.152 dated 27.09.2014 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') at Police Station Mehatpur, Jalandhar.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No.2 are reproduced as under:-

“Prosecution case is that on 27.09.2014, ASI Maninder Singh along with HC Ranjit Singh No.773, Constable Sarabjit Singh No. 996, Constable Amarvir Singh No.1013, PHG Surjit Singh No.27796, on their private vehicle were present on GT Road at the main turn

of Village Billa Baghela in connection with patrolling duty and checking of suspected persons. Two persons were seen coming on motorcycle from the side of Village Billa Baghela, who on seeing the police party got perplexed and tried to turn back. On the basis of suspicion, ASI Maninder Singh apprehended them with the help of other police officials. The person driving the motorcycle disclosed his name as Mangat Singh alias Mangi son of Jagir Singh and the person sitting behind him disclosed his name as Mangat Singh alias Manga son of Mohinder Singh, ASI Maninder Singh after disclosing his identity told them that he suspected that they might be carrying some intoxicant substance and he apprised them that they have a legal right to get themselves searched from Gazetted Officer or a Magistrate or from him. They reposed faith upon him and expressed that he could conduct their search. Their consent statements were recorded. ASI Maninder Singh tried to join an independent witness, but none was ready. ASI Maninder Singh in the presence of police officials conducted the search of Mangat Singh alias Mangi son of Jagir Singh and a polythene envelope containing intoxicating substance was recovered from the right pocket of his pant. Two samples of 5 gram each of intoxicant substance were drawn. The remaining quantity on weighing came out to be 90 grams. They were converted into parcels and were sealed with Seal impression MS and were taken into police possession. Form M-29 was prepared at the spot. Thereafter, ASI Maninder Singh in the presence of police officials conducted the search of Mangat Singh alias Manga son of Mohinder Singh and a polythene envelope containing intoxicating substance was recovered from the left pocket of his pant. Two samples of 5 gram each of intoxicant substance were

drawn. The remaining quantity on weighing came out to be 90 grams. They were converted into parcels and were sealed with seal impression MS. Form M-29 was prepared at the spot and were taken into police possession. Seal after use was handed over to HC Ranjit Singh No.773. Ruqa was sent through C.Sarabjit Singh No.996 for the registration of a case and an FIR under Section 22 of the NDPS Act was registered against accused Mangat Singh alias Mangi son of Jagir Singh and Mangat Singh alias Manga son of Mohinder Singh. Accused were arrested. Site plan was prepared. Statements of the witnesses were recorded. Accused along with the case property and form M-29 were produced before SI/SHO Lakhwinder Singh, who appended his seal bearing impression LS on the case property and form M-29. The case property was deposited by the SHO Lakhwinder Singh to the MHC Manjit Singh. On 28.09.2014, ASI Maninder Singh produced the accused along with the case property and form M-29 before the Duty Magistrate, Nakodar and thereafter the case property was redeposited by ASI Maninder Singh to MHC Manjit Singh. Two sample parcels of 5 gm each of intoxicant powder were sent to the office of Chemical Examiner, Kharar and the reports have been received.”

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

Charge under Section 22 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 HC Ranjit Singh, PW2 ASI Maninder Singh, PW-3

HC Manjit Singh, PW4 C. Balwinder Kumar PW5 Inspector Lakhvir Singh and closed the evidence.

During pendency of the trial, accused Mangat Singh alias Manga died and proceedings against him were abated.

The statement of accused Mangat Singh alias Mangi 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. It was further stated by him that nothing was recovered from him and false recovery has been planted upon him by illegally detaining him in the police station and thereafter he was implicated in this false case.

No evidence was led in the defence.

After appraisal of the evidence, the learned trial Court vide impugned judgment dated 16.03.2019, 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 were arrested on the spot and 200 grams of intoxicant powder containing 'Diphenoxylate' was recovered from possession of both the accused. Since the recovery was effected from the accused, there is presumption that they were in conscious possession of the same. It is further contended that sample seals were intact, therefore, the delay, if any, in sending the samples to the FSL pales into insignificance. It is further contended that it has

come in the statement of PW-3, the Investigating Officer of the case made efforts to join independent witness but nobody came forward to be a witness in the proceedings.

We have heard the learned State counsel and have gone through the case file very carefully.

The learned trial Court has acquitted the accused on the following grounds:-

1. *The conscious possession on the part of accused Mangat Singh @ Mangi was not proved.*
2. *There is unexplained delay of 8 days in sending the sample to the FSL.*
3. *There is non-compliance of Section 50 of NDPS Act.*
4. *There is non-joining of an independent witness.*

We have gone through the case file carefully and find that the judgment of acquittal has been passed rightly. Though, it is a case of recovery of 200 gms of intoxicant powder. No independent witness has been joined and the prosecution has failed to give any plausible explanation for not joining any independent witness despite availability as it has been admitted by the Investigating Officer that the place of recovery was thoroughfare. Moreover, the sample remained in the police custody for 8 days and there is no explanation for the delay in sending the sample to the FSL. Prosecution has failed to comply the mandatory provisions of Section 50 (1) of NDPS Act and has miserably failed to prove its case as the offer made to the accused before making personal search stood vitiated as inasmuch as Investigating Officer included himself for making offer which is in violation of Section 50, *ibid* and law laid down in ***State of Himachal***

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(HP). There is no reason to differ from the view taken by the learned trial Court.

Even otherwise, 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. 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.

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 reappraise, 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."

The judgment of acquittal does not suffer from any perversity or illegality calling for interference by this Court, therefore, the present application for leave to appeal is declined. Even otherwise, there is delay of 124 days in filing the appeal. There is no cogent explanation for condoning the delay.

Thus, the application for condonation of delay as well as application seeking leave to appeal are hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARUN MONGA)
JUDGE

04.02.2020

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No