

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

CRM-A-2676-2019 (O&M)
Date of decision: 26.02.2020

State of Punjab

... Applicant/ appellant

Versus

Gurpartap Singh @ Kali

...Respondent

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

Present: Mr. AA Pathak, Additional Advocate General, Punjab
for the applicant/Appellant.

JITENDRA CHAUHAN, J.

CRM-35714-2019

For the reasons mentioned in the application which is duly supported by an affidavit, the delay of 116 days in filing the appeal is condoned. The application is allowed.

Main case

1. The present application for grant of leave to appeal has been filed against the judgment dated 01.03.2019, passed by learned Judge, Special Court, Jalandhar, whereby, respondent Gurpartap Singh @ Kali was acquitted of the charge framed under Section 22 (c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The custody certificate dated 25.02.2020 issued by Deputy Superintendent, Central Jail, Kapurthala has been filed today in the Court

and the same is taken on record.

3. The facts necessary for adjudication of the matter as narrated in para 2 of the impugned judgment are as under:-

“2. In brief, the case of prosecution is that on 16.11.2014, police party headed by ASI Som Nath (hereinafter called IO for the sake of brevity) was present at T-point, Village Dharme Dian Chhanna in connection with the patrolling duty, where they saw one person coming from the side of Village Dharme Dian Chhanna on the foot and he was carrying one polythene bag in his left hand. On seeing the police party, said person tried to turn back, but he was apprehended by Investigaton Officer with the help of other police officials, on the basis of suspicion. On asking his whereabouts, said person disclosed his name as Gurpartap Singh @ Kali (herein after called accused for the sake of brevity). IO told him about his name, rank and posting and further told that he suspect some intoxicant substance in his possession. IO also apprised him about his legal right to get his personal search be conducted before a Magistrate or Gazetted Officer, but accused reposed confidence in him. Then IO prepared consent memo. Firstly, IO tried to join independent witness, but none came forward. IO prepared consent memo. IO conducted the search of polythene bag which was carried by the accused and on opening the same, IO found intoxicant powder to be lying in it. Two samples weighing 10 grams each were separated from said contraband and remaining bulk came to be 120 grams. Samples and bulk property were taken into police possession. Accused was formally arrested. An intimation was sent to Police Station for registration of

FIR.”

4. After investigation, challan was presented against the accused. The charge was framed against the accused under Section 22 (c) of NDPS Act, to which he did not plead guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined MHC Manjit Singh as PW1, HC Amrik Singh as PW2, C-Sukhchain Singh as PW3, Inspector Lakhvir Singh as PW-4 and ASI Som Nath as PW5.

6. After completion of the evidence of the prosecution, the accused was examined under Section 313 of the Code of Criminal Procedure. The accused denied the circumstances appearing against him in prosecution evidence and pleaded innocence. In defence, although, the accused opted to lead defence evidence but closed defence evidence without examining any witness.

7. After hearing the learned Additional Public Prosecutor for the State; the learned defence counsel and examining the evidence on record, the learned trial Court acquitted the respondent herein.

8. Learned counsel contends that the learned trial Court erred in acquitting the accused by ignoring the evidence on record because the recovery stands duly proved. He further argues that Section 50 of NDPS Act will not apply in the present case, because it was a chance recovery.

9. We have heard the learned State counsel and perused the record carefully with his able assistance.

10. In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra 2011 (1) RCR (Criminal) 57** Hon'ble the apex Court framed the guidelines for appellate court as to how to deal with in the matter of

“appeal against acquittal”, which are as under:-

“Appeal against Acquittal:

22. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration.

The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling

circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**, AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P.**, AIR 2006 SC 2500; **S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.**, AIR 2008 SC 2066; **Arulvelu & Anr. v. State**, (2009) 10 SCC 206; **Ram Singh alias Chhaju v. State of Himachal Pradesh**, (2010) 2 SCC 445; and **Babu v. State of Kerala**, (2010) 9 SCC 189)."

11. Learned trial Court has acquitted the accused/respondent on the following grounds:-

- (i) The provisions of Section 50 of the NDPS Act were not complied with inasmuch as the IO had included himself in the consent offer as third option along with Gazetted Officer and Magistrate.
- (ii) No independent witness was joined by the police party despite the fact that it was a thoroughfare.
- (iii) There was delay of 19 days in sending the sample to the chemical examiner.

Though, recovery of 140 grams of powder containing

Diphenoxylate Hydrochloride was allegedly effected from the possession of accused on 16.11.2014, however, there is non-compliance of Section 50 of the NDPS Act coupled with the fact that no independent witness from the locality was joined in the recovery proceedings so much so no effort was made by the I.O to do so. Further, there was delay of 19 days in sending the sample to the chemical examiner. Thus, no case for interference in the judgment of acquittal is called for.

13. In view of the above, this Court finds no perversity or illegality in the impugned judgment passed by the learned trial Court whereby the respondent has been acquitted. As such, the present application for leave to appeal is hereby declined being devoid of any merit.

[JITENDRA CHAUHAN]
JUDGE

[ARCHANA PURI]
JUDGE

26.02.2020
anju/sunita

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No