

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

**CRM-38682-2019 in/and
CRA-AD-816-2019 (O&M)
Date of decision : 10.02.2020**

State of Union Territory, Chandigarh

...Applicant

Versus

Anjali

...Respondents

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

Present: Mr. Kuldeep Tiwari, Addl. P.P., U.T., Chandigarh.

JITENDRA CHAUHAN, J.

CRM-38682-2019

For the reasons stated in the CRM application, the same is allowed and the delay of 80 days in filing the instant appeal is condoned.

Main case

Challenge is to the judgment dated 03.06.2019, passed by learned Juvenile Justice Board, Chandigarh (for short, 'the trial Court'), thereby, acquitting the accused-respondent in FIR No.152 dated 14.05.2018, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), at P.S. Sector 11, Chandigarh.

Brief facts of the case as noticed by learned trial Court in para No.2 of the impugned judgment, read thus:-

*“2. Case of the prosecution in breif is that on
14.05.2018, ASI Sukhminder Singh along with Ct.*

Devinder, L/Ct. Renu was on patrolling duty near Dental Turn College, Sector 25, Chandigarh and at about 05:15 P.M., one girl namely Anjali came from the side of Sector-24/25, 37/38 chowk and was carrying a white cloth bag in her right hand. After seeing the police party, the girl turned back and started moving quickly, however, she was apprehended by ASI Sukhminder Singh with the help of L/Ct. Renu. On search of carry bag which she was carrying, 15 injections of Buprenorphine 2 ML each were recovered. The said girl was carrying the injections without any permit or license. Later on, the said girl disclosed her name as Anjali daughter of Babli. Thereafter, ASI Sukhminder Singh himself made the complaint regarding the same and took further action in the matter. Therefore, on this basis present FIR was registered. Investigation was commenced. Statements of witnesses were recorded. After completion of investigation, final report u/s 173 Cr.P.C. was presented against the juvenile Anjali for commission of offence punishable under Section 22 of NDPS Act.”

Upon presentation of final report under Section 173 Cr.P.C., notice of accusation was served upon the accused, to which she pleaded not guilty and claimed inquiry.

In order to prove its case, the prosecution examined HC Jai Bhagwan as PW-1; Ct. Devinder as PW-2; ASI Sukhminder Singh, complainant and the first investigating officer as PW-3; Shalini Sharma as PW-4; Lady Constable Renu as PW-5; HC Shamsher Singh as PW-6; Constable Pardeep Kumar as PW-7; HC Yashpal as PW-8; SI Parkash Singh as PW-9; and SI Hari Om as PW-10.

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

all the incriminating evidence appearing against her and pleaded false implication. However, she did not lead any evidence in defence.

After hearing learned counsel for the parties and perusing the record, learned trial Court acquitted the juvenile of the notice of acquisition served upon her.

Hence, the instant appeal on behalf of the U.T. Administration.

It is contended that the mandatory provisions of Section 50 of the NDPS Act, were duly complied with. Further, all the prosecution witnesses have fully supported its case.

Heard.

In the instant case, the mandatory provisions of Section 50 of the NDPS Act have not been complied with. It has come on record that the personal search of the juvenile was conducted by Lady Constable Renu vide memo Ex.P4, though there was no recovery. On search of the box which was put in a carry bag, fifteen injections of Buprenorphine 2 ML each were recovered. Thus, when it is proved that the personal search of the juvenile was conducted, the police was required to comply with the provisions of Section 50 of the NDPS Act. She was not given an offer whether she wanted to be searched before a Gazetted Officer or a Magistrate. PW-10, SI Hari Om, Additional SHO, has testified that when he reached at the spot, the juvenile had already been searched and the parcels prepared. Further, the investigating officer did not record reasons for his belief which necessitated the search of the juvenile without producing her before the nearest Gazetted Officer or Magistrate and no such copy of reasons to belief was sent to the superior officials within 72 hours. For these reason, the search and seizure proceedings get vitiated as the very purpose of introducing an independent

official witness in the form of a Gazetted Officer or a Magistrate during the search and seizure gets defeated. Reliance in this regard can be placed on a judgment of Hon'ble the Supreme Court in **Arif Khan @ Agha Khan v. State of Uttarakhand, 2018 AIR (SC) 2123**, wherein, it has been so held by their Lordships:-

“22. Indeed, the latter Constitution Bench decision rendered in the case of Vijaysinh Chandubha Jadeja (supra) has settled the aforementioned questions after taking into considerations all previous case law on the subject.

*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**)*

24. Keeping in view the aforementioned principle of law

laid down by this Court, we have to examine the question arising in this case as to whether the prosecution followed the mandatory procedure prescribed under Section 50 of the NDPS Act while making search and recovery of the contraband "Charas" from the appellant and, if so, whether it was done in the presence of a Magistrate or a Gazetted Officer so as to make the search and recovery of contraband "Charas" from the appellant in conformity with the requirements of Section 50.

25. In our considered view, the evidence adduced by the prosecution neither suggested and nor proved that the search and the recovery was made from the appellant in the presence of either a Magistrate or a Gazetted Officer."

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. The finding of acquittal recorded by the trial Court cannot be said to be perverse and the same is hereby, affirmed.

Appeal dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

10.02.2020

himanshu/atulsethi

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