

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

CRM-A-2731-MA-2018 (O&M)

Date of Decision: 21.01.2020

State of Punjab

.....Applicant/Appellant

VS.

Laddi

.....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.

This is an application for leave to appeal against the judgment dated 04.01.2018 passed by Judge, Special Court, Amritsar, vide which the accused/respondent was acquitted of the charge in FIR No.123 dated 25.09.2013 registered under Sections 21 and 22 of Narcotic Drugs and Psychotropic Substances, Act, 1985 at Police Station Chatiwind, District Amritsar.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 8 are reproduced as under:-

“8. In the present case, in order to prove the recovery of intoxicating powder from accused Laddi, prosecution has examined Investigating Officer of the case ASI Balwinder Singh as PW3 who has stated that on 15.9.2013 he was posted as Incharge Police Post Daburji and he alongwith police party was on private vehicles and laid a picket at the turn of bridge of drain Bhagtupura and they were

checking the vehicles. In the course of their checking two clean shaven persons came from the side of Mehma Pandori on a motor cycle. On seeing the police party, they perplexed. The pillion rider of the motor cycle threw away something. They were apprehended. On query driver of the motor cycle told his name as Laddi and person sitting pillion told his name as Shiva. The driver failed to show ownership record of the motor cycle bearing no.PB09-E-5117. He tried to join public witness before checking the thrown material but no one was ready. On checking the poly bag, it was found to contain intoxicating powder. He took out 10 grams of the intoxicating powder and put the same in a plastic container, prepared sample parcel. The bulk on weighing comes out to be 390 grams and separate parcel of which was prepared. He put his seal having impression BS on the same. Form M29 was prepared. The seal after use was handed over to HC Nirmal Singh. Both the parcels, sample seal, form M29 were taken into police possession vide recovery memo Ex.P1. Recovery memo of the motor cycle Ex.P2 was prepared. Thereafter Ex.P9 ruqa was sent in the hands of HC Niral Singh on the basis of which formal FIR Ex.P10 was registered. Form M29 Ex.P4 was prepared on which he put his seal at point 'A'. Rough site plan Ex.P11 was prepared. Accused was arrested vide separate arrest memo Ex.P12 and Ex.P13. Intimation was sent to the relatives. Personal search memo Ex.P14 and Ex.P15 were prepared, which were attested by HC Nirmal Singh and HC Sawinder Singh. On return he handed over both the parcels, form M29, sample seal chit alongwith accused to SHO Azad Davinder Singh, who put his seal impression of AS on sample parcel as well as bulk parcel and completed form M29. Handing over memo

Ex.P5 was prepared. On 26.9.2013 SHO after operating the double lock of the malkhana handed over parcels, sample seal chit and application Ex.P6 for producing the case property and accused before Illaqa Magistrate for conducting proceedings under section 52-A of NDPS Act. The Illaqa Magistrate passed order Ex.P7 after withdrawing representative sample from the bulk weighing 10 grams and sealed the same with seal GKD and BS. Thereafter he handed over these parcels, sample seal to SHO who kept the same in the double lock. On 01.10.2013 SHO operated the double lock of police malkhana and handed over bulk parcel and representative parcel for depositing in judicial malkhana which he deposited vide receipt Ex.P8. Sample was sent to the FSL and report of FSL Ex.P16 was received. Thereafter challan was presented."

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 Sarwan Singh, PW2 HC Nirmal Singh, PW3 DSP Azad Davinder Singh, PW4 ASI Balwinder Singh and closed the evidence.

During pendency of trial, accused Shiva absented, therefore, he was declared as proclaimed offender vide order dated 20.10.2016 by the learned trial Court.

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. 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 evidence, the learned trial court vide impugned judgment dated 04.01.2018, acquitted accused/respondent Laddi 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 Laddi was very much in the knowledge that co-accused Shiva (proclaimed offender) had been carrying intoxicant powder with him. The accused were caught on the spot and there is presumption that the accused were in conscious possession of narcotic substance. The prosecution had proved on record that the sealed parcels of the case property were intact. Recovery of 400 gms of intoxicant powder containing Diphenoxylate 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. There is no evidence on record regarding sharing of common intention by accused Laddi with accused Shiva.*
- 2. The conscious possession on the part of accused Laddi was not proved.*
- 3. There is unexplained delay of 9 days in sending the sample to the FSL.*
- 4. There is discrepancy in the statement of prosecution witnesses PW-3 DSP Azad Davinder Singh and HC Sawinder Singh with regard of receipt of sample.*

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 400 gms of intoxicating powder from Shiva who had been declared a proclaimed offender by the trial Court but the prosecution has failed to bring on record any evidence that accused Laddi had the knowledge regarding the intoxicating substance with accused Shiva. Laddi was driving the motor cycle whereas, Shiva was a pillion. ASI Balwinder Singh had categorically admitted that Laddi neither threw anything nor anything incriminating was recovered from his personal search. The accused were residents of different localities. Moreover, the sample remained in the Police custody for 9 days and there is no explanation for the delay in sending the sample to the FSL. As per PW-3 DSP Azad Davinder Singh, the sample parcel was handed over by him to HC Swinder Singh on 03.10.2013 but HC Sawinder Singh stated that on

03.10.2013 he had received sample from Moharrir Head Constable. Further, the said Moharrir Head Constable has not been examined by the prosecution. There is no reason to differ from the view taken by the learned trial 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 109 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

(ARCHANA PURI)
JUDGE

21.01.2020.
SN

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