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

**CRM-A-273-2022
Date of decision :31.10.2022**

STATE OF PUNJAB**..... PETITIONER****VS****ANKUSH SHAMPLE****..... RESPONDENT**

**CORAM : HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI
HON'BLE MR.JUSTICE ALOK JAIN**

Present :- Mr. J.S. Mehndiratta, Additional Advocate General, Punjab.

AUGUSTINE GEORGE MASI, J. (Oral)

Challenge in this appeal is to the judgment passed by the Judge, Special Court, Fatehgarh Sahib, whereby in an FIR No.61 dated 15.06.2018 under Section 22 of NDPS (Narcotic Drugs and Psychotropic Substances) Act, 1985, Police Station GRP Sirhind the accused has been acquitted on the ground of non-compliance of Section 50 of NDPS Act. Apart from the fact that no independent witness was associated at the time of search, despite the recovery being effected from the railway station, which was a busy place and large number of independent witnesses were available apart from the fact that the CCTV footage has also not been taken into possession to substantiate the aspect with regard to the recovery having been effected from the accused.

Counsel for the State has made an effort to contend that as far as the non-compliance of Section 50 of NDPS Act is concerned, one of the

witnesses has stated that earlier 5/6 persons were searched before apprehending the accused, from whom no objectionable substance was recovered and thus no option was called from them, but the presumption cannot be drawn that qua the co-accused also the same procedure would have been followed especially when the Investigating Officer had clarified the position that no suspicious substance was being carried out by the earlier persons and therefore, the option was not called for.

As regards the aspect of doubting with regard to the presence of DSP is concerned because of non signing of the search memo, an effort has been made by the State counsel that the same may be a sheer aberration on the part of the officer, but no explanation could come-forth from the State counsel with regard to non taking into custody the CCTV footage, which was very much available, although an explanation has been given for non association of the independent witnesses by contending that it is not mandated and has come in evidence that an effort was made for associating independent witnesses but none came forward to identify or prove the search.

Having considered the submissions made by the counsel for the State, we are not inclined to accept the explanation as has been sought to be projected by the counsel for the State as the mandatory provisions of Section 50 of NDPS Act had to be complied with. The explanation as has been sought to be projected in the form of non-information of the earlier witnesses, although may be accepted but the very presence of the Deputy Superintendent of Police at the spot becomes doubtful when the search memo does not contain his signatures. That apart, non-taking into possession the CCTV footage, which was very much available at the railway station as also non-association of the independent witnesses when there was no dearth thereof is also fatal to the case of the prosecution. The reasons for non proving of the

case against the accused, by prosecution, which have been assigned by the trial Court, therefore, cannot be faulted with. The opinion as formed by the trial Court is based upon plausible consideration of the evidence, and therefore, do not call for any inference in the finding of the trial Court and the same stand affirmed.

Finding no merits in the present appeal, the same is dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

31.10.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No