

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

CRA-S-2011-SB-2007 (O&M)

Date of decision: 06.05.2022

State of Punjab

...Appellant

Versus

Som Raj

...Respondent

**CORAM: HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Anmol Singh Sandhu, AAG, Punjab  
for the appellant.

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**H.S. MADAAN, J.**

1. Accused Som Raj, aged about 24 years, son of Sh. Ram Paul, resident of Nidhan Wala, Tehsil and District Moga, was tried by Judge, Special Court, Moga in FIR No.67 dated 26.03.2002, for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station City, Moga.

2. Briefly stated the facts of the case as per prosecution story are that on 26.03.2002, a raid was conducted by the police on ground of D.M. College, Moga by forming separate parties, in connection with the investigation of a case registered with Police Station City, Moga FIR No.64 dated 26.03.2002, for offences under Sections 399, 402 IPC and Section 25 of the Arms Act; accused Som Raj was apprehended by the police party and a *kapa* was recovered from his possession; on a suspicion, personal search of accused was conducted after getting his

consent for doing the same in the presence of a gazetted officer as Sh. Surinder Singh, DSP was already present there; search resulted in recovery of contraband in the form of opium tied around waist of the accused; 10 gms was separated as a sample and on being weighted, the remaining opium came to be 2 kgs and 240 gms; the sample and remainder of recovered opium were converted into sealed parcels, which were taken into police possession; ruqa was sent to the police station on the basis of which formal FIR was registered; accused was formally arrested in this case; sample parcel was sent to the office of Chemical Examiner, Punjab and as per report received there from, it was found to be that of opium.

3. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court; on presentation of the challan, documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C., and then finding a prima facie case, charge for an offence under Section 18 of the Act was framed against the accused, to which he pleaded not guilty and claimed trial.

4. During the course of prosecution evidence, prosecution examined PW-1 SI Tehail Singh, Investigating Officer, PW2 HC Balraj Masih, PW-3 Inspector Ram Parkash, PW-4 Constable Janta Singh, PW-5 Surinder Singh, DSP (retired), PW-6 ASI Balwinder Singh.

5. The prosecution relied upon following documents i.e. Ex.P1 affidavit of MHC Balraj Masih, Ex.P2 sample seal impression, Ex.P3

memo regarding handing over case property to concerned SHO, Ex.P4 Form No.29, Ex.P5 application for deposit of case property in safe custody, Ex.P6 order passed by Id. Illaqa Magistrate, Ex.P7 consent memo, Ex.P8 recovery memo, Ex.P9 personal search memo, Ex.P10 ruqa, Ex.P1/A carbon copy of formal FIR, Ex.P11 rough site plan of the place of recovery, Ex.P12 grounds of arrest memo and Ex.P13 affidavit of Constable Janta Singh. With that, the prosecution evidence got concluded.

6. Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in evidence against the accused were put to him but he denied the same, contending that he is innocent and has been falsely implicated in this case due to party factionalism in the village.

7. In defence evidence, the accused tendered copy of judgment passed by CJM, Moga in a connected matter i.e. FIR No. 64 dated 26.03.2002 titled as 'State Vs. Naib Singh', Ex.DX.

8. After hearing arguments, learned Judge, Special Court, Moga, vide judgment dated 08.11.2005 concluded that the prosecution had failed to prove its charge against the accused beyond a shadow of reasonable doubt and acquitted the accused of the charge framed against him.

9. The main reasons for arriving at this conclusion happened to be as follows:-

- i. that in a case arising out of the same occurrence with regard to the alleged recovery of pistol from the accused,

- the prosecution version was found to be doubtful and accused had been acquitted of the charge framed against him, vide judgment passed by CJM, Moga on 15.11.2003;
- ii. that the prosecution had not challenged that judgment by way of filing appeal, therefore the said judgment had become final and binding upon the parties, therefore, the prosecution story suffers on that account adversely affecting its credibility;
- iii. that the prosecution case is that further search of the accused resulted in detection of the fact that he was carrying articles around his waist. It is highly doubtful that when personal search of accused was conducted for the first time, then such articles tied around waist of accused could not have been detected by the police;
- iv. that there was a non-compliance of the provision of Section 50 of the Act and there was discrepancy between statement of SI Tehal Singh, Investigating Officer-PW-1, that five police parties had been formed for conducting raid at the disclosed place, whereas, PW-5 Surinder Singh, DSP (retired) had stated that only two police parties had been formed, one headed by SI Tehal Singh and other by Rajesh Hasthir, SHO, Police Station City, Moga;
- v. that there was a non-compliance of the provisions of Section 42(2) of the Act, since search and seizure had been effected between sunset and sunrise;
- vi. that the secret information received had not been reduced into writing and sent to immediate official superior in rank within statutory period.

10. The State felt aggrieved by the acquittal of accused in this case and has approached this Court by way of filing an application for leave to appeal, which was allowed and the appeal was admitted, vide

order dated 03.10.2007.

11. I have heard learned State counsel besides going through the record.

12. No doubt in an appeal against the judgment of acquittal, this Court can reappraise the entire evidence, so as to find out whether the trial Court was justified in returning finding of acquittal but at the same time, interference by the Appellate Court is called for, only if the conclusion drawn by the trial Court is perverse or arbitrary. If two views are possible, even then for said reason, the judgment of the trial Court is not to be upset. Here after hearing the State counsel and going through the record, I find that the judgment passed by the trial Court can certainly be not termed as perverse or suffering from any infirmity. There does not appear to be any misappraisal of evidence or wrong interpretation of law applicable. Therefore, I do not find any merit in the appeal. The same stands dismissed accordingly.

06.05.2022

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**(H.S. MADAAN)**  
**JUDGE**

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