

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-353-2021 (O&M)
Date of Decision : 17.11.2022

State of Punjab

..... Applicant

Versus

Dilbagh Singh and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. J.S.Mehandiratta, Addl. Advocate General, Punjab
for the applicant.

VIKRAM AGGARWAL, J

CRM-31274-2021

Through this application, prayer has been made for condonation of delay of 85 days in filing the appeal.

Heard. For the reasons mentioned in the application, which is duly supported by an affidavit of Manjit Singh, PPS, Deputy Superintendent of Police, Sub Division Fatehgarh Sahib, District Fatehgarh Sahib, the same is allowed. Delay of 85 days in filing the appeal is condoned.

CRM-A-353-2021

The applicant-State of Punjab has preferred the instant application for grant of leave to file an appeal against the judgment dated 09.10.2019, passed by the learned Judge, Special Court, Fatehgarh Sahib vide which the respondents-accused have been acquitted.

The facts, as emanating from the record, are that on 28.06.2018,

a police party which was engaged in search operation and patrolling, apprehended the respondents-accused. Both were found to be carrying black coloured carry bags. Since their act and conduct was suspicious, one Dr. Ravjot Grewal, IPS, Assistant Superintendent of Police, was requested to come at the spot. The offer, as envisaged under Section 50 of the Act, was given to the respondents-accused and the carry bags were searched. Both carry bags were found to be containing 14 injections each of Avil and Buprenorphine. FIR registered. Investigation commenced. After completion of formalities and completion of investigation, final report was submitted against the respondents-accused. Trial commenced. After its conclusion, the trial Court acquitted the accused finding that the prosecution had not been able to prove its case beyond reasonable doubt.

Aggrieved by the said decision, the State of Punjab has preferred the present application for seeking leave to file an appeal.

We have heard Sh. J.S.Mehandiratta, learned Addl. Advocate General, Punjab and have perused the record.

Sh. Mehandiratta has strenuously urged that the trial Court has not appreciated the controversy from the correct perspective and has given undue weightage to minor contradictions in the statements of witnesses and the evidence produced by the prosecution. It has been argued that the prosecution had led cogent evidence to prove its case against the accused and, therefore, the trial Court erred in acquitting the accused. Learned counsel for the applicant-State has also contended that the menace of drugs is increasing in the State of Punjab day by day and such cases need to be dealt with firmly. It has been urged that the judgment of the trial Court is not sustainable. Sh. Mehandiratta has prayed that the judgment be set aside

and the respondents-accused be convicted for the offences committed by them.

Before referring to the merits of the case, it would be appropriate to discuss the legal position in so far appeals against judgments of acquittal are concerned.

It is now well settled that Courts have to be extremely careful while hearing appeals against acquittal and the judgments of acquittal should not be interfered with lightly. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of “caution” was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence. Though, in this case the Hon'ble Apex Court reversed a judgment of acquittal but the principles carved out would definitely be binding and would be applicable as per the facts of each case. As stated above, in the present case, there is no perversity on facts or law. Still further, in the case of **State of Maharashtra Vs. Fazal Rehman Abdul, 2014(7) SCC (Criminal) 01**, the Hon'ble Apex Court laid few parameters to be kept in mind while entertaining appeals against judgments of acquittal. It was held that 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. It was held that while dealing with a judgment of acquittal, the Appellate Court has to consider the entire evidence on record so as to arrive at a finding as to whether the view of the trial Court was perverse or otherwise unsustainable. It was also held that the Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters presumption of his innocence. The part of the Judgment dealing with this issue is reproduced here-in-below:-

“9. This Court has laid down parameters for interference against the order of acquittal time and again. 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. While dealing with a judgment of acquittal, the appellate court has to 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. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. 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 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 in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. 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. The 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.”

This view was also taken by the Hon'ble Apex Court in

a case **State of Rajasthan Vs. Madan alias Madaniya, 2019 CrI.L.R. (S.C.) 09**. It was held by the Hon'ble Apex Court that in an appeal against acquittal, the Appellate Court would only interfere where there exists perversity of facts and law. While arriving at these conclusions, the Hon'ble Apex Court relied upon the Judgment in the case of **Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2) SCC 490**.

Coming to the merits of the present case, having heard learned counsel for the applicant-State at length and having perused the judgment as also the other relevant record, we are of the considered opinion that the prosecution was unable to prove its case against the accused beyond reasonable doubt. No doubt, the menace of drugs is increasing at a very fast pace. However, this alone would not be sufficient to fasten criminal liability on the accused and the prosecution would have to prove its case by leading cogent evidence. It has to be borne in mind that the Act provides for very stringent punishment in case the accused is found to have committed an offence under the same and, therefore, it is all the more important and imperative for the prosecution to prove its case beyond reasonable doubt. It is for this reason that several safeguards have been provided under the Act and it is obligatory upon the investigating agency and then the prosecution to comply with these provisions. The trial Court has passed a very well reasoned judgment discussing about each aspect and we find no reason to differ with the same. The star witness of the prosecution was PW2 Dr. Ravjot Grewal, IPS who had been called to the spot when the respondents-accused were suspected to be carrying some narcotics. However, this witness completely faltered in the cross-examination and despite being a senior officer of the State, went on to state

that she did not remember whether the investigating officer had asked anyone to join as independent witnesses. She could not tell whether any guard or official worker was present at the Aam Khas Bagh or not. She could not tell whether the Investigating Officer had gone to Aam Khas Bagh for calling any person for joining him as an independent witness or not. She said that she did not know whether CCTV cameras were installed outside Aam Khas Bag or not. She did not remember whether any document was prepared during that period or not. She could not tell whether the police information or whether the person who had taken the police information (ruqa) had returned to the place of recovery in her presence. She could not tell as to whether the Investigating Officer had recorded statement of any witness in her presence. She could not tell whether the site plan Ex.P6 had been prepared in her presence or not. She did not remember as to from where the name of house of Surjit Singh was collected and was mentioned in the site plan Ex.P6. The learned trial Court, therefore, rightly came to the conclusion that the presence of the officer at the spot was itself in doubt. The trial Court also discussed the major discrepancies in the statements of witnesses. Infact, the witnesses were not even able to tell where the printer had been installed for taking print out of the documents which had been prepared, as per the Investigating Agency, at the spot. While PW2 Dr. Ravjot Grewal stated that laptop and the printer were operated from the battery of the vehicle, PW4 SI Rupinder Singh, who was the Investigating Officer of the case, stated that the printer and laptop were operated from the electricity socket installed on the outer wall of the house of one Captain Sukhjit Singh. The investigation conducted by the Investigating Officer was also very shoddy. He did not verify from the manufacturing company

regarding the genuineness of the batch of the alleged contraband nor did he verify from the manufacturing company about the wholeseller or retailer who had purchased the contraband. It was also not verified as to from where the respondents-accused had purchased the contraband. Head Constable Daljit Singh, who appeared as PW1, went to the extent of stating that no Form No.29 was prepared at the spot and no sample seal slip chits were prepared at the spot. Infact, form No.29 was not found mentioned in the FSL report also. The trial Court, therefore, came to the conclusion that Form No.29 had never been sent with the sample parcels and seemed to have been prepared only to complete the formaities and to plug the lacunas. The trial Court also noticed many other inconsistencies in the case of prosecution. It, therefore, rightly came to the conclusion that the prosecution had not been able to prove its case against the accused. In our opinion, the defence remained successful in causing a dent in the case of the prosecution and, therefore, the trial Court rightly acquitted the accused.

In view of the settled position of law and the facts and circumstances of the case, as noticed above, we do not find any merit in the present application and the same is hereby dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

17.11.2022
mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No