

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

214

CRM-A-488-2021

Decided on : 13.09.2022

State of Punjab

... Appellant(s)

Versus

Damandeep Kumar @ Deepa

... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE JAGMOHAN BANSAL**

Present:- Mr.Arjun Sheoran, DAG, Punjab, for the appellant.

G.S. Sandhawalia, J. (Oral)

The present application has been filed by the State under Section 378 (3) Cr.P.C. against the judgment of acquittal dated 02.12.2019 recorded by the Special Court, Shaheed Bhagat Singh Nagar in FIR No.164 dated 03.11.2017 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act').

The recovery in question from the respondent was of 20 injections of Buprenorphine containing salt Buprenorphine Hydrochloride and 15 grams of intoxicating substance containing salt Alprazolam on 03.11.2017. The Trial Court granted the benefit of doubt primarily on the ground that the prosecution failed to prove its case beyond the shadow of reasonable doubt and keeping in view the fact that recovery has to be in conformity with the requirements of Section 50 of the NDPS Act since the search and recovery was not made in the presence of a Gazetted Officer or a Magistrate, which was held to be fatal to the case of the prosecution. The Trial Court relied upon the judgment of the Apex Court in **Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018 (2) RCR (Criminal) 931** while

also noticing that the Constitution Bench in **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2011 AIR (SC) 77** were also binding upon it. Apart from that the recovery was effected in a busy locality. Therefore, keeping in view the fact that there were stringent punishments provided under the NDPS Act, the non-joining of the independent witnesses was held to throw serious doubt on the veracity of the prosecution case.

The said reasoning, in our considered opinion, cannot be faulted with in any manner as admittedly the recovery was from the pant-pocket of the respondent and therefore, the said judgments would be fully applicable. Even otherwise, from a perusal of the record we are of the considered opinion that the acquittal is well justified. The recovery was made on 03.11.2017 and the contraband was produced before the Magistrate on 04.11.2017 who had sealed the samples which were to be sent to the FSL with the seal 'HS'. We have also perused the report of the FSL (Ex.PW-5/J) which would go on to show that the samples were received after a period of 6 days on 10.11.2017. There was no mention in the said report of the seal 'HS' which was affixed by Shri Harshbir Sandhu, JMIC, SBS Nagar. Reference has only been made of the seal of Balwinder Singh, SI and the seals of Manjit Lal, SI and Subhash Bath, SI. It is apparent from the record that admittedly there was delay in sending the contraband and therefore, the tinkering during the time the samples remained in police custody, cannot be ruled out.

In such circumstances, we are of the considered opinion that the findings which have been recorded by the Trial Court are well justified, in the

facts and circumstances of the case and therefore, we do not find any reason to grant leave to appeal since it is settled principle that only on account of perversity, the judgment is liable to be interfered with. The Trial Court has discussed the evidence in detail and given valid reasons. It is a matter of fact that the recovery was from the person and in the absence of any Gazetted Officer being associated or a Magistrate having been called at the site, the recovery itself becomes doubtful. Thus, there is double presumption of innocence in favour of the accused and therefore, the benefit of acquittal which has been granted is not lightly to be interfered with, as per settled principles of law.

Accordingly, in view of the above discussion, no case is made out for allowing the application for grant of leave to appeal and the same is dismissed. Consequently, the appeal is also dismissed.

(G.S. SANDHAWALIA)
JUDGE

September 13, 2022
sailesh

(JAGMOHAN BANSAL)
JUDGE

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