

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

CRM-A-2413-2019 (O & M)
Date of decision: 17.08.2022

State of Punjab

....Appellant(s)

Versus

Kashmiro @ Shiro

...Respondent(s)

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

Present: Mr. Ajay Pal Singh Gill, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

CRM-33270-2019

Application has been filed for condonation of delay of 85 days in filing the application for grant of leave to appeal.

Keeping in view the averments made in the application duly supported by affidavit of the official, application is allowed. Delay of 85 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of.

CRM-A-2413-2019

The present application has been filed under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment passed by the Special Court, Jalandhar dated 30.03.2019 whereby acquittal has been recorded of the respondent in FIR No. 59 dated 10.04.2015 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'), P.S. Phillaur, Jalandhar.

Counsel for the State has submitted that the reasoning given by

the Trial Court is not justified as there was a lady constable also present and,
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integrity of this document

therefore, the reasoning that there was violation of Section 50(4) of the Act is not justified.

We have perused the paper book. The respondent is stated to have been found in conscious possession of 200 grams of narcotic powder drug (Alprazolam) without any valid license or permit. The reasoning given by the Trial Court as such was based on the binding precedent of the Apex Court in *State of Rajasthan vs. Parmanand and others, 2014 (2) RCR (Crl.) 40* that if the person is also searched, Section 50 of the Act will come into play. Apart from that, it has also been noticed by the Trial Court that the Lady Constable PW-4 Amarjit Kaur, in her cross examination, had stated that the Investigating Officer, who admittedly was a male, had conducted the search and it was on such account, the trial Court came to the conclusion that there was violation of Section 50(4) of the Act, which provides that a female has to be searched only by a female. Therefore, an important right of accused was vitiated. Reliance was placed upon the judgment of this Court in *Smt. Manorama Devi vs. State of Haryana, 2018 (2) RCR (Crl.) 339*.

The prosecution case in essence was that on 10.04.2015, the police party was present when the respondent was seen coming from the side of village Morro carrying a nylon envelope in her hand and had turned back on seeing the police party. She had been apprehended by the Lady Constable Amarjit Kaur and disclosed her identity and was apprised of her legal right of search to be conducted in the presence of a Gazetted Officer/Magistrate. She is stated to have reposed confidence in ASI Parminder Singh and her consent memo was accordingly prepared. The seized contraband as such was recovered from the plastic envelope carried by the accused Kashmiro in her left hand. It has also come in the statement

was conducted by a Lady Constable and the memo was prepared Ex.P-6. The disclosure statement Ex.P-7 shows that she had got the intoxicant powder from one Mohan Lal @ Ghugga. It has also come on record that the contraband as such was only deposited on 17.04.2015 and thus, there is also a delay of almost a week and chances of tampering with the same cannot be ruled out. Keeping in view the stringent punishment provided under the Act, the benefit as such has to go to the respondent. The evidence discussed would also go on to show that the person of the accused as such was also searched and the principles laid down in *Parmanand's case (supra)* wherein also the contraband was being carried in the bag by the accused and personal search was also conducted. Reliance had also been placed upon the earlier judgment in ***Dilip and another vs. State of Madhya Pradesh, 2007 (1) RCR (Crl.) 586*** by the Apex Court and resultantly, no interference had been made against the benefit of acquittal which the Rajasthan High Court had given. The relevant portion in *Parmanand's case (supra)* reads thus:-

“10. In Dilip & Anr. v. State of Madhya Pradesh 2007(1) RCR (Criminal) 586 : 2007(1) Recent Apex Judgments (R.A.J.) 235 : (2007)1 SCC 450, on the basis of information, search of the person of the accused was conducted. Nothing was found on their person. But on search of the scooter they were riding, opium contained in plastic bag was recovered. This Court held that provisions of Section 50 might not have been required to be complied with so far as the search of the scooter is concerned, but keeping in view the fact that the person of the accused was also searched, it was obligatory on the part of the officers to comply with the said provisions, which was not done. This Court confirmed the acquittal of the accused.

11. *In Union of India v. Shah Alam 2009(3) RCR (Criminal) 158 : 2009(3) Recent Apex Judgments (R.A.J.) 695 : (2009)16 SCC 644*, heroin was first recovered from the bags carried by the respondents therein. Thereafter, their personal search was taken but nothing was recovered from their person. It was urged that since personal search did not lead to any recovery, there was no need to comply with the provisions of [Section 50](#) of the NDPS Act. Following *Dilip*, it was held that since the provisions of [Section 50](#) of the NDPS Act were not complied with, the High Court was right in acquitting the respondents on that ground.

12. Thus, if merely a bag carried by a person is searched without there being any search of his person, [Section 50](#) of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, [Section 50](#) of the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, [Section 50](#) of the NDPS Act will have application."

It has also been noticed by the Trial Court that the respondent is an illiterate lady and she had put her thumb impressions and it has come on record that it was not mentioned in the memos that the same were read over and explained to her. Thus, it was held that it was a defective offer apart from the fact that it has also come on record that the lady Constable also, in her cross examination, admitted the fact that the Investigating Officer had conducted the search of the accused who was a female and which was

noticed that the time of writing done was also varying from the statements as such of the police witnesses and, therefore, has come to the conclusion that the consent memo had been fabricated later on just to complete the paper work and the fact that no independent witness had been joined though the place of recovery was a thoroughfare. Even otherwise, no effort has been made by the prosecution to investigate the source of the drugs though they knew the name of the suppliers.

Accordingly, in the absence of any perversity in the judgment under appeal and keeping in mind that the Special Court has examined the evidence in detail, we are of the considered opinion that there is double presumption of innocence in favour of the respondent-accused. It is settled principle that interference in the judgment of acquittal is only to be done in case there is perversity in the judgment itself, which the counsel for the State could not point out as such.

In such circumstances, no case is made out to grant leave to appeal in the present facts and circumstances. The present application accordingly stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

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(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No