

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

CRM-A-2544-2019 (O & M)
Date of decision: 09.08.2022

State of Punjab

....Appellant(s)

Versus

Lakhvir Singh

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

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

G.S.SANDHAWALIA, J. (Oral)

CRM-34326-2019

Application has been filed for condonation of delay of 138 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 138 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of.

CRM-A-2544-2019

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 Judge, Jalandhar dated 04.02.2019 whereby, acquittal has been recorded of the respondent in FIR No. 82 dated 03.05.2015 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act'), P.S. Phillaur, Jalandhar.

Prosecution case was set in motion by lodging the abovesaid

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FIR wherein, the allegations were that the respondent-accused was coming

on foot and on seeing the police party, had become perplexed and, therefore, search was made after giving an option as such to get the search conducted from the Magistrate or from a Gazetted Officer. The contraband recovered was 150 grams of intoxicant power i.e. Alprazolam. The benefit of acquittal has been granted on the ground that since the search was of the person, provisions of Section 50 of the Act had not been complied with. In this regard, the trial Court relied upon the judgment of the Apex Court in ***State of Rajasthan vs. Parmanand and others, 2014 (2) RCR (Crl.) 40*** apart from that there are other grounds also regarding non-joining of the independent witnesses and the fact that the recovery was effected on 03.05.2015 whereas, sample was sent 5 days later i.e. only on 08.05.2015 and, thus, benefit has been given by the Trial Court.

We have gone through the statements appended of PW-2 ASI Parminder Singh, which would go on to show that he had conducted the search of the accused and the polythene envelop was recovered from the right pocket of the pant, which contained the intoxicant power. In the cross examination, he admitted that no other person had been checked except the accused and the *abadi* of village Morron was situated at a distance half a kilometer and there was no dearth of private witnesses and the place of recovery was a single road. It has also come in the cross examination that remand of the accused was not taken to determine the source of contraband. The denial of course was there that the consent was not invalid and was as per law. Statement of PW-4 ASI Om Prakash is also to the same effect but there is a contradiction as such which arises in the cross examination that a number of persons were checked besides the accused and, therefore, doubt as such arises whether both the police personnel were on duty at the same

point of time. He also admitted that many persons had passed by the side and neither any person was called from the *abadi* area.

Thus, we are of the considered opinion that the trial Court was justified to grant the benefit of acquittal since mandatory provisions of the Act have not been complied with. Reliance can be placed upon the judgments rendered by the Apex Court in ***State of Punjab vs. Baldev Singh, (1999) 6 SCC 172*** and ***Vijaysinh Chandubha Jadeja vs. State of Gujarat, 2011 (1) SCC 609*** followed in ***Arif Khan @ Agha Khan vs. State of Uttarakhand, (2018) 18 SCC 380***. Relevant portion of *Vijaysinh Chandubha Jadeja's case (supra)* reads thus:-

*“22. In view of the foregoing discussion, we are of the firm opinion that the object with which right under [Section 50\(1\)](#) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of [Section 50](#) of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision. As observed in ***Re Presidential Poll, (1974) 2 SCC 33***, it is the duty*

of the courts to get at the real intention of the Legislature by carefully attending to the whole scope of the provision to be construed. "The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole." We are of the opinion that the concept of "substantial compliance" with the requirement of [Section 50](#) of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of sub-section (1) of [Section 50](#) nor it is in consonance with the dictum laid down in Baldev Singh's case (supra). Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of [Section 50](#) had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf. We also feel that though [Section 50](#) gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of (1974) 2 SCC 33 the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well."

The fact remains that the stringent provisions as such of the Act having not been duly complied with and no independent person having joined would result in the benefit of acquittal as such.

In such circumstances, it is apparent that the trial Court has rightly recorded acquittal and the benefit of doubt has to flow to the accused. The judgment as such does not seem to be suffering from any vice of perversity that would give any reason to reopen the double presumption of innocence, which has now come in favour of the respondent, as per the settled principle of law.

Accordingly, keeping in view the above, we are of the considered opinion that no case is made out for grant of leave to appeal in the present facts and circumstances and the present application stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

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(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No