

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

CRM-A-1048-MA-2017

Date of decision:21.11.2023

**Union Territory of Chandigarh through Additional Public
Prosecutor** **....Appellant**

Versus

Rahul Chaudhary @ Sunny

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Y.S. Rathore, Advocate for U.T. Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application under Section 378(3) of CrPC seeking leave to appeal is preferred by Union Territory, Chandigarh against the judgment of acquittal dated 16.09.2016 passed by learned Special Court, Chandigarh in FIR No. 479 dated 08.12.2014 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter the NDPS Act).

2. Brief facts of the case are that on 08.12.2014, the Respondent-accused was apprehended by the patrolling police party at 4:00 pm on suspicion as he tried to throw away one polythene packet he was holding on seeing the police. The contents of the packet were found to be heroin on being checked through Narcotic Detection Kit. The contraband was weighed at 10 grams out of which two samples of 2 grams each were separated by SI Ashok. Thereafter he sent a message to Operation Cell for sending a second investigating officer for further investigation of the case who reached the spot and arrested the accused. The case property was deposited in the malkhana and sample was sent to CFSL for analysis.

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3. The prosecution examined as many as six witnesses. The statement of the accused was recorded under Section 313 of the CrPC where he pleaded innocence and claimed that a false recovery was planted on him and later produced three witnesses in his defence.

4. After duly appreciating the evidence on record, the learned trial Court acquitted the accused vide impugned judgment.

5. Learned counsel for UT Chandigarh submits that the trial Court misread the evidence and wrongly acquitted the accused based on minor discrepancies. It was argued that minor discrepancies are bound to occur in statements of witnesses, more so when police officials are involved as they are involved in several other such investigations. He further argues that non-joining of an independent witness would not be fatal to the prosecution case and it must be borne in mind that general public is often reluctant to join such proceedings. Learned counsel for UT further submits that tower location of mobile phones of the police officials only indicate absence of mobile phones at the spot, not absence of the police officials themselves.

6. Having heard the learned counsel for UT Chandigarh and after perusing the record with his able assistance, I am of the view that that the learned counsel for the petitioner has not been able to indicate any perversity in the impugned order that would merit interference by this court.

7. The argument of the learned State counsel that the witnesses had two mobile phones and one of the mobile phones could

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have been used by another person and hence, on this ground alone, his testimony cannot be disbelieved, is far from convincing. When HC Ajmer Singh appeared as a PW-1 during his cross-examination, he failed to disclose that the mobile in question was with someone else at the time of incident and he was not in possession of the said mobile. The remaining official i.e. Constable Anil Kumar and Head Constable Hawa Singh were not examined by the prosecution and the learned trial Court has rightly returned a finding that the presence of PW-1 Ajmer Singh is not proved on the spot and at the relevant time when the alleged contraband was recovered from the possession of respondent. Apart from that, there are major discrepancies and gaping holes in case of prosecution regarding the time of arrest. In the arrest memo Ex.P-2, the time of arrest has been shown as 6:40 pm whereas, in the ruqa Ex.P-12, the time of arrest is shown as 4:00 pm. In the absence of any independent witness at the time of alleged recovery and also during investigation these discrepancies and contradictions create a serious doubt in the case set up by the prosecution and the learned trial Court has rightly granted benefit of doubt to the respondent.

8. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely

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observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched and fortified on acquittal of the accused by trial Court.

9. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of

language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

10. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the case of the prosecution and that the prosecution has failed miserably failed to establish its version beyond reasonable doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. Resultantly, the present application as well as instant appeal is dismissed.

21.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>YES/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>