

CRM-A-1085-MA-2014

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2023:PHHC:166346

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

CRM-A-1085-MA-2014

Date of decision : 09.05.2023

State of Punjab

...Applicant/appellant

Vs.

Major Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Madhur Sharma, AAG, Punjab.

**Mr. Dhruv Gupta, Advocate
for the respondent.**

DEEPAK MANCHANDA, J.(Oral)

This is an application filed under Section 378 (3) Cr.P.C for grant of leave to appeal against the judgment dated 27.09.2013, acquitting Major Singh (respondent) in FIR No.37 dated 28.03.2009 under Sections 18, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered at Police Station Raikot, District Ludhiana.

It is the case of the prosecution that on 28.03.2009, when a police party of Police Station Raikot led by SI Gurdial Singh was patrolling in the area of canal bridge of Ramgarh Sibia, the respondent was seen coming on foot from the direction of Ramgarh Sibia carrying a bag in his hand. On seeing the police party, he got perplexed and tried to turn back. On suspicion, he was apprehended and on inquiry, he disclosed his name as Major Singh son of Malkit Singh. A search was conducted on the respondent in the presence of Gazetted officer, DSP-Narinder Pal Singh and on checking of the bag of the

respondent, opium wrapped in a polythene was recovered from the bag. On weighing the contraband, the same was found to be 2 kgs. Accordingly, the respondent was taken into custody.

Despite awarding numerous opportunities, the prosecution failed to conclude its evidence and the same was ordered to be closed by order of the trial Court. Statement of the respondent under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to him, who denied the same and pleaded false implication.

The trial Court having adverted to the failure of the prosecution to prove its case, disbelieved its case and as a consequence thereof, recorded acquittal of the respondent.

Learned counsel representing the State submits that the sole ground for the acquittal of the accused-respondent is that the prosecution did not produce its witnesses, who were officials of the Police Department, for their examination-in-chief/cross examination and their testimonies could not be read in to evidence, therefore, trial Court has erred in acquitting the accused-respondent.

Learned counsel for the respondent submits that there is no infirmity in the judgment passed by the Lower Court and the respondent has been rightly acquitted after appreciating the evidence on record.

I have heard the submissions made by learned counsel for the parties and have gone through the case file.

A perusal of the judgment passed by the trial Court dated 27.09.2013 shows that in support of the prosecution's case, ASI Harbhajan Singh appeared as PW1, SI Nirmal Singh appeared as PW2, HC Baljinder

Singh appeared as PW3 and Inspector Gurdial Singh appeared as PW4. It has come on record that apart from the testimony of PW1 ASI Harbhajan Singh, no other prosecution witness has come forward to prove the case of the prosecution despite having been granted numerous opportunities by the trial Court. It is only for the reason that the prosecution failed to appear and prove its case beyond the shadow of doubt, the respondent was acquitted of the charges against him.

After perusing the judgment dated 27.09.2013, this Court finds that the trial Court has passed a well reasoned judgment considering failure on the part of the prosecution to prove its case and recorded acquittal of the respondent.

The application filed by the State seeking leave to prefer an appeal merits no consideration and the same is declined and the application is dismissed.

(DEEPAK MANCHANDA)
JUDGE

09.05.2023
sapna/vanita

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