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

CRM-A-429-2022

Date of Decision: December 19, 2023

State of Punjab

...Applicant-Appellant

Versus

Narinderjit Singh @ Sodhi

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Madhur Sharma, AAG Punjab.

HARPREET SINGH BRAR, J. (ORAL)**CRM-21899-2022**

This is an application seeking condonation of delay of 72 days in filing the accompanied application under Section 378(3) of Cr.P.C.

For the reasons mentioned in the application, the same is allowed.

Delay of 72 days in filing the appeal is condoned.

CRM-A-429-2022

The present application is preferred by the State against the judgment of acquittal dated 05.10.2019 passed by learned Judge, Special Court, Fatehgarh Sahib in FIR No. 171 dated 15.12.2011 under Section 18 of Narcotic Drugs and Psychotropic Substances Act (hereinafter 'NDPS Act') registered at Police Station Fatehgarh Sahib, District Fatehgarh Sahib

FACTUAL BACKGROUND

2. On 15.12.2011, a police party headed by SI Harjinder Singh, was patrolling the area near Dera Banta Singh which falls in the revenue estate of Village Mandophal. The patrolling party apprehended a car bearing registration no.

PB-10-BY-6121 make Indica on which a plate inscribed with the words 'Vice President' was affixed above the registration number plate and a VIP sticker was stuck on the front windscreen, at the checkpoint on suspicion. A search was conducted and a polythene paper containing opium was recovered from the dashboard. The contraband was weighed at 2 kg out of which two samples 10 gm each were drawn. Thereafter, a *ruqa* was sent to the police station was registration of the instant FIR, following which he was arrested.

3. On completion of investigation, a report under Section 173 CrPC was presented before the trial Court. A formal charge sheet dated 17.08.2015 was prepared and served upon the respondent for commission of an offence under Section 18 of the NDPS Act to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as 6 witnesses to prove its case, while the respondent-accused did not examine any witnesses in his defence.

CONTENTIONS

5. Learned State counsel assails the impugned judgment on the ground that the learned trial Court had erred in holding that the prosecution case is fatally flawed as the respondent was not taken to the Magistrate or a Gazetted Officer. The learned trial Court has failed to consider that the consent memo (Ex. PA) which duly proves the compliance of Section 50 of the NDPS Act, which negates the need to produce the accused before the Magistrate or a Gazetted Officer.

6. Further, learned State counsel submit that representative samples not drawn by the Magistrate is not fatal to the prosecution case as the inventory was certified to be correct by the Magistrate (Ex. PW4/D) which is in compliance of Section 52A(2)(a) of the NDPS Act. Additionally, not filling the CFSL form on the spot can also not be considered fatal to the case of the prosecution. Learned State counsel further contends that Section 57 of the NDPS Act provides 48 hours for the

information of arrest or seizure to be communicated to the superior officers, as such,

the trial Court erred in concluding that Section 57 of the NDPS Act was not complied with.

OBSERVATIONS AND ANALYSIS

7. Having heard the learned State counsel and after perusing the record with his able assistance, this Court is of the opinion that the learned trial Court has correctly assessed the evidence on record to reach the right conclusion and as such, there is no perversity in its findings.

8. While under Section 42 of the NDPS Act, SI Harjinder Singh was competent to conduct search and seizure in case of a chance recovery, however, since the person of the accused was also searched, a strict compliance of Section 50 of the NDPS Act is necessary. The personal search of the accused persons was also conducted along with recovery of the opium from the car. As such, it becomes obligatory on the investigating officer to produce the accused persons before the nearest Magistrate. The above lapse on the part of the Investigating Officer would make the judgment of the Hon'ble Supreme Court in **Arif Khan @ Agha Khan v. State of Uttarakhand, 2018(2) RCR (Criminal) 931** applicable to the respondent. Reliance in this regard is also placed upon the judgment of the Hon'ble Supreme Court in **State of Rajasthan v. Parmanand and another, 2014 (5) SCC 345** as well as **Vijaysinh Chandubha Jadeja v. State of Gujarat, (2005) 12 SCC 574**.

9. It is a well settled proposition that the representative samples must be drawn before the Magistrate as per the ratio laid down in **UOI v. Mohan Lal 2016 (1) R.C.R(Criminal) 858**. While acquitting the accused, a two Judge Bench of the Hon'ble Supreme Court in **Mangilal v. The State of M.P., Crl. Appeal No. 1651 of 2023 decided on July 12, 2023**, has observed that the mandate of Section 52-A of the NDPS Act has to be duly complied with. Speaking through Justice M.M.Sundresh, the following was observed:-

"8. Before any proposed disposal/destruction mandate of Section 52A of the NPDS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non-production of a physical evidence would lead to a negative inference within the meaning of section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples."

10. 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.

11. Furthermore, the trial Court has the additional advantage of closely 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 in ***CRM-A No.3 of 2022*** decided on 06.07.2023, has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

12. 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."

CONCLUSION

13. In view of the facts and circumstances of the case and the discussion above, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

December 19, 2023
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |