

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

CRM-A-1510-2019

Reserved on: 18.07.2023

Pronounced on : 24.07.2023

State of Punjab

....Applicant

Versus

Gursewak Singh alias Mota

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Gurdarshan Singh Sidhu, AAG, Punjab,
for the applicant.

HARNARESH SINGH GILL, J.

The applicant-State seeks leave to appeal against the judgment dated 29.01.2019 passed by the learned Special Court, Fatehgarh Sahib, whereby respondent No.1 was acquitted of the charges framed against him.

2. Learned counsel for the applicant-State would submit that the findings of the learned trial Court that the case seemed to be of a planted recovery upon the respondent and that there was no independent corroboration to the recovery of the contraband from the respondent, are legally untenable. It is further submitted that it was duly explained by way of the facts and evidence on record that no one had expressed his willingness to join as an independent witness and the said fact could not be held to be sufficient to acquit the accused-respondent. It is further argued that when on the record itself

the procedure as contemplated by the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), stood duly complied with, the minor contradictions ought not to have weighed in the mind of the Court to grant the accused benefit of doubt.

3. I have heard the learned counsel for the State and have also gone through the impugned judgment of acquittal.

4. A perusal of the impugned judgment of acquittal would show that the learned trial Court has found that there was lack of proper compliance of Section 50 of the NDPS Act. It was further found that though mere non-compliance might not vitiate the case of the prosecution, yet the same puts the case of the prosecution under a strong shadow of doubt. It was further found that when it was the case of the prosecution itself that the alleged recovery was effected from the place near village Dholewal, the Investigating Officer was required to join the Sarpanch of the village, if none was willing to join as an independent witness and that the Sarpanch, being a public servant, could not have denied him joining as independent witness. It was further found by the trial Court that there being discrepancies in the prosecution case, the inevitable conclusion thereof would emerge that the alleged contraband had been planted upon the accused-respondent. The relevant extracts from the judgment of the trial Court would read as under:-

“26. Even though it is the principle of law that merely for want of independent corroboration the prosecution case should not be thrown out yet, the spirit of law is that where there is a lack of independent corroboration, it becomes a stricter duty of the Court to appreciate the testimony of the official witnesses

and to ascertain the merit if any in the explanation furnished by the Investigating Officer for non joining of independent witness.

27. The cumulative effect of all these snags and discrepancies leads this Court to the inevitable conclusion that the prosecution witnesses were not present at the spot on the date and time so stated. The recovery did not take place in the mode and manner alleged. The prosecution version does not inspire any confidence in the mind of the Court.

28. Above all, the possibility of the plantation on the accused falling within the ambit of non-commercial quantity cannot be ruled out in the obtaining circumstances of the case. It became the bounden duty of the Investigating officer to observe all the safeguards provided under the Act which is totally missing in the present case. Thus, no credence can be lent to the prosecution version.”

5. The learned State counsel could not point out any material evidence on record, which could connect the chain of events in terms of the provisions of the NDPS Act. Though the cases cannot be thrown away merely for the reason that there was no independent witness to the recovery and/or occurrence(s), yet the fact remains that in a case of alleged recovery of commercial quantity from the accused, it is the bounden duty of the prosecution to prove the same from independent corroboration.

7. This Court does not find that the findings recorded by the trial Court suffer from any illegality.

8. In view of the above, finding no merit in the present application, the same is dismissed. Leave to appeal is declined.

24.07.2023
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No