

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

**CRM No.37630 of 2023 in/and
CRM-A No.1210 of 2023 (O&M)
Date of Decision:07.11.2023**

State of U.T., Chandigarh

... Applicant/Appellant

Versus

Shammi

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Yashwant Singh Rathore, Addl. P.P., U.T., Chandigarh.
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application has been preferred by the applicant-U.T., Chandigarh under Section 378 (3) of the Criminal Procedure Code, 1973 against the judgment dated 14.02.2022 passed by the learned Additional Sessions Judge, Chandigarh whereby the respondent has been acquitted in case bearing FIR No.302 dated 12.10.2018 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act) at Police Station Mauli Jagran, Chandigarh.

1.1 The instant application is also accompanied by an application seeking condonation of delay of 378 days in filing of the application.

FACTUAL BACKGROUND

2. In brief, the version put forth by prosecution is that on 12.10.2018, ASI Dharam Dev along with other police officials was on patrolling duty in the area of Mauli Jagran Complex, Chandigarh and at about 2.20 PM when they reached near *sansi mohalla*, a person was seen coming by the side of wall of railways

having a bag in his right hand. On seeing the police party, he ran towards House No.2070-2071 and on being chased, he was apprehended by HC Jarnail Singh. On being checked his bag, *ganja* was recovered therefrom. On being asked, he disclosed his name, however, failed to produce any valid permit or licence to justify the possession of the said contraband. The contraband recovered from the respondent-accused was weighed to be 5.4 kgs along with polythene bag. Thereafter, the recovered contraband was converted into a parcel with seal 'SS' at two places. Efforts were also made to join an independent witness but no one came forward. After completing formalities, respondent-accused was arrested. SI Sharminder Singh, second investigating officer was called at the spot and the first investigating officer ASI Dharam Dev handed over the respondent-accused along with parcels, sample seal and other documents. On the basis of the ruqa sent, FIR under Section 20 of the NDPS Act was registered against the respondent-accused.

2.1. On presentation of challan and appearance of the accused in the Court, copies of documents relied upon by the prosecution were supplied to him, as required under Section 207 Cr.P.C.

2.2. Finding a *prima facie* case, charge under Section 20 of the NDPS Act was framed against the respondent-accused to which he pleaded not guilty and claimed trial.

2.3. In support of its case, the prosecution examined as many as 9 witnesses and closed its evidence.

2.4. Statement of the respondent-accused as required under Section 313 Cr.P.C. was recorded and the incriminating evidence was put to him. The respondent-accused denied the same and pleaded innocence but he did not lead any evidence in his defence.

CONTENTIONS

3. Learned counsel for the appellant argues that the learned trial Court has gravely erred in discarding the testimonies of the official respondents in the absence of any evidence produced in defence by the respondent-accused to establish that they were biased in conducting the investigation and the alleged recovery was planted upon the respondent-accused with an ulterior motive. Moreover, the official respondents had duly corroborated the prosecution version. Further, the learned trial Court had ignored the report of CFSL Ex.P33 and therefore, the impugned judgment dated 14.02.2022 passed the learned trial Court is liable to be set aside.

ANALYSIS AND OBSERVATION

4. This Court has heard learned counsel for the appellant and has gone through the record of the case with his able assistance.

5. A perusal of the record would show that there are stark and glaring contradictions in the statements of the official respondents, who were members of the raiding party. PW1 HC Jarnail Singh deposed that the contraband was weighed on electronic weighing machine, which was brought by a lady Constable whereas PW2 Constable Parmod stated in his examination-in-chief that he was carrying the investigating kit with him including the weighing machine. Different versions were given by the official respondents regarding arrival of the second investigating officer on the spot as well as the manner of apprehension of the respondent-accused. PW1 HC Jarnail Singh had feigned ignorance regarding arrival of the second investigating officer as whether he came in a car or on a motor cycle; whereas PW2 Constable Parmod stated that the second investigating officer came on his private motor cycle. PW6, SI Sharminder Singh, who was the second investigating officer, had stated that he reached on the spot in his

private car. Further, it was nowhere the case of the prosecution that provisions of Section 50 of the NDPS Act were complied with but during the cross-examination PW8 Dharam Dev stated that the respondent-accused was apprised of his right to be searched by him or a Gazetted Officer. However, no documentary evidence to corroborate the said fact was brought on record. Furthermore, in respect of preparation of the documents on the spot, there are contradictions in the versions of PW8 Dharam Dev, ASI (retd.), first investigating officer and PW6 SI Sharminster Singh, who was the second investigating officer. The investigation done by the investigating officers was shoddy and therefore, the learned trial Court has rightly acquitted the respondent-accused by giving him the benefit of doubt.

6. 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 observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. The presumption of innocence further gets reinforced on the acquittal of the accused. (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*).

7. Further, no plausible and satisfactory explanation came forth from the counsel appearing for the appellant qua delay of 378 days in filing the present application seeking leave to appeal.

CONCLUSION

8. 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 prosecution case and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined on the ground of delay as well as on merit. Resultantly, the main appeal is also dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 07, 2023

Pankaj*	Whether speaking/reasoned	Yes/No
	Whether reportable	Yes/No