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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-A-1740-MA-2015
Date of decision: 12.08.2024

State of Haryana ...Applicant

Versus

Sandeep ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Nidhi Garg, AAG, Haryana
for the applicant.

Mr. P. K. Chugh, Advocate
for the respondent.

MANISHA BATRA, J. (Oral)

1. This is an application, filed by the applicant-State of Haryana under Section 378(3) of the Code of Criminal Procedure, seeking leave to file appeal against the judgment dated 02.06.2015, passed by the learned Special Judge, Hisar in case titled as *State vs. Sandeep*, arising out of FIR No.688 dated 06.07.2013, registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*), vide which, the respondent-accused had been acquitted of the charge framed against him under Section 20 of the Act.
2. Brief facts of the case relevant for the purpose of disposal of this application are that on 06.07.2013, SI Karan Singh along with EASI Om Parkash, EHC Subhash Chand and Constable Ranjit Singh was on patrolling duty and when they were near Jangra Hotel, after completing the patrolling duty, they saw a young boy coming from front side and on seeing the police party, he turned

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backwards and started moving briskly. On suspicion, the said boy was apprehended by the police party, who on interrogation, disclosed his name as Sandeep son of Dharambir, i.e. the respondent-accused. He was served with a notice under Section 50 of the Act apprising him of his rights to be searched either before a Magistrate or before a Gazetted Officer, to which, he reposed faith in SI Karan Singh. Then SI Karan Singh conducted his personal search and recovered a polythene bag containing brown sugar (Cocaine) from the right side pocket of his pant. Out of the recovered contraband, two samples of 05 grams each were separated and were put into separate polythenes and the residue contraband was weighed, which was found to be 10 grams. The residue was put in the same polythene. The samples and residue were converted into parcels by affixing the seal KS. All the parcels were taken into possession, vide separate recovery memo, which was signed by the witnesses. After use, the seal was handed over to EASI Om Parkash. SI Karan Singh sent *ruqa* Ex. P7 to the Police Station Sadar Hisar through Constable Ranjit Singh, on the basis of which, the present FIR Ex. P8 had been registered. SI Karan Singh also prepared rough site plan of the place of occurrence and thereafter, the investigation was handed over to ASI Sohan Lal. Case property along with samples was deposited in the Malkhana. On interrogation, the respondent-accused suffered his disclosure statement Ex. P10 on 07.07.2013. On the same day, accused along with sample parcels and case property was produced before the learned Judicial Magistrate First Class, Hisar. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented before the Court

3. On finding a *prima facie* case for commission of the offences

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punishable under Section 20 of the Act, the accused was charge-sheeted accordingly. He pleaded not guilty to the charges and claimed trial.

4. To substantiate its case, the prosecution examined 09 witnesses in all, besides placing reliance upon certain documents and thereafter, the evidence of prosecution was closed. Statement of accused under Section 313 of Cr.P.C. was recorded separately wherein he abjured his guilt and claimed himself to be innocent. However, no evidence in defence had been adduced by him.

5. On appraising the evidence produced on record and considering the contentions as raised by both the sides, the learned trial Court vide the impugned judgment dated 02.06.2015, acquitted the accused of the charge as framed against him by observing that the prosecution had failed to prove its case beyond reasonable doubt.

6. Feeling aggrieved, the present application has been filed by the applicant-State seeking grant of leave to file appeal against the aforesaid judgment of acquittal.

7. It has been argued by learned State counsel that the impugned judgment is liable to be set aside as the findings as given by learned trial Court are not sustainable in the eyes of law. The trial Court had not properly appreciated the evidence produced on record and had erred in acquitting the respondent. Hence, it is argued that the application deserves to be allowed and the applicant-State deserves to be granted leave to file appeal before the impugned judgment.

8. On the other hand, learned counsel for the respondent-accused has argued that the respondent had been falsely implicated in this case by the police

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party. The trial Court had rightly appreciated the evidence produced before it, thereby acquitting the respondent. It is, therefore, urged that the application is liable to be dismissed.

9. I have heard learned counsel for the parties at considerable length and have gone through the material placed on record including the trial Court record carefully.

10. Since challenge is to the judgment of acquittal of the trial Court, therefore, before proceeding further and adverting to the arguments raised by learned counsel for the parties, it would be useful to review the approach to be adopted while deciding the application for grant of leave to appeal/appeal against acquittal by the trial Court. In ***Chandrappa and others v. State of Karnataka : (2007) 4 SCC 415***, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In ***Atley v. State of U.P. : AIR 1955 SC 807***, the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In ***Aher Raja Khima v. State of Saurashtra : AIR 1956 SC 217***, it was observed that for the High Court to take a different view on the evidence "there must also be

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substantial and compelling reasons for holding that the trial Court was wrong”. In ***Ramesh Babulal Doshi v. State of Gujarat : 1996 SCC (CrL) 972***, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In **Chandrappa's case** (Supra), the Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) 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.

11. In view of the above discussed position of law, it is to be seen as to whether the applicant-State of Haryana deserves to be granted leave to file and

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pursue the appeal against the judgment of acquittal passed by the trial Court. On going through the material placed on record of the trial Court, I am of the considered opinion that no reasonable ground has been made out for allowing the application as moved by the applicant-State for the reasons to be discussed hereinafter.

12. The case of the prosecution mainly rested upon the testimonies of PW-1 EASI Om Parkash and PW-6 SI Karan Singh, who was the complainant and who had conducted initial investigation in the matter. On a perusal of their depositions, it is revealed that the same suffered from material inconsistencies, which may be pointed out as under:

(i) As per prosecution version, after apprehending the respondent and on conducting his search, one polythene bag containing cocaine was recovered from his person. Two samples of 5 grams each were taken and residue weighed to be 10 grams. Meaning thereby that the recovery was of 20 grams of cocaine. However, PW-6 deposed that the residue was of 100 grams.

(ii) Then as per prosecution case, at the time of conducting personal search of the respondent, a Spice make mobile phone and cash amount of Rs. 500/- had been recovered, which was taken into custody by memo of *jama talashi* but neither PW-1 nor PW-6 deposed about this fact. Rather, they categorically stated that no recovery was effected by way of *jama talashi*.

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(iii) As per PW-1, he had left the CIA Police Station on the date of occurrence at about 10:00 AM but according to PW-6, they had left it about 11:30 AM. Both these witnesses were not aware about the make, model and registration number of the jeep, which was allegedly used by them at the time of apprehending the respondent.

(iv) According to PW-1, seal appended on the parcels had been handed over to him, which was returned after 2-3 days of the occurrence, whereas according to PW-6, it was returned after one week.

(v) PW-6 stated that it was he, who had apprehended the respondent at a distance of 10 steps, whereas according to PW-1, EHC Subhash had apprehended the respondent.

13. The aforementioned contradictions might appear to be minor, however, the well settled proposition of law is that even minor contradictions in the statements of police officials assume greater importance when they are not corroborated by any independent and disinterested evidence. Reliance in this regard can be placed upon the authority cited as ***Dharambir alias Dharam vs. State of Haryana : 2004 (2) RCR (Criminal) 777***, wherein it was held by this Court that the evidence of the official witnesses is as good as that of public witnesses but when the official witnesses are discrepant in their statements then no reliance can be placed on their statements. In this case, no sincere efforts are shown to have been made either by PW-6 or by the Investigating Officer to join some members of the public at the time of occurrence and even during the course

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of investigation proceedings. Therefore, the contradictions as pointed out above cannot be discarded and taken lightly and in the opinion of this Court, the same certainly created a serious dent over the truthfulness of the prosecution story. Reliance in this regard can be placed upon the authority rendered by Delhi High Court in ***Dinesh Kumar vs. State : 1993 (2) RCR (Criminal) 153***, wherein it was held that associating independent witness is not a formality and the accused of that case was acquitted as no independent witness was joined by the investigating officer.

14. Further, even the statements of PW-2 EASI Harikesh and PW-3 EASI Harlal are also contradictory, thereby creating break in the chain of link evidence. PW-2 EASI Harikesh, who was Malkhana Moharrir of the concerned police station, submitted in his sworn affidavit Ex. PW-2/A that the case property and samples thereof were deposited in the Malkhana on 06.07.2013, the same were taken by Investigating Officer ASI Sohan Lal on 07.07.2013 and the samples along with seals were handed back to him on the same day. He further deposed that the samples were handed over to Constable Ashok Kumar on 18.07.2013 in an intact condition at 5-6 PM but PW-3 EASI Harlal, in his sworn affidavit, stated that the samples had been handed over to him by PW-2 on 18.07.2013. During cross-examination, he stated that the sample was handed over to him at 6 AM. He had deposited the same at 12 noon in FSL and handed over the receipt to PW-2 at 7 PM. PW Constable Ashok Kumar was not examined at all. In view of the contradictions in the statements of the aforesaid PW-2 and PW-3 with regard to time when the samples were handed over to them till it reached the hands of the chemical examiner, a doubt has been created as the

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possibility that the samples were tampered with till the same reached the hands of the chemical examiner cannot be ruled out. It is the duty of the prosecution to prove affirmatively that right from the stage of seizure till it reached the hands of the chemical examiner, there was no possibility to tamper with the material or the samples, which does not appear to have been performed by the prosecution in this case. The contradiction with regard to time of taking the samples from the Malkhana as well as about police official, who had taken the same, is a major contradiction, thereby falsifying the entire prosecution story with regard to keeping the samples in an intact condition as well as about the fact that the samples sent to FSL were the same, which were of the contraband allegedly recovered in the present case. The recovery was effected on 06.07.2013 and the samples were deposited with FSL on 13.07.2013. There is delay of 06 days in sending the same to the office of chemical examiner. No explanation whatsoever was furnished as to why the samples were sent to chemical examiner after a period of 06 days. Under these circumstances also, the possibility of tampering with the samples could not be ruled out and the link evidence has become incomplete.

15. The prosecution has also relied upon the disclosure statement allegedly suffered by the co-accused. It may be mentioned that inculpatory part of this disclosure statement could not be considered to be admissible in evidence and hence it could not be taken into consideration. More so, this disclosure statement did not lead to discovery of any new or distinctive fact, which could be considered to be admissible in evidence and, therefore, this piece of evidence also did not lend any support to the prosecution story.

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16. In view of the discussion as made above, this Court finds that the applicant-State of Haryana has failed to extend any convincing reason for this Court to form an opinion that there was any manifest illegality, perversity or the gross miscarriage of justice in the impugned judgment passed by the trial Court, thereby acquitting the respondent from charges framed against him, for which, the interference of this Court is warranted by way of granting leave to file appeal against the same. Accordingly, the application, seeking leave to appeal, is hereby dismissed.

12.08.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No