

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

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**2024:PHHC:053440
CRM-A-692-MA-2017 (O&M)
Date of decision: April 05, 2024**

STATE OF HARYANA

...Appellant

Versus

SHAMSHER SINGH ETC.

...Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Anmol Malik, Deputy Advocate General, Haryana.

ALOK JAIN, J. (ORAL)

CRM-12075-2017

The instant application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 204 days in filing the appeal.

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

CRM-A-692-MA-2017

1. The present appeal has been filed against the order of acquittal dated 04.07.2016 passed by the learned Judge, Special Court (NDPS Act Cases), Karnal.
2. Learned counsel for the appellant has vehemently argued that the learned trial Court has made an error in acquitting the accused despite the fact that there was a recovery of the contraband from the respondents. He has further submitted that the recovery was effected from the car which was apprehended when the vehicle was in transit but the learned trial Court failed to appreciate the same.
3. Learned State counsel has also argued that in the testimony of PW-4 ASI Jatinder Singh, who was the second IO of the case, stated that he tried to join the witness from village Jalmana as well as from petrol pump at the

time of recovery but this fact has been negated and the reason for acquittal is that no independent witness was joined and provisions of Sections 42, 43 and 50 of the NDPS Act were not complied with. He has further submitted that the delay which occurred in sending the samples to the office of FSL, Madhuban was inconsequential because it was not agitated that the seal of the sample was tampered or broken. It was nobody's case that the contraband was not sealed within the time frame and therefore, delay in sending the samples to the FSL could not have been fatal. As regards the minor discrepancies which have occurred in the statements of the prosecution witnesses, the same were insignificant and hence, should have no bearing on the outcome of the case.

4. I have heard learned State counsel at length and have gone through the judgment.

5. The prosecution could not prove beyond doubt with regard to the offence committed and the lapse on the part of the prosecution. It would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a Gazetted Officer or a Magistrate. Obligation under Section 50 of the NDPS Act is mandatory and requires a strict compliance.

6. Further, the Hon'ble Apex Court in the case of ***Karnail Singh vs. State of Haryana, (2009) 8 SC 539*** has held that total non-compliance with requirements of Section 42 of the NDPS Act is impermissible and delayed compliance with satisfactory explanation about delay will be acceptable compliance. Where police officer does not inform the superior at all, then it will also be a clear violation of Section 42 of the NDPS Act. The Legislature in its wisdom had made the provision of Section 42 of the NDPS Act mandatory and not optional as stated by Hon'ble Apex Court in *Karnail Singh's case* (supra).

The Hon’ble Supreme Court in the judgment of *Vijaysinh Chandubha Jadeja vs. State Of Gujarat, AIR 2011 SC 77* has therefore held that “*non-compliance of Section 42 and Section 50 of the NDPS Act are fatal to the case of the prosecution and therefore, the benefit of the same has to go to the accused*”.

7. In the light of the above, I do not find any merit in the present appeal and accordingly, the present appeal stands dismissed.

April 05, 2024
Jaspreet Kaur

(ALOK JAIN)
JUDGE

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