

In The High Court for the States of Punjab and Haryana
At Chandigarh

CRA-D-312-DBA-2003 (O&M)
Date of Decision:- 06.05.2024

State of Haryana ... Appellant

Versus

Anil Tiwari and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH

Present:- Mr. Munish Sharma, DAG, Haryana.

Mr. Rahul Vats, Advocate, for respondent/accused No.1.

Mr. R.S.Mamli, Advocate, for respondent/accused No.2.

Mr. Bahadur Singh, Advocate and
Ms. Rajni, Advocate, for respondents/accused No.3 and 4.

FIR NO.	DATE	POLICE STATION	OFFENCES
117	16.6.1998	Loharu	20, 29 of NDPS Act and 120-B IPC

GURVINDER SINGH GILL, J.

1. Appellant-State of Haryana has filed this appeal challenging judgment dated 17.10.2002 passed by learned Additional Sessions Judge, Bhiwani vide which all the four respondents/accused namely Anil Tiwari, Krishan Kumar, Anil and Sudhir have been acquitted of the charges framed against them in respect of offences punishable under Sections 20 and 29 of NDPS Act.

2. The case of the prosecution, in nutshell, is that on 16.6.1998 when a police party headed by SI Ram Rattan was present near Bus Stand Singhani, District Bhiwani, for the purpose of patrolling, Mam Chand, Tehsildar and Ram Kumar *Lambardar* met SI Ram Rattan. At that very time, a person was noticed, carrying a bag in his right hand and a (grey) coloured suitcase in his left hand and who upon noticing the police party turned back abruptly. The said person was apprehended on the basis of suspicion, who upon inquiry disclosed his name as Anil Tiwari. He was told that his bag and suitcase were to be searched as it was suspected that he was carrying some intoxicating substance and was extended an offer as to whether he wished his search to be conducted in the presence of some Magistrate or a Gazetted Officer. The said person (Anil Tiwari) opted to be searched in the presence of a Magistrate and accordingly his search was conducted by Mam Chand, Tehsildar, Loharu, and the search yielded recovery of 'charas'. While 14 kgs of 'charas' was recovered from suitcase, another 7 kgs of 'charas' was recovered from the bag. 50 grams of 'charas' was separated from each of the two recoveries as sample. The sample as well as the remaining 'charas' were sealed separately with a seal of SI Ram Rattan bearing initials 'RR' and also with the seal of Mam Chand, Tehsildar. The seal of SI Ram Rattan after use was handed over to Ram Kumar, *Lambardar*.
3. It is further the case of prosecution that on 07.08.1998, DSP Jagat Singh received secret information that Krishan Kumar had also been apprehended by the police in this case, but had been let off by SI Ram Rattan, Investigating Officer. The DSP went to Village Singhani and

recorded statements of Sunita, Roshni and Sumitra and accordingly Krishan Kumar was also arrayed as an accused. Said Krishan Kumar was formally arrested on 25.10.1998 and who disclosed in his disclosure statement (Ex.PE) that Anil son of Ram Kumar and one Sudhir were also associated with him and Anil Tiwari.

4. Consequently, the aforesaid accused were also arrested. Upon conclusion of investigation challan was presented against the accused. The prosecution in order to establish its case examined as many as 6 witnesses. The trial Court upon marshaling the evidence held that the prosecution had failed to establish its case and consequently acquitted all the accused vide judgment dated 17.10.2002. The State being aggrieved by the same has filed the instant appeal.
5. Learned counsel for appellant/State of Haryana submitted that the trial Court fell in error in holding that provisions of Section 50 of NDPS Act had not been duly complied with inasmuch as while extending the offer under Section 50 of NDPS Act, it was not made clear to the accused that it was their right to exercise an option as to whether they wished to be searched before the Magistrate or a Gazetted Officer whereas in the instant case apart from the fact that the search was effected by a Magistrate, the provision of Section 50 was not even applicable, as it is a case of search of suitcase and bag. Learned State counsel has further submitted that the trial Court gave undue weightage to the fact that there was a delay of 21 days in sending the sample for chemical examination whereas in the absence of any other evidence to suggest that the sample had not been kept

safely, the mere factum of delay would not be material. Learned State counsel further submitted that the trial Court also fell in error in observing that Mam Chand, Tehsildar was not Executive Magistrate.

6. On the other hand learned counsel appearing on behalf of the respondents/accused submitted that case of the prosecution is not only suspicious, but is also having various infirmities. Learned counsel submitted that while it was only one accused who was stated to have been apprehended at the spot allegedly in possession of contraband, it was subsequently that accused Krishan Kumar came to be arrested on the basis of alleged secret information received by DSP Jagat Singh (PW-5) and also on the basis of statements of Sumitra, Sunita and Roshni who have not been examined by prosecution. It has been submitted that said Krishan Kumar is further stated to have disclosed the names of two more co-accused namely Anil and Sudhir but none of the said three persons were ever found in possession of any contraband and nor is there any other evidence to connect them with the recovery allegedly effected from Anil Tiwari. It has been submitted that there are inconsistencies in the testimony of PW-3 Mam Chand and PW-6 Ram Rattan which go to the root of the case. Learned counsel for respondents further pointed out that in the instant case independent witness namely Ram Kumar, *Lambardar* has not been examined which would also affect the case of prosecution seriously.
7. This Court has considered the rival submissions addressed before this Court.

8. As far as the contention of the appellant regarding non-applicability of Section 50 of NDPS Act is concerned, it is a fact that in the instant case recovery was effected from one suitcase and a bag being carried by the accused and not from personal search. It is now well settled that Section 50 of NDPS Act would have no application in a case where recovery is effected from bag and is not effected from the personal search.
9. As far as the contention of the appellant to the effect that delay of 21 days in sending the sample for chemical analysis is not of any significance is concerned, this Court finds that the instant case is not just a case of delay of 21 days, but a case where the person to whom the seal after use was handed over i.e. Ram Kumar, *Lambardar* was never examined by the prosecution. Under these circumstances, the delay in sending sample would assume some significance.
10. As far as the case of the prosecution qua Krishan Kumar, Anil and Sudhir is concerned, the same is certainly on a weak footing inasmuch as apart from the disclosure statements allegedly made by the said accused, there is nothing on record to connect them with the alleged recovery from co-accused Anil Tiwari. PW-5 DSP Jagat Singh, while in the witness box stated that he had received secret information that accused Krishan Kumar had been apprehended but had been let off by SI Ram Rattan (PW-6) and that he had thereafter recorded statements of Roshni, Sumitra and Sunita. However, said Roshni, Sumitra and Sunita have not been examined as witness. Said Krishan Kumar is further stated to have disclosed names of Anil and

Sudhir. In the absence of any recovery or any other evidence to suggest that they had joined hands with the main accused, they certainly cannot be held guilty in any manner.

11. Still further, this Court finds that although it is the case of prosecution that Mam Chand, Tehsildar had already been associated, but somehow his signatures are not there on notice Ex.PK and reply Ex.PK/1, creating a doubt regarding his presence at the spot. Further, there are some discrepancies in the statements of the witnesses inasmuch as while PW-3 Mam Chand stated that writing was done by PW-6 Ram Rattan, the said PW-6 Ram Rattan stated that the writing was done by ASI Sajjan Singh. PW-3 Mam Chand stated that the writing was done on the bonnet of the jeep whereas PW-6 Ram Rattan stated that the writing work was done while sitting at the bench.
12. From the aforesaid discussion, the following infirmities are borne out which surely cast a dent in case of the prosecution:
 - i. Delay of 21 days in sending the sample coupled with the fact that the person to whom the recovery officer SI Ram Rattan had handed over the seal was never examined.
 - ii. Mam Chand, Tehsildar who was accompanying the police party right from the very inception neither attested the notice issued to the accused under Section 50 of NDPS Act nor the consent memo.
 - iii. Three of the accused nominated on the basis of disclosure statements/secret information namely Krishan Kumar, Anil and Sudhir cannot be connected with the factum of alleged recovery from co-accused Anil Tiwari as there is no evidence to show any meeting minds of the accused.

iv. The inconsistencies in the statements of material witnesses i.e. PW-3 Mam Chand, Tehsildar and PW-6 SI Ram Rattan.

13. The aforesaid infirmities when coupled together do make the case of prosecution doubtful. As such, the view of the trial Court in having acquitted the accused cannot be said to be a perverse view. It is well settled that finding of acquittal is not to be readily interfered with. In this context, a reference can be made to a judgment passed by Hon'ble the Apex Court rendered in 2023(8) SCC 197, Central Bureau of Investigation Vs. Shyam Bihari & others, wherein Hon'ble the Apex Court while examining a case of acquittal where some infirmities in impugned judgment were noticed but the appeal had remained pending for a decade, held as under:

“26. At the outset, we may observe that no doubt the judgment and order of the High Court appears a bit cryptic but that by itself need not be a ground for us to set aside the order and remit the matter to the High Court, particularly, when we have the relevant record to assess the merit of the prosecution case. More so, because the incident is of the year 1987 and the appeal has remained pending since more than a decade. In such circumstances, if we remit the matter to the High Court only to rewrite the judgment, it would be travesty of justice. Consequently, as the trial court has dealt with the matter at great length and has discussed each and every piece of evidence on which the prosecution seeks to rely, it would be apposite for us to assess whether, by not granting leave to appeal against the judgment of the trial court, there has been a miscarriage of justice.

27. It is trite law that in an appeal against acquittal, the power of the appellate court to re-appreciate evidence and come to its own conclusion is not circumscribed by any limitation.

But it is equally settled that the appellate court must not interfere with an order of acquittal merely because a contrary view is permissible, particularly, where the view taken by the trial court is a plausible view based on proper appreciation of evidence and is not vitiated by ignorance/misreading of relevant evidence on record.”

14. In view of the aforesaid discussion, this Court does not find any infirmity in the impugned judgment and the same is hereby upheld.

(GURVINDER SINGH GILL)

JUDGE

06.05.2024

mohan

(GURBIR SINGH)

JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No