

2024:PHHC:162744



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-971-2024 (O&M)
DECIDED ON: 14.08.2024

STATE OF PUNJAB

.....APPLICANT

VERSUS

SATNAM SINGH ALIAS SATTA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-26705-2024

The instant application has been under section 5 of the Limitation Act seeking condonation of delay of 131 days in filing the appeal, against the judgment dated 20.09.2023 passed by Special Judge, Kapurthala, whereby the respondent-accused have been acquitted for an offence under FIR NO. 34 sections 21/22/29 NDPS Act registered at Police Station Kotwali, District Kapurthala.

For the reasons mentioned in the application, delay of 131 days in filing the appeal is condoned. Application stands allowed and disposed of as such.

CRM-A-971-2024

1. This appeal has been preferred by the State of Punjab against the judgment dated 20.09.023 passed by the learned Special Court, Kapurthala (for short – ‘court below’), vide which accused Satnam Singh, Dalbir Singh and Sahib

Singh stand acquitted by giving the benefit of doubt for the offence 21/22/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

2. The brief facts of the case unfolds that on 02.03.2019, ASI Naveen Kumar received a telephonic call from ASI Swaran Singh about apprehension of two motor-cyclists with intoxicant injections and Heroin. Accordingly, ASI Naveen Kumar, alongwith his police team, reached at the spot and recorded the statement of ASI Swaran Singh. Afterwards, upon enquiry, the driver of the motor cycle disclosed his name as Gursahib Singh @ Sabi and pillion rider as Satnam Singh @ Satta. They were having motorcycle bearing registration No. PB-09-AB-6819 make Hero Splendor. However, upon checking the polythene bag thrown away by accused Gursahib Singh @ Sabi , 09 intoxicant injections of Buprenorphine were recovered from the same, which were converted into a parcel. Then, on checking the polythene thrown away by accused Satnam Singh , 04 intoxicant injections of Buprenorphine were recovered from the same and one more polythene bag containing 25 grams of Heroin was also recovered from him. The aforesaid contrabands were converted into separate parcels and sealed with seal bearing impression NK by ASI Naveen Kumar Specimen seal was also prepared separately. The said motor cycle was also taken into police possession. Ruqa was sent through Ct.Mandeep Singh. During investigation proceedings, on the basis of disclosure statement of accused Satnam Singh @ Satta , accused Dalbir Singh @ Kalu and Kuldeep Singh @ Sabi were also nominated in the present case being seller of that intoxicant. Accordingly, accused Kuldeep Singh @ Sabi was also apprehended on 12.03.2020, in the present case on the basis of production warrants. However, accused Dalbir Singh @ Kalu was arrested later on.

3. The learned Court below after examining the prosecution evidence, hearing counsel for both sides, has acquitted the accused Gursahib Singh @ Sabi – A3, Satnam Singh @ Satta – A1 and Dalbir Singh @ Kalu – A2 by giving them the concession of benefit of doubt and they were acquitted of the charges framed against them whereas accused Dalbir Singh @ Kalu – A2, who was already in custody in the present case was ordered to be set at liberty by the Jail Authorities. As such, State of Punjab has preferred this appeal to challenge the order of the learned Court below.

4. It is contended by the learned State counsel that the judgment of acquittal passed by the learned Court below is prima facie at fault by acquitting all the accused persons by giving them benefit of doubt because the prosecution has been able to prove its case beyond shadow of reasonable doubt but the learned Court below has erred in examining the prosecution case and evidence in its correct perspective.

5. He further contends that the lower court failed to take into account the fact that the present FIR was registered on 02.03.2019 whereas the witnesses were examined in the year 2023 i.e. after 4 years of the occurrence which has caused prejudice to the present case.

6. He strenuously submits that the court had erred in stating that the prosecution had miserably failed to examine any independent witness and solely on this reason has acquitted the accused whereas it is a settled principle of law that mere non-joining of independent witness will not discredit the facts duly proved by the prosecution during the trial. As such, the judgment of the learned Court below is liable to be set aside and the accused/respondents No.1 to 3 may kindly be convicted and sentenced appropriately.

7. Heard and case file perused.

8. It has revealed on perusal of the case file that the Court below has examined the case from all possible angles and has also scrutinized the prosecution evidence minutely wherein the Court below has agreed to the contention of the defence counsel to the effect that Investigating officer of the present case failed to separate sample from the bulk parcel; PW-2 Retd. Insp Jiwan Singh who was concerned SHO and one of the star witnesses of the prosecution, has candidly admitted in his cross-examination that he did not separate any sample from them bulk parcel at the police station nor he produced the accused before the court alongwith case property whereas it is settled law that non-separation of sample from the bulk parcel is fatal to the prosecution case and it is also the bounden duty of SHO concerned to produce the accused before the court concerned alongwith case property; PW-4 ASI Swaran Singh though has tried to depose as per prosecution story in chief but in cross-examination has categorically admitted that it was correct that road towards Badshahpur was a straight road, at T-point in front of school and that it was correct that school was visible from the distance of 1km whereas Naka was also visible from village Badshahpur whereas it is the story of prosecution that police was present just opposite to Government School Badshahpur in connection with checking of vehicles, and both accused came from the side of Badshahpur.

9. It is highly improbable that police party will signal the accused from such a long distance and the accused would get perplexed and throw away the intoxicant material; PW-4 ASI Swaran Singh stated that accused were apprehended at about 05.10 PM, however, the ruqa was sent at about 07:15P.M., thus, prosecution has failed to explain and justify as to why ruqa was sent so late, i.e., after a delay of more than two hours; and that ASI Swaran Singh further stated that

he had lifted the intoxicant material which had been thrown by accused whereas according to ASI Naveen Kumar PW-5, it was he who had picked up the same; furthermore, ASI Swaran Singh said that ruqa was sent at about 07:15 PM and ruqa person came back at about 10.30 P.M. whereas ASI Naveen Kumar – PW5 said that ruqa was sent at about 07:50 PM and ruqa person returned at 08:30 PM. Moreover, ASI Swaran Singh admitted in his cross-examination that he had already picked the polythene before ASI Naveen Kumar reached the spot so if the polythene was already picked up by him, then there was nothing left for Naveen Kumar, PW5, to pick up and to take further proceedings rather his version is that he took search of polythene.

10. Thus, there are material contradictions and discrepancies in these two prosecution witnesses which cast doubt on the prosecution case. There is no reason given by the prosecution as to why no independent witness was examined by the prosecution, which makes the accused entitled to acquittal by giving the concession of benefit of doubt.

11. Thus, such an order of prudent reasoning should not be disturbed in appeal unless it is perverse or unreasonable. There must exist very strong and compelling reasons in order to interfere with the same. Findings of fact recorded by a court can held to be perverse, if the same has been arrived at by ignoring or excluding relevant materials on record or by taking into consideration irrelevant/inadmissible materials or if they are against the weight of evidence or if they suffer from the vice of irrationality.

12. Therefore, the above circumstances leave no manner to doubt that the trial Court has dealt with the trial in depth with all possible probabilities and as such the present appeal challenging the judgment of acquittal dated 20.09.2023 passed by

the Judge, Special Court, Kapurthala, miserably fails and is hereby ordered to be dismissed.

13. Accordingly ordered.

14.08.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>