

2024:PHHC:021785-DB

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

CRM-A-1398-2023(O&M)

Date of decision: 15.02.2024

State of Punjab

....Applicant

Versus

Sahil Kumar & Anr.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**Present: Mr. Dhruv Dayal Additional AG, Punjab,
for the applicant.**SUDHIR SINGH, J.**

The instant application seeking leave to appeal is preferred against the judgment dated 16.03.2023 passed by the learned Judge, Special Court, Faridkot, whereby respondents have been acquitted of the charges under Section 22 of NDPS Act, 1985.

2. Vide order dated 18.01.2024, the Lower Court record was called for. The same was received on 07.02.2024.

3. The prosecution case was that on 21.11.2018, a police party consisting of PW1 ASI Paramjit Singh, PW2 Jagsir Singh and other police officials was patrolling in the area of Faridkot to Kotkapura. When the police reached near Dr. Parmod Gupta Dental Hospital, the accused/respondents were seen coming on a motorcycle bearing registration no. PB-04-Z-

2991 and on seeing the police party, they became nervous. On suspicion, both the motorcyclists were apprehended and their names and particulars were ascertained. Accused Sahil Kumar (Respondent no. 1) was driving the motorcycle and the accused Ramandeep Singh @ Raman (Respondent no. 2) was occupying the pillion seat. A transparent polythene bag containing intoxicant tablets was tied to the handle of motorcycle whereas another polythene bag containing intoxicant tablets was carried by accused Ramandeep Singh @ Raman (Respondent no. 2). Subsequently, PW1 ASI Paramjit Singh conducted search of both the polythene bags and recovered 100 stripes of Clavitol – SR – 100 Tramadol Hydrochloride, from each polythene bag. Each strip had 10 tablets and thus, a total of 1000 intoxicant tablets each were recovered from both the accused/respondents. Furthermore, PW1 ASI Paramjit Singh converted the recovered tablets into two sealed parcels and prepared a sample seal chit. The personal search of the accused/respondent no. 1 Sahil Kumar led to recovery of currency notes worth Rs. 200/- whereas Rs. 210/- currency notes were recovered from the personal search of accused/respondent no. 2-Ramandeep Singh @ Raman.

4. Based on the aforesaid complaint, FIR No. 188 dated 21.11.2018 under Section 22 NDPS Act, 1985, at P.S. Kotkapura, was registered. After investigation, the chargesheet was submitted, whereafter cognizance was taken. Thereafter,

charges were framed against the respondents to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined six witnesses, namely, PW1 ASI Paramjit Singh (investigating officer), PW2 ASI Jagsir Singh (recovery witness), PW3 Ct. Joginder Singh (link evidence), PW4 Ct. Harjinder Singh (link evidence), PW5 MHC Gurmeet Singh (link evidence) and PW6 SI Charanjit Singh (officiating SHO). In support of its case, the prosecution had also produced documentary evidence in the form of Ex P1, two sealed parcels of the recovered tablets with the seal impression 'SK'; Ex. P2, currency notes recovered from the accused persons/respondents; Ex. P3, Ruqa; Ex. P4, FIR; Ex. P5, memo to call an advocate; Ex. P6, physical search memo; Ex. P7, grounds of arrest – cum – intimation memo; Ex. P10 and Ex. P11, report of the RTFSL Bathinda; two sample parcels with two distinct protective parcels along with Form M-29 further affixing codes no. 48 and 49 with the seal impression of 'CK'; Ex. PX, seized motorcycle. The defence examined DW1 Shanker Kumar, Municipal Councilor of Municipal Committee, Kotkapura; DW2 Jarnail Singh, neighbour of Ramandeep Singh @ Raman (respondent no. 2). After the conclusion of the trial, the learned Trial Court acquitted the accused persons/respondents.

6. The grounds considered by the learned Trial Court for acquitting the Respondents are as under:-

- i) The testimony of PW1 and PW2, both recovery witnesses apart from Ruqa Ex. P3 or recovery memo Ex. P1, was completely silent about the

necessary details of batch number, manufacturing date or the expiry date of the recovered tablets. Such information of batch number or manufacturing date or expiry date was also missing from subsequent documents consisting of handing over memo Ex. P9, Forms – M29 Ex. PW6/B and Ex. PW6/C, application Ex. PW6/D for verification of inventory and application Ex. PW6/E for conducting proceedings under Section 52-A of NDPS Act.

- ii) In his cross examination, PW-1 stated that only SR-Clavitol Tramadol Hydrochloride was mentioned on the stripes recovered from both the accused/respondents. He further showed ignorance and asserted that he had not seen any batch number or lot number mentioned on the strips recovered from the accused/respondents. Similarly, PW2 has deposed in his cross examination that he had not seen any lot number or batch number, date of manufacturing, date of expiry or the name of manufacturer on the strips recovered from the accused/respondents.
- iii) The reports of RTFSL Bathinda Ex. P10 and Ex. P11 were completely silent about the batch number, date of manufacturing or expiry and name of the manufacturer of these strips.
- iv) The lack of necessary details like batch number or dates of manufacturing and expiry in the spot memos or FSL reports Ex. P10 and Ex. P11 entailed to draw an inference that the tablets recovered by the IO were not similar with the tablets produced before Ld. Magistrate or the tablets received in the FSL laboratory.
- v) There was no connection between the alleged recovered tablets during spot investigation and the tablets produced before the Duty Magistrate, during the proceedings under Section 52-A NDPS

Act or the tablets received in the RTFSL Bathinda for analysis.

7. The learned State counsel, while assailing the judgment of acquittal passed by the trial Court, would argue that the recovery was effected from the accused persons/respondents and both of them were formally arrested. Thereafter, the case property was kept in safe custody of PW6-SI Charanjit Kaur, and both the sealed bulk parcels were produced before the learned Duty Magistrate. Also, PW1 identified the bulk parcels as MO1 and MO2, two samples as MO3 and MO4 and motorcycle MO5. He has further argued that there was no dispute regarding the collected samples of the case property and in the absence thereof, the finding recorded by the learned trial Court is not tenable.

8. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon marshaling the material available on the record, the following issues arise for consideration before this Court:-

- “i. Whether the batch number, manufacturing date and the expiry date are necessary details to be mentioned?*
- ii. Whether the recovery of the case property from the spot and the sample tablets sent for chemical analysis was the same or different in nature?”*

9. With reference to the necessary details like batch number or dates of manufacturing and expiry in the spot memos or FSL, it is important to notice that the tablets recovered by the Investigating Officer must be similar with the tablets produced before the learned Magistrate or the tablets received in the FSL.

In the instant case, it was found by the trial Court that there was a huge difference in the samples with relation to the average weight of each tablet or average quantity of Tramadol in each tablet. Furthermore, it would be pertinent to mention here that the tablets produced before the learned Duty Magistrate during the proceedings under Section 52-A of NDPS Act were different from the tablets allegedly recovered at the spot or the sample tablets sent for chemical analysis which clearly depicts that there was no inter-se connection between the samples and the tablets.

10. As there was no batch number or dates of manufacturing and expiry of the recovered contraband in the spot memos or FSL report, the trial Court was justified in holding that such a course would lead to an inference that the tablets recovered by the Investigating Officer were not similar to the ones produced before the Magistrate. Still further, a huge difference was found in the samples sent to the FSL for chemical analysis and the ones produced before the Magistrate.

11. Learned counsel for the applicant-State could not point out any material from the record on the basis of which, it could be said that the findings recorded by the trial Court are illegal or perverse.

12. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the appellate court comes to the finding that the grounds on which

the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused persons is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of Surajpal Singh & Ors. Vs. The State, 1952 SCR 193, has held as under:-

"..the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

In the case of Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed as follows:

"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

13. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a

different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds. Accordingly, both the issues framed above are answered in negative.

14. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present application is dismissed and leave to appeal is declined.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

15.02.2024
Mahavir/ds

- Whether speaking/reasoned:

Yes/No
- Whether reportable:

Yes/No