

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-3002-2019 (O&M)

Date of Decision: 04.07.2024

State of Punjab

... Appellant

VS.

Yadwinder Singh @ Giani

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. JS Rattu, DAG Punjab for the applicant/appellant

Sandeep Moudgil, J.

(1). This application under Section 378(3) CrPC has been filed by the applicant/appellant-State of Punjab seeking permission to file an appeal against the judgment dated 30.07.2019 passed by the Special Court, Jalandhar vide which the respondent has been acquitted in case FIR No.243 dated 29.08.2015 under Section 22 of Narcotic Drugs and Psychotropic Substance Act, 1985 (in short, the NDPS Act) registered at Police Station Sadar Nakodar.

(2). Learned counsel for the applicant/appellant-State submits that the case against the respondent is of recovery of heavy quantity of contraband and the observation made by the trial court as to non-joining of the independent witness cannot prove to be fatal to the prosecution case as the people in general public hardly take any interest or are willing to cooperate in the police proceedings.

(3). He further averred that the minor discrepancies, if any, in the statement of the witnesses examined after a long time is somewhat natural and the trial court, as such, has erred in taking this phenomenon into consideration before acquitting the respondent.

(4). While applying stringent parameters for scrutinizing the evidence, the trial court observed that the prosecution completely deviated from procedural requirements under the Act and the brazen lacuna is the delay having occurred in sending the sample to the Forensic. On the basis of the evidence on record, the trial court also came to the conclusion that the whole incident cannot be believed inasmuch as the respondent had already been charged for offences under Section 399/402 IPC at the same time and same place besides the present FIR.

(5). The argument raised on behalf of the respondent cannot be doubted as in the other case registered against the petitioner at the very same time and place, the respondent stood acquitted on the ground that the prosecution story fell flat lacking veracity. In such a situation, the trial court has rightly observed that the whole transaction/incident becomes doubtful as to the possession of contraband and continuation of the trial in the present case would tantamount to double jeopardy.

(6). That apart the prosecution case is full of contradictions and material non-compliance of the provisions of NDPS Act as no option was given to the respondent for being searched by the superior officer which is the mandatory requirement under Section 50 of the NDPS Act and such safeguard provided under this section is significant in protecting a person from coercive police action.

(7). The Supreme Court in **State of Rajasthan v. Parmanand, (2014) 5 SCC 345** while relying upon its Constitution Bench judgment in **State of Punjab v. Baldev Singh, (1999) 6 SCC 172** concluded that if a search is made by an empowered officer on prior information without informing the person of

his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only on the basis of possession of illicit articles recovered from his person.

(8). Taking into consideration the totality of the circumstances and the fact that before the trial court, the applicant/appellant drastically failed to prove its case against the respondent beyond any shadow of doubt as also the fact that in the other case registered against the respondent at the very “same and place time” when the instant FIR was registered, has already been dismissed and the respondent stood acquitted as such and moreover, when the trial court has come up with a finding that the prosecution has not been able to establish compliance of the ingredients of Section 50 of NDPS Act which is a *sine qua non* in order to prove possession of contraband from the respondent, there is no valid ground left for this Court to hold the judgment of the trial court to be infirm and arbitrary to be quashed.

(9). Dismissed.

04.07.2024

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)

Judge

- Yes/No
- Yes/No