

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1471 of 2024

Arising Out of PS. Case No.-30 Year-2018 Thana- N.C.B (GOVERNMENT OFFICIAL)
District- Gaya

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The Union of India Through the Junior Intelligence Officer, Narcotics Control
Bureau, Patna. Bihar

... .. Appellant/s

Versus

1. Md. Sufian S/O Anvar R/O Village- Khushhalpur, P.S. and P.O- Mirzapur,
Distt.- Saharnapur, Uttar Pradesh.
2. Istekar S/O Rizvan R/O Village- Khushhalpur, P.S. and P.O- Mirzapur,
Distt.- Saharnapur, Uttar Pradesh.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Satyabir Bharti, Sr.Advocate
	:	Ms.Kanupriya Singh, Advocate
	:	Mr. Abhishek Anand, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 29-08-2025

Re.: Interlocutory Application No. 1 of 2024

The aforesaid interlocutory application has been
pressed for condoning the delay of 66 days in preferring this
appeal.

2. For the reasons stated in the interlocutory
application, the delay is condoned.

3. Interlocutory Application No. 01/2024 stands
allowed.



Re.: Cr.Appeal(DB) No. 1471 of 2024

4. This appeal is taken up at the Admission stage itself.

5. The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 26.06.2024 passed by the learned Additional Sessions Judge-1st, Gaya in N.D.P.S. Case No.21 of 2018, arising out of N.C.B. Case No. 30 of 2018, whereby Respondent Nos. 1 and 2 have been acquitted by the learned Trial Court from the charge of Sections 20(b)(ii)(c), 25, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

6. The prosecution case, in short is that on 28.06.2018 at about 07:10 A.M., at Amas toll Plaza at Gaya, N.C.B. team has intercepted one truck bearing registration no. UP-11T-6779. Two persons were found sitting in the truck, one as the driver and another person as helper. Both of them disclosed their names as 1. Md. Sufian and 2. Istekar respectively. The N.C.B. team informed them about the secret and reliable information of having huge quantity of Ganja in their truck. They were also informed and notice issued to them u/s 50 of the N.D.P.S. Act were served on them. Apprising about their right and option of being searched by a Magistrate or Gazetted Officer. But both of



them opted to be searched by the N.C.B. Team. During search of the aforesaid truck 520 kilograms of brown colour dried substance believed to be Ganja in 17 packets was recovered from the secret cavity in the Dala(Carriage) of the truck. Two samples of 25 grams each were drawn from the recovered 17 packets of Nylon sacks and were marked as S1 and S2 respectively. Test memo in triplicate were prepared on the spot. The search cum seizure list was also prepared on the spot. On the basis of recovery made, notice u/s 67 of the N.D.P.S. Act was issued against both 1. Md. Sufiyan and 2. Istekar. Their voluntary statements u/s 67 were recorded in which they confessed their involvement in the trafficking of Ganja. Based on the recovery made and their confessional statements, 1. Md. Sufian and 2. Istekar were arrested on 28.06.2018 itself at about 18:00 hrs and 16:30 hrs respectively, for committing an act in violation of Section 8 of the NDPS Act, which is punishable u/s 20(b)(ii)(c) as well as for offence u/s 25 and u/s 25 and u/s 29 of N.D.P.S.Act.

7. On the basis of written complaint of the informant, N.D.P.S. Case No.21 of 2018, arising out of N.C.B.Case No. 30 of 2018, was instituted under Sections 20(b)(ii)(c),25,29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and



investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 1 and 2 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

8. During the trial, the prosecution examined three witnesses i.e. P.W.1-Dhiraj Kumar, P.W.2- Ravi Ranjan Kumar and P.W.3- Parma Nand Singh. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial Court has acquitted the accused persons.

9. Learned counsel for the appellant has submitted that the learned Trial Court failed to appreciate that all the three witnesses (P.W.1,P.W.2 and P.W.3) are not only eye witnesses but are also witnesses to search, seizure and recovery of contraband material which was found from the truck in question and the accused persons were found to be seated inside the truck as Driver and Helper respectively. Apart from that, the prosecution has proved compliance of relevant provisions of the NDPS Act through consistent and reliable evidence. The prosecution has also proved their case starting from recording of



secret information about movement of contraband material to intercepting of same, recovery of Ganja and resultant sampling and seizure through chain of events. Learned Trial Court has also failed to appreciate that the prosecution has duly complied the requirements of Section 52A of N.D.P.S. Act by obtaining certificate from the designated Judicial Magistrate about correctness of process of sampling done with regard to seized contraband. Section 52(A)(4) of N.D.P.S. Act suggests that once a certificate about the correctness of the inventory prepared or sampling done is given by a Judicial Magistrate, irrespective of date of certificate, same cannot be put in question and therefore, learned Trial Court has erred in acquitting the accused persons and holding that sampling of seized contraband and inventory has not been done as per mandate of Section 52A of the N.D.P.S. Act. Learned counsel for the appellant further submits that the learned Trial Court has failed to appreciate that the prosecution has proved the factum of recovery of contraband from opposite parties, seizure and sampling of the Ganja in compliance of relevant provisions under the N.D.P.S. Act.

10. We have heard learned counsel for the appellant and have also gone through the material available on the record which suggests that in most casual investigation the prosecution



has measurably failed to getting the trial conducted.

11. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

12. It is apparent that two independent witnesses, namely, Santu Yadav and Dukhan Yadav, who were the witnesses of seizure list have not been produced by the prosecution before the Court as witnesses which suggests that the prosecution has failed to prove the seized articles and all three witnesses are witnesses of N.C.B. raiding party and they are official witnesses so the recovery of 520 Kg of Ganja from two accused persons from the truck in question is also not proved by the prosecution. As per Exts. 14/C and 14/D with respect to photograph of seized materials and said truck issued by Sri Y.K.Shukla, learned Judicial Magistrate, Fast Track which are Exts. 14/A and 14/B, the same was delayed by three years and ten months. Apart from that, P.W.2 also deposed in paragraph-12 in his deposition that he has no knowledge about the sampling of seized contraband materials. He has also deposed in paragraph-14 who has recorded statement of the accused persons and he did not know what they have stated or confessed before the Officer. The confessional statement



recorded under Section 67 of the N.D.P.S. Act by the N.C.B. are not admissible in view of the judgment of the Hon'ble Apex Court in the case of **Tofan Singh Vs.State of Tamil Nadu, reported in (2021)4 SCC 1**. From perusal of the notification of the Ministry of Finance, it has also been reiterated in the case of **Surjit Singh & Tikka Vs. State of Punjab**, passed in **CRA-D-522-DB-2016(O & M)** on **18.03.2025** and in the case of **Jaimal Singh Vs.State of Punjab** passed in **CRA-S-181-SB-2011(O&M)** on **12.12.2024**, paragraph-15 of the said judgment which is quoted herein below:

“15. It may also be relevant to mention here that in terms of Section 52-A of the NDPS Act, a Notification No.G.S.R. 899(E) dated 23.12.2022 has been issued by the Ministry of Finance and the relevant extract thereof is reproduced as under:-

CHAPTER III

SAMPLING

8. Application to Magistrate. – *After the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the Act or if it is seized by such an officer himself, he shall*



prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of section 52A of the Act in Form-5.

9. Samples to be drawn in the presence of Magistrate. – *After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.*

10. Drawing the samples. – *(1) One sample, in duplicate, shall be drawn from each package and container seized.*

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots



*of not more than ten packages or containers,
and for each such lot of packages and
containers, one sample, in duplicate, shall be
drawn:*

*Provided that in the case of ganja, poppy
straw and hashish (charas) it may be
bunched in lots of not more than forty
packages or containers.*

*(3) In case of drawing sample from a
particular lot, it shall be ensured that
representative sample in equal quantity is
taken from each package or container of that
lot and mixed together to make a composite
whole from which the samples are drawn for
that lot.*

13. All three witnesses i.e. P.W.1-Dhiraj Kumar, P.W.2- Ravi Ranjan Kumar and P.W.3- Parma Nand Singh are witnesses of NCB raiding party and all are official witnesses. The corroboration of allegation of seizure of 520 Kg of Ganja from possession of two accused persons from the truck in question is also not proved by the prosecution. The sampling of seized contraband material was made on the very spot at Amas



Toll Plaza between 07.00 AM to 10.00 AM on 28.06.2018 and as per mandate of Section 52A of the NDPS Act, the process of sampling must be done before the learned Magistrate and the same has to be recorded or photographs before the said learned Magistrate. As per mandate of Section 52A of the NDPS Act, upon seizure of the contraband it has to be forwarded either to the officer- in-charge in the nearest police station or to the Officer empowered under Section 53 of the NDPS Act who is obliged to prepare inventory and to produce before the learned Magistrate for the purpose of getting its correctness or certified. It has further laid down that the samples drawn before the learned Magistrate. In the present case, the certificate of learned Magistrate which is exhibited as Ext. 14/A and 14/B and the photographs of seized material dated 12.04.2022 which is delayed by about 03 years and 10 months which makes the seizure and sampling procedure highly doubtful.

14. From perusal of the deposition of P.W.1 which was recorded in paragraph-6 of the deposition that the contraband material was seized before him but he has not tried to get information, from where the material was brought and where has to be delivered as all the process of seizure was done by P.W.3 and P.W.2 also deposed in paragraph-12 that he has no



knowledge about the sampling or F.S.L. testing report of the seized contraband material. As far as confessional statement of co-accused person recorded by P.W.3. The confessional statement under Section 67 of the NDPS Act which was proved by P.W. 3 is not admissible in view of the law pronounced by the Hon'ble Apex Court in the case of **Tofan Singh Vs.State of Tamil Nadu, reported in (2021)4 SCC 1**, it was held that any confessional statement recorded by the officials of the Narcotic Department is equally hit by the mandate of Section 25 of Evidence Act wherein the confessional statement recorded before the police officer is not admissible.

15. We find that the findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

16. 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 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 in the case of ***Mrinal Das vs. State of Tripura (2011) 9 SCC 479***, paragraphs 13 & 14 of which read as under:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived



at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

"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."

17. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if 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 absence of strong and compelling grounds.

18. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

19. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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