

2025 PHHC:005829-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-A-405-2023(O&M)

Date of Decision:-16.01.2025

Union of India

.....Appellant.

Vs.

Rup Chand

.....Respondent.

**CORAM:- HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Ms. Gurmeet Kaur Gill, Senior Panel Counsel, UOI
for the Appellant.

JASJIT SINGH BEDI, J.

The present application under Section 378(3) of Cr.PC has been filed for grant of leave to appeal against the judgment of acquittal dated 20.12.2021 passed by Judge Special Court, Rupnagar.

2. As per record, the offence was committed in the year 2017 and the complaint came to be registered on 16.11.2017. The judgement of acquittal was recorded on 20.12.2021. The leave to appeal was filed in 2023 and has come up for hearing today after more than 07 years of the filing of the complaint.

3. The case of the prosecution, as stated in the complaint, of Narcotics Control Bureau (hereinafter referred to as 'NCB'), Chandigarh is

that on the basis of specific information the Narcotics Control Bureau Chandigarh effected seizure of 9.720 kgs of Charas from an Innova Car bearing registration No.HP-02K-1463 apprehended at Behram toll plaza, Ropar and arrested two person namely Tule Ram, Age 34 Years S/o Tape Ram, R/o V. PO-Khokhan, Teh Bhunter, Dist-Kullu, HP and Bhupinder Singh aged 34 Years, S/o Inderjit Singh R/o V PO- Khokhan, Teh. Bhunter, Dist-Kullu, HP on 16.11.2017. The complaint in the case was filed against accused Tule Ram and Bhupinder Singh on 07.05 2018 vide filling No 1224/2018. Reg No 55/2018 who stood Trial at Spl Court, NDPS, Rupnagar and were convicted vide judgment dated 14.11.2019. The Supplementary/additional complaint in the case was filed against Rup Chand accused/respondent being the supplier of seized 9.720 Kgs of Charas from Tule Ram and Bhupinder Singh.

It is alleged that the accused Tule Ram tendered his voluntary statement in his own handwriting under section 67 of NDPS Act 1985 before Viveka Nand, I.O. and disclosed that he had received around twenty packets of Charas from one person R/o Khokhan, Bhunter, Kullu Himachal Pradesh. On 19.11.2017 Viveka Nand, I.O. along with the NCB Team, reached village Khokhan, Bhunter, HP, along with accused Tule Ram and two lady Police constables of Bhunter Police Station, for apprehending the supplier of the Charas. The accused Tule Ram identified the house of the supplier of the seized 9.720 kgs Charas from whom he collected the same as that of Rup Chand (Rupnu) S/o Rot Ram. The team looked for Rup Chand, but no one from his family could be found. The Panchnama of the House search was drawn in the presence of independent witnesses. The accused Tule Ram identified Rup Chand S/o Rot Ram from his photograph displayed at the residence of Rup Chand as the source of the seized Charas.

The respondent/accused Rup Chand was joined in the investigation and got recorded his statement under Section 67 of the NDPS Act denying the allegations except that he knew Tule Ram, resident of his village. The statement of Ashok Kumar son of Rup Chand was recorded with respect to the mobile numbers used by Rup Chand. Subsequently, Rup Chand was arrested on 10.06.2019.

The mobile seized from the accused was sent to CFSL, Chandigarh for data analysis vide letter dated 20.11.2017 and the Examination report of the seized Mobile was received from CFSL Chandigarh vide examination report No. CFSL(C)/83/PHY/34/2018/147 dated 30.01.2018 vide forwarding letter No. CFSL(C)/83/PHY/34/2018/2151 dated 16.02.2018 and even no. 6508 dated 05.02.2018 along with one pen drive containing the data extract. The pen drive provided by CFSL contains the data of the mobile seized from accused and on analyzing it was found that the Samsung mobile model GT-E2252 with BSNL SIM ICCID 89915150431314079110 seized from accused Tule Ram marked as M1 & S1 respectively contains contact information of Rup Chand saved as Rupnu with mobile number 8894008216. The data provided by CFSL as per examination report was burned on CD (marked as NCB Cr:No.75-2017, CHARAS 9.720 kgs, RECOVERED MOBILE DATA ANALYSIS). The Certificate U/s 65 B Indian Evidence Act was prepared for authenticity to Compact disk prepared along with Extraction/printing of related pages from data provided by CFSL i.e. Page No. 1, 2, 10, 12, 23, 35, 93, 102, 110, 112 from Mobile 1 and Page No. 1, 4 & 11 from SIM of Mobile-1 recovered from accused Tule Ram (Path- Play CDPHY-34-2018 PD1PHY-34-2018 M1 for Mobile 1 pages and Play CD - PHY-34-2018 PD1-PHY-34-2018 S1 for SIM pages).

Subsequently, as per the disclosure statement of Rup Chand, Gopal Seth, Davindra and Anant Ram were involved in the present case.

Upon conclusion of the investigation against the respondent/accused, a complaint under Section 8, 20, 27a and 29 of NDPS Act, 1985 was presented in the Court.

4. Finding a prima facie case under Section 29 read with Section 20 of the NDPS Act, 1985, charge was accordingly framed against the accused, to which he pleaded not guilty and claimed trial (subsequently the charge was formally amended).

5. In order to prove its case, the prosecution examined PW1 Rajan Kumar, Intelligence Officer, PW 2 Rajinder Singh, Intelligence Officer, PW3 Puran Singh Garbyal, Junior Intelligence Officer, PW4 HHC Haradei, PW5 Ashok Kumar, PW6 Dhani Ram, PW7 Dr. P Siddambary, Scientist B, Ball, CFSL, Chandigarh, PW8 Rajesh Mittal, PW9 Pankaj Sharma, alternate Nodel Officer, Airtel IT Park Chandigarh and PW10 Viveka Nand Intelligence Officer, NCB Chandigarh and thereafter, the Special PP on behalf of the NCB gave up PW Meena Devi being won over by the accused party and closed the prosecution evidence.

6. After closing of the prosecution evidence, the statement of the accused/respondent under Section 313 Cr.P.C. was recorded, wherein the entire incriminating circumstances were put to him, which he denied and pleaded false implication. He stated that he had been falsely implicated merely on the statement of Tule Ram. He had no concern whatsoever with the allegations levelled in the present case. He stated that the story has been cooked up by the NCB Official and no recovery had been effected from him.

7. Based on the evidence led the accused/respondent was acquitted by the court of Judge, Special Court, Rupnagar vide judgment dated

20.12.2021.

8. It is the aforementioned judgment which is under challenge in the present case.

9. The Counsel for the applicant/appellant contends that the judgment of acquittal has been passed on the basis of conjectures and surmises. The prosecution had established the guilt of the accused/respondent beyond reasonable doubt. The arrested accused had specifically named the accused/respondent after their arrest. There was evidence of the convicted accused from whom recovery was effected being in telephonic contact with the accused/respondent. The statement under Section 67 of the NDPS Act of the accused/respondent was wrongly disbelieved. In fact Tule Ram the convicted accused had duly identified the accused/respondent. She therefore, contends that as the offence was established beyond reasonable doubt, leave be granted to file an appeal against the acquittal of the accused/respondent.

10. We have heard the counsel for the applicant/appellant and have gone through the lower Court record.

11. Apparently, the primary piece of evidence against the respondent/accused is the statement Ex.PW-2/E allegedly suffered by Rup Chand to NCB on 10.06.2019. The said statement having been made to the NCB is inadmissible in evidence has been categorically held in the judgment of ***Toofan Singh Vs. State of Tamil Nadu 2021 (1) RCR (Criminal) 1***. The relevant paragraphs of the same are reproduced hereinbelow:-

“ 3. Shri Sushil Kumar Jain, learned Senior Advocate appearing for the Appellants in Criminal Appeal Nos. 152 of 2013; 836 of 2011; 433 of 2014; 77 of 2015 and 1202 of 2017, outlined six issues before us, which really boil down to two issues, namely:

"1. Whether an officer "empowered under Section 42 of the NDPS Act" and/or "the officer empowered under Section 53 of the NDPS Act" are "Police Officers" and therefore statements recorded by such officers would be hit by Section 25 of the Evidence Act; and

2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exercisable by an officer under section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused?"

155. We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

12. As regards the evidence of phone contact between Tule Ram and Rup Chand (accused/respondent) is concerned, accepting the same to be correct the said evidence is insufficient to affix guilt upon the accused/respondent in the absence of any transcript of the aforesaid conversation. The Hon'ble Gujarat High Court in ***Yash Jayeshbhai Champaklal Shah Vs. State of Gujarat*** 2022 SCC Online Guj 271 held as under:-

"5. Having heard learned advocates for the appearing parties, it emerges on record that the applicant is not found in possession of any contraband article. Over and above that, the call data records may reveal that in an around the time of incident, he was in contact with the co-accused who were found in possession of contraband. Since there is no recording of conversation in between the accused, mere contacts with the co-accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused. However, screen-shot of one of the whatsapp chat in between the co-accused shown to the Court, there is hardly anything which connects the applicant with the present offence or even asserting that he ordered for the same which were to be delivered by the accused found in possession of contraband. In absence of any other material, which is still to be retrieved from the devices of the mobile phone and information thereon which is still awaited, as considered by the Supreme Court in the case of Bharat Chaudhary (Supra) said material cannot be considered to be a sufficient material to establish any live link with the co-accused who were

found in the possession of contraband.”

13. Admittedly, there is no direct evidence against the accused/respondent and no recovery whatsoever was effected from him when his home was raided. Further there is absolutely no evidence that the accused/respondent earned money from the alleged sale of the contraband.

14. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon’ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

15. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment of acquittal passed by the Judge, Special Court, Rupnagar. Therefore, the application seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

16.01.2025
Vinay

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