

2025:PHHC:077490



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

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**CRA-S-1356-2025 (O&M)
Date of Decision: 03.05.2025**

PARGAT SINGH ALIAS PADDI

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gurbir Singh Sidhu, Advocate
for the Petitionr

Mr. Jasjit Singh Rattu, DAG, Punjab

SANDEEP MOUDGIL, J

1. The instant appeal has been preferred by the appellant against the judgment of conviction dated 05.10.2023 passed by the Ld. Judge, Special Court, Sangrur arising out of an FIR No. 143 dated 14.07.2021 under section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (herein after referred as 1985 Act) registered at police station Dirba, District
2. Briefly put, instant case FIR was registered when on 14.07.2021 ASI Jagtar Singh alongwith other police party while on patrol duty was coming from Sangrur to Dirba and when the police party was behind about 50 yards from village Toorbanjara situated on main road which leads from Sangrur to Dirba, then two persons were seen standing near the bus stop, out of them, one person was carrying a black coloured polythene in his hand and another person was checking

the said polythene. On seeing the police party, above said both the persons became nervous and threw polythene on the ground and moved towards Dirba side but they were apprehended. On asking, person who was carrying polythene told his name as Soma Singh and the another person told hisname as Pargat Singh. ASI Jagtar Singh went near the polythene and Ganja was visible from the same. Inspector Satnam ASI Jagtar Singh informed about the Investigating officer and requested to send another Ruqa was sent through C-I Sandeep Singh for registration of FIR and on the basis of which formal FIR was registered. ASI Malkit S ingh and ASI Amritpal Singh reached the spot and ASI Jagtar Singh disclosed them the brief facts of the case and handed over the copy of ruqa and accused persons and left the spot. On search of polythene, Ganja was recovered and on weighment, it came out to be 1 Kg 450 gram. Investigating Officer put the recovered intoxicant substance into polythene and converted into parcel and sealed the parcel with his seal bearing impression "MS", Sample seal chits were prepared. Seal after use was handed over to ASI Amritpal Singh. Parcel was taken R into possession vide recovery memo. Site plan with correct marginal notes was prepared. Accused were arrested vide arrest-cum-intimation memo. Personal search of the accused was also conducted. Special report was prepared. On return to the Police Station, case property and witnesses were produced before Officiating SHO Mohinderjit Singh. On 15.07.2021, Investigating officer produced the case property and accused before Area Magistrate for inventory purpose. Statements of witnesses were recorded. After completion of necessary investigation, challan was presented in the court for trial of the accused, in accordance with law.

3. The trial court on 05.10.2023, convicted the accused-appellant and held that the prosecution had genuinely proved the allegations against the

accused for the commission of offence punishable under section 20 of the 1985 Act beyond shadow of reasonable doubt.

4. It is contended by the counsel for the appellant that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside.

5. He further contends that the trial court has failed to appreciate the fact that prosecution has failed to link the recovery of the contraband with the appellant and co-accused.

6. He vehemently argues that the accused was apprehended on the basis of suspicion and notice under section 50 of the Act was not duly served upon him and during the personal search, the alleged contraband was not recovered from him and his co-accused.

7. He further argues that the trial court has failed to appreciate that there are contradiction in the prosecution version, as investigation of the case was bad in the eyes of law.

8. Per contra, learned State counsel contends that the prosecution had examined PW-1 ASI Malkiat Singh who deposed that 1 Kg 450 gms Ganja was recovered from the conscious possession of the accused-appellant in the area of Dirba. To the same effect, testimony of PW-2 ASI Amritpal Singh and PW-3 retired ASI Jagtar Singh was examined who also deposed on the lines of statement of PW-1 ASI Malkiat Singh.

9. Heard learned counsel for the parties at length.

10. I have perused the impugned judgment carefully and have also gone meticulously through the findings recorded by the trial Court.

11. Before adverting to the merits of the case, it would be worthwhile to have a glance on the scope in conviction appeals. It is well settled in catena of

decisions that an Appellate court has full power to review, reappreciate and consider the evidence upon which the order of conviction is founded. Under the criminal jurisprudence it is the settled principle of law that guilt of the accused should be proved beyond reasonable doubt and if the accused is able to rebut the presumption the whole burden shifts on the prosecution to establish the guilt. And in the present case the prosecution has failed from all corners to establish the guilt of the accused, rather the whole case of the prosecution suffers from contradictions falsifying their own stand as there is nothing on record to prove that the alleged contraband was recovered from the conscious possession of the appellant as section 50 of the Act was not complied with.

12. In addition, there is a delay of six days in sending the sample to the FSL which creates doubt in the mind of the court on the truthfulness of the prosecution version added with the fact that only the affidavits of SC Amrinder Singh Ex.PX and affidavit of ASI Gurdeep Singh Ex.PY were taken into consideration wherein they were not summoned to be cross examined by the accused-appellant. It is a trite that mere tendering of FSL report has only a presumption of truth and is not a conclusive proof, meaning thereby, an opportunity to cross examine the author of the report has to be provided to the accused by the trial court.

13. In view of the above stated discussion and on perusal of the judgment passed by the trial Court dated 05.10.2023, this Court is of the considered view that the prosecution has miserably failed to discharge burden upon the accused in the nature of the evidence adduced. On the basis of such a cooked up story, the accused cannot be weighed down with criminal liability as nothing on record is available to prove the allegations against the accused without reasonable doubt.

14. Therefore, said judgment of the trial court is ill reasoned and is not based upon proper and cogent evidence. The ground of conviction, as has been culled out by the trial Court, is said to be faulty, contrary to law.
15. Accordingly, the appeal stands allowed while setting aside the conviction by the trial court dated 05.10.2023..
16. Allowed.
17. Ordered accordingly.

03.05.2025
Anuradha(v)

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No