IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-23-2021 (O&M)
Date of Reserved: 02.12.2025
Date of Pronouncement: 08.12.2025

State (U.T., Chandigarh) **....Applicant.**

Versus

Anil Tanwar **...Respondent.**

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CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present**:** Mr. Sumit Jain, Addl. P.P., U.T., Chandigarh with
Mr. Dushyant Rana, Advocate
for U.T., Chandigarh.

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Sukhvinder Kaur, J.

1. The appellant-State has preferred the instant appeal against judgment dated 17.01.2020, passed by learned Judge, Special Court, Chandigarh, vide which respondent-accused Anil Tanwar has been acquitted.

2. Present FIR was registered on the allegations that on 06.7.2018, SI Jaivir Singh along with other police officials was on patrolling duty near Girls College, Sector 42, Chandigarh. At about 8.35 P.M., when they reached near T point near petrol pump Sector 42, Chandigarh, they saw the accused coming from slip road, Lake Sector 42, Chandigarh. After seeing the police party, he turned back immediately and started walking swiftly. On suspicion, the accused was apprehended and tried to threw one small polythene bag after taking it out from the right pocket of his pant, but SI Jaivir Singh did not allow him to do so. He

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disclosed his name as Anil Tanwar. After checking said polythene bag 5.30 grams of heroine was recovered from the possession of the accused, without any permit or licence. Two samples were taken out from the polythene bag and were put in the plastic bag and was further kept in plastic container and wrapped in white cloth, which were sealed with the seal of 'JB' at two places. The remaining contraband/heroine was kept in the same polythene bag and put in plastic container, which was wrapped with white cloth which was also sealed with the seal of 'JB' at two places. Sample seal was separately prepared. Test memo form was filled at the spot. Heroine/contraband along with sample seal was taken into possession. Ruqa was sent to the Police Station on the basis of which present FIR was registered. Thereafter, SI Mehar Singh second Investigating Officer reached at the spot and the accused alongwith the entire case property consisting of sealed parcels were handed over to him alongwith sample seal. Accused was arrested. Rough site plan was prepared and personal search memo was also prepared. Thereafter, SI Mehar Singh took the other recovery witnesses as well as accused and case property for producing before the SHO at Police Station 36, Chandigarh. During the course of investigation, statements of witnesses were recorded. The case property was produced before the Ilaqua Magistrate, who after verification certified the inventory prepared. One of the samples was sent to the office of CFSL for examination and after receipt of CFSL report and completion of necessary formalities, challan against the accused was presented in the Court.

3. After finding a prima facie case against the accused, he was charge-sheeted for the offence punishable under Section 21 of NDPS Act, to which he pleaded not guilty and claimed trial.

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4. In order to prove its case, the prosecution has examined as many as eight witnesses. PW1-HC Yash Pal proved on record the site plan Ex.P2 prepared by him.

PW2-HC Naresh Kumar, deposed regarding depositing of sample in Malkhana on 07.07.2018 handed over to him by Inspector Ranjodh. He further deposed regarding the inventory proceedings before the learned Magistrate and also deposed that after inventory he deposited two samples and remaining case property in the Malkhana. On 09.07.2018, he sent samples to CFSL through C-Sumit and after depositing the same on the same day, he handed over the receipt to him. On 27.07.2018, the result alongwith sealed parcel was handed over to him by Constable Manoj Kumar and he deposited the sealed parcel in the Malkhana. He proved the relevant entry Ex.P3; copy of road certificate Ex.P4 and copy of the acknowledgement Ex.P5.

PW3-Inspector Ranjodh Singh, deposed regarding producing of accused Anil along with sealed parcels of the contraband before him on 06.07.2018 and regarding verifying the facts from ASI Mehar Singh and after verifying the facts from ASI Mehar Singh, attesting the parcels. Then he deposited the case property with MMHC JHC Naresh Kumar.

PW4-Constable Shri Kumar, proved on record the photographs EX.PW4/1 and Ex.PW4/2 clicked by him on 07.07.2018.

PW5-SI Jaivir Singh, was the Investigating Officer of this case and he deposed in detail regarding various investigation proceedings conducted by him during the course of the investigation.

PW6-HC Dilawar Singh, is a witness of recovery and also deposed regarding the recovery of 5.30 grams of heroine from possession of

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the accused on 06.07.2018 and the proceedings conducted by Investigating Officer SI Mehar Singh.

PW7-SI Mehar Singh is the second Investigating Officer in this case and he has also deposed about the various investigating proceedings conducted by him in the present case.

PW8-Constable Sumit deposed regarding deposition of sealed parcel into CFSL and thereafter, handing over of the receipt to MMHC.

Prosecution has also tendered into evidence CFSL report Ex.P1.

5. Statement of accused under Section 313 Cr.P.C. was recorded in which, all incriminating evidence was put to him, which he denied and pleaded innocence. However, the accused led no evidence in his defence.

6. Learned trial Court held that prosecution had failed to prove its case against the accused beyond the reasonable doubt and acquitted the accused of the offences in the present case.

7. Aggrieved of the said decision, present appeal has been filed by the appellant-State challenging acquittal of the accused Anil Tanwar.

8. Learned counsel for the appellant-State vehemently contended that the trial Court has wrongly acquitted the accused without appreciating the facts and circumstances of the case in a proper manner, whereas there was cogent and convincing evidence against the accused. Learned trial Court has failed to appreciate that the fact that it was a chance recovery effected by the Investigating Officer and as such Section 50 of NDPS Act was not applicable in the present case. Although provision of NDPS Act were duly complied with by the investigating agency, but learned trial Court has wrongly disbelieved the testimony of the official witnesses. When the

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statement of the official witnesses are natural and believable then the same can be relied upon by the Court and it is not necessary to join the independent witness in each and every case. All the prosecution witnesses deposed on the similar lines and there were no chinks in the prosecution story as put forth before the trial Court, but deposition of the prosecution witnesses have been misread and misinterpreted by the trial Court. Learned trial Court has also lost sight of the fact that the accused/ respondent did not lead any evidence in his defence. He urged that even if HC Adalat Singh had reduced the complaint Ex.PW5/3 into writing, he was performing a ministerial act and benefit of not examining him cannot be given to the accused by keeping in view the gravity of the offence committed by the accused. He prayed that present appeal be allowed, impugned judgment dated 17.01.2020 be set aside and accused be convicted for the offences as charged with and be punished in accordance with law.

9. We have heard learned counsel for the parties and have also perused the record.

10. After having heard learned counsel for the appellant-State and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was indeed not able to prove its case against the accused beyond the shadow of reasonable doubt and that learned trial Court has correctly acquitted him of the charges framed against him.

11. NDPS Act provides for very stringent punishment in case the accused is found to have committed an offence under the same. In ***Noor Aga v. State of Punjab, 2008(3) RCR (Crl.) 633,*** the Hon'ble Supreme Court has observed in the following terms :

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> *"The provisions of the Act and the punishment prescribed therein being indisputably stringent flowing from elements such as a heightened standard for bail, absence of any provision for remissions, specific provisions for grant of minimum sentence, enabling provisions granting power to the Court to impose fine of more than maximum punishment of L 2,00,000 as also the presumption of guilt emerging from possession of Narcotic Drugs and Psychotropic substances, the extent of burden to prove the foundational facts on the prosecution, i.e., proof beyond all reasonable conduct would more onerous. A heightened scrutiny test would be necessary to be invoked. It is so because whereas, on the one hand, the court must strive towards giving effect to the parliamentary object and intent in the light of the international conventions, but on the other, it is also necessary to uphold the individual human rights and dignity as provided for under the UN Declaration of Human Rights but insisting upon scrupulous compliance of the provisions of the Act for the purpose of upholding the democratic values, it is necessary for giving effect to the concept of wider civilisation'. The Courts must always remind itself that it is a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. A higher degree of assurance thus, would be necessary to convict an accused."*

12. In the light of above, it is to be examined whether learned trial Court correctly concluded that prosecution could not prove its case beyond the shadow of reasonable doubt regarding recovery of contraband in question from conscious possession of accused person.

13. In the instant case, no special report had been sent by the Investigating Officer to his immediate superior officers and the investigation was also not verified by any Gazetted Police Officer. The Investigating Officer did not comply with the directory provisions of

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Sections 52 and 57 of the NDPS Act, when no information was sent to the senior police officers in compliance of provisions of Section 57 of the NDPS Act. Rather it appears that every thing was kept as a guarded secret, which has adversely effected the case of the prosecution.

14. It has been held by the Hon'ble Apex Court in **Gurbax Singh Vs. State of Haryana, 2001(1) RCR (Criminal), 702 (SC),** that non compliance of provisions of Sections 52 and 57 which are no doubt, directory and violation thereof, would not ipso-facto vitiate the trial or conviction. However, the Investigating Officer cannot totally ignore these provisions as such failure will have bearing on the appreciation of evidence regarding search of the accused and seizure. So non compliance of the above said provisions has adversely effected the case of the prosecution.

15. Even in the statements of the official witnesses that have been examined by the prosecution, there are material contradictions. PW5 SI Jaivir Singh deposed during his cross-examination that the complaint Ex.PW5/3 is in his handwriting, whereas PW6 HC Dilawar deposed that Ex.PW5/3 was reduced into writing by HC Adalat Singh. Trial Court has specifically observed that Ex.PW5/2 and Ex.PW5/3 are in one hand and personal search memo and hand over memo and some portion of arrest memo are in some other hand. Trial Court has further rightly observed that the contradiction regarding author of Ex.PW5/3 is material one and it raises the doubt that whether this document had been prepared at the spot or not. PW5 and PW6 both deposed that arrest memo, personal search memo and Ex.PW5/4 hand over memo were also prepared by HC Adalat Singh. Learned trial Court has rightly held that when most of the documents were prepared by HC Adalat Singh then he should have been cited as a witness

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and examined by the prosecution, so as to properly scrutinize that these documents had been prepared at the spot.

16. We do not agree with this contention of learned State counsel that only upon the aforesaid ground of non citing of HC Adalat Singh, the accused has been acquitted. The specific finding has been given by learned trial Court in the impugned judgment that this lapse itself had not gained much importance, if the prosecution had succeeded to prove its case otherwise and only after considering the totality of the facts and circumstances and evidence on record, the non citing of HC Adalat Singh as a prosecution witness had created doubt about the prosecution case.

17. The case of the prosecution also lacks the independent corroboration. Though, it is not essential that independent witness is to be joined and examined in each and every case and law is well settled that the testimony of official witnesses is as good as that of the private witnesses. Keeping in view the contradiction and discrepancies as pointed out above in the prosecution case, the non joining of the independent witness has also assumed importance and a doubt has been created that whether the alleged recovery of the contraband in this case had taken place from the accused in the manner as alleged by the prosecution.

18. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record has been ignored unjustifiably by the trial Court. Reference in this regard can be made to judgments of Hon'ble the Supreme Court in ***'Mahamadkhan Nathekhan vs.***

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State of Gujarat' 2014 (14) SCC 589 and ***Mallappa and others Vs. State of Karnataka, 2024 AIR (SC) 1252*****.**

19. Learned counsel for the applicant was unable to point out any illegality, infirmity or perversity in the impugned decision dated 17.01.2020 which calls for interference.

20. In the instant case, keeping in view all the aforesaid discrepancies and snags the trial Court has rightly reached at the conclusion that the prosecution witnesses were not successful in bringing home guilt to the accused beyond the reasonable doubt and it becomes doubtful if the recovery took place in the mode and manner as alleged by the prosecution. So, the accused has been rightly acquitted by giving him the benefit of doubt.

21. In view of the above, no case is made out for grant of leave to appeal against acquittal of accused/ respondent. The application without having any merits stands dismissed and the leave to appeal is declined.

22. Pending applications, if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(ANOOP CHITKARA)
JUDGE

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

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