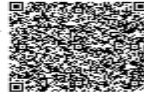


2025:PHHC:092777



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

237

CRM-A-61-2020

Date of Decision: 07.07.2025

STATE OF HARYANA

.....APPLICANT/APELLANT

VERSUS

DEEPU AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Baljinder Singh Virk, Senior DAG Haryana.

None for the respondents

SANDEEP MOUDGIL, J

1. The instant application seeking leave to appeal under section 378(3) Cr.P.C. has been preferred by the State of Haryana against the judgment of acquittal dated 31.05.2019 passed by the Additional Sessions Judge, Hisar arising out of an FIR No. 20 dated 12.01.2016 under sections 21 and 27-A of the Narcotics Drugs and Psychotropic Substances Act, 1985 (herein after referred as 1985 Act) registered at police station City Hansi.

2. Factual matrix of the present case unfolds as under that on 12.01.2016, SI Ramesh Kumar along with HC Sikandar, Constable Narender, and driver HC Dharambir Singh was on patrol duty near Sisay Bridge, Hansi. A secret informer told them that one Deepu @ Suraj was selling smack near Hindu Senior Secondary School, Hansi. Acting on this tip, the police team reached the spot and saw a boy who started walking away on seeing them. He was apprehended and identified as Deepu @ Suraj, son of Ram Badan, resident of Nand Nagar Colony, Hansi. A notice under Section 50 of the NDPS Act was served, offering him the

option of being searched before a Gazetted Officer or Magistrate he declined and consented to be searched by the police team. On searching, 70 grams of smack was recovered from his trouser pocket. Two samples of 10 grams each were separated, and the remaining 50 grams was sealed. All samples were sealed and taken into possession. Attempts were made to join public witnesses but all refused to assist. A case under Section 21 of the NDPS Act was registered, and the investigation began. On 13.01.2016, Deepu disclosed that he bought the smack from Mohan (co-accused), son of Patram, resident of Mohalla Roop Nagar, Jind, for Rs. 20,000. Based on this, Mohan was apprehended. He confessed to buying 75 grams of smack for Rs. 15,000 from an unknown person, using 5 grams for himself and selling 70 grams to Deepu. Both accused were arrested and lodged in police custody. Section 27-A of the NDPS Act was later added. Upon completion of the investigation, a final report under Section 173 CrPC was filed against both accused.

3. A prima facie case was made out under section 21 and 27A of NDPS Act and charges were framed on 27.11.2017, to which they did not plead guilty. Further prosecution witnesses were examined after which the accused recorded their statement under section 313 Cr.P.C. wherein they pleaded themselves to be innocent.

4. The trial court on 31.05.2019, acquitted the accused persons and held that the prosecution had failed miserably to prove allegations against all the accused for the commission of offence punishable under section 21 and 27 A of the 1985 Act beyond shadow of reasonable doubt.

5. It is contended by learned state counsel 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.

4. He further contends that the trial court has failed to appreciate the evidence tendered by the prosecution witness and have only acquitted the accused on the basis of prosecution's lethargic and callous act of delaying the delivery of samples to FSL.

5. He vehemently argues that the accused was apprehended on the basis of suspicion and notice under section 50 of the Act was duly served upon him and during the personal search, 70 grams of smack was recovered from the applicant deepu who stated in his disclosure that he purchased the said contraband from Mohan (co- accused).

6. Heard.

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

8. Before advertng to the merits of the case, it would be worthwhile to have a glance on the scope in acquittal appeals. It is well settled in catena of decisions that an Appellate court has full power to review, re appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the Fundamental principle of Criminal Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of Law, secondly the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial court.

9. 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 non compliance of legal provisions.

10. Adverting to the merits on the case in hand it is the admitted case of prosecution that though public witnesses were available and were given offer to join but nobody came forward to join and hence it was incumbent upon the investigating officer to jot down their name which he did not casting a doubt on the prosecution narrative.

11. As regards another contention of state counsel qua compliance of section 50 is concerned in present case this court is of the opinion that investigating agency has failed to comply as IO says that the accused was given the offer to get investigated by the gazetted officer and the magistrate but he refused and reposed faith in the IO. Courts have consistently held that compliance with Section 50 is mandatory and not a mere technicality. The obligation to inform the suspect of this right must be strictly followed, and any lapse is treated as a serious violation that can vitiate the entire prosecution case if the search is of the person. The Supreme Court, in one of the celebrated cases such as ***State of Punjab v. Baldev Singh; AIR 1999 SUPREME COURT 2378*** has unequivocally ruled that any failure to comply with Section 50, where applicable, renders the search illegal and the evidence obtained inadmissible. This strict approach is intended to ensure that the rights of the accused are not compromised in the pursuit of law enforcement;

“31. However, the question whether the provisions of Section 50 are mandatory or directory and if mandatory to what extent and the consequences of non-compliance with it does not strictly speaking arise in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched. Therefore, without expressing any opinion as to whether the provisions of Section 50 are mandatory or not, but bearing in mind the purpose for

*which the safeguard has been made, **we hold** that the provisions of **Section 50** of the Act implicitly make it imperative and obligatory and cast a duty on the Investigating Officer (empowered officer) to ensure that search of the concerned person (suspect) is conducted in the manner prescribed by **Section 50**, intimating to the concerned person about the existence of his right, that if he so requires, he shall be searched before a Gazetted Officer or a Magistrate and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, would cause prejudice to an accused and render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered during a search conducted in violation of the provisions of **Section 50** of the Act. The omission may not vitiate the trial as such, but because of the inherent prejudice which would be caused to an accused by the omission to be informed of the existence of his right, it would render his conviction and sentence unsustainable. The protection provided in the **section** to an accused to be intimated that he has the right to have his personal search conducted before a Gazetted Officer or a Magistrate, if he so requires, is sacrosanct and indefeasible - it cannot be disregarded by the prosecution except at its own peril.”*

12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the trial Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of

justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

13. In view of the above stated discussion and on perusal of the judgment passed by the trial Court dated 31.05.2019, this Court is of the considered view that the appellant has miserably failed to discharge burden upon the accused in the nature of the evidence adduced. On the basis of such a shaky story, the accused cannot be weighed down with criminal liability as nothing on record is available to prove the allegations against them without reasonable doubt.

14. Therefore, said judgment of the trial court is well reasoned and is based upon proper appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or requiring any interference by this Court.

15. Accordingly, the leave to appeal stands declined.

16. Dismissed.

07.07.2025

Sham

(SANDEEP MOUDGIL)
JUDGE

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