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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 462/2022

UNION OF INDIA

.....Petitioner

Through: Mr. Gibran Naushad, SSC
with Mr. Suraj Shekhar
Singh & Mr. Harsh
Singhal, Advs.

versus

MOHAMMAD NASEEM

.....Respondent

Through: Mr. Rajat Oswal, Adv. on
behalf of Ms. Jahanvi,
Adv. (DHCLSC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **12.11.2025**

1. The present petition is filed seeking leave to appeal against the judgment dated 30.09.2019 (hereafter, '**impugned order**') passed by the learned Special Judge whereby the learned Trial Court acquitted the respondent of offences under Sections 21(c)/23(c)/28 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. Briefly stated, it is alleged that on the intervening night of 23.12.2016 - 24.12.2016, the respondent was intending to depart via flight from Delhi to Dammam, carrying one hand bag and two check in bags with him. It is alleged that the two checked-in bags of the respondent were intercepted and upon inspection 150 bottles of Phensedyl cough syrup of 100ml each were found in the bags. It is alleged that the Phensedyl cough-syrup bottles were



concealed by wrapping them in black carbon paper and transparent polythene, and further placing them in cardboard boxes resembling gift packs so as to evade detection. It is alleged that the respondent upon being asked, failed to produce any evidence, documentary or otherwise in support of lawful possession and export of recovered "Chlorpheniramine Maleate & Codeine Phosphate Cough Linctus" Phensedyl Cough Linctus 100ML, a scheduled narcotic drug falling under the schedule of the NDPS Act, 1985.

3. The Learned Trial Court framed charges under Sections 21(c)/23(c)/28 of the NDPS Act against the respondent to which he pleaded not guilty and claimed trial.

4. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offences and noted that the prosecution failed to prove that the contraband was recovered from the accused. It was noted that the testimonies of the prosecution witnesses were inconsistent and all procedural safeguards provided under the NDPS Act, were not complied with by the Customs Department.

5. The learned Additional Public Prosecutor ('APP') for the State submits that the impugned judgement is based on presumptions, conjectures and surmises, and cannot stand the scrutiny of law and thus, deserves to be set aside.

6. He submits that the learned Trial Court has erred in not appreciating the evidence of PW-1, who was an independent witness and supported the case of the prosecution.

7. He submits that the learned Trial Court has erred in observing in the impugned judgment that the prosecution has not



strictly complied with procedural safeguards.

8. He submits that the learned Trial Court has erred in ignoring the testimonies of the prosecution witnesses who have supported the case of the prosecution.

9. *Per contra*, the learned counsel for the respondent vehemently opposes the arguments as raised by the learned APP for the State and consequently prayed that the present petition be dismissed.

ANALYSIS

10. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar***: (2008) 9 SCC 475 held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking



leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

11. Suffice it to say that leave to appeal can be granted only if there is any perversity in the order of the learned Trial Court or a substantial error in the view taken by the Trial Court. Hence, an order of acquittal can only be set aside if the approach of the lower court is vitiated with manifest illegality or the decision is perverse.

12. It is the case of the prosecution that the respondent while intending to depart from Delhi to Damman was carrying 150 bottles of a cough syrup namely Phensedyl in his 2 check-in bags packaged in a manner to resemble gift packs to avoid detection.

13. After a detailed examination of the case, the evidence presented, and the legal principles governing the NDPS Act, it is evident that the impugned judgment acquitting the respondent is well-founded and does not warrant interference. The prosecution’s case is fraught with procedural lapses, contradictions in witness testimonies, and failure to adhere to the mandatory safeguards enshrined in the NDPS Act, which are essential to ensure a fair trial and prevent abuse of power.

14. It has been argued by the learned APP that the learned Trial Court failed to consider the testimony of PW-1, who is an independent witness and has fully supported the case of the prosecution.

15. PW-1 in his examination deposed that it was his duty to



physically search bags which were referred from Level- II security and he was made to search the bags of the respondent based on suspicions. He deposed that 150 bottles of Phensedyl were recovered from the bags of the respondent. In his cross-examination PW-1 admitted that there were 3 persons including him at level-IV for physical checking of the checked in bags, however, only PW-1 has signed the physical check register.

16. PW-1 further admitted that he did not personally count the recovered bottles but the same were counted by his senior in his presence, however, he could not name the officer. He admitted that the checked in baggage was not weighed and could not even name the senior official to whom the information regarding the bags was given by him.

17. Thus, the learned Trial Court rightly noted that PW-1 gave vague replies to various questions and did not inspire confidence so as to support the case of the prosecution.

18. Moreover, the learned Trial Court rightly noted multiple material discrepancies in the testimonies of the witnesses and procedural lapses in the case of the prosecution.

19. It is pertinent to note that PW-6 admitted to having knowledge as to the fact that the respondent was not well educated and did not know any English. Even so, PW-6 served notices under Section 50 of the NDPS Act and Section 102 of the Customs Act in English language. Further a perusal of the said notices shows that there is no endorsement of the interpreter to the effect that he had explained the contents of the notices to the respondent. PW-6 had further admitted that the checked in baggage of the accused was not locked. Hence, the possibility of someone having



tampered with the bags of the respondent cannot be ruled out.

20. PW-7, who was one of the panch witnesses in the present case did not support the case of the prosecution. He could neither identify the accused nor could he tell his name. He deposed that there were only three persons when the proceedings were conducted, including him, the customs officer and the respondent. Thus, the learned Trial Court rightly noted that the deposition of PW-7 shows that the other panch witness was not present when the proceedings were going on and she was called later just to complete the formality of taking her signatures on the proceedings.

21. PW-7 in his testimony admitted that he had not read the papers signed by him as he was illiterate and he had not understood the contents of the documents. Moreover, he admitted that no bag was searched in his presence and when he had entered the room, the bottles were already lying on the table. The learned Trial Court rightly noted that the deposition of PW-7 shows that the search proceedings were just conducted in a mechanical manner as the bag was already opened before calling the panch witness who seems to be a mere stock witness. This testimony of PW-7 created a major dent in the case of the prosecution.

22. Moreover, PW-12, who was also one of the panch witnesses, did not support the case of the prosecution as she could not identify the respondent. She deposed that the bags were opened in her presence with a knife and there were locks on the bags, which was contrary to the deposition of PW-6 who deposed that there were no locks on the bags. She further deposed that she did not understand the contents of the documents which she had signed and was just merely brought to sign on the papers.



23. PW-14, who had deposed that he had recorded the voluntary statement of the respondent also failed to recognise the respondent in his deposition.

24. In the instant case, the learned Trial Court rightly noted that all procedural safeguards provided under the statute have not been strictly complied with, moreover the testimonies of the prosecution witnesses have further casted doubts of the case of the prosecution. The prosecution has not discharged its burden of proving its case against the accused beyond all reasonable doubt.

25. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with. This Court is of the opinion that the State has not been able to establish a prima facie case in its favour and no arguable ground has been raised to accede to the State's request to grant leave to appeal in the present case.

26. The leave petition is therefore dismissed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 12, 2025

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