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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.L.P. 2/2018**

STATE (GNCT OF DELHI)

.....Petitioner

Through:

Mr. Sunil Kumar Gautam,
APP for the State
SI Krishna Kumar, PS-
ANTF/ Crime Branch

versus

RANI

.....Respondent

Through:

Mr. Kundan Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.09.2025

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1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 08.09.2017 (hereafter '**impugned judgment**') passed by the learned Special Judge, North District, Rohini Courts, Delhi in SC No. 110/2015 whereby the respondent was acquitted of the offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. Briefly stated, the case of the prosecution is that on 18.06.2015, a secret information was received that the respondent, who is involved in the business of supplying heroine, would be coming to supply a consignment of heroine at around 11:15 am near Rajkiya Sah-Shiksha Madhyamik Vidyalaya. On the basis of the secret information, a raiding team was constituted, and the respondent was apprehended at about 11:25



am. A notice under Section 50 of the NDPS Act was served upon the respondent. On her refusal to be searched in the presence of a woman Gazetted Officer, cursory search of the respondent was conducted. During search, one yellow colour polythene containing another white transparent polythene was found, and the same was allegedly found to contain a mud-coloured powder. On the basis of the field-testing kit, the same was identified to be heroine and weighed 300 grams on the electronic weighing machine.

3. The respondent was charged for the offence under Section 21 of the NDPS Act.

4. By the impugned judgment, the learned Trial Court acquitted the respondent of the offence under Section 21 of the NDPS Act. It was noted that the search of the respondent was not conducted in terms of Section 42 of the NDPS Act. It was noted that the prosecution had failed to prove whether there was a strict compliance of Section 50 of the NDPS Act. It was noted that witnesses failed to explain the meaning of the term 'Gazetted officer' as appearing in Section 50 of the NDPS Act.

5. The learned Trial Court noted that the entire case of the prosecution revolved around the testimonies of the police officials. It was noted that the testimonies of the police officials in relation to joinder of independent witnesses was contradictory in nature. It was noted that no efforts were made by the prosecution to join any independent witness after the respondent was apprehended and the recovery was effected. Considering the lack of independent witnesses coupled with the non-compliance of Section 42 and 50 of the NDPS, the learned Trial Court acquitted the respondent of the offence under Section 21 of the



NDPS Act.

6. The learned Additional Public Prosecutor for the State submits that the learned Trial Court erroneously acquitted the respondent of the offence under Section 21 of the NDPS Act. He submits that the contradictions as pointed out in the impugned judgment are only minor in nature. He submits that all legal formalities were complied with by the officials and sincere efforts were also made to make independent witnesses join the investigation but no one agreed to do so. He consequently submits that impugned judgment is perverse and is liable to be set aside.

Analysis

7. It is trite law that the Appellate 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.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

(emphasis supplied)

8. 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.

9. In the present case, in order to establish its case, the prosecution examined 12 witnesses all of them being formal witnesses who deposed about the manner in which the secret



information was received, raid was conducted and the manner in which the investigation was conducted.

10. Ct Jagdish/PW-2 deposed that on 18.06.2015, the raiding party constituting ASI Narender/PW-1, HC Jitender, Ct Janita/PW-5, the informer left the office at about 10 AM. He stated that on the way, ASI Narender/PW-1 asked some passerby to join the proceedings but they all refused. He stated that the respondent was found standing with some *thaila* in her hand. He stated that some persons were requested to join the proceedings but they all refused. He stated that notice under Section 50 of the NDPS Act was served upon the respondent who refused to get her search conducted by a Gazetted officer. He stated that the search was conducted by Ct Janita/PW-5. Ct Jagdish/PW-2 further stated that during search some drug was found in the *thaila* of the respondent. During cross-examination PW-2 deposed that the polythene was taken by Ct Janita/PW-5 from the hand of the respondent after 5 minutes of her apprehension. PW-2 could not tell as to how many ladies/men were requested to join the proceedings. He further admitted that the place from where the respondent was apprehended, there were many shops.

11. As per the testimony of PW-2, the nearest shop was about 20-30 metres from the spot of apprehension of the respondent. He further stated that the public persons who refused to join the proceedings were asked to disclose their names but they refused to do so.

12. PW-5/Janita corroborated the testimony of PW-2/Jagdish. During her cross examination, she deposed that the first public person who was requested to join the proceedings was a male. She could not tell whether or not his name or address had been



asked. She could not tell after ~~no~~ much time the search of the respondent was conducted. When cross-examined on this particular aspect, she could not say if it was 5/10/30/60 minutes or 2-3 hours. She further stated that the colour of the contraband changed and the contraband was handed over to some other staff member. PW-5 could not tell to whom the contraband was handed over.

13. PW-8 corroborated the testimony of PW-2 and PW-5. He stated that no request was made to gazetted officer or Magistrate to remain ready for being called if required. He could not depose about the particulars of the person who were requested to join the proceedings. He admitted that after the receipt of information, he did not make any attempt to verify whether or not the informer was trying to implicate an innocent person. He further deposed about the number of cases in which information had been given to him by the said informer and further stated that in no case instituted on the basis of the said informer, any public person was ever made to join the proceedings. He stated that the fact that the respondent was carrying a *thaila* was not mentioned in the notice which was the first document prepared on the spot. He admitted that none from the nearby located school was called to join the proceedings. He further stated that some repair was in progress in the nearby police station but none of the labourers working there were called to join the proceedings.

14. PW-11 also corroborated the testimonies of PW-2, PW-5 and PW-8, however, he could not tell the name or the particulars of the first person who had been requested to join the proceedings.

15. From a perusal of the material on record, it is apparent that



the search of the respondent was conducted by Ct Janita/PW-5 who is a lady constable. In accordance with Section 42 of the NDPS Act the power of entry, search, seizure and arrest without warrant or authorisation is afforded to any officer who is '*superior in rank to a peon, sepoy or constable*'. In the present case, however, the search of the respondent was conducted by PW-5 who was a constable. It is apparent that the prosecution failed to comply with Section 42 of the NDPS Act.

16. In addition to the same, the prosecution failed to bring forth any independent witness to corroborate the case of the prosecution. While the testimony of the police officials ought not to be discarded, the same ought to be looked into with great care and caution especially when the seizure is made in broad daylight and in a public place. From a perusal of the testimonies, it is apparent that the police officials took contradictory stands insofar as the joinder of independent witnesses is concerned.

17. PW-2, in his cross examination, stated that the nearest shop was about 20-30 metres from the spot of apprehension of the respondent. PW-8, in his testimony, admitted that none from the nearby school was called to join the proceedings. He further stated that some repair was in progress in the nearby police station but none of the labourers working there were called to join the proceedings. In the light of the alleged recovery to have been made in a public place, at around 11:25 am in broad daylight, the absence of any independent witnesses casts a doubt on the veracity of the case of the prosecution.

18. There are also inconsistencies in regard to the respondent holding a *thaila* in her hand at the time when she was apprehended. PW-8, on being cross examined, stated that the fact



that the respondent was carrying *thaila* was not mentioned in the notice which was the first document prepared on the spot. There are also discrepancies in regard to the time during which the search of the respondent was conducted. When cross-examined on this particular aspect, PW-5 could not say if the search of the respondent was conducted for 5/10/30/60 minutes or 2-3 hours.

19. 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.

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

AMIT MAHAJAN, J

SEPTEMBER 8, 2025
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