IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 293 of 2012
Reserved on: 31.10.2026
Date of Decision: 25.11.2026.

State of H.P. ...Appellant

Versus

Dimple Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No*

For the Appellant/State : Mr Tarun Pathak, Deputy Advocate General.

For the Respondent : Mr Arun Kaushal, Advocate, vice Mr Anil Kumar.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 30.04.2012 passed by the learned Additional Sessions Judge (Fast Track Court), Una, District Una, H.P. (learned Appellate Court) vide which the judgment of conviction dated 25.07.2011 and order of sentence dated 26.07.2011 passed by the learned Judicial Magistrate First Class, Court No. 1, Amb, District Una (learned Trial Court) were set aside. *(The parties shall hereinafter*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of HP. It was asserted that H.C. Pawan Kumar (PW4), HHC Lal Chand, Constable Nardev Singh (PW2), and Constable Bachitter Singh had set up a Naka at Kallu Di Bar on 31.03.2007. A Tata Sumo bearing registration No. HP-19B-0825 came from Jorbar at about 05:30 a.m. The police signalled the driver to stop the van. The driver identified himself as Dimple Kumar. The police checked the Tata Sumo and recovered 12 boxes of IMFL bearing the mark Bag Piper, 12 boxes of IMFL bearing the mark Officer's Choice, and 2 boxes of IMFL bearing the mark Royal Chamber. The police demanded a permit for transporting the liquor, but the accused could not produce any permit. The police took out 1 bottle each of the Mark Bag Piper, Officer's Choice and Royal Chamber for analysis, and sealed each bottle with seal "P". Seal impression (Ext.PW4/B) was taken on a separate piece of cloth. The other boxes were put in gunny bags,

and each gunny bag was sealed with seal "P". The seal was handed over to Constable Bachitter Singh after use. The bottles, boxes and the vehicle were seized vide memo (Ext.PW2/A. A Rukka (Ext.PW4/E) was prepared and was sent to the police station, where FIR (Ext.PW4/F) was registered. HC Pawan Kumar (PW4) investigated the matter. He prepared the site plan (Ext.PW4/C) and recorded the statements of witnesses as per their version. He deposited the case property with ASI Manmohan (PW1), who deposited it in the Malkhana and sent the sample bottles to CTL Kandaghat through Constable Vipin Kumar (PW5) vide RC No. 66/07 dated 16.04.2007. Constable Vipin Kumar deposited all the articles in safe condition at CTL Kandaghat and handed over the receipt to MHC on his return. The result of chemical analysis (Ext.PA) was issued, in which it was mentioned that samples of IMFL contained 75.1% proof alcohol each. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was

charged with the commission of an offence punishable under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of HP, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined six witnesses to prove its case. ASI Manmohan (PW1) was working as MHC, with whom the case property was deposited. Constable Nardev Singh (PW2) is the witness to recovery. Monu Thakur (PW3) did not support the prosecution case. HC Pawan Kumar (PW4) investigated the matter. Constable Vipin Kumar (PW5) carried the sample bottles to CTL Kandaghat. Inspector Om Parkash (PW6) signed the FIR.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), denied the prosecution case in its entirety. He claimed that he was not apprehended by the police. A false case was made against him. The police officials deposed against him falsely because they belong to the police force. He did not produce any evidence in his defence.

6. Learned Trial Court held that the police had no prior information regarding the transportation of the liquor.

Therefore, it was not possible to associate any independent person. The testimonies of police officials corroborated each other. The police could not have planted a huge quantity of liquor against the accused. No reason was assigned as to why the police would depose falsely against the accused or would implicate him falsely. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 61 (1) (a) of the Punjab Excise Act applicable to the State of HP and sentenced him to undergo simple imprisonment for 6 months, pay a fine of ₹1,000/- and in default of payment of fine to undergo simple imprisonment for 1 month.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge, Fast Track Court, Una (learned Appellate Court). The learned Appellate Court held that HC Pawan Kumar (PW4) had effected the recovery and had carried out the investigation, which is improper. Only three bottles were sent for analysis to the CTL Kandaghat, and not all the bottles were sent. No independent witness was associated. There is no evidence that the sample seal was deposited with the MHC or that it was sent to the CTL

Kandaghat, in the absence of which, the integrity of the case property was not established. The prosecution had failed to prove its case beyond reasonable doubt, and the learned Trial Court had erred in convicting and sentencing the accused. Hence, the judgment and order passed by the learned Trial Court were set aside, and the accused was acquitted of the charged offence.

8. Being aggrieved by the judgment and order passed by the learned Appellate Court, the State has filed the present appeal asserting that the learned Appellate Court erred in acquitting the accused. It was wrongly held that investigation by HC Pawan Kumar (PW4) would make the prosecution case doubtful. The report of the analysis shows that the case property was found to be intact, and the learned Appellate Court was not justified in doubting the integrity of the case property. The possession of three bottles is also an offence and was not sufficient to record the acquittal. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Tarun Pathak, learned Deputy Advocate General for the appellant/State and Mr Arun Kaushal, learned vice counsel representing the respondent.

10. Mr Tarun Pathak, learned Deputy Advocate General for the appellant/State, submitted that the learned Appellate Court erred in reversing the well-reasoned judgment passed by the Learned Trial Court. There is no bar to conducting the investigation by the officer who had effected the recovery under any provision of law. The learned Trial Court had rightly held that it was a case of chance recovery and it was not possible to join any dependent person. The learned Appellate Court failed to appreciate this aspect. Even if 3 sample bottles were sent, the possession of more than 2 bottles was itself an offence punishable under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of HP, and the accused could not have been acquitted. The bottles were sealed, and there could not have been any tampering with them. The learned Appellate Court had taken a view that could not have been taken by any reasonable person. Hence, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside

and that the judgment passed by the learned Trial Court be restored.

11. Mr Arun Kaushal, learned vice counsel representing the respondent, submitted that the prosecution had failed to prove its case beyond reasonable doubt. The recovery was effected in a densely populated area, and there is no explanation for not associating any independent person. ASI Manmohan Singh (PW1) did not say that any sample seal was deposited with him or that he had sent any sample seal to CTL Kandaghat. C. Vipin Kumar (PW5) did not state that any sample seal was taken by him to CTL Kandaghat, and the learned Appellate Court was justified in holding that the integrity of the case property was not proved. The learned Appellate Court had taken a reasonable view, and this Court should not interfere with the reasonable view of the Court acquitting the accused, even if another view is possible. Hence, he prayed that the present appeal be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in

Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373, that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

> **Scope of interference with an acquittal:**
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> **26.** At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.
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> **27.** In ***Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808: 1973 SCC (Cri) 1048***, this Court explained the golden thread running through criminal jurisprudence in the following words:
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> > *"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the*

doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab *v.* Jagir Singh, *a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."*

28. The decision in ***Kali Ram*** (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not a technical rule; it is a substantive safeguard flowing from the presumption of innocence.

29. In ***Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450: (2009) 1 SCC (Cri) 60***, this Court reiterated the limited scope of interference with acquittals. This Court observed:

"75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered

with unless it is totally perverse or wholly unsustainable."

30. The decision in ***Ghurey Lal*** (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In ***Chandrappa v. State of Karnataka (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325***, this Court held that though the appellate court has full power to review and re-appreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in ***Mrinal Das v. State of Tripura (2011) 9 SCC 479***, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

14. The present appeal is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. Learned Appellate Court held that HC Pawan Kumar (PW4) had effected the recovery and he had also carried out the investigation, which would make the prosecution's case doubtful. This conclusion cannot be sustained. It was laid down by the Constitutional Bench of the Hon'ble Supreme Court in ***Mukesh Singh v. State (NCT of Delhi)*, *(2020) 10 SCC 120: (2021) 1 SCC (Cri) 356: 2020 SCC OnLine SC 700,*** that there is no bar in the NDPS Act or any other law for the complainant to carry out the investigation. It was observed at page 163:

> "**12.2.** Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby the prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record. Therefore, as rightly observed by this Court in ***Bhaskar Ramappa Madar [Bhaskar Ramappa Madar v. State of Karnataka, (2009) 11 SCC 690: (2010) 1 SCC (Cri) 133]***, the matter has to be decided on a case-to-case basis without any universal generalisation.
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> **12.3.** As rightly held by this Court in ***V. Jayapaul [State v. V. Jayapaul, (2004) 5 SCC 223: 2004 SCC (Cri) 1607]***, there is no

> bar against the informant police officer investigating the case. As rightly observed, if at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer; the question of bias would depend on the facts and circumstances of each case, and therefore it is not proper to lay down a broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information conducts the investigation that itself has caused prejudice to the accused and thereby vitiates the entire prosecution case and the accused is entitled to acquittal.
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> **13.2.** (**II**) In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias, and therefore on the sole ground that the informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis. A contrary decision of this Court in ***Mohan Lal v. State of Punjab [Mohan Lal v. State of Punjab, (2018) 17 SCC 627: (2019) 4 SCC (Cri) 215]*** and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law, and they are specifically overruled."

16. The learned Appellate Court had not recorded any prejudice to the accused and erred in holding that the prosecution case would become suspect merely because HC

Pawan Kuar (PW4) had effected the recovery and he had also carried out the investigation.

17. The learned Appellate Court also held that the prosecution had sent three sample bottles, which is fatal to the prosecution case. This conclusion can also not be sustained. Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.) punishes a person who possesses any intoxicant, which, as per Section 3(12)(a), means liquor or intoxicating drug. It was laid down by this Court in ***Mahajan v. State of Himachal Pradesh, 2002 SCC OnLine HP 88,*** that as per the notification issued by the State Government, the limit of transportation is two bottles of country liquor, each of capacity 750 ml. It was observed: -

> **9.** In exercise of the powers conferred by Ss. 5 and 58 of the Punjab Excise Act, the Governor, Himachal Pradesh, on 29-3-1985 issued an order bearing No. EXN. F(1)-4/76 published in Himachal Rajpatra (Extra-ordinary) on 30-3-1985 prescribing the limit for possession of Indian made foreign spirit (for short, IMFS) in respect of the areas/territories comprised in Himachal Pradesh immediately before 1st November, 1966. This order was issued by way of amendment of O. 2 of Himachal Pradesh Intoxicants Licence and Sale Orders, 1965. The relevant order reads:—
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> "2-A. Limit for retail possession:

The following are the maximum quantities of intoxicants which can be sold in each transaction in retail sale under the Punjab Excise Act, 1914, in the said area:—

(1) Foreign spirit	Two bottles each of the capacity of 750 ml.
(2) Beer, whether imported or made in India.	Twelve bottles each of the capacity of 650 ml
(3) Cider (liquor manufactured by fermentation of juice of any fruit), whether imported or made in India.	Six-quart bottles.
(4) Country liquor	Two bottles each of the capacity of 750 ml.
(5) Country fermented liquor.	Six-quart bottles.
(6) Bhang	100 grams.
(7) Rectified spirit	One Pint of 375 ml.
(8) Denatured spirit	One bottle of 650 ml.

Note. — The limit of transportation mentioned in Items Nos. (1) and (2) above shall be alternative with the limit mentioned at Item No. (4):

Provided that a person may, for bona fide consumption by him, the members of his family, or his guests, purchase, transport and possess foreign spirit up to 12 bottles of the capacity of 750 ml. each inclusive of imported spirit and 36 bottles of the capacity of 650 ml. each of Beer on the authority of a permit in Form L-50 granted by the Excise Officer, holding the charge of the District, on payment of a permit fee according to the following scale for a financial year or part thereof: —

Quantity	Permit fee
Exceeding six bottles of IMFS of 750 ml. each and 12 bottles of 650 ml. each of Beer but not exceeding 12 bottles of IMFS and 36 bottles of Beer.	Fifty rupees only.

Note:— The possession limit by one family living in a separate and distinct premises will be six bottles of IMFS of 750 ml. each and 24 bottles of Beer of 650 ml. each at one time. Imported liquor will be considered as part of the stocks of IMFS, and bottles of foreign liquor, which may be of one litre or two litres, will be converted, for this purpose, to the limits prescribed for IMFS in 750 ml. bottles:

Provided further that in case of possession and purchase of denatured spirit for industrial purposes, a permit may be obtained from the Excise Officers of the 1st Class as declared by the State Government."

18. It was laid down by this Court in ***Mahajan*** (supra) that where the prosecution had sent only three bottles for analysis, it is proved that the accused was in possession of three bottles of liquor. It was observed:

> "11. In the present case, as per the prosecution story, eight bottles of XXX Rum were recovered from the possession of the accused. Admittedly, samples out of only three bottles were taken by the Investigation Officer and sent for analysis. Such samples were found to be of IMFS vide report Ex. P.W. 5/E.
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> 12. In view of such report, at the most, the prosecution has been able to prove the possession of the accused only qua three bottles of IMFS. Nothing has come on the record to

> show that the remaining five bottles alleged to have been recovered from the accused also contained IMFS.
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> 13. Before the accused could be convicted for the offence, the prosecution was obliged to prove that he was in conscious possession of IMFS in excess of the prescribed limit of six bottles of 750 ml each. The prosecution, as stated above, could prove the possession of the accused only qua three bottles, which possession is below the prescribed limit. The conviction and sentence imposed upon the accused by the two Courts below, on this short ground alone, cannot be sustained."

19. Therefore, it was rightly submitted on behalf of the State that even the possession of 3 bottles of liquor would be an offence under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of HP.

20. ASI Manmohan Singh (PW1) stated that boxes kept in a plastic bag, bottles sealed with seal "P", were deposited with him and he sent the sample bottles to CTL Kandaghat through Constable Vipin Kumar (PW5) vide RC No. 66/2007. Constable Vipin Kumar (PW5) stated that he had carried 1 bottle each of Officer Choice, Royal Chamber and bag piper sealed with seal "P" and deposited them at CTL Kandaghat. The learned Appellate Court had rightly held that these witnesses have not deposed that any sample seal was deposited with the MHC or any sample seal was sent to the CTL Kandaghat. The copy of the RC or Malkhana

Register was not produced before the Court to show that any sample seal was sent to CTL Kandaghat.

21. It was laid down by this Court in ***Kishan Chand & Another Vs. State 2009 (2) HLJ 925*** that where the person carrying the case property did not say anything about the carrying of the sample seal, link evidence is missing. The endorsement made by CTL Kandaghat in these circumstances that seal impressions were compared with the sample seal will lose their significance. It was observed:-

> "6. It is incumbent on the prosecution to prove that the accused were in possession of an incriminating article or an offensive material before they are convicted for keeping in possession the contraband or the offensive material. From its recovery and taking samples, the chain of evidence until the samples are analysed in the laboratory should be complete. In case of breach of the chain of evidence, it gives rise to a reasonable doubt that the samples were tampered with, to the benefit of which goes to the accused.
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> 7. In the instant case, PW-6 A.S.I. Churamani, however, did not state about the deposit of the case property in the Malkhana. But PW-5 MHC Hukam Singh stated that on 19.6.2000 A.S.I. Churamani had deposited the case property sealed with seal impression 'N' in the Malkhana with him. But he nowhere stated that the sample of the seal was also deposited with him in the Malkhana. Even the extract of the Malkhana Register was not placed and proved on record. Thus, it cannot be said that the sample of the seal was also deposited in the Malkhana with him along with the case property.

Even PW-2 Constable Rajinder Kumar did not say anything about handing over the sample of the seal to him when he had taken the samples for examination to C.T.L. Kandaghat. The copy of R.C. No.55/2000, vide which he took the sample for analysis, has also not been placed and proved on record. Had it been there, it could have thrown some light on this aspect of the matter, whether the sample of the seal was also entrusted to him, which was further handed over by him to the person who received the samples in the laboratory, for its comparison with the seal found on samples sent for analysis.

8. The lithographic impression on the report Ext. PW-4/A, of course, shows that seals on the samples were found intact and unbroken and tallied with the impression seal sent separately, but it loses its importance in view of the fact that no witness has stated to have either deposited the sample seal along with case property in the Malkhana or sent it separately to the Laboratory when the samples were taken for analysis. Then how could the sample of the seal be available in the Laboratory for its comparison? The lithographic stamp is mechanically put on the report.

9. Further, the case of the prosecution is that the seal, after its use, was given to PW-1 Ravinder Kumar, but he did not say that the seal was ever entrusted to him. Thus, where the seal used on the samples is not known, in these circumstances a substantial doubt has arisen, and the prosecution could not exclude the possibility of tampering with the samples.

Thus, the link evidence in the instant case is found missing. There is no evidence on record regarding the entrustment of seal and no entry in the R.C. and Malkhana register; therefore, reasonable doubt is cast on the probity of the prosecution case, which fact was lost sight of by the courts below. Therefore, in these circumstances, the benefit of the doubt should have been given to the petitioners."

22. This position was reiterated in ***State of H.P. Vs. Rakesh Kumar 2018 (1) HLJ 73***wherein it was held:-

> "7. Interestingly, there is no mention, if any, regarding the handing over of the seal by this witness to CTL Kandaghat, for comparison. It has come in his statement that he had taken samples, but he has not stated that a specimen seal was also given to him for depositing in CTL Kandaghat. Samples were sent to CTL Kandaghat through Jai Singh (PW- 6), who simply deposed that he had sent samples through PW-5 DurgaDutt. Interestingly, he nowhere stated that the specimen seal impression was also sent separately for chemical analysis.
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> 18. True it is that reports of CTL, Ext. PW-7/G to Ext. PW-7/K show that the specimen seal impression allegedly separately sent, tallied with the seal impressions on the samples; however, link evidence is missing as to how the specimen seal impression reached the chemical analyst. Similarly, it emerges from the record that there is no mention, if any, in the Challan with regard to sending of specimen seal to CTL Kandaghat. This certainly creates doubt with regard to the genuineness of the prosecution case.
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> 19. This Court, in a case titled ***State of H.P. vs. Pankaj Sood, Latest HLJ 2009 (HP) 727,*** has held that in such a case, by no stretch of the imagination, it can be presumed that the samples were sent along with the sample seal for comparison, and it was held that the prosecution case was doubtful on this count. It was further held by this Court in the aforesaid case that the prosecution is obliged to prove that the article recovered from the possession of the accused is contraband within the meaning of the Act. For that, from the time of recovery till the examination of the samples, the link is required to be completely proved. Seals used on the samples must be intact and unbroken, and the said seals should tally with the sample of the seal taken separately at the time of sampling by the Investigating

> Officer to overrule every possibility of tampering with the contents of the samples."

23. Similar is the judgment in ***Jagdev Singh v. State of H.P.,*** ***2015 SCC OnLine HP 2520***wherein it was observed:

> **36.** Thus, there is no link evidence establishing the factum of receipt of the sample from the doctor till such time it was handed over to the police official who got it deposited in the laboratory. Whether it was kept in safe custody and not tampered with remains unproven on record.
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> **37.** The SHO/Investigating Officer has not deposed that the sample was deposited in the police station. Where the sample was kept between the 13th and 17th June 2009 remains unexplained on record. Also, seal-H with which the alleged sample was sealed has not been produced in Court. Crucially and significantly, even the Road Certificate has not been produced on record, which would have only thrown light as to with whom and where the sample was kept at the police station.
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> **38.**No doubt, MLC (Ext.PW-6/G) records the sample to be that of Jagdev (accused), but then the Doctor does not specifically state that the sample was sealed. All that he states is that the sample was handed over to the police in a sealed bag. But then who sealed the same and with which seal, he does not state, and Constable Roshan Lal (PW-5) is also silent about the same. In fact, he is silent about the seal impression. As already observed, ASI Om Prakash and HC Nup Ram are silent with regard to the sample, much less sealing thereof. It is in this backdrop that it was necessary for the prosecution to have produced the original seal or impression thereof, with which the sample was sealed, for it cannot be said with certainty that the sample was not tampered with.

24. Thus, the report of analysis cannot be connected to the recovery effected by the police on the spot, and the learned

Appellate Court had rightly held that the integrity of the case property was doubtful. This was a reasonable view that could have been taken, and this Court will not interfere with the reasonable view of the Court while deciding an appeal against acquittal.

25. Therefore, the judgment passed by the learned Appellate Court is sustainable, and the present appeal fails and is dismissed. All the pending applications, if any, also stand disposed of.

26. In view of the provisions of Section 437 A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent is directed to furnish bail bond in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the respondent on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

27. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

25th November, 2026
(Nikita)