2026:HHC:47874

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 539 of 2015
Reserved on : 15.10.2026
Decided on : 31.10.2026
Uploaded on : 31.10.2026

State of Himachal Pradesh ...Appellant.

Versus

Shankar Giri …Respondent.

Coram
Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
Hon'ble Mr. Justice Bhupesh Sharma, Judge.
Whether approved for reporting?

For the Appellant: Mr. J.S. Guleria, Deputy Advocate General.

For the Respondent: Mr. Tarun Brakta, Advocate, Amicus Curiae.

Bhupesh Sharma, Judge

The State of Himachal Pradesh is in appeal before this Court against the judgment of acquittal dated 01.06.2015 passed by learned Special Judge, Bilaspur, H.P., in Session Trial No.10/3 of 2010, titled as '*State of Himachal Pradesh Vs. Shankar Giri*,

whereby the respondent (hereinafter referred to as 'accused') has been acquitted for the commission of offences punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The accused was sent to face trial for the commission of an offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985, by SHO Police Station Barmana, District Bilaspur, H.P., in Case FIR Number 90/2010 dated 23.04.2010 registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985. The accused was prosecuted for the said offence, and was subsequently acquitted by the learned Trial Court vide impugned judgment dated 01.06.2015 passed in Session Trial No.10/3 of 2010, titled as '*State of Himachal Pradesh Vs. Shankar Giri'.*

3. Briefly, the facts relevant for the disposal of this appeal, in short, are as under:

3(a) On 22.04.2010 at 11:00 PM, a Police party headed by Dy.SP(P) Kulbhushan Verma officiating SHO Police Station Barmana left for routine night patrolling towards Ghagas Bridge

vide GD Entry No.55(A) dated 22.04.2010. He was accompanied by other police officials of Police Station Barmana namely SI Mathru Ram, PSI Sanjeev Kumar, ASI Amar Nath, HC Shiv Kumar No.79, HHC Jai Ram No.263, Constable Ravi Dutt No.109 and Constable Ramjan Mohd. No.467. The Police party was travelling in official vehicle No.HP-69A-0129 and motorcycle No.HP-69-1320. The Police party during the course of patrolling reached Ghagas bridge on NH 21 at 11:15 PM where they stopped Haryana Roadways bus No.HR-55-3509 enroute Manali to Delhi for routine checking. The police officials during the course of checking found the accused sitting on seat No.1, which was behind the driver's seat. The accused on seeing the police officials got frightened and on suspicion his personal search was carried out in the presence of driver Rajvir Singh and conductor Praveen Kumar and other police officials during which he was found wearing waist belt with zip pocket containing polythene bag, containing 160 grams of '*Charas'(*Cannabis). The accused could not account for the said contraband, which was receovered from his exclusive and conscious possession .

3(b). Pursuant to the recovery of 160 grams of '*Charas'* (Cannabis) from exclusive and conscious possession of the accused, the Investigating Officer Kulbhushan Verma proceeded with conducting codal seizure formalities. The contraband was put in the polythene and was sealed in a cloth parcel by affixing 12 seals of impression 'M' in the presence of the independent witnesses Rajvir Singh (Driver) and Praveen Kumar (Conductor). The seal 'M' after its use was handed over to the independent witness Praveen Kumar. The Investigating Officer thereafter filled the relevant columns of NCB-I form in triplicate and thereafter the sealed parcel was taken into possession vide witnesses i.e. Rajvir Singh and Praveen Kumar. The signatures of the accused in the presence of witnesses were obtained on the said memo. The copy of the same was handed over to the accused free of cost. Thereafter, the accused was arrested at 2:15 AM. The Investigating Officer Kulbhushan Verma scribed rukka and sent the same through Constable Ravi Dutt No.109 at Police Station Barmana for registration of FIR against the accused. In pursuance thereof, case FIR No.90/2010 dated 23.04.2010 under

Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985, was registered at Police Station Barmana, District Bilaspur, H.P. The Investigating Officer thereafter prepared spot map and recorded the statements of witnesses under Section 161 Cr.PC and on returning to Police Station Barmana handed over the case property with MHC Police Station, Barmana for safe custody.

3(c). On 23.04.2010, the Investigating Officer Kulbhushan, Dy.SP(P) prepared Special Report under Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sent the same to the Superintendent of Police, Bilaspur through ASI Amar Nath. Pursuant to the receipt of the Special Report under Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985, necessary entries regarding the said receipt were made at Sr. No.1000/45 of the Special Reports Register.

3(d). On 24.04.2010, the case property was sent to State FSL, Junga for chemical examination through HHC Krishan Dayal vide RC No.50/10 and State Forensic Science Laboratory

Report No.789 NDPS Division 308/2010, dated 06.05.2010, and was found extract of Cannabis and sample of *'Charas'.*

3(e) Pursuant to the completion of investigation, the accused was found to have committed the offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 and final report under Section 173(2) Cr.PC was prepared against him and a case was filed before learned Special Judge Bilaspur, H.P. The accused was prosecuted for the commission of offence under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 in Session Trial No.10/3 of 2010, titled as '*State of Himachal Pradesh Vs. Shankar Giri'.*

3(f). The learned trial Court after considering the oral and documentary evidence led by the prosecution acquitted the accused for the commission of offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 vide impugned judgment of acquittal dated 01.06.2015 passed in Session Trial No.10/3 of 2010, titled as '*State of Himachal Pradesh Vs. Shankar Giri'.*

4. Feeling aggrieved and dissatisfied with the judgment of acquittal dated 01.06.2015*, passed in Session Trial No.10/3 of 2010, titled as 'State of Himachal Pradesh Vs. Shankar Giri',* the State of Himachal Pradesh is in appeal before this Court on various grounds.

5. **GROUNDS OF APPEAL:**

(i) "That the impugned judgment passed by the Learned Trial Court is wrong on facts as well as on law, hence, liable to be set-aside.

(ii) That the impugned judgment is based on hypothetical reasoning surmises and conjectures hence liable to be set-aside.

(iii) That the Learned Trial Court has appreciated the evidence on record in a slip-shod and perfunctory manner and has acquitted the accused person on the flimsy grounds.

(iv) That the Learned Trial Court has not only failed to view the prosecution evidence in its proper perspective but at the same time has set unrealistic standards to evaluate the direct and cogent prosecution evidence. The reasoning of the Trial Court is manifestly unreasonable and unsustainable as there was warrant at all for the Trial Court to discard the well reasoned and consistent testimony of prosecution witnesses on material point.

(v) That the Learned Trial Court has discarded the testimony of prosecution witnesses for untenable reasons in the absence of any proof of enmity no reasons what so ever have been assigned for discarding the version of official witnesses. The acquittal in this case is in

disregard of material evidence on record and as such, the same is unreasonable, therefore, the impugned judgment is liable to be set-aside.

(vi) *That the Ld. Trial Court has erred and erred gravely while putting no reliance on the testimonies of PW-2 DY.S.P. Kulbhushan, PW-6 ASI Shiv Kumar, PW-7 HC Ravi Dutt, PW-8 SI Mathru Ram and PW-11 ASI Amar Nath merely on the ground that the independent witnesses has not supported the prosecution and they were declared hostile.*

(vii) *That the finding of the Ld. Trial Court that there are two stories one is supported by the police witness and other by three independent witnesses are wrong and against law.*

(viii) *That no other appeal or revision arising out of the impugned judgment has been filed either in this Hon'ble Court or in the Hon'ble Supreme Court of India.*

(ix) *That this appeal is being filed within the period of limitation."*

6. We have heard learned counsel for the parties and carefully gone through the material on record and the findings recorded by the learned Trial Court while passing the impugned judgment dated 01.06.2015.

7. Sh. J.S. Guleria, learned Deputy Advocate General has strenuously argued that the findings rendered by the learned Trial Court are unsustainable since the oral and documentary evidence adduced by the prosecution during the course of trial

was not well appreciated. Although, the independent witnesses of search, recovery and seizure namely Rajvir Singh (PW-1) and Praveen Kumar (PW-3) have denied the prosecution case on material aspects, nevertheless the official witnesses namely Kulbhushan Verma (PW-2), ASI Shiv Kumar (PW-6), HC Ravi Dutt No.100 (PW-7), SI Mathru Ram (PW-8) and ASI Amar Nath (PW-11) have supported the prosecution case against the accused and the recovery of 160 grams of 'Charas'(Cannabis) stands proved on the basis of the testimony of the official witnesses. There are no material contradictions and omissions in the evidence of the official witnesses, therefore, the findings of acquittal recorded by the learned trial Court are liable to be set aside.

8. Per contra, Sh. Tarun Brakta, learned Amicus Curiae for the respondent/accused has vehemently defended the judgment of acquittal passed by the learned Trial Court after considering the oral and documentary evidence adduced by the prosecution, which does not inspire confidence. He has further argued that the Investigating Officer during the course of

investigation failed to adhere to the mandatory provisions under Sections 50, 52A and 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The entire trial stands vitiated, therefore, the judgment of acquittal passed by learned trial Court warrants no interference.

9. Perusal of the record evidently shows that the learned Trial Court, on considering and evaluating the material and evidence, found material discrepancies in the prosecution evidence and accordingly acquitted the accused.

10. Since the present appeal has been filed against the judgment of acquittal, therefore, the scope of powers of the Appellate Court in the case of an appeal against acquittal needs to be considered before embarking upon the factual matrix.

11. The scope of the powers of the Appellate Court in case of an appeal against acquittal has been elaborately dealt with by the Hon'ble Apex Court in **Muralidhar alias Gidda & another vs. State of Karnatka reported in (2014) 5 SCC 730**. and **Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471**.

12. Similarly in **H.D. Sundara & others vs. State of Karnataka, (2023) 9 SCC 581**, the Hon'ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt.

13. It is more than settled that the powers of Appellate Court while hearing the appeals against the acquittal are not unbridled. There is a clear caveat that in case the view arrived at by the trial Court is a possible one borne from the material on record, the same cannot be viewed differently, even if, there is a possibility of any other view. Reference in this regard can be made to the judgment passed by Hon'ble Supreme Court in **Jafarudheen and others vs. State of Kerala (2022) 8 SCC 440**, wherein it has been held as under:

> ***"Scope of Appeal filed against the Acquittal:***
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> *25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is*

> *that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."*

14. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in **Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

> *"12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the*

> *view consistent with the guilt of the accused is possible from the evidence available on record*."

15. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal. Further, if two views were possible on the basis of the evidence on record, the Appellant Court should not disturb the findings of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

16. The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In fact, it is a settled principle of criminal jurisprudence that more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused.

17. The careful perusal of the record shows that it is a case of a chance recovery during the routine checking of Haryana Roadways bus No.HR-55-3509 enroute Manali to Delhi on the night intervening 22.04.2010 and 23.04.2010 at 11:50 PM near Ghagas Bridge on National Highway 21, within the jurisdiction of Police Station Barmana, District Bilaspur, H.P. The accused was travelling in the said bus and was occupying seat No.1 behind the driver seat. His personal search was carried out on the basis of suspicion and he was found wearing a waist belt with a pocket containing 160 grams of '*Charas'*(Cannabis).

18. Since, the Police party intercepted and checked bus No.HR-55-3509 without any prior information, therefore, the provisions under Section 42(2) Narcotic Drugs and Psychotropic Substances Act, 1985 are not attracted. Similarly, the provision of Section 50 of the Act are also not attracted since the Police did not raise any suspicion against the accused for being in possession of narcotic drugs prior to conducting his personal search, in view of the law laid down by the Hon'ble Supreme Court in ***State of H.P. Vs. Sunil Kumar (2014) 4 SCC 780.***

19. Now adverting to the oral and documentary evidence adduced by the prosecution.

20. The prosecution in order to establish the allegations and accusations against the accused examined 13 witnesses. The independent witnesses of search, recovery and seizure are Rajvir Singh (Driver of the bus) examined as PW-1 and Praveen Kumar (Conductor of the bus) examined as PW-3. Apart from this, the prosecution has also examined Ram Singh, owner of sweet shop near the place where the bus was intercepted as the weighing scale was procured from his shop, as PW-5. The other witnesses examined by the prosecution namely Kulbhushan Verma examined as PW-2, ASI Shiv Kumar examined as PW-6, HC Ravi Dutt No.100 examined as PW-7, SI Mathru Ram examined as PW-8 and ASI Amar Nath examined as PW-11 are the official witnesses of the recovery. The other witnesses examined by the prosecution are formal in nature, who were associated at various stages of investigation and necessarily constitute the link evidence.

21. Apart from this, the prosecution also heavily relied upon the documentary evidence collected during the course of investigation and proved during the course of trial i.e. Contraband identification memo (Ex.PW1/A), Recovery & Seizure memo (Ex.PW1/B), Recovery & Seizure memo of bus tickets (Ex.PW1/C), Personal search memo (Ex.PW1/D), Sample seal 'M' (Ex.PW1/E), GD Entry (Ex.PW2/B), NCB-I form in triplicate (Ex.PW2/C), Rukka (Ex.PW2/D), FIR (EX.PW2/E), Special Report (Ex.PW2/L), Special Reports Register (Ex.PW9/A), RC (EX.PW9/B) and SFSL report (Ex.PW10/A).

22. The independent witnesses of search, recovery and seizure namely Rajvir Singh (Driver of the bus) examined as PW-1 and Praveen Kumar (Conductor of the bus) examined as PW-3 have failed to support the prosecution version qua the recovery of 160 grams of *'Charas'(*Cannabis) from exclusive and conscious possession of the accused during his personal search on 22.04.2010 at 11:50 PM near Ghagas bridge on National Highway 21, District Bilaspur, H.P. There is a complete denial on all material aspects for the prosecution case by these two

witnesses. Although, they have admitted signing the documents i.e. contraband identification memo Ex.PW1/A, recovery and seizure memo Ex.PW1/B and recovery and seizure memo of bus tickets Ex.PW1/C, however, as per their version they were made to sign these documents by the Police and have explicitly denied the contents of these documents thereof.

23. The prosecution also examined Ram Singh being the owner of the nearby shop from where the weighing scale was procured by the Police for weighing the contraband. As per the prosecution case, the contraband was weighed in his presence. However, the aforesaid witness has categorically denied for providing the weighing scale to the police officials for the said purpose. As per his version, the police officials came to his shop and asked him to weigh the contraband. Therefore, he has also denied his presence on the spot when the proceedings were carried out by the police.

24. After going through the statement of Kulbhushan Verma (PW-2) Dy.SP(P)/SHO/IO, it is evident that the re-sealing of the case property was not conducted in compliance to Section

55 of the Narcotic Drugs and Psychotropic Substances Act, 1985. This fact is also evident after going through the NCB-I form in triplicate(Ex.PW2/C). No reasons have been put forth as to why the said provisions were not complied. Therefore, the prosecution case is bad for non-compliance of Section 55 of Narcotic Drugs and Psychotropic Substances Act, 1985.

25. It is evident that the Investigating Officer also did not resort to the provisions under Section 52A(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The non-compliance of the said provision is also not explained on record.

26. Although, the official witnesses have come forward supporting the prosecution case, however, their version cannot be relied upon due to non-supporting of the prosecution case by the independent witnesses. Furthermore, the investigation was not carried out by the Investigating Officer in compliance to the mandatory and directory provisions under Narcotic Drugs and Psychotropic Substances Act, 1985. Therefore, the case of the prosecution becomes vulnerable and cannot be relied upon.

27. The learned Trial Court after having considered the aforesaid aspects rightly acquitted the accused since the prosecution case suffers from material infirmities, contradictions and omissions, which are insufficient for securing conviction of the accused.

28. In view of the above, the present appeal fails and it is dismissed.

29. 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/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of learned Registrar (Judicial) within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

30. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith.

31. The appeal is, accordingly, disposed of, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

31st October, 2026
(Kiran)