

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRA-D-44-DBA-2005

|                          |                               |                                         |             |
|--------------------------|-------------------------------|-----------------------------------------|-------------|
| JUDGEMENT<br>RESERVED ON | JUDGEMENT<br>PRONOUNCED<br>ON | OPERATIVE PART<br>PRONOUNCED OR<br>FULL | UPLOADED ON |
| 11.02.2026               | 17.03.2026                    | FULL PRONOUNCED                         | 17.03.2026  |

State of Haryana

...Appellant

Versus

Malha Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA  
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Karan Sharma, DAG, Haryana for the appellant.

Ms. Monika Jalota, Advocate for respondent No.1.

Proceeding qua respondent No.2 stands abated vide order dated 13.11.2025.

\*\*\*\*\*

ANOOP CHITKARA, J.

|         |            |                 |                         |
|---------|------------|-----------------|-------------------------|
| FIR No. | Dated      | Police Station  | Section                 |
| 791     | 26.12.2001 | Sadar Fatehabad | 17/18/61/85 of NDPS Act |

|                                     |                                                                             |
|-------------------------------------|-----------------------------------------------------------------------------|
| Criminal Case before Sessions Court | Sessions Case No.42 NDPS of 23.04.2002<br>Sessions trial No.5 of 17.01.2003 |
| Date of Decision                    | 26.05.2004                                                                  |

1. Challenging the acquittal of respondents-Malha Ram and Matu Ram, the State of Haryana, had come up before this court by filing the appeal two decades ago i.e. in the year 2005.
2. During the pendency of the appeal, the respondent No.2, Matu Ram had expired and Malha Ram is not traceable, as such, this Court had appointed a legal aid counsel to represent Malha Ram.
3. We have heard the counsel for the State and the Legal Aid counsel for respondent No.1- accused and its analysis would lead to the following outcome.
4. On December 26, 2001, when the police party headed by ASI Ramesh Kumar, was on patrolling, then they noticed one scooter, which was a signalled to stop. On this, the

scooter driver suddenly applied breaks and tried to reverse it. On this, one of the person sitting in the middle, also tilted and a packet slipped from his bag. However, the police party was able to stop them and questioned them. On enquiry, the person who was driving the scooter described his name as Malha Ram and the person who was sitting in the middle and carrying a bag said his name was Matu Ram, since expired. The 3rd person, sitting on the back of the seat, disclosed his name as as Mahabir. After that, the police checked the bag, found five packets and weighed the contraband, which was opium, and its total weight was found to be 950 grams after taking out two samples of 25 gram each from six packets and police also took 12 samples from all 6 packets. The total opium was in 6 packets, as such, two samples were taken from each packet, and the remaining contraband was re-sealed. All the parcels and the bulk were sealed by putting the seal impression of RKM. After that the seizure memo was prepared, accused were arrested and they were produced before the officiating SHO of the police station. The accused and the case property when produced before the officiating SHO PW1, he took them into position and resealed the case property with his seal SS. Then the samples were sent for testing through PW2 and as per the laboratory report, the samples contained opium. After completing the investigation, the prosecution was launched against two accused, namely Malha Ram i.e. driver of the scooter and Matu ram, who was sitting in the middle seat and carrying the bag. During the enquiry, the 3rd occupant of the scooter, namely Mahabir, was absolved and discharged and he was not prosecuted. By the impugned judgment the trial court did not find substance in the prosecution's evidence and acquitted both the accused of all charges. Feeling aggrieved, the State sought leave to appeal by filing an application before this court and the Coordinate Division bench of this court had granted leave and admitted the appeal.

5. During the pendency of the appeal, the person who was carrying the bag i.e. Matu Ram, had expired, as such appeal against him was abated. Now the only one person is the respondent-Malha Ram, who was driver of the scooter.

6. This Court does not want to discuss the evidence in detail. The fundamental defect in the prostitution case is the tampering with the case property. As per PW4-ASI Ramesh Kumar, after the seizure, he had sealed the case property with his seal RKM and later on produced the case property before PW1, one who was officiating SHO. PW1-Surat Singh

testified that on receipt of the case property, he had resealed the entire case property with

his seal SS and later on, deposit the same with the Malkhana. In cross-examination, he denied of tampering with the case property and he also denied that SHO Vijay Kumar had returned back. He admitted that SHO was Vijay Kumar, but who was not present as such. the case property was received by him and he had forwarded the same. The case property was taken to the laboratory by PW 2 constable Dharmpal Pal. He tendered his affidavit in evidence as Exhibit P6. In cross-examination, he admitted that the sample was bearing seal impressions of RKM and VK, when the sample was given to him. PW4-ASI Ramesh Kumar, who was the investigator, was also cross-examined and he stated that the SHO was Surat Singh, who had affixed his seal SS on all the samples. In cross-examination, he admitted that seal monograms have been converted from VK to SS. But he denied that he had interpolated the seals from SS to VK. Inspector Vijay Kumar was examined as PW7, who admitted that earlier seal was mentioned as VK and later on it was substituted with the word SS. He said that he had initialed the cutting but he did not mentioned that how this contradiction had happened. The material contradiction in the prosecution case is that the re-seal of the case property had to be by SS i.e. PW1, who was officiating SHO, and he had stated an oath that he had re-sealed the case property and since his name is Surat Singh, his seal was SS. But PW7 Vijay Kumar who was actual SHO, had not sealed, then there was no question of the seal's impressions bearing seal VK, which again represents his name. The FSL report has been tendered in evidence as Exhibit P13 and it describes the seals on the parcel as RKM and SS. Thus, a fundamental contradiction has come that initially, it was the reason and occasion to re-seal the case property as VK. It appears that resealing was an empty formality, and the police party had used the seal of the SHO VK, but they did not realise that since VK was not present in the police station, then they exchanged it with SS, who was officiating as SHO. It means the entire exercise of re-sealing was done by the investigator or other police officers without even taking into confidence the SHO. Later on PW7 Vijay Kumar is trying to justify by saying that he had initialed the same, but he could not explain that under what circumstances, his personal seal of VK got into the possession of the police officers and how it was affixed without his permission and in his absence. It shows that the entire re-sealing was a farce, never actually done, and was a cover-up by the police. Thus, on this ground alone, the link evidence is

to the laboratory for testing vide P13. Since there is no laboratory test report to establish that the opium which was tested was not tampered, no reliance can be placed on the Seattle port. On this ground alone, the prosecution has failed to prove its case. There is another defect in the prosecution's case. A perusal of the statement of the accused under Section 313 CrPC, points out that the manner in which the case property was taken from the police station and was deposited in the police station has not been explained. Only exhibits have been put to the accused as P6 by PW2- Dharampal, and P7 by PW Omprakash. PW2 Dharampal had carried the case property to the FSL, and PW-Omprakash was the MHC. The affidavit states that the case property, which was taken by Omprakash, was secured in safe custody and during the time PW3-Omprakash was over control of the samples of the case properties and nobody had access to the same, which was not done. Similarly, what was required from the statement of PW2 to be put to the accused was that how he had collected the samples from Omprakash-PW3, and how he took them to FSL, and during the entire period, none had any access to tamper with them. Thus, the questions that were raised regarding link evidence in 313 CrPC, are also cryptic, and it is not possible for an accused to have answered the same. Since the main accused Matu Ram, who was carrying the bag, has expired, as such, this court cannot even remand the matter for statement under Section 313 CrPC and consequently, the non-putting of the right questions in the statement under Section 313 CrPC has created an illegality, and on this ground also the prosecution has failed.

7. In the entirety of facts and circumstances, it is not a case for interference. Appeal stands dismissed. Bail bonds and surety bonds are discharged. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)  
JUDGE

(SUKHVINDER KAUR)  
JUDGE

17.03.2026

Anju rani

Whether speaking/reasoned: Yes

Whether reportable: No