



**263 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-A-2690-2019 (O&M)  
Date of Decision: 17.03.2025**

**STATE OF PUNJAB**

**.....APPELLANT**

**VERSUS**

**SURINDER SINGH @ SHINDER AND ANR.**

**.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. J.S. Rattu, DAG, Punjab.

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**SANDEEP MOUDGIL, J**

1. This appeal has been preferred against the judgment of acquittal dated 1.7.2019 passed by Judge, Special Court, Jalandhar whereby the respondent have been acquitted of the charge framed against them under Section 22 of the NDPS,Act,1985.

2. The brief facts of the case are as follows:

On 12.03.2015, ASI Lakhwinder Singh, along with other police officials, was conducting a routine patrol in private vehicles, traveling from Mehatpur towards Village Angakiri-Adraman. When they reached the gate of the grain market, they observed two individuals, one Hindu and one Sikh, walking towards them from the direction of Village Angakiri. Upon seeing the police party, the two individuals appeared uneasy and fled towards the grain market. With the help of the other officers, ASI Lakhwinder Singh managed to apprehend them.



3. During questioning, one of the individuals identified himself as Surinder Singh alias Shinder, son of Arjan Singh, a resident of Village Madhepur, Police Station Sidwabet, District Jalandhar. ASI Lakhwinder Singh informed the accused of his official position, expressed suspicion that he was in possession of contraband, and stated his intention to conduct a search. The accused was made aware of his legal right to have the search conducted either by the ASI, a Gazetted Officer, or a Magistrate. The accused willingly agreed to have the search carried out by ASI Lakhwinder Singh, and a consent memo was prepared and signed by the accused.

4. Despite efforts, no independent witnesses were found for the search. A polythene envelope containing an intoxicating substance was recovered from the accused, Surinder Singh alias Shinder. The substance was divided into two 5-gram samples, and the remaining 90 grams was sealed with the 'LS' seal. Form M-29 was completed, and the items were taken into police custody. After reviewing the evidence and hearing both parties, the Court acquitted the respondents in its judgment dated 1.07. 2019.

5. The learned State Counsel for the appellant argues that the trial court's judgment is flawed, based on conjecture and error, and should be overturned. It is further argued that the trial court acquitted the respondent-accused due to discrepancies in the prosecution's version, which made the defense seem plausible. This finding is erroneous, as the trial court failed to properly consider the solid oral and documentary evidence presented by the prosecution.

6. Learned counsel appearing on behalf of the state has argued that the Trial Court's decision to acquit the accused is flawed, particularly in its conclusion that the mandatory provisions of Section 50 of the NDPS Act were not followed.



This conclusion contradicts the case facts and misinterprets the law. The accused were apprehended at the scene, and a consent memo was duly signed by each accused. The prosecution has proven, through witness testimonies, that all required formalities under the NDPS Act were properly followed. Therefore, the Trial Court's findings do not accurately reflect the facts or the legal requirements, and the guilt of the accused is evident beyond a reasonable doubt. .

7. The Trial Court wrongly concluded that the prosecution failed to explain efforts to involve an independent witness and that no such witness was examined. However, the prosecution witnesses' testimony clearly shows that attempts were made to involve public witnesses, but none were available. Additionally, the accused were apprehended based on suspicion, and the testimony provided demonstrates full compliance with the NDPS Act, establishing the accused's guilt beyond a reasonable doubt.

8. I have heard learned counsel for the applicant/appellant and gone through the record.

9. The right of appeal against acquittal vested in the State Government should be used sparingly and with circumspection and it is to be made only in case of public importance or where there has been a great miscarriage of justice.

10. Law is well settled as has been held in the case of ***Babu -Vrs.- State of Uttar Pradesh reported in A.I.R. 1983 Supreme Court 308*** that in appeal against acquittal, if two views are possible, the appellate Court should not interfere with the conclusions arrived at by the trial Court unless the conclusions are not possible. If the finding reached by the trial Judge cannot be said to be unreasonable, the appellate Court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record because the trial Judge has the advantage of seeing and hearing witnesses and the initial



presumption of innocence in favour of the accused is not weakened by his acquittal. The appellate Court, therefore, should be slow in disturbing the finding of fact of the trial Court and if two views are reasonably possible on the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it.

11. The Trial Court noted that compliance with Section 50 of the NDPS Act is mandatory. However, in this case, such compliance was not properly observed. PW3, ASI Lakhwinder Singh, the investigating officer, stated that he informed the accused of his right to have the search conducted by a Magistrate, a Gazetted Officer, or himself. However, this did not constitute a proper offer as required by Section 50, raising doubts about whether the accused was adequately informed of his legal rights, thus failing to meet the necessary compliance.

12. Further the alleged recovery took place in a public place, as confirmed by the testimonies of PW3, ASI Lakhwinder Singh, and PW4, HC Jaswinder Singh, who both stated it occurred on a thoroughfare. However, neither explained why they did not attempt to involve a public witness, suggesting they failed to secure one despite its availability. Additionally, the police were using a private vehicle, but the driver's name and vehicle registration were not provided, and the driver was not made an independent witness. This lack of independent testimony weakens the prosecution's case.

13. On perusal of the impugned judgment passed by the trial Court, this Court is of the considered view that the said judgment is based upon the proper appreciation of the facts and evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution



and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

14. Thus, an order of acquittal should not be disturbed in appeal under section 378 of Cr.P.C. unless it is perverse or unreasonable. There must exist very strong and compelling reasons in order to interfere with the same. Findings of fact recorded by a Court can be held to be perverse, if the same have been arrived at by ignoring or excluding relevant materials on record by taking into consideration irrelevant/inadmissible materials or if they are against the weight of evidence or if they suffer from the vice of irrationality.

15. Accordingly, the leave to appeal stands declined.

16. Dismissed.

**(SANDEEP MOUDGIL)**  
**JUDGE**

**17.03.2025**  
**anuradha (a)**

*Whether speaking/reasoned*  
*Whether reportable*

*Yes/No*  
*Yes/No*