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2025.PHHC.066080-DB



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

**CRM-A-186-2020 (O&M)
Date of decision: 12.05.2025**

State of Punjab

...Appellant

Vs.

Sarwan Kumar @ Labhu

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Aftab Singh Khara, Sr. DAG, Punjab.

DEEPAK MANCHANDA, J.

The present appeal has been filed against the judgment of the trial Court dated 26.09.2019, vide which the respondent had been acquitted in case bearing FIR No.215 dated 22.12.2013, registered under Sections 22 of the NDPS Act at Police Station Kotwali, Kapurthala.

2. The brief facts emanating from the pleadings of the case are that the accused, Sarwan Kumar @ Labhu, was apprehended during routine patrolling in the area of village Nawan Pind Bhathe, Police Station Kotwali, Kapurthala, when he allegedly tried to flee upon seeing the police. On enquiry, he disclosed his name as Sarwan Singh @ Labhu. After his detention, a consent memo was prepared, and a personal search was conducted, which resulted in the recovery of the intoxicant substance from the right pocket of his trousers, i.e. 250 grams on 22.12.2013. Thereafter, two sample parcels of 05/05 grams each were separated, and the remaining intoxicant substance was weighed into 240

grams. All three parcels, two of 05/05 grams each and third of 240 grams, were sealed with a seal bearing GS, and accordingly Form-29M was also prepared. After use, the seal was handed over to HC Kuldeep Singh, and Ruqa was sent through HC Jagjit Singh. Thereafter, the accused and the case property were produced before the concerned SHO of the Police Station and then, before the learned Magistrate. Accordingly, a challan was presented on completion of the necessary formalities of that recovery and receipt of report of the chemical examiner. A *prima facie* case under Section 22 of the NDPS Act, 1985 was made out, and charges were framed accordingly on 29.10.2014.

3. The perusal of impugned judgment reveals that prosecution examined six witnesses, and subsequently, the Additional Public Prosecutor closed the prosecution's evidence. However, the accused did not lead any defence evidence and closed his case. The statement of accused was recorded in consonance with the spirit of Section 313 Cr. P.C. He took the plea of denial of allegations levelled against him by the prosecution and pleaded his innocence in the present case.

4. Based on the evidence presented, the accused/respondent was acquitted by the trial Court vide impugned judgment dated 26.09.2019, passed by the learned Judge, Special Court, Kapurthala, which is under challenge through present appeal by the state.

5. The learned counsel for the appellant contended that the present case is of chance recovery where the accused was arrested based on suspicion of having being found in illegal possession of the contraband. A consent memo was prepared and personal search was conducted. Thereafter, accused alongwith case property were produced before the concerned SHO of the Police Station and

then before the Magistrate. He further submitted that the testimony of prosecution witnesses proves due compliance with the provision of Section 50 of the NDPS Act. According to him, the ruqa was sent and the accused along with the case property, were produced before the SHO concerned of the Police Station and then before the Magistrate, and the testimony of the prosecution witnesses duly proves compliance with the provisions of Section 57 of the NDPS Act. He submitted that the testimony of prosecution witnesses duly proves on record the recovery of contraband from the conscious possession of the accused and due compliance with the provisions of the NDPS Act. The link evidence stands established on record of the case about recovery till the receipt of the report of the Chemical Examiner. It is argued that the non-joining of an independent witness in the present case is not fatal to the prosecution's case since the deposition of prosecution witnesses duly corroborates the prosecution's version, rendering it truthful and contends that leave be granted to file an appeal against the respondent's acquittal.

6. In support of his contention, learned counsel for the appellant has placed reliance upon the judgments passed by Hon'ble Apex Court in "*State of Rajasthan Vs. Parmanand and another*", 2014 (2) RCR (Criminal) 40 and "*State of Kerala Vs. Prabhu*" in criminal appeal No.3434-2024.

7. We have heard learned counsel for the appellant and have perused the material available on record.

8. After a meticulous review of the impugned judgment dated 26.09.2019 and the evidence placed before the trial Court, the sole question before this Court is whether the impugned judgment of acquittal requires interference. This comprehensive review ensures the validity and integrity of the

judgment.

9. After perusing the impugned judgment dated 26.09.2019, this Court finds that nothing has come on record that the prosecution tried to join any independent witness. Instead, it is evident from the evidence of PW-2, PW-3, and PW-5 that the police party did not make any effort to join an independent witness from the public. Therefore, it is inferred that the prosecution failed to enter a public witness despite availability, which is found to be a material lapse in relation to the allegations of alleged recovery of the case in hand.

10. Further, the consent memo Ex.P-1 shows that the Investigating Officer (PW-2) had given a third option to the accused that he himself was also competent to conduct his personal search and the accused reposed faith in favour of the Investigating Officer and got searched by him. It shows non-compliance with Section 50 of the NDPS Act due to the third option given by the Investigating Officer to the accused. Further, HC Balwinder Singh (PW-3) has stated that the accused had preferred his personal search before the Magistrate and accordingly, the statement of the accused was recorded, but no Magistrate was called at the spot, which is a deviation from the correct legal procedure.

11. There is also a discrepancy in the date of the sample sent. The sample seal immediately came into the hands of the police party, especially before forwarding that sample to the office of the chemical examiner. Further, the alleged recovery is on 22.12.2013, whereas the sample was conveyed to the office of Chemical Examiner through PW-4 HC Jatinder Singh on 25.12.2013. However, the said PW-4, while facing the cross-examination, has replied that the sample was conveyed to the office of the Chemical Examiner on

24.12.2013. The reply of PW-4 falsifies his examination-in-chief as he deposed vide affidavit Ex.PW4/A that the sample was conveyed to the office of Chemical Examiner on 25.12.2013. The report of the Chemical Examiner, i.e. Ex.PZ reflects that the sample was received in that office on 26.12.2013, and no Malkhana register entry was produced to explain the date contradictions.

12. Further, PW-2 has deposed that Magistrate had sealed the sample and bulk parcel with his seal bearing the impression 'SS' and sent it to the office of Chemical Examiner. The report of Chemical Examiner Ex.PZ reflects that the sample parcel, which was attested and received, had a seal bearing the impression 'GS' only. Therefore, the report of chemical examination, Ex.PZ could not be connected to the alleged recovery from the accused person.

13. Moreover, there is non-compliance with Section 57 of the NDPS Act, as nothing has come on record indicating that the report under said section was ever sent to the higher police officials regarding the alleged recovery allegedly made from the accused.

14. Apart from the above, there is nothing on record which shows that Form-29M was prepared on the spot at the time of alleged recovery. The Investigating Officer PW-2 while facing the cross-examination has replied that ASI Gurmit Singh, officiating SHO, put his seal bearing impression 'GS' on Form-29M at the spot and otherwise, nothing has come on record to establish that the said ASI Gurmit Singh, officiating SHO, was at the spot of recovery. It has rather been alleged that the accused and case property were handed over to said Gurmit Singh on reaching the police station. Accordingly, it is also inferred that Form-29M might not be prepared at the spot.

15. After reviewing the pleadings and the impugned judgment, we

believe that the examination of prosecution witnesses does not match the allegations against the respondent/accused, and the evidence placed on record does not support such allegations. Therefore, the findings recorded by the trial Court do not suffer from illegality or perversity. In a criminal matter, whenever doubt is cast upon the prosecution's case, the accused is entitled to the benefit of such doubt. After examining the depositions of the prosecution and defence witnesses, the trial Court has held that the prosecution had failed to prove the charges levelled against the accused and acquitted him. Further, the law cited by the appellant also does not extend help to the appellants in the facts and circumstances.

16. In an appeal filed against an acquittal, the appellate Court must examine whether the findings of the Court are perverse and prima facie illegal. Once the appellate Court finds that the grounds on which the judgment is based are not depraved, the scope of the appeal filed against acquittal is limited, considering that the trial court's finding further strengthens the legal presumption of the accused's innocence. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of *Mrinal Das v. State of Tripura (2011) 9 SCC 479*, wherein it has been observed as follows:

"8. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction is not warranted. However, suppose an appellate court hears the appeal. In that case, the final Court of fact is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on the exercise of such power, and the appellate Court is free to arrive at its conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person,

and in criminal jurisprudence, every person is presumed to be innocent unless he is proven guilty by the competent Court. If two reasonable views are possible based on the evidence on record, the appellate Court should not disturb the findings of acquittal. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its conclusion. The appellate Court can also review the conclusion arrived at by the trial court concerning both facts and law. While dealing with the appeal against acquittal preferred by the State, the appellate Court must marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

17. Similarly, in the case of ***Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450***, the Hon'ble Supreme Court reiterated the same view, and the relevant extract of the said judgment reads as follows:

"78. After careful analysis of all the evidence on record, we believe that the reasons given by the High Court for reversing the judgment of acquittal are unsustainable and contrary to settled principles of law. 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 trial court's decisions. An acquittal by the trial court should not be interfered with unless it is perverse or unsustainable".

18. Thus, the judgment of acquittal is to be interfered with only for compelling and substantial reasons. If the impugned judgment is unreasonable, it would be a compelling reason for interference. Still, where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. This is because the trial Court has the privilege of seeing the demeanour of witnesses; therefore, its decision must not be upset without strong and/or compelling grounds.

19. Given the above, we find no illegality or perversity in the findings recorded by the trial Court. Therefore, the application seeking a grant of leave to appeal stands dismissed, and leave to appeal is declined.

(DEEPAK MANCHANDA)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

12.05.2025

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Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No