IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1499-2024 (O&M)
Reserved on:- 11.03.2025
Pronounced on:- 29.05.2025

STATE OF HARYANA

….APPELLANT

vs.

RAMEHAR AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HONBLE MS. JUSTICE HARPREET KAUR JEEWAN

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(As on the reserved date)

Present:- Mr. Vikrant Pamboo, Sr. D.A.G, Haryana,
for the appellant-State.

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HARPREET KAUR JEEWAN, J.

1. The State has filed an application under Section 378 (3) of the Code of Criminal Procedure, 1973 for grant of Leave to Appeal to challenge the findings of acquittal recorded by the learned Additional Sessions Judge, Jhajjar, whereby the respondents Ramehar and Sube Singh were acquitted of the charges framed against them in FIR No. 31, dated 26.01.2020, registered under Section 20(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short *'the Act of 1985'*) at Police Station City, District Jhajjar, vide its judgment dated 16.04.2024.

2. As per the prosecution version, on 26.01.2020, ASI Naresh Kumar (PW-9), while he was present at Sampla Road Flyover, Jhajjar Road, Byepass, Jhajjar, received a secret information that a *'Canter'*

bearing registration No. HR-65-A-9707 is parked at the Bus Stand of Village Surkhpur towards Jhajjar side. Sube Singh-Driver and Rambir-Conductor are also present and they have loaded huge quantity of '*Ganja'* belonging to Surjeet @ Jeetu in the said *'Canter'* and if a raid is conducted, they can be apprehended with the consignment of *'Ganja'.* On the basis of the said information ASI Naresh Kumar (PW-9) recorded a notice (Ex. P-1) and sent the same to the police station upon which GD No. 007, dated 26.01.2020 (Ex. P-2) was registered in Police Station City, District Jhajjar.

2.1 ASI Naresh Kumar (PW-9) along with the other police officials reached the disclosed place and found the said *'Canter'* parked. The raiding party apprehended one person who disclosed his name as Surjeet @ Jeetu, son of Radheshyam @ Shyama Bhadu Bishnoi, resident of Village Budhakhera Police Station Uklana, District Hisar, whereas the other two persons managed to escape. After serving notice under Section 80 of the Act of 1985, DSP Shamsher Singh (PW-5) was called on the spot. On the search of the *'Canter',* 50 plastic bags were recovered containing '*Ganja Patti'* which on weighing was found 1000 kg. The recovered '*Ganja'* was converted into sealed parcels and seal of Mark 'DK' was affixed by ASI Naresh Kumar (PW-9). Sh. Shamsher Singh, DSP (PW-5) also affixed his seal Mark 'BS' on each parcel. The Investigating Officer, ASI Naresh Kumar (PW-9) handed over his seal to ESI Purshotam (PW-13). Thereafter, *'Tehrir' (*Ex.P-9) was sent to the police station, upon which a formal FIR was registered by SI Krishan Kumar (PW-10), who conducted the remaining investigation. ASI Naresh Kumar (PW-9) handed over the case file, case property and the accused Surjeet @ Jeetu to SI Krishan Kumar (PW-10), who verified the facts and formally arrested accused

Surjeet @ Jeetu. Personal search memo of accused Surjeet @ Jeetu was prepared. Statements of witnesses were recorded and SI Krishan Kumar (PW-10) produced the case property, accused Surjeet @ Jeetu and the witnesses before the DSP Raj Kumar (PW-4), who further verified the facts from the witnesses and put his seal 'SR' on the sealed parcels of the case property and also prepared verification report (Ex. P-4).

2.2 On 27.01.2020, the investigating officer, SI Krishan Kumar (PW-10) produced the accused Surjeet @ Jeetu, as well as the case property along with the inventory before the learned Chief Judicial Magistrate, Jhajjar, who verified the case property and passed the order (Ex. P-16) after getting the photographs of the case property. Two samples of the case property, measuring 200 grams each were also drawn by the CJM and these were taken into possession, vide recovery memo (Ex. P-19). Thereafter, the case property was deposited in the '*Malkhana'* of Police Station City, District Jhajjar.

2.3 On 28.01.2020 accused Surjeet @ Jeetu suffered a disclosure statement and disclosed the involvement of remaining accused, i.e. the respondents Ramehar and Sube Singh.

2.4 On 29.04.2020 accused Sube Singh was arrested and on 30.09.2021 accused Ramehar was arrested. Statement of witnesses were recorded. After completion of the investigation, final report '*challan'* under the provisions of Section 173 Cr.P.C. was presented and accused Surjeet @ Jeetu, Ramehar and Sube Singh were put to trial.

2.5 Copies of the documents under Section 207 Cr.P.C were supplied to the accused and charge under Section 20 of the Act of 1985 was framed against them, to which they pleaded not guilty and claimed trial.

3. In order to prove the case, prosecution examined ASI Sunil Kumar PW-1, Constable Ajit Kumar PW-2, Inspector Bijender PW-3, DSP Raj Kumar (PW-4), DSP Shamsher (PW-5), ASI Sandeep (PW-6), Rajpal (PW-7), EHC Rohtash (PW-8), ASI Naresh Kumar (PW-9), SI Krishan Kumar (PW-10), ASI Gauram (PW-11), HC Virender (PW-12), ESI Purshotam (PW-13), ASI Paramjeet (PW-14), Jasbir (PW-15), Vijay (PW-16), SI Mahender (PW-17), Ashish (PW-18), ASI Amit Kumar (PW-19), Satyawan (PW-20), Sh. Jitender (PW-21), SI Rajbir Singh (PW-22) and Aman Rishi (PW-23). The accused alleged false implication in their statements recorded under Section 313 of the Cr.P.C. However, they did not lead any evidence in defence of the same.

4. After appreciating the evidence on record, the trial Court convicted accused Surjeet @ Jeetu under Section 20 of the Act of 1985 vide its judgment, dated 16.04.2024 and sentenced him to undergo rigorous imprisonment for a period of 20 years and also to pay a fine of Rs.2,00,000/- and in case of default of payment of fine, to further undergo simple imprisonment for a period of 03 years, vide its order of sentence, dated 19.04.2024. However, giving the benefit of doubt, the trial Court acquitted the respondents Sube Singh and Ramehar by recording the following reasons:-

i. The identification features of two persons who escaped from the spot are neither mentioned or described by the Investigation Officer ASI Naresh Kumar (PW-9) nor by any other witnesses;

ii. Merely mentioning the names of Ramehar and Sube Singh in the *'Tehrir'* (Ex. P-9) has no weightage as it was only on the basis of a

secret information and there is no evidence on record that accused Ramehar and Sube Singh were in any manner earlier known to the secret informer;

iii. No Test Identification Parade was conducted to prove the identity of accused-respondents Ramehar and Sube Singh and deposition of Investigating Officer ASI Naresh Kumar (PW-9) and the recovery witness ESI Purshotam (PW-13), as such cannot be made a ground to convict them. The trial Court has also placed reliance upon the decision of the Hon'ble Apex Court in **Sasi and others** vs. **State of Kerala** 2000 (10) SCC 360; and

iv. The disclosure statement of accused Surjeet @ Jeetu (Ex.P-24) cannot be used against respondents-accused Ramehar and Sube Singh, since no material recovery was effected on the basis of the said disclosure statement. Reliance was also placed upon the decision of the Hon'ble Apex Court in **Surinder Kumar Khanna** vs. **Intelligence Officer Directorate of Revenue Intelligence** 2018 (3) RCR (Criminal) 954.

5. Learned counsel for the appellant-State submits that the findings of the trial Court recording acquittal of the respondents is erroneous and not based on evidence on record The trial Court has ignored the evidence that it was specifically mentioned in the notice sent under Section 42 of the NDPS Act (P-1) that Sube Singh was the driver of the *'Canter'* and even the registration number of the *'Canter'* is mentioned. The trial Court has not even appreciated the testimony of PW-9 ASI Naresh Kumar and PW-13, ESI Purshotam who have categorically deposed that on reaching the spot, three persons were found standing but on seeing the

police party, respondent-accused-Sube Singh son of Om Parkash and another accused-Ramehar (who is yet to be arrested) ran away from the spot towards mustard crop fields. It is further contended that even in the secret information, name of Sube Singh, respondent was disclosed which was even mentioned in the *Tehrir* (Ex.P-9). Huge quantity of contraband was recovered. The trial Court has ignored the substantial evidence on record.

6. We have considered the aforesaid contentions and perused the paper-book as well as the record of the trial Court.

7. The facts and circumstances of each case have to be appreciated on the basis of evidence available on record. The Hon'ble Apex Court has laid down the law on the scope of enquiry by an Appellate Court while dealing with an appeal against acquittal under Section 378 Cr.P.C., 1973. The Hon'ble Apex Court in **Mohan @ Srinivas @ Seena @ Tailor Seena v. State of Karnataka**, (SC) 2022(1) R.C.R.(Criminal) 493, dealt with such scope and observed that the findings of fact recorded by a Court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The findings may also be said to be perverse if it is "against the weight of evidence", if the finding so outrageously defies logic has to suffer from vice of irrationality. While dealing with the observations laid down in various judgments on the scope of the Appellate Court to deal with an appeal against acquittal, the observations of the Apex Court are as under:-

> *"23.This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against*

acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali and Anr. v. State of Himachal Pradesh, (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

> *"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635 : 1985 SCC (L&S) 131] , Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , Triveni Rubber & Plastics v. CCE [Triveni Rubber & Plastics v. CCE, 1994 10 Supp (3) SCC 665] , Gaya Din v. Hanuman Prasad [Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501] , Aruvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])" It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.*

14.3. In the recent decision of Vijay Mohan Singh [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436: (2019) 2 SCC (Cri) 586], this Court again had an occasion to consider the scope of Section 378 CrPC and the interference by the High Court [State of Karnataka v. Vijay Mohan Singh, 2013 SCC OnLine Kar 10732] in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228: 1978 SCC (Cri) 108]. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under:

> *'10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. 11 Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.'*

31.1. In Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320], the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under:

> *'8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of*

Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which 12 is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.'

31.2. In K. Ramakrishnan Unnithan [K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309 : 1999 SCC (Cri) 410] , after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several

aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and 13 therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley [Atley v. State of U.P., AIR 1955 SC 807: 1955 Cri LJ 1653], in para 5, this Court observed and held as under: '5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order. It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence. It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal. If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very

> *cases cited at the Bar, namely, Surajpal Singh v. State [Surajpal Singh v. State, 1951 SCC 1207: AIR 14 1952 SC 52]; Wilayat Khan v. State of U.P. [Wilayat Khan v. State of U.P., 1951 SCC 898: AIR 1953 SC 122]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.'*
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> *31.4. In K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355: 1979 SCC (Cri) 305], this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."*

8. Coming to the facts of the present case, we have observed that only Surjeet @ Jeetu was apprehended by the Police party at the spot while the contraband was recovered from the *'Canter'*. Though, the name of respondent-Sube Singh is recorded in the notice Ex.P1/GD recorded in the police station Ex.P2, however such recital in the said GDR was made only on the basis of the secret information. Neither the respondent-Sube Singh nor Rammehar were apprehended at the spot nor subsequently after their arrest, any recovery was effected from them.

9. The investigating agency has tried to link Sube Singh, respondent on the basis of his name having been disclosed by the secret informer and as such reflected in *Tehrir* (Ex.P-9) and GDR (Ex.P-2). Such recital recorded on the basis of secret information cannot be considered as substantial piece of evidence to hold a person guilty of a criminal charge.

10. The prosecution has further tried to link the respondent-Sube Singh on the basis of the testimony of PW-9, Naresh Kumar, the initial Investigating Officer and PW-13, ESI Parshottam, the recovery witness. In

this regard, we have perused testimony of PW-9, ASI Naresh Kumar. He has stated that when they reached the spot, they found the said *'Canter'* parked and three persons standing there were engaged in conversation with each other. Two of them fled away, but one of them was apprehended who disclosed his name as Surjeet @ Jeetu. The said witness has categorically stated that the name of the other two persons, who ran away was disclosed by co-accused Surjeet @ Jeetu. In view of such testimony of PW-9, the only inference can be drawn that he is only relying upon the testimony of the co-accused Surjeet @ Jeetu to implicate the respondent Sube Singh. The witness has nowhere disclosed the identification characters of the said two persons who allegedly ran away at the time of apprehension of accused Surjeet @ Jeetu. Moreover, it is highly improbable that two accused would be able to run away on foot, whereas, the members of the police party were six in number, i.e. ASI Naresh Kumar, PW-9, ESI Purshotam, HC Naveen, Ct. Vivek, Ct. Ajit and Ct. Varinder and they were also having a Government vehicle bearing Registration No. HR14-N-6682 which was being driven by Constable Navneet Kumar as per the testimony of PW-9. In view of such improbable facts narrated by PW-9, the complicity of Sube Singh cannot be proved merely on the basis of the alleged disclosure of his name by the co-accused.

11. The prosecution has also relied upon the disclosure statement of Sube Singh, Ex.P22, to show his involvement. It is not disputed that no recovery from Sube Singh was effected on the basis of the alleged disclosure statement. The facts as disclosed in Ex.P22 are also not corroborated on any material points by any other material evidence on record.

12. Against the respondent Ramehar, the prosecution has alleged that he arranged the funds for procuring the contraband which was recovered from the spot in the said *'Canter'*. In this regard, the prosecution has relied upon the disclosure statement of the co-accused, Surjeet @ Jeetu (Ex.P-24) and the disclosure statement of respondent-Ramehar (Ex.P-34). It is not disputed that on the basis of the said disclosure statement, no recovery was effected. So far as the disclosure statement of respondent Ramehar is concerned, it is in the nature of a confessional statement having been recorded by the Investigating Officer (a police officer) during the investigation, when the accused was in custody. Such a statement is inadmissible in evidence in view of the provisions of Section 25 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'), which reads as under:-

> *"25. Confession to police officer not to be proved. – No confession made to a police officer, shall be proved as against a person accused of any offence."*

13. Only a part of such a statement could have been admissible under Section 27 of the Act of 1872 if it leads to discovery of some new facts or recovery of further evidence, whereas, in the present case, no such discovery in pursuance to such confession took place.

14. So far as the disclosure statement of a co-accused is concerned, the trial Court has disbelieved such an evidence on the ground that no test identification parade was conducted. Relying upon the ratio of the decision of Hon'ble Apex Court in **Sasi's case** (supra), the trial Court disbelieved the prosecution evidence regarding the respondents. As per the facts of the said case, none of the appellants was caught at the spot,

although the witnesses examined in the Court stated that they all fled from the scene and disappeared into the thick forest, no test identification parade was conducted. The Hon'ble Apex Court held that in such circumstances, it is most unsafe to believe the evidence of identification made by the witnesses who simply deposed that they were the persons whom they saw running fast and disappearing into dense forests. The observations of the Apex Court read as under:-

> *"9. But the position regarding the remaining appellants is different. None of them was caught by the Forest Officers who went to the spot. All the witnesses examined for proving that fact have said in court that they all fled from the scene and disappeared into the thick forest. Four years thereafter those witnesses said in court that those escaped persons were A-2 to A-5 in this case. None of those witnesses had a case that A-2 to A-5 were known to them earlier. None of them had any case that any of those accused was shown to these witnesses subsequently. No test identification parade was conducted either. In such circumstances it is most unsafe to believe the evidence of identification made by PWs 1 to 3 in the Court simply because they deposed that A-2 to A-5 were the persons whom they saw running fast and disappearing into the dense forest."*

15. In view of the above discussion, it is concluded that the findings arrived at by the trial Court are based on evidence available on record and after proper appreciation of facts and circumstances of the case. Merely on the basis of disclosure statement of the co-accused and confessional statements of the accused without there being any corroboration on material points, the accused cannot be held guilty. In view of the scope of the present appeal, as per the principles laid down by Hon'ble the Apex Court in **Mohan's case** (supra), we are of the considered opinion that no

grounds are made out for interference in the well-reasoned judgment passed by the trial Court.

16. Consequently, the leave is declined to the State and present application stands dismissed.

17. Accordingly the present appeal also stands dismissed.

(DEEPAK SIBAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

29.05.2025
Nitin/atulsethi

Whether Speaking Yes/No
Whether Reportable Yes/No