

(2022) 04 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No.207 Of 2021

State Of Himachal Pradesh

APPELLANT

Vs

Satish Kumar

RESPONDENT

Date of Decision : 02-04-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2022) 04 SHI CK 0011

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Kamal Kant

Final Decision : Dismissed

Judgement

Sabina, J

1. Respondent had faced trial under Section 21 of Narcotic Drugs & Psychotropic Substances Act, 1985, in case F.I.R. No.177/2017, dated 26.07.2017, registered at Police Station Sadar Hamirpur, District Hamirpur (H.P.).

2. Learned trial Court, vide judgment/order dated 10.03.2021, ordered the acquittal of the respondent of the charge framed against him. Hence, the present appeal by the appellant-State.

3. Prosecution story, in brief, was that on 26.07.2017, Police Party was present at place Jhandi, in connection with patrol duty. At about 02.00 a.m., a motorcycle driven by PW-6 Navjot Kumar, came from Patta side. The said person was stopped for checking by H.C. Vinod Kumar (PW -9). While H.C. Vinod Kumar (PW-9) was checking the documents of the motorcycle, a person came from Bhota Petrol Pump side. On inquiry by H.C. Vinod Kumar, the said person disclosed that he had got late as he had gone to visit his relatives. The said person disclosed his name as Satish Kumar. On suspicion, the respondent (Satish Kumar) was informed that he was required to be searched. Respondent Satish

Kumar, vide memo Ext.PW-6/B, gave his consent for his search before H.C. Vinod Kumar. A Poly Packet containing smack from the left pocket of his pant alongwith one small electronic weighing scale, were recovered from the respondent. On weighment, the smack came to 12.65 grams.

4. After completion of the investigation and necessary formalities, Challan was presented against the respondent.

5. Learned trial Court, while ordering the acquittal of the respondent, has taken into consideration the fact that there were material contradictions in the statements of the official witnesses and so far as the independent witness PW-6 Navjot Kumar was concerned, he had not supported the prosecution case with regard to the consent given by the respondent for his search before the Police Party.

6. Although, PW-6 Navjot Kumar had deposed that the Police Party had not asked the respondent that he had the right to get his search effected before a Magistrate or a Gazetted Officer, but the said witness had admitted his signatures on consent memo prepared in this regard, Ext. PW-6/B.

7. PW -9 HC Vinod Kumar deposed that after the recovery of the contraband effected from the respondent, he was arrested. Thereafter, the respondent was got medically examined in PHC, Bhota and was taken to his house. The house of the respondent was searched and thereafter, the respondent was produced before the Station House Officer alongwith case property. In his cross-examination, he deposed that there was no reference of the search of the house of the accused in the statement of PW-7 HHC Kashmir Singh in his statement recorded under Section 161 Cr.P.C. PW-7 HHC Kashmir Singh had accompanied him at the time of the search of the house of the accused.

8. HHC Kashmir Singh, while appearing in the witness-box as PW-7, deposed that all the proceedings in the case were conducted at the spot and thereafter, respondent was brought to the Police Station. The photographs of the house of the respondent were clicked later when the search of his room was conducted. No document with regard to the search of the house of the respondent was prepared.

9. Thus, although, PW-9 HC Vinod Kumar has stated that the respondent was taken to his house after recovery of the contraband and his house was searched in the presence of HHC Kashmir Singh and witness Navjor Kumar, but the said part of the statement of PW-9 HC Vinod Kumar is not corroborated by PW-6 Navjot Kumar and PW-7 HHC Kashmir Singh. PW-6 Navjot Kumar has deposed that he had stayed at the spot for about 45 minutes and had not been taken anywhere else on the relevant day by the Police. PW-7 HHC Kashmir Singh has also deposed to the effect that after recovery of the contraband from the respondent he was taken to the Police Station.

10. A perusal of the photographs on record, reveal that the Police had visited the

room of the respondent. However, admittedly there is no memo on record with regard to the search of the house of the respondent by the police officials.

11. In view of the material contradictions in the statements of the witnesses, learned trial Court rightly came to the conclusion that the recovery of the contraband, alleged to have been effected from the respondent, had not been done in the manner projected by the prosecution.

12. It is a settled proposition of law that in a case of acquittal, if two views are possible, then the view taken by the trial Court is liable to be accepted. It has been held so by the Hon'ble Supreme Court in Allarakha K. Mansuri versus State of Gujarat, (2002) 1 RCR (Criminal) 748.

13. Similarly, in Mrinal Das & others versus State of Tripura, reported in (2011) 9 SCC 479, the Hon'ble Supreme Court, after looking into various judgments, has laid down parameters, in which, interference can be made in a judgment of acquittal by observing as under:-

"13. 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, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own 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 proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. 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 own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to 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. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

14. Keeping in view the facts and circumstances of the present case, we are of the opinion, that the view taken by the learned trial Court is a possible one. Hence, no ground for interference is made out. Consequently, the appeal is

dismissed. The impugned order dated 10.03.2021, passed by the learned trial Court, is upheld.