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**(2018) 04 J&K CK 0042**  
**In the Jammu And Kashmir High Court**  
**Case No : CRAA No.19 OF 2018**

STATE OF Jammu & Kashmir

APPELLANT

Vs

BISHAN DASS

RESPONDENT

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**Date of Decision :** 23-04-2018

**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8, 15, 57  
Code of Criminal Procedure, 1973 — Section 540

**Citation :** (2018) 04 J&K CK 0042

**Hon'ble Judges :** ALOK ARADHE, JANAK RAJ KOTWAL

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Heard on the question of admission.Â

2) This appeal has been filed against the judgment dated 22.04.2017 by which the respondent has been acquitted in respect of offence under Sections

8/15 NDPS Act arising out of FIR No.15/2015 of Police Station, Batote.Â

3) The prosecution story in nutshell is that on 17.02.2015, a docket was received in Police Station, Batote, through Sri Nath No. 953/Rbn, who was

posted in police post Patnitop on behalf of Head Constable Mohd Shabir No.62/Rbn, wherein he has stated that, he alongwith Sgct Jai Pal, Constable

Abdul Rashid and Sri Nath was on patrolling duty at Patnitop Chowk and at about 9.00 a.m., a Tralla Truck bearing No. HR38R/134S came from

Srinagar side, which was stopped for checking. Tarpaulin had been fixed by the driver over the Tralla Truck and above the said tarpaulin, some

intoxicating material was concealed in bags and another tarpaulin was put over those bags to conceal these bags. During checking the said bags, some

powdered material like poppy husk was found in these bags and smelt like poppy

husk. In all, twelve bags were found beneath the tarpaulin containing poppy husk, which weighed around 120 kgs. Thereupon, an FIR No.15/2015 was lodged against the respondent in Police Station, Batote for the commission of offence under Sections 8/15 NDPS Act. On completion of investigation, the charge sheet was filed.

4) The prosecution, in order to prove its case, examined nine witnesses out of eleven witnesses cited by the prosecution. PW Head Constable Mohd

Shabir in his deposition has stated that on 17.02.2015, he was performing frisking duty at Patnitop Chowk and was heading the naka team. PW

Constable Sri Nath stated that when he was posted at Police Post Patnitop, on 17.02.2015, Head Constable Shabir Ahmed and Sgct Jai Pal besides

him were on duty at Patnitop Chowk, a Trola Truck bearing No. HR38N-1345 was stopped for checking, which was coming from Srinagar side. He

has also supported and corroborated the statement of Head Constable Shabir Ahmed. PW Sgct. Jai Pal has stated that on the day of occurrence,

he was on naka duty at Patnitop Chowk, when they checked tralla. The tralla was empty, however, the recovered contraband was on its roof top.

He has also given the same version of the incident as that of other two witnesses.

5) PW Gulzar Ahmed in his statement has stated that he has seen accused for the first time in the Court on the day of deposition. He stated that

some one year back, he was sitting in a vegetable shop of his cousin at Patnitop. In the meanwhile, police came there and demanded weighing

machine. Thereupon, he supplied the weighing machine to the police authorities. His statement was not recorded before the Magistrate in this

case. PW Sgct. Dharam Pal stated that on the day of occurrence, he was working as PSO of Station House Officer, Patnitop, i.e., Irfan Wani and

he went along with him to Patnitop. The naka team headed by Head Constable Shabir Ahmed had stopped a truck tralla bearing No. HR38R/1345.

When they reached on spot, the naka team had unloaded twelve bags from the truck trolley, which they had kept open on the road side and after

perusal it was found some material like poppy straw and accused was driving that vehicle. PW Junaid Khan has supported the prosecution case and

supported the version of other prosecution witnesses. PW Talib Hussain has stated that on the day of occurrence he was PSO of SHO and when

they reached on spot, 12 bags containing poppy husk were loaded on the truck over the tarpaulin of the roof of said truck and when they reached on

spot, these bags were unloaded and after getting a weighing machine of Gulzar Ahmed, 250 gms. each sample was taken from each bag after

weighing the contraband.Â

6) PW Saif Ullah in his deposition has stated that he had resealed 12 packets with regard to which he had written a letter dated 18.02.2015.Â PW

Pawan Abrol in his deposition has stated that he had received 12 sealed packets through ASI Romesh Chander No.795494/Exj of police post, Patnitop

on 23.02.2015 for chemical analysis and after subjecting the material to various chemical tests, Morphine was detected in the exhibits and were

identified as poppy straw (plant material of *Papaver Somniferum*). He has admitted the contents and execution besides his signature on the report

submitted by him.Â In cross examination, the aforesaid witness has stated he does not know where the sample was retained from 21.2.2015 till

23.02.2015 and no NCB form was forwarded to him alongwith samples. PW Mohd Riaz has made entry in register No. 19 of malkhana and

subsequently, on 18.02.2015, the seized material was taken by S.I. Irfan for resealing. It was further stated by him that on 25.02.2015, S.I. Irfan again

took packets for depositing in the FSL. PW Romesh Chander No.795495/EXJ was examined on the application moved by the Public Prosecutor under

section 540 of the Code of Criminal Procedure, who has stated that he deposited 12 sample packet with FSL against which he obtained receipt.Â

7) From the perusal of the prosecution evidence, it is evident that the prosecution has failed to prove as to where the samples were kept from

21.02.2015 till 23.02.2015.Â Admittedly, there is a non-compliance of the provisions of Section 57 of the Act and the aforesaid fact has been admitted

by the Investigating Officer in his deposition.Â It is also pertinent to mention here that the FSL report does not reveal the percentage of Morphine in

the samples examined by the expert.Â Â

8) The trial Court has recorded the findings, which are based on meticulous appreciation of evidence available on record and has held that there is a

contradiction between the statements of PW Gulzar Ahmed, Talib Hussain and Junaid Khan with regard to the weighing machine.Â There is

noncompliance of the Section 57 of the Act.Â Accordingly, the trial Court has

concluded the findings which, by no stretch of imagination, can either be termed as perverse, contrary to the evidence or erroneous. It is well settled in law that this Court while hearing an acquittal appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the Trial Court is also a reasonable view of the evidence on record and the findings recorded by the Trial Court are not manifestly erroneous, contrary to the evidence on record or perverse. (See Ram Swaroop and others. Vs. State of Rajasthan, (2002) 13 SCC 134, Vijay Kumar v. State by Inspector General, (2009) 12 SCC 629 and Upendra Pradhan vs. State of Orissa (2015) 11 SCC 124. CRAA No.172/2013.

9) From perusal of the judgment of the Trial Court, we find that the findings recorded by the trial Court can neither be termed as perverse, contrary to the evidence or erroneous, therefore, no case for interference in this acquittal appeal is made out. In the result, the appeal fails and is hereby dismissed.