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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

UDAY UMESH LALIT; J, S. RAVINDRA BHAT; J, PAMIDIGHANTAM SRI NARASIMHA, J.

CRIMINAL APPEAL NO.870 OF 2016; March 09, 2022

SANJEEV & ANR. VERSUS STATE OF HIMACHAL PRADESH

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 50 - Personal search did not result in recovery of any contraband material but the non-compliance of requirement of affording an option to be searched before a Magistrate of a competent Gazetted Officer - Accused acquitted. (Para 9)

Code of Criminal Procedure, 1973; Section 378 - Appeal against Acquittal- Reasons which had weighed with the Trial Court in acquitting the accused must be dealt with, in case the appellate Court is of the view that the acquittal rendered by the Trial Court deserves to be upturned - With an order of acquittal by the Trial Court, the normal presumption of innocence in a criminal matter gets reinforced - If two views are possible from the evidence on record, the appellate Court must be extremely slow in interfering with the appeal against acquittal. (Para 7)

Counsel for the Parties: Mr. A. Sirajudeen, Sr. Adv./Amicus Curiae Mr. S. Mahendran, AOR Mr. Parnam Prabhakar, Adv. Mr. Aditya Dhawan, Adv. Mr. Chander Shekhar Ashri, AOR Mr. Abhinav Mukerji, AOR

JUDGMENT

Uday Umesh Lalit, J.

1. This appeal under the provisions of Section 379 of the Code of Criminal Procedure, 1973 read with Section 2(A) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is directed against the judgment dated 26.05.2016 passed by the High Court [The High Court of Himachal Pradesh at Shimla] reversing the acquittal rendered in favour of the appellants by the Trial Court [The Special Judge, Fast Track, Kullu, Himachal Pradesh] and order dated 20.06.2016 passed by the High Court imposing punishment of rigorous imprisonment of ten years, with imposition of fine in the sum of Rs.1,00,000/- (Rupees One Lakh Only) in respect of the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act" for short).

2. For the sake of facility, we may reproduce the case of the prosecution as narrated by the High Court in its judgment and order under challenge:

"2. The case of the prosecution, in a nut shell, is that on 22.12.2010, HC Nand Lal along with other police personnel was on patrolling duty in official vehicle. They spotted the accused of Ruara Bridge sitting by the side of the road. The accused tried to abscond. They were apprehended. The bag was also lifted and brought to the vehicle. Word 'COASTER' was inscribed on the red coloured bag. The

place was solitary and no independent person was available on the spot. The I.O. sent Const. Om Prakash (PW-7) to search for independent witnesses, however, he could not trace any independent witnesses. The I.O. associated Const. Om Prakash (PW-7) and Const. Bhupinder Singh as witnesses and checked the bag. On checking, stick and pancake like charas was recovered from the bag and some of the sticks were found to be wrapped in a polythene. The charas was weighed with the help of electronic scale. It weighed 1 kg. 500 grams. The charas was repacked in the same bag and bag was sealed in a cloth parcel with three seals of seal impressions "A". The specimen of seal was obtained separately. Seal after use was handed over to Const. Om Prakash (PW-7). The I.O. filled in the NCB-I form in triplicate. Thereafter, I.O. prepared rukka. It was sent to the Police Station. FIR Ext. PW-2/B was registered. The I.O. prepared the spot map and handed over the case properly for resealing to ASI Naresh Chand (PW-2). He resealed the same with three seals of seal impression "T" and filed in column nos.9 to 11 of NCB-I form. On 23.12.2010, I.O. prepared the special report and produced the same before Dy. S.P. Kullu. ASI Naresh Chand deposited the parcel containing charas sealed with seal "A" and resealed with seal impression "T" along with NCB-I form in triplicate with MHC Chaman Lal, PW-1. He made necessary entry in the relevant register at Sr. No.149. The case property was sent to FSL, Junga. The report of the FSL is Ext. PX. The investigation was completed and the challan was put up before the Court after completing all the codal formalities."

3. The prosecution mainly relied upon the testimonies of PW7 and PW8, namely Constable Om Prakash and Head Constable Nand Lal respectively. According to these witnesses, on the day in question at about 9.00 p.m. when the police party had reached the other side of the Ruara Bridge, they found the appellants sitting by the side of bonfire and a bag was lying on the ground near them. As the police put search light towards the direction of the appellants, the appellants tried to run away. The police party followed them and after having crossed a distance of about 100 meters, they were nabbed. Thereafter, the bag was also retrieved which was found to contain charas weighing about 1.5 kgs. According to the witnesses, the electronic weighing scale which was with the police party was utilized to check the weight of the contraband. Thereafter, the procedure for taking personal search of the accused was followed.

4. The entire evidence was considered by the Trial Court and in the opinion of the Trial Court, broadly three features emerged from the evidence:

1. The Report of the FSL Ex.PX did not show anywhere that the resin was of cannabis plant in order to bring it within the definition of "Charas".
2. The Police did not give any option to the appellants to be searched before a Magistrate of a competent Gazetted Officer.
3. Going by the evidence on record, the case of the prosecution could not be believed.

With this view, the Trial Court by its judgment and order dated 31.08.2012 acquitted the appellants of the offence for which they were charged.

5. The State being aggrieved preferred Criminal Appeal No.546 of 2012 in the High Court, which appeal was allowed by the High Court by its judgment under challenge.

By a subsequent order, the sentence as stated hereinabove was imposed upon the appellant.

6. In this appeal, we have heard Mr. A. Sirajudeen, learned Senior Advocate assisted by Mr. S. Mahendran and Mr. Parnam Prabhakar, learned Advocates, and Mr. Aditya Dhawan, learned Advocate for the appellants and Mr. Abhinav Mukerji, learned Advocate for the State.

7. It is well settled that:-

(A) While dealing with an appeal against acquittal, the reasons which had weighed with the Trial Court in acquitting the accused must be dealt with, in case the appellate Court is of the view that the acquittal rendered by the Trial Court deserves to be upturned (See **Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436** at para 31; **Anwar Ali and another v. State of Himachal Pradesh, (2020) 10 SCC 166** at para 14.3).

(B) With an order of acquittal by the Trial Court, the normal presumption of innocence in a criminal matter gets reinforced (See **Atley v. State of Uttar Pradesh, AIR 1955 SC 807 at page 809**).

(C) If two views are possible from the evidence on record, the appellate Court must be extremely slow in interfering with the appeal against acquittal (See **Sambasivan and others v. State of Kerala, (1998) 5 SCC 412** at para 8).

8. A perusal of the judgment passed by the High Court does not show that the High Court had considered the matter from the perspective stated above. As a matter of fact, the High Court proceeded to consider the evidence on record straightforwardly without considering the reasons that had weighed with the Trial Court. The approach to be adopted was laid down by this Court in **Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225** as under:-

“7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above-quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or

demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then — and then only — reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial court are sustainable or not.”

9. We have checked the original record to satisfy ourselves. Exhibits PW8/B, PW8/C, PW8/D and PW8/E, which are arrest memos, do not reflect that any option or choice was given to the accused before their personal search was undertaken. It is true that the personal search did not result in recovery of any contraband material but the non-compliance of requirement of affording an option, was one of the reasons which weighed with the Trial Court in disbelieving the case of the prosecution.

10. Considering the totality of the circumstances, in our view, the assessment on facts made by the Trial Court was absolutely correct and did not call for any interference by the High Court.

11. We, therefore, allow this appeal, set-aside the judgment and order passed by the High Court and restore the order of acquittal recorded by the Trial Court. The fine, if any, paid by the appellants be returned to them.

12. The appellants shall be set at liberty forthwith unless their custody is required in connection with any other crime.

13. We express our gratitude for the assistance rendered by Mr. A. Sirajudeen, learned Senior Advocate, Mr. S. Mahendran and Mr. Parnam Prabhakar, learned Advocates, who appeared on behalf of the Supreme Court Legal Services Committee.

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