



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2825 of 2023

Date of decision: 03.01.2024.

State of H.P. ...Applicant.

Versus

Laxmi ...Respondent

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the applicant : Mr. I. N. Mehta, Sr. Additional Advocate General, with Ms. Sharmila Patial, Mr. Navlesh Verma, Addl. A.Gs and Mr. J.S. Guleria, Deputy Advocate General.

For the respondent : Nemo.

Satyen Vaidya, Judge (Oral)

Cr.M.P.(M) No. 2825 of 2023

The contents of the application are duly supported by the affidavit sworn by the Principal Secretary (Home) to the Government of Himachal Pradesh. We are satisfied that the reasons for delay in filing the petition for leave to appeal are bonafide. Accordingly, the application

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**

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is allowed for the reasons stated therein. Application is disposed of.

2. Leave to appeal be registered.

Cr.M.P.(M) No. 34 of 2024.

3. By way of instant petition, leave has been sought by the State of Himachal Pradesh to assail the judgment of acquittal dated 04.03.2022, passed by learned Special Judge-III, Solan, District Solan, H.P. in Sessions Trial No. 4ASJ-II/7 of 2017.

4. We have perused the record.

5. The respondent was booked for commission of offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "ND&PS Act") vide FIR Ext. PW-5/A registered on 21.9.2016 at Police Station, Kandaghat, District Solan, H.P. It was alleged that the police officials of Special Investigation Unit (SIU), Solan were on routine patrol duty. At about 5.00 P.M., HC Rajesh Kanwar, one of the members of the patrol party, received a secret information that one

Nepali lady named Laxmi, who was running a tea stall near Mehta Filling Station, Dolag was indulging in illicit trade of Charas and in case her tea stall was searched immediately, huge quantity of Charas could be recovered. HC Rajesh Kanwar reduced into writing the secret information and on recording satisfaction as required under Section 42 of the NDPS Act, forwarded the same to Supervisory Officer, SIU, Solan through HC Balbir Singh.

6. Thereafter, the independent witnesses namely Ramesh Mehta and Sharda Shandil were associated. In their presence, the search was conducted in the tea shop of respondent and 142 grams of Charas and one electronic weighing scale was recovered from tin box kept behind the counter of the shop. The contraband was seized. The "rukka" was prepared on the basis of which, FIR Ext.PW-5/A was registered. The respondent was formally arrested. The respondent alongwith seized

contraband and collected evidence was forwarded to SHO, Police Station, Kandaghat, who conducted the re-sealing proceedings and deposited the recovered contraband alongwith the connecting evidence in the Malkhana of the Police Station.

7. The entire bulk of Charas was sent to SFSL, Junga for chemical analysis and as per the laboratory report, the substance was confirmed to be the sample of Charas.

8. The challan was presented against the respondent. After trial, the respondent has been acquitted by learned trial Court by not finding the prosecution evidence to be convincing, reliable and cogent enough to meet the required standard of proof.

9. The record reveals that both the independent witnesses did not support the case of the prosecution. Though, in their cross-examination on behalf of the Public Prosecutor, certain admissions were made by

them, nonetheless various discrepancies and contradictions have emerged from depositions made by both the independent witnesses. Learned trial Court having taken notice of such discrepancies and contradictions, has given the benefit to the respondent.

10. In addition, learned trial Court has also not found the statements of police witnesses to be convincing. It has also been noticed by the learned trial Court that the exclusive possession of the respondent over the recovered contraband was not established as the factum of another person working in the tea shop as also the husband of respondent also being involved in the business in the same shop had emerged on record. Learned trial Court has also doubted the prosecution witnesses as they had not been consistent with respect to the identity of the tea shop allegedly being run by the respondent.

11. After going through the record, we have found the view taken by learned trial Court to be a possible one. The findings recorded by learned trial Court to doubt the prosecution story are borne from the material on record.

12. The independent witnesses associated by the Investigating Officer have made depositions which are contradictory and inconsistent with the prosecution case. Both the independent witnesses have substantially differed not only from the prosecution case but from each other also. This is a valid reason for doubting the prosecution story.

13. The prosecution has also relied upon one document Ext. PW-1/C, i.e. a certificate issued by PW-1 wherein the tea stall in question was said to have been leased out by said witness to respondent and her husband named Jeet Bahadur. While being cross-examined, this witness had also stated that another

person was also working in the same tea shop. Thus, exclusive domain of the respondent was not established either over the shop or the tin box from which the contraband was recovered. There is no corroborative evidence to prove the charge against the respondent.

14. In **Chandrappa and others vs. State of Karnataka (2007) 4 SCC 415, State of Rajasthan vs. Kistoora Ram, 2022 SCC Online SC 984 and Ravi Sharma vs. State (Government of NCT of Delhi) and another (2022) 8 SCC 536**, the Hon'ble Supreme Court has provided a clear exposition as to scope of interference in an appeal against acquittal. The same has been held to be limited. As per the aforesaid exposition, unless it is found that the view taken by the trial Court is impossible or perverse, it is not permissible for the Appellate Court to interfere with the findings of acquittal. It has also been held that if two views are possible, it is not permissible to set-aside an order of

acquittal merely because the Appellate Court finds the way of conviction to be more probable.

15. As noticed above, the view taken by learned trial Court is possible one and we have found no material on the basis of which such view can be said to be perverse.

16. Accordingly, we find no merit in the petition and leave to appeal is declined. The petition stands disposed of.

17. Before parting, we place it on record that we are not at all satisfied the way learned trial Court has made reference to certain judgments passed by this Court or Hon'ble Supreme Court. Noticeably, learned trial Court has made reference only to the Head Notes provided in the Journal reporting the judgments and nowhere the facts or ratio of the judgments has been stated or discussed. This, evidently is not the correct way of citing or relying upon a judicial precedent. We,

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therefore, direct the Registrar General of this Court to circulate a copy of this judgment to all the Judicial Officers in the State.

(Tarlok Singh Chauhan)
Judge

(Satyen Vaidya)
Judge

3rd January, 2024
(GR)

High Court of H.P.