(2026:HHC:49133)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 411 of 2015
Reserved on : 27.10.2026
Date of decision: 06.11.2026
Uploaded on : 06.11.2026

State of Himachal Pradesh ...Appellant.

Versus

Ramesh Kumar Thakur ...Respondent.

Coram
The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
The Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Appellant : ***Mr. I.N. Mehta, Senior Additional Advocate General.***

For the Respondent: ***Mr. Manoj Pathak, Senior Advocate, with Mr. Parth Sagar, Advocate.***

Bhupesh Sharma, Judge

The State of Himachal Pradesh is in appeal before this Court against the judgment of acquittal dated 28.02.2015, passed by the learned Special Judge-1, Shimla, District Shimla, H.P., in Sessions Trial No.10-S/7 of 2011, titled, 'State of Himachal Pradesh vs. Ramesh Kumar

[1] *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

Thakur', whereby, the respondent (hereinafter to be referred to as the 'accused'), has been acquitted for the commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, after giving him benefit of doubt.

2. The accused was sent to face trial for the commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 by SHO, Police Station West (Boileauganj), Shimla, District Shimla, H.P. in case FIR No.22 of 2009 dated 08.02.2009, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The accused was prosecuted for the said offence and was subsequently acquitted by the learned trial Court vide impugned judgment dated 28.02.2015, passed in Sessions Trial No.10-S/7 of 2011, titled, 'State of Himachal Pradesh vs. Ramesh Kumar Thakur'.

3. The case of the prosecution as set out against the accused, in short, is as under:-

3(a). On 08.02.2009, at 10:20 A.M., at Village Anji, Post Office Tara Devi, Tehsil and District Shimla, H.P., the

accused was found in exclusive and conscious possession of 1 Kg. 50 Gram 'Opium'.

3(b). On 08.02.2009, Sub Inspector Keshav Singh, Investigating Officer, State CID, Crime Branch, Shimla, received a secret, specific, reliable and credible information that the accused being actively engaged in narcotic trade was transporting narcotic contraband in his Maruti Van bearing registration No.HP-02-6339. The information was further specific that in case the said vehicle of the accused is searched, sufficient quantity of 'Opium' and 'Cannabis' (Charas) can be recovered therefrom.

3(c). Pursuant to the receipt of said information, requisite entry was made in the relevant register vide Rapat No.7 dated 08.02.2009, in the office of State CID, Shimla and thereafter, the Police party headed by SI Keshav Singh, Investigating officer immediately proceeded towards Village Anji. He was accompanied by other Police officials of State CID Crime Branch i.e. SI Bhikham Ram, ASI Manjeet Kumar, ASI Vidya Sagar, HC Prakash Chand, C. Mohinder Lal and C. Manohar Lal. The Police party was travelling in the official Maruti Gypsy bearing registration No.HP-07A-0303. On the

way, the Police party met Ms. Babita Rana, Dy.S.P., CID Crime Branch, near Sankat Mochan Temple Gate on NH-22. The Police party under her supervision proceeded towards Villages Kayari-Anji, Post Office Tara Devi, Tehsil and District Shimla and on the way, they associated two independent witnesses namely Krishan Gopal Thakur and Sohan Lal. On reaching the spot, the Police party found a Maruti Van No.HP-02-6339 parked on the lintel of the garage of Krishan Gopal Thakur and the accused was found present near the vehicle. Thereafter, the vehicle was searched leading to recovery of 1 Kg. 50 Grams 'Opium' from a Thermos bottle, kept beneath the rear seat of the vehicle.

3(d). Pursuant to the recovery of the contraband from vehicle No.HP-02-6339, the Investigating Officer procured a Weighing Scale from the shop of one Surender Thakur and thereafter, the contraband was weighed and was found to be 1Kg. 50 Grams.

3(e). The Investigating Officer, SI Keshav Singh, pursuant to the recovery of the contraband i.e. 1 Kg. 50 Grams of 'Opium', proceeded to conduct codal seizure formalities. Two samples of 25 grams each were taken out of

the entire stuff, which were put in two different match-boxes and thereafter, the same were put in a cloth parcel and the cloth parcel was sealed after affixing four(4) seals of impression 'N'. Remaining contraband was also sealed in a separate cloth parcel along with thermos bottle by affixing six (6) seals of impression 'N'. The sample seal impression 'N' was taken on a separate piece of cloth and the seal after its use was entrusted to the independent witness Krishan Gopal Thakur. The Investigating Officer, thereafter, filled relevant columns of NCB-1 Form in triplicate and the entire case property was taken in to possession vide search, recovery and seizure memo in presence of independent witnesses namely Krishan Gopal Thakur, Sohan Lal and Ramesh Kumar (Ward Member). The Investigating officer, SI Keshav Singh, after completing the search and seizure formalities, scribed a rukka and at 01:40 P.M., sent the same through ASI Manjeet Kumar to Police Station West (Boileauganj) Shimla, for registration of FIR against the accused.

3(f). On the basis of disclosure of facts in the rukka, case FIR No.22 of 2009 dated 08.02.2009, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act,

1985 was registered against the accused at Police Station West (Boileauganj), Shimla, District Shimla, H.P.

3(g). On 08.02.2009, at 05:30 P.M., SI Keshav Singh, Investigating Officer produced the case property of case FIR No.22 of 2009 dated 08.02.2009 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 along with two samples of 25 grams each, sealed with four (4) seals of impression 'N' and another parcel bearing six (6) seals of impression 'N' stated to be containing 1 Kg. 50 Grams of 'Opium' along with sample seal 'N' and NCB-1 form in triplicate before Sub Inspector Mathura Dass, SHO, Police Station West (Boileauganj) Shimla. He conducted resealing of the case property and sampling of the same by affixing four(4) seals of impression 'R'. The sample resealing impression 'R' was also taken on a separate piece of cloth for the purpose of record. Specimen of seal impression 'R' was affixed on NCB-1 form in triplicate and thereafter, the case property was deposited with MHC, Police Station, West, Shimla in safe custody and Resealing Certificate under Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was issued regarding the proceedings.

3(h). On 10.02.2009, the Investigating Officer, SI Keshav Singh prepared a Special Report under Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sent the same to Superintendent of Police Crime State CID, Shimla through ASI Manjeet Kumar, which was delivered at 10:00 A.M. and in this regard necessary entries were made in the Special Reports Register.

3(i). On 10.02.2009, the case property along with samples and relevant documents were sent for chemical examination to the State Forensic Science Laboratory Junga, vide RC's No.29/09 and 67/10. The case property on being subjected to chemical examination at State Forensic Science Laboratory was opined to be 'Opium'.

3(j). Pursuant to completion of investigation, the accused was found in exclusive and conscious possession of 1 Kg. 50 Grams of 'Opium', accordingly, he was found to have committed an offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Therefore, Final Report under Section 173(2) Cr.P.C. was prepared against him and the case was filed before Learned Special Judge, Shimla. The accused was prosecuted for the

commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Sessions Trial No.10-S/7 of 2011, titled as 'State of Himachal Pradesh v. Ramesh Kumar Thakur'.

3(k). The learned trial Court after considering the oral and documentary evidence led by the prosecution acquitted the accused for the commission of offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 vide impugned judgment of acquittal dated 28.02.2015, passed in Sessions Trial No.10-S/7 of 2011, titled as 'State of Himachal Pradesh vs. Ramesh Kumar Thakur'.

4. Feeling aggrieved and dissatisfied with the judgment of acquittal passed by learned trial Court vide impugned judgment dated 28.02.2015, in Sessions Trial No.10-S/7 of 2011, titled, 'State of Himachal Pradesh vs. Ramesh Kumar Thakur', the appellant-State filed the instant appeal before this Court on following various grounds:-

- That the impugned judgment passed by the learned trial Court is wrong on facts as well as on law, hence, the same is liable to be set aside.

- That the impugned judgment is based on hypothetical reasoning, surmises and conjectures, hence, liable to be set aside.

- That the learned trial Court has appreciated the evidence on record in a slip-shod and perfunctory manner and has acquitted the accused on the flimsy grounds.
- That the learned trial Court has not only failed to view the prosecution evidence in its proper perspective but at the same time has set unrealistic standards to evaluate the direct and cogent prosecution evidence. The reasoning of the learned trial Court is manifestly unreasonable and unsustainable as there was warrant at all for the trial Court to discard the well reasoned and consistent testimony of the prosecution witnesses on material points.

- That the learned trial Court has discarded the testimony of prosecution witnesses for untenable reasons in the absence of any proof of enmity no reasons whatsoever have been assigned for discarding the version of official witnesses. The acquittal in this case is in disregard of material evidence on record and as such, the same is unreasonable, therefore, the impugned judgment is liable to be set aside.

- That the learned trial Court has not properly appreciated the evidence of the official witnesses and has wrongly discarded their version on the ground that

PW-4 Sohan Lal and PW-14 Krishan Gopal have not supported the prosecution case qua the recovery of the contrabant.

- That the learned trial Court has wrongly held that there is non compliance of Section 42 and 50 of the ND & PS Act. In fact, Section 42 of the Act has been complied with and keeping in view the facts and circumstances of the case, section 50 of the Act was not applicable as from the search of the Van, Opium weighing 1 Kg. 50 Grams was recovered. Therefore, the impugned judgment is bad in the eyes of law and deserves to be set aside.

5. Therefore, on aforesaid grounds, it is prayed that the present appeal be allowed and the impugned judgment of acquittal be set aside.

6. We have heard learned Senior Additional Advocate General for the appellant-State, learned senior counsel for the accused and have also carefully gone through the records as well as the findings recorded by the learned trial Court while passing the impugned judgment dated 28.02.2015.

7. Mr. I.N. Mehta, learned Senior Additional Advocate General, has strenuously argued that the findings

rendered by the learned trial Court are unsustainable, since, oral and documentary evidence led by the prosecution was not well appreciated. Although, independent witnesses of search, recovery and seizure namely Krishan Gopal Thakur (PW14), Sohan Lal (PW4) and Surender Thakur (PW9) have denied the prosecution case on material aspects, nevertheless, official witnesses ASI Manjeet Kumar, examined as PW13 and SI Keshav Singh examined as PW15 have supported the prosecution case against the accused qua recovery of 1 Kg. 50 Grams 'Opium'. Therefore, charge against the accused stands proved on the basis of statements of official witnesses and the documentary evidence brought on record. Hence, the findings of acquittal rendered by the learned trial Court are unsustainable and liable to be set aside.

8. Per contra, Mr. Manoj Pathak, learned senior counsel for the accused defended the judgment of the acquittal passed by the learned trial Court and submitted that there is no material and evidence on record whereby the accused can be convicted for the commission of offence punishable under Section 18 of the Narcotic Drugs and

Psychotropic Substances Act, 1985. He further argued that the Investigating Officer during the course of investigation failed to adhere to comply with the mandatory provisions under Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The entire trial stands vitiated, therefore, the judgment of acquittal dated 28.02.2015, passed by the learned trial Court warrants no interference.

9. Perusal of the record evidently shows that the learned Trial Court, on considering and evaluating the material and evidence, found material discrepancies in the prosecution evidence and accordingly acquitted the accused.

10. Since, the present appeal has been filed against the judgment of acquittal, therefore, the scope of powers of the Appellate Court in the case of an appeal against acquittal needs to be considered before embarking upon the factual matrix.

11. The scope of the powers of the Appellate Court in case of an appeal against acquittal has been elaborately dealt with by the Hon'ble Apex Court in **Muralidhar alias Gidda & another vs. State of Karnatka reported in (2014) 5 SCC**

730. and **Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471**.

12. Similarly in **H.D. Sundara & others vs. State of Karnataka, (2023) 9 SCC 581**, the Hon'ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt.

13. It is more than settled that the powers of Appellate Court while hearing the appeals against the acquittal are not unbridled. There is a clear caveat that in case the view arrived at by the trial Court is a possible one borne from the material on record, the same cannot be viewed differently, even if, there is a possibility of any other view. Reference in this regard can be made to the judgment passed by Hon'ble Supreme Court in **Jafarudheen and others vs. State of Kerala (2022) 8 SCC 440**, wherein it has been held as under:

> ***"Scope of Appeal filed against the Acquittal:***
>
> *25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial*

> *Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."*

14. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in **Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

> *"12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable*

> *views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*"

15. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal. Further, if two views were possible on the basis of the evidence on record, the Appellant Court should not disturb the findings of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

16. The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In fact, it is a settled principle of criminal jurisprudence that more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused.

17. The careful perusal of the record reveals that it is a case, where the Police party had prior information regarding transportation of the contraband, either 'Opium' or

'Cannabis', by the accused in Maruti Van No.HP-02-6339. The fact regarding prior information having been conveyed to SI Keshav Singh (PW15), Investigating Officer, State CID Crime Branch, Shimla, can be inferred after going through the copy of Rapat No.7 dated 08.02.2009 (Ext.PW8/A) that pursuant to the receipt of credible information in this regard, the Police party headed by Sub Inspector Keshav Singh (PW15) Investigating Officer along with other Police officials immediately left towards Village Anji. Considering the aforesaid evidence, it was incumbent upon the SI Keshav Singh (PW15), being Investigating Officer, to comply with the provisions under Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985. However, there is no separate document (memo) on record, whereby, it can be inferred that he recorded the 'reasons of belief' before proceeding towards the spot and conveyed to his superior officers in accordance with the said mandatory provisions.

18. Dwelling into the question of compliance of Section 42 of NDPS, Act 1985 reference can be made to the judgment of the constitution Bench of Hon'ble Supreme

Court in ***Karnail Singh Versus State of Haryana (2009) 8 SCC 539***.

19. It is well elaborated judgment on the statutory requirement of writing down and conveying information to the superior/supervisory officer prior to entry, search and seizure as per Section 42(1) and Section 42(2) of the NDPS, Act 1985 requiring a literal and substantial compliance.

20. The Hon'ble Supreme Court in ***Abdul Rashid Ibrahim Mansuri versus State of Gujarat (2000) 2 SCC 513 and Sajan Abraham versus State of Kerala (2001) 6 SCC 692,*** observed that while total non-compliance with requirements of sub sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay could be acceptable compliance of statutory requirement under Sections 42(1) and 42(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

21. Hon'ble Supreme Court in **Sukhdev Singh vs. State of Haryana (2013) 2 SCC 212**, followed by Hon'ble Supreme Court in **Karnail Singh** case (supra), in **State of Rajasthan vs. Jograj Singh @ Hansa (2016) 11 SCC 687** and in **Rajender Singh vs. State of Haryana (2011 INSC**

551) held that non compliance of Section 42(2) of Narcotic Drugs and Psychotropic Substances Act, 1985 vitiates trial and is impermissible.

22. Having considered the ratio of law laid down by the Hon'ble Supreme Court in judgments referred supra, it appears that the Investigating Officer failed to comply with the mandatory provision under section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

23. Now coming to the recovery of the alleged contraband from the Maruti Van No.HP-02-6339.

24. It is the case of the prosecution that the contraband was recovered from the Thermos Bottle, kept beneath the rear seat of the Maruti Van No.HP-02-6339. In this regard, the search, recovery and seizure memo Ext.PW4/A, rukka Ext.PW15/A can be referred. As per the prosecution case, the recovery of contraband was effected in presence of independent witnesses Krishan Gopal (PW14), Sohan Lal (PW4), Ramesh Kumar and Amit Thakur (PW3). Apart from this, the Police during the course of proceedings, procured Weighing Scale from Surender Thakur (PW9) Shop Keeper. However, all the witnesses referred herein above have

completely denied the prosecution case qua conducting search of Maruti Van No.HP-02-6339 in their presence, recovery of the contraband therefrom and the seizure formalities so conducted by the Police, as reflected in the memo Ext.PW4/A. Therefore, the independent witnesses associated by the Investigating Officer during the course of investigation have completely failed to support the factum of recovery of contraband from the vehicle of the Accused.

25. It is further evident that the Police party headed by SI Keshav Singh (PW15) left to the spot under the supervision of Ms. Babita Rana, Dy. S.P., State CID, Shimla. Although, as per the prosecution, she remained on the spot throughout the proceedings, however, her presence is nowhere reflected in any of the documents prepared by the Investigating Officer during the course of investigation. Also, the aforesaid officer was not examined by the prosecution in order to lend support to the case of prosecution.

26. The careful perusal of the evidence of the official witnesses i.e. SI Keshav Singh, examined as PW15 and ASI Manjeet Kumar, examined as PW13, there are material contradictions regarding the preparation of documents as

well as the personal search offered by the Police officials before effecting the contraband.

27. Although, the official witnesses have come forward supporting the prosecution case, however, their version cannot be relied upon due to non supporting of the prosecution case by the independent witnesses. Furthermore, the investigation was not carried out by the Investigating Officer in compliance to the mandatory and directory provisions under Narcotic Drugs and Psychotropic Substances Act, 1985. Therefore, the case of the prosecution becomes vulnerable and cannot be relied upon.

28. The learned Trial Court after having considered the aforesaid aspects rightly acquitted the accused since the prosecution case suffers from material infirmities, contradictions and omissions, which are insufficient for securing conviction of the accused.

29. In view of the above, the present appeal fails and it is dismissed.

30. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the accused is directed to furnish

bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of learned Registrar (Judicial) within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

31. A copy of this judgment along with the record of the learned Trial Court be sent back forthwith.

32. The appeal is, accordingly, disposed of, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

6th November, 2026
(Sanjeev)