



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 612/1996

State Of Rajasthan

-----Appellant

Versus

1. Suraj Dass S/o Basantilal R/o Bassi PS Vijaipur District Chittorgarh
2. Shri Shanker Lal S/o Laxman Kumar R/o Badarsa PS Chittorgarh

-----Respondent

For Appellant(s) : Mr. Sri Ram Choudhary, AGA

For Respondent(s) : Ms. Sarika Bishnoi, Amicus Curiae

HON'BLE MR. JUSTICE FARJAND ALI

Judgment

REPORTABLE

09/04/2026

1. The present criminal appeal has been instituted by the State under Section 378(1) of the Code of Criminal Procedure assailing the judgment dated 09.08.1996 rendered by the learned Judge, NDPS Act Cases, Chittorgarh, whereby the accused respondents Suraj Dass and Shanker Lal came to be acquitted of the charges under Sections 8/18 and 8/29 of the NDPS Act by extending to them the benefit of doubt.

2. It is further noticed that for a considerable length of time there was no effective representation on behalf of the accused-respondents. In view of these circumstances, and in order to ensure that the cause of justice does not suffer on account of such absence, this Court deemed it appropriate to appoint Ms.Sarika Bishnoi, Advocate, who is present before the Court, as Amicus



Curiae to represent the respondents and to assist the Court in the adjudication of this long-pending matter. The learned Amicus Curiae accepted the assignment with promptitude and readiness. Adequate opportunity and sufficient time were granted to her to scrutinise and peruse the record within the courtroom itself. Thereafter, the Court heard elaborate and detailed submissions advanced on behalf the State as well as on behalf of the respondents, and proceeded to undertake a comprehensive re-examination of the entire record.

3. At the threshold, it is noticed that the appeal arises consequent upon grant of leave under Section 378(3) Cr.P.C., and therefore stands examined on merits. The prosecution case, in succinct terms, is that on receipt of prior information, a raiding party was constituted, pursuant to which accused Suraj Dass was apprehended and alleged recovery of opium was effected from his possession. It was further alleged during investigation that the contraband had been supplied by co-accused Shanker Lal, thereby attracting the provisions of Section 29 of the NDPS Act. Upon completion of investigation, charge-sheet was filed; however, the learned trial court, after full-fledged trial and appreciation of evidence, recorded an order of acquittal.

4. Assailing the impugned judgment, learned Public Prosecutor has contended that the findings recorded by the trial court are contrary to the evidence available on record. It has been urged that the recovery of contraband stands duly established through reliable evidence, the sealing of the seized substance remained



intact throughout, and the chain of custody is complete and unbroken. It is further contended that compliance of statutory provisions, particularly Sections 42 and 50 of the NDPS Act, stands substantially established, and the learned trial court has erred in discarding the prosecution case on hyper-technical grounds, thereby resulting in miscarriage of justice.

5. Per contra, learned *Amicus Curiae*, appointed to represent the respondents, has advanced elaborate submissions supporting the impugned judgment. It has been submitted, at the outset, that the scope of interference in an appeal against acquittal is inherently circumscribed and limited. Unless the conclusions recorded by the trial court are demonstrated to be manifestly perverse, wholly unreasonable, or based on misreading or non-consideration of material evidence, the appellate court ought not to supplant its own view merely because another view is possible.

Elaborating further, it has been contended that the prosecution case is fraught with serious infirmities, particularly in relation to the alleged recovery. The testimonies of prosecution witnesses reveal material contradictions and inconsistencies with regard to the manner, place, and circumstances of seizure. Such discrepancies strike at the root of the prosecution case and render the recovery doubtful. The absence of independent witnesses, despite availability, further casts a shadow of doubt on the fairness and credibility of the alleged recovery proceedings. The entire edifice of the prosecution case rests upon official witnesses,



whose testimony, in absence of independent corroboration, requires cautious scrutiny.

5.1. Learned Amicus Curiae has also assailed the prosecution case on the ground that the chain of custody is not established beyond doubt. Although it has been asserted that the seized contraband remained duly sealed, the evidence on record does not conclusively demonstrate that the seal remained intact at every stage or that the sample sent for chemical examination was the very same as allegedly recovered from the accused. The possibility of tampering, substitution, or procedural irregularity has not been effectively ruled out, thereby creating a serious dent in the prosecution case.

5.2. It has been further argued that compliance with the mandatory provisions of Sections 42 and 50 of the NDPS Act has not been established in its true spirit. The safeguards embodied in these provisions are not mere procedural formalities but are substantive in nature, intended to protect the rights of the accused and to ensure fairness in the process of search and seizure. Any ambiguity, deviation, or non-compliance in this regard vitiates the recovery and renders the prosecution case unsustainable. The alleged compliance, being doubtful and inadequately proved, cannot be treated as sufficient compliance in the eyes of law.

5.3. The learned Amicus Curiae has further submitted that the prosecution has failed to establish conscious and exclusive possession of the contraband by the accused. Mere recovery, even



if assumed, is not sufficient unless accompanied by proof of knowledge and control. The essential element of "conscious possession," which forms the backbone of offences under the NDPS Act, remains unproved. In absence of such foundational facts, the statutory presumption under the NDPS Act does not get attracted, and the burden does not shift upon the accused. It has also been urged that the cumulative effect of the aforesaid infirmities gives rise to reasonable doubt in the prosecution case. The NDPS Act, being a stringent penal statute, mandates strict adherence to procedural safeguards and requires a higher degree of proof. The prosecution is under a legal obligation to establish its case beyond all reasonable doubt and in strict compliance with statutory requirements. Failure to do so necessarily enures to the benefit of the accused.

6. This Court has bestowed its thoughtful consideration to the rival submissions and has meticulously perused the entire record. A careful and cumulative reading of the impugned judgment reveals that the learned trial court has undertaken a detailed, analytical, and conscious evaluation of the evidence on record. The findings recorded are based on proper appreciation of material contradictions, procedural lapses, and evidentiary deficiencies.

6.1. It is a well-entrenched principle of criminal jurisprudence that in an appeal against acquittal, the presumption of innocence stands further reinforced, and interference is warranted only when the findings of the trial court are perverse or result in miscarriage of justice. Where two views are reasonably possible on the basis



of evidence available on record, the view favourable to the accused must be adopted.

6.2. In the present case, this Court finds that the view taken by the learned trial court is not only a possible view but a plausible and legally sustainable one. The prosecution has failed to establish its case with the degree of certainty required under law, particularly in light of the stringent nature of the NDPS Act and the mandatory safeguards embedded therein.

7. Accordingly, this Court is of the considered opinion that the impugned judgment does not suffer from any illegality, perversity, or material irregularity warranting interference. Resultantly, the appeal fails and is hereby dismissed. The judgment and order dated 09.08.1996 passed by the learned Judge, NDPS Act Cases, Chittorgarh in Criminal Case No.160/1994 is affirmed. The acquittal of the accused respondents stands upheld. Bail bonds, if any, stand discharged.

8. Ms. Sarika Bishnoi, learned Amicus Curiae, shall be remunerated by the State Legal Services Authority in accordance with the rules applicable in that regard.

(FARJAND ALI),J

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