RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Appeal No. 198/1994
CNR: RJHC010011151992 | URN: CRLA / 13U / 1994

State Of Rajasthan

----Appellant

Versus

Kheraj Ram s/o. Wagaram, r/o. Khara, PS Sanchore, Distt. Jalore

----Respondent

Rajasthan High Court
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For Appellant(s)	:	Mr. Narendra Gehlot, Dy. GA
For Respondent(s)	:	Mr. H.R. Bishnoi

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

27/10/2026

1. The instant appeal, preferred by the State of Rajasthan, assails the judgment of acquittal dated 18.12.1991, passed by the learned Sessions Judge, Jalore, whereby the respondent was acquitted of the charge under Sections 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act").

2. Succinctly stated, the facts of the case are that on 14.12.1988, Pahar Singh, Crime Assistant in the office of the Superintendent of Police, Jalore, furnished a written report stating that he had received secret information regarding transportation of contraband by a person proceeding towards the railway station. Acting upon the said information, he proceeded towards Station Road, where a person carrying a bag was apprehended. Upon

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being questioned, the said person disclosed his identity as Kheraj Ram, the respondent herein.

3. The respondent was asked whether he desired to be searched before a Gazetted Officer, whereupon he expressed his willingness to be searched in the presence of a Gazetted Officer. He was, accordingly, taken to the office of the Superintendent of Police, where his search was conducted in the latter's presence. According to the prosecution, the search of the bag resulted in the recovery of 2.5 kilograms of opium, for the possession of which the respondent was not holding any valid licence or authorisation. The contraband was seized, the accused was arrested, and a formal case was registered. Samples were drawn and forwarded to the Chemical Examiner for analysis to ascertain the nature of the substance recovered. Upon completion of the usual investigation, a charge-sheet came to be filed against the respondent for the offence punishable under Sections 8/18 of the NDPS Act.

4. The learned trial Court framed the charge against the accused, who denied the same and claimed trial. The prosecution examined as many as eight witnesses in support of its case. Upon conclusion of the prosecution evidence, the incriminating circumstances appearing against the accused were put to him under Section 313 of the Code of Criminal Procedure, 1973, whereupon he pleaded innocence and alleged that the prosecution case was false. Upon a comprehensive appraisal of the evidence adduced on record, the learned trial Court acquitted the respondent of the charge under Section 8/18 of the NDPS Act.

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5. The State of Rajasthan preferred an application seeking leave to appeal, which came to be allowed. Consequently, the present criminal appeal has been taken up for consideration. Heard learned counsel for the parties and perused the material available on record, including the impugned judgment.

6. Shorn of unnecessary details and repetition, the principal questions which arise for consideration in the present appeal pertain to compliance with the statutory safeguards prescribed under Sections 42, 50 and 55 of the NDPS Act; the competence and authority of the officer who effected the search and seizure; and the evidentiary discrepancies noticed by the learned trial Court in relation to the recovery, sealing and forwarding of the alleged contraband.

7. The learned trial Court acquitted the respondent, inter alia, on the ground that the secret information allegedly received by Sub-Inspector Pahar Singh regarding transportation of opium had neither been reduced into writing nor forwarded to his immediate superior officer, as contemplated under Section 42(2) of the NDPS Act.

8. In this regard, the statutory mandate embodied in Section 42 of the NDPS Act assumes considerable significance. The requirement of recording information received by an empowered officer and communicating the same to his superior officer constitutes an important safeguard against arbitrary exercise of power. The Hon'ble Supreme Court, in ***Karnail Singh v. State of Haryana, (2009) 8 SCC 539***, has elucidated the scope of

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compliance with Section 42 and held that total non-compliance with the statutory requirement is impermissible, though delayed compliance may be acceptable in circumstances duly explained. The applicability of the aforesaid principle is required to be examined in the backdrop of the evidence available on record.

9. Another material aspect considered by the learned trial Court relates to the authority and competence of PW-6, Pahar Singh, who effected the search and seizure. The record indicates that he was serving as a Sub-Inspector and was posted as Crime Assistant in the office of the Superintendent of Police, Jalore, and not as the Station House Officer of a police station.

10. In this context, the prosecution sought to rely upon the Central Government notification dated 16.02.1986, stated to have been issued in relation to the empowerment of police officers for conducting searches and seizures under the NDPS Act. The competence of the officer concerned, however, has to be determined with reference to the precise terms of the applicable notification and the capacity in which he was authorised to exercise the statutory powers. The mere fact that an officer belongs to the police establishment does not, by itself, dispense with the requirement of establishing that he was duly empowered under the relevant statutory provision.

11. The question of the effect of a search or seizure conducted by an officer lacking the requisite statutory authority has also engaged judicial consideration. The learned trial Court, upon examining the relevant material, found the authority of the officer

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effecting the recovery to be doubtful. Such a finding, when considered alongside the other infirmities in the prosecution case, assumes material significance in assessing the reliability and legality of the alleged recovery.

12. The next aspect concerns compliance with Section 50 of the NDPS Act. The learned trial Court has undertaken a detailed examination of this issue in the impugned judgment. The statutory safeguards governing the search of a person are of considerable importance and must be observed in accordance with the law laid down by the Hon'ble Supreme Court. In ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172,*** the Constitution Bench explained the nature and effect of non-compliance with the requirements of Section 50. The question of compliance must, therefore, be determined in the light of the evidence on record and the legal principles applicable to the facts of the present case.

13. The learned trial Court has also adverted to material discrepancies emerging from the testimony of the prosecution witnesses concerning the manner and circumstances in which the search and seizure were allegedly effected. Particular significance has been attached to the testimony of PW-7, Laxman Singh, also referred to in the record as Laxman Meena, whose deposition was considered in conjunction with that of PW-6, Pahar Singh. The evidence was appreciated by the learned trial Court with particular reference to the prosecution's assertion regarding the sequence of events leading to the alleged recovery.

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14. A further infirmity noticed by the learned trial Court pertains to discrepancies concerning Exhibit P-1, Exhibit P-6 and Exhibit P-7, particularly in relation to the sealing of the seized articles and the specimen impression of the seal. Serious inconsistencies were found regarding the identity and impression of the seal allegedly used for sealing the packets containing the contraband. Exhibit P-6, being the forwarding letter, and Exhibit P-7, the specimen seal memorandum, were also found to disclose discrepancies in this regard. If the statement of PW-6, Pahar Singh, to the effect that the seal of the Superintendent of Police, Jalore, was affixed to the packets is accepted, an apparent inconsistency arises concerning the specimen seal impression accompanying the packets forwarded to the Forensic Science Laboratory. These discrepancies bear directly upon the integrity of the seized material and the reliability of the prosecution's account of its handling and transmission.

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15. The aforesaid circumstances, when considered cumulatively, render the prosecution version doubtful. The learned trial Court has dealt with these aspects in the impugned judgment after undertaking a detailed and considered appraisal of the oral and documentary evidence. Upon a careful examination of the record, this Court finds that the conclusions drawn by the learned trial Court are founded upon the evidence available and cannot be characterised as perverse, arbitrary or contrary to the settled principles governing appreciation of evidence.

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16. It is a cardinal principle of criminal jurisprudence that every accused is presumed innocent unless his guilt is established in accordance with law. This presumption continues throughout the trial and is further reinforced when the competent trial Court, upon appreciation of the evidence, records an order of acquittal. In an appeal against acquittal, the appellate Court undoubtedly possesses the power to reappreciate the evidence; nevertheless, where the view taken by the trial Court is a reasonably possible view founded upon the material on record, interference is not warranted merely because another view may also be conceivable.

In this regard, reliance may be placed upon *Mallappa & Ors. v. State of Karnataka*, Criminal Appeal No.1162/2011, decided on 12.02.2024, as cited in support of the principle governing appellate interference with an order of acquittal. The aforesaid principle, together with the settled law governing the presumption of innocence and the scope of appellate review, guides the consideration of the present appeal.

Having regard to the cumulative effect of the aforesaid circumstances, including the questions relating to statutory compliance, the authority of the officer effecting the seizure, and the material discrepancies concerning the sealing and forwarding of the alleged contraband, this Court finds no cogent ground warranting interference with the judgment of acquittal passed by the learned trial Court.

17. Consequently, the present criminal appeal filed by the State of Rajasthan is dismissed. The judgment of acquittal dated

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18.12.1991, passed by the learned Sessions Judge, Jalore, is hereby affirmed.

18. The bail bonds, if any, furnished by the respondent in connection with the present appeal stand discharged.

19. Let the record of the learned trial Court be transmitted back forthwith, along with a copy of this judgment.

(FARJAND ALI),J

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