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**(2009) 01 P&H CK 0211**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. 682-MA of 2008

State of Haryana

APPELLANT

Vs

Satish Kumar

RESPONDENT

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**Date of Decision:** Jan. 20, 2009

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 378(3)
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20

**Citation:** (2009) 28 CriminalCC 374

**Hon'ble Judges:** Satish Kumar Mittal, J; Daya Chaudhary, J

**Bench:** Division Bench

**Advocate:** P.S. Sullar, DAG, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Satish Kumar Mittal, J.

The State of Haryana has filed this application u/s 378 (3) of the Code of Criminal Procedure for grant of leave to appeal from the judgment of acquittal dated 19.09.2008, passed by the Special Judge, Jhajjar in NDPS Act Case No. 15 of 2007 titled as "State Versus Satish Kumar" arising from FIR No. ! 29 dated 03.04.2007 u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"), Police Station Jhajjar.

2. In the present case, as per the prosecution version, on 03.04.2007, 1.5 Kgs. of charas was recovered from the possession of the respondent accused, when the police party intercepted him at Northern Bridge near a temple, which was under construction, Jhajjar, while he was seen coming from Rohtak side. According to the FIR, before the alleged recovery of charas from the possession of the respondent-accused, a notice u/s 50 of the Act was served upon him and when he expressed his willingness to get his personal search conducted in the presence of a Gazetted Officer, then Balbir Singh, DSP, Jhajjar was telephonically informed, who

reached at the spot,, and in his presence, the personal search of the respondent-accused was conducted. The alleged charas was recovered from the polythene, which was held by the respondent-accused in his right hand. Out of the recovered contraband, two samples of 20 grams each were taken out and separate parcels were prepared. After putting the seal of JS on both the sealed parcels and the residue, the case property was deposited with the MHC and the FIR was registered at Police Station Jhajjar.

3. After completing the investigation, challan was filed and charge u/s 20 of the Act was framed against the respondent accused, to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined nine witnesses and produced on record various documents. In his statement u/s 313 Cr. P.C. the respondent accused denied each and every incriminating material appearing against him in the prosecution evidence. He pleaded innocence and false implication. However, he did not examine any witness in his defence.

5. The trial court, after considering the evidence led by the prosecution and hearing the counsel for the parties, acquitted the respondent-accused on the following grounds:

(i) That the prosecution has failed to prove that the samples which were prepared on the spot and deposited with the MHC were not the same, which were sent to the Forensic Science Laboratory, Madhuban for examination. It has been held that as per the statement of PW9 Inspector Mahender Singh, who was the Investigating Officer of the case, samples were put into a tin box and then those were put in the sealed parcels, but as per the FSL report Ex.P4, sealed cloth parcels, containing the samples, were received. It has been further observed that PW7 SI Jai Singh, who was the recovery witness, had stated that two samples of 20 grams each were taken out of the recovered charas, but perusal of the FSL report Ex.P4 reveals that the samples which were received by the FSL were 21.5 grams.

(ii) It has been found by the trial court that as per the statement of PW7 SI Jai Singh, SHO Hari Singh also affixed his seal of HS on the samples as well as on the residue contrabands, whereas on the case property Ex.P1 to Ex.P3, produced in the court, there was no seal of HS and only seals of JS and BS were affixed and the samples which were received by the FSL, Madhuban.

(iii) It has also been observed that recovery of the alleged contraband was made on 03.04.2007, whereas the sample was sent to the FSL after ten days i.e. on 13.04.2007. This fact, according to the trial court, is also material, particularly when it has been found that the same samples which were taken out of the alleged recovered contraband were not sent for laboratory examination.

6. After hearing counsel for the applicant-State on the application for grant of leave to appeal and perusing the impugned judgment, we do not find any illegality or perversity in the aforesaid findings recorded by the trial court. In our opinion, the trial court was fully justified to acquit the respondent-accused, while holding that the prosecution has failed to establish its case against the respondent-accused beyond all shadow of reasonable doubts. From the various factors taken into consideration by the trial court, as discussed above, the trial court has come to a definite conclusion that the samples, which were taken from the contraband allegedly recovered from the possession of the respondent-accused on the spot and deposited with the MHC, were not the same which were sent to the FSL, Madhuban for analysis. Thus, link evidence was totally missing. In our opinion, from the evidence available on the record, the said view taken by the trial court is possible, therefore, the trial court has rightly given benefit of doubt to the accused. Thus, we do not find any ground to grant leave to appeal.

Dismissed.