

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

Cr. A. No. 595/2015

Reserved on: 4.11.2025

Decided on: 28.11.2025

State of Himachal Pradesh

.....Appellant

Versus

Rajinder @ Raju

....Respondent

Coram:***The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******The Hon'ble Mr. Justice Romesh Verma, Judge.****Whether approved for reporting?¹*

For the Appellant: Mr. Raj Negi, Deputy Advocate General.

For the Respondent: Mr. Shekhar Badola & Mr. Vishal Thakur,
Advocates.

Romesh Verma, Judge

The present appeal arises out of judgment of acquittal, as passed by the learned Special Judge-III, Solan dated 2.5.2015, whereby the accused/respondent has been acquitted in case FIR No. 95/2010, dated 25.7.2010, registered at Police Station Dharampur, under Section 20 of the Narcotic

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.



Drugs and Psychotropic Substances Act, 1985 (for short, the Act).

2 The facts, as enumerated by the prosecution, are that on 25.7.2010, ASI Choli Ram along with PSI Kshma Dutt, HC Hem Raj, Constable Uma Ram, Constable Devinder Kumar and Constable Ali Mohammad as per rapat No.4 went to NH22 and during this time, it was found that in Volvo bus bearing registration No. HR68-7259 of Haryana Roadways, which was coming from Delhi to Shimla, one person occupying seat No.32 was misbehaving and fighting with the passengers. After seeing the police officials, the said person immediately got up from his seat and started to flee towards door of the bus. The said person was carrying green coloured bag and he tried to escape from the police. The said person was apprehended and thereafter taken to the Police Station along with conductor, driver and other passengers of the bus. The name of said person was inquired, who told his name to be Rajinder Singh, son of Sita Ram, village and post office Balag, Tehsil Theog, District Shimla. The bag, which he was carrying, was opened in the presence of the witnesses, wherein one white coloured plastic bag, on which circles, in red and blue, were incorporated, was found to be containing black coloured substance in shape of balls and sticks. As per experience of the



I.O. the recovered substance was charas, which on weighing was found to be 2 kg 300 grams. Thereafter, the recovered contraband was again put in the same white coloured plastic bag and thereafter in green coloured bag and sealed in parcel with seal impression 'N' at eight places. Specimen of seal impression was taken separately. NCB-I form, in triplicate, was filled-in and the seal impression was also embossed thereon. Statements of the witnesses were recorded. After taking into possession the case property, an FIR came to be registered.

3 During investigation, the case property was sent to SFSL Junga for chemical analysis and on receipt of the SFSL report and after completing all codal formalities, final report was filed in the court.

4 In order to prove its case, the prosecution examined as many as 15 witnesses in support of its case. Thereafter, the respondent was examined under Section 313 Cr.P.C., in which he denied all set of incriminating evidence led by the prosecution against him and claimed himself to be innocent. However, the respondent did not lead any evidence in his defence.

5 The learned trial court, after evaluating the oral as well as documentary evidence, acquitted the respondent, as



aforesaid, constraining the appellant-State to file the instant appeal.

6 We have heard Mr. Raj Negi, learned Deputy Advocate General, appearing for the appellant-State and Mr. Shekhar Badola and Mr. Vishal Thakur, Advocates, appearing for the respondent and have also gone through the records of the case in detail.

7 In order to substantiate its case, the prosecution has examined the Investigating Officer of the case, ASI Choli Ram, who stepped into the witness box as PW14 and deposed that he remained posted as ASI/I.O. of Police Station Dharampur in the year 2010. On 25.7.2010 at about 7.05 a.m, an information was received at Police Station Dharampur from the driver of Volvo bus namely Bhagwan Singh bearing registration No. HR-68-7259 that a passenger occupying seat No. 32 is quarreling with co-passengers of the bus. On the aforesaid information, he alongwith PSI Kshma Dutt, H.C Hem Raj, C. Uma Ram, C. Devinder Kumar and C. Ali Mohammad proceeded towards the bus, which was parked near the gate of police station by the side of road. They entered the bus and noticed that the occupant of seat no. 32 of the bus got up from his seat and started running towards front door of the bus by holding a green coloured polythene carry bag. The respondent



was apprehended and was brought to police station complex. On asking his name, the respondent disclosed his name to be Rajinder, son of Sh. Sita Ram. His carry bag was searched in presence of the witnesses Raj Kumar, Ramesh Chand and Surinder Singh. On searching the bag, one more polythene bag was recovered, in which black coloured substance was found which was in the shape of balls and sticks and the same was found to be Charas. Constable Devinder Kumar was sent to bring the weights and scale. After receiving the weights and scale, the Charas was weighed and it was found to be 2 kg 300 gms. The Charas was sealed in a cloth parcel and was sealed with eight seals of impression 'N' and sample seal was taken on a separate piece of cloth. The Charas was taken into possession through seizure memo Ex. PWI/A which was signed by witnesses and the respondent.

8 In his cross-examination, PW14 stated that the information was received through driver of the bus, who personally visited the police station after stopping the bus outside the police station. He along with other police officials did not reach upto seat no. 32. Self stated that occupant of seat No. 32 got up and started running towards front door of the bus and there was only one door that was from the front side of the bus. He stated that the entire investigation of the case



took place outside the police station in the police station complex. He denied that the alleged bag was not recovered from the respondent in presence of witnesses, Raj Kumar Ramesh Chand and Surinder. He also denied that neither any charas was recovered from the respondent nor it was put back in the parcel nor any photograph was clicked on the spot. He stated that the personal search of the respondent was also conducted. He denied that the respondent was falsely arrested by him.

9 Raj Kumar was examined as PW1, who deposed that he is an agriculturist. On 23.7.2010 he had gone to Delhi for selling apples in the truck. After selling the apples, he received Rs.47,000/-, which were kept by him in a bag. When he reached Chandigarh by bus, then he found that his bag containing Rs.47,000/- was missing. From Chandigarh, he travelled in Volvo bus bearing No. HR-68-7259. He was occupying seat No. 32 in the bus. The respondent was sitting on seat No. 31 by his side. PW1 further deposed that he noticed that the respondent was wearing the pant which belonged to him. The said pant was kept in the bag which was stolen in the bus. He had also kept Rs. 47,000/- in the same bag. The respondent started quarreling with him when PW1 inquired about the same from him. During the said quarrel, conductor of



the bus came and also inquired about cause of quarreling. The respondent told conductor that he wanted to get down at Parwanoo, however conductor told him that he had bought the ticket to Solan. When the conductor asked about the reason for getting down, the respondent told that he is trapped and police has been informed by someone. The driver of the bus took the bus to police station, Dharampur. The respondent tried to flee from the scene of occurrence along with his bag, however he was apprehended by the police and was taken to police station, Dharampur. The bag of the respondent was searched in presence of the witnesses Ramesh Chand and Surinder Kumar. On search of bag, a green coloured plastic (polythene) bag was found, which was containing iron ring and two glass bottles, however no charas was recovered in his presence. He further stated that the Police has not carried out any proceedings in his presence. He admitted his signatures on seizure memo Ex. PW1/A inside red circle 'A' and that of the respondent inside red circle 'B'. He also testified that attachment form Ex. PW1/B also bears his signature. He stated that the witness Ramesh Chand and Surinder Singh also put their signatures on memo Ex. PW1/A and Ex. PW1/B.



10 The Public Prosecutor requested the learned court below for declaring PW1 as hostile and requested for his cross-examination.

11 In his cross-examination conducted by the Public Prosecutor, he deposed that he is matriculate. He was told by the police officials that his statement has been recorded regarding theft of his bag. He stated that after the said incident he never visited the police or inquired about theft of currency notes and pant. He admitted that the police had caught the respondent and took him along with PW1, bus conductor and other passengers of the bus. He denied that police had recovered the cannabis from the bag which was kept in a polythene envelope. He denied that on weighing, it was found to be 2 kg 300 grams. He stated that he has heard portion A to A of statement, mark A, which is incorrect. He stated that no such statement was given by him to the police. He deposed that charas, Ext. P5 was not recovered in his presence from the respondent. The respondent was not present at the time of recovery. He stated that he requested the police to lodge FIR about the theft, but he did not know whether FIR was lodged by the police or not.

12 PW2 Surinder Kumar is conductor of the Volvo bus bearing No. HP-68-7259. He deposed that on 24.7.2010, the



said bus was being driven by driver Bhagwan Dass. They started from Delhi at about 11.15 P.M at night. On 25.7.2010 at about 7.15 A.M when they reached near Parwanoo, he noticed that the occupants of seat No. 31 and 32 were having altercation with each other. He inquired about the said cause. According to him, the respondent was occupying seat No. 32 and PW1 Raj Kumar was occupying seat No. 31 in the bus. The occupant of seat No. 31 told him that the respondent has stolen his money and then he asked the respondent to give his search, for which he declined. PW2 asked driver to take the bus to Police Station Dharampur. The driver of the bus stopped the vehicle in front of police station, Dharampur. The bus driver informed the police and police came on the spot. On seeing police, the respondent tried to flee away, however the police apprehended him inside the bus along with bag. The Police took the respondent along with PW2, driver and Raj Kumar to the police station. The bag was searched in their presence. Ex. P-4 is the same bag which was taken out from the bag and it contained black substance of different sizes i.e. in the form of sticks and balls. On weighing the charas, it was found to be 2 K.G 300 Gms. He stated that the police was saying that the charas has been recovered from respondent, but he does not know whether it was Charas or not. Identification of charas



memo Ex. PW2/A was prepared by police, which bears his signature and that of witness Ramesh Chand. He also testified that parcel, Ext. P2 also bears his signature and that of the respondent. He does not remember if PW Ramesh has signed. Seal after its use was entrusted to PW Ramesh Chand. Tickets, Ext. PW2/B-1 to Ext. PW2/B-3 were issued by him to the respondent, which were taken by the police during investigation.

13 In his cross-examination, PW2 stated that the bus was 41 seater and there was no standing passenger in the bus from Chandigarh to Shimla. There were two seats on either side of the bus and the last seat was five seater. He further stated that seats No. 31 and 32 were in the line of conductor seat. Seat Nos. 29 and 30 were adjacent to seat No. 31 and 32. He did not remember about the luggage of passengers of seat No. 29 and 30. Likewise he did not know what sort of luggage the passengers of seat No. 31 and 32 were carrying. PW2 further stated that he did not make search of any of the passengers in the bus including the respondent. He did not ask any passenger for giving their search. He was not having any knowledge about the luggage of passengers of seat No. 31 and 32 when they left Chandigarh. He deposed that the bus in question did not stop anywhere from Chandigarh except at



Police Station Dharampur. No passenger boarded and alighted the bus between Chandigarh and Dharampur. He denied that he had seen the bag in the police station only and not earlier to that. Self stated that the bag was seen in the hand of respondent when the police came and he started moving out of the bus. He denied that the respondent was not carrying any bag and the bag allegedly searched by the police in the police station did not belong to the respondent.

14 The prosecution examined Lokender Chauhan as PW3, who was working as Cashier in Apna Panjabi Dhaba at Sanwara at the relevant time. He deposed that on 25.7.2010, at about 7.00 A.M., the police came to their dhaba and asked him for weighing machine. He handed over the weighing machine along with weights of 100 gms, 1 kg, $\frac{1}{2}$ kg, 200 grams and 50 grams. Weighing machine was returned back by the police in the later evening. He identified the weighing machine to be the same which he had handed over to the police on that day.

15 In his cross-examination, he deposed that no written appointment letter had been given to him by the owner of the Dhaba. He did not accompany the police officials on that day. The Police did not click his photo on that day nor the



photographs of weighing machine and weights were taken by the police.

16 PW4 Ramesh Chand deposed that he is working as a Carpenter. On 24.7.2010, he went to Batala in connection with his personal work. He boarded Haryana Roadways Volvo-bus bearing Registration No. HR-68-7259 from Chandigarh Bus Stand at 1.30 p.m. He was sitting on the last seat of the bus. When the bus reached near Parwanoo some altercation took place between the occupants of Seat No. 31 and 32. The respondent was occupying seat No. 32 in the bus. The driver of the bus stopped the vehicle near Parwanoo and the conductor of the bus asked the reason for quarreling of persons. The occupant of seat No. 31 told conductor that the occupant of seat No. 32 has stolen his money. The respondent told that he had not stolen any money. Police was informed by the conductor and driver of the bus, and when police came inside the bus the respondent tried to alight the bus along with bag, which he was holding in his hand. The Police took him to the police station along with PW4, bus driver, conductor and other 15-20 passengers. Police checked the bag which the respondent was carrying alongwith him while he was trying to leave the bus. Charas was recovered from the bag of the respondent which was put in a polythene envelop. The said substance was



weighed by the police and it was found to be 2.k.g. 300 g.m. and the same was sealed in a cloth parcel. He identified his signatures over Memo Ext. PW-2/A. He also testified his signatures and that of Raj Kumar on Ext. PW-1/C. He deposed that memos Ext. PW-1/A and Ext. PW-1/B bear his signatures inside red circle B and the witness also appended his signatures in his presence on Ext. PW-1/A and Ext. PW-1/B. He deposed that he did not remember to which witness the seal was handed over.

17 In his cross-examination, PW4 stated that he rarely travel in the bus. He feigned ignorance about the other Bus Numbers in which he travelled and even he also did not remember by which bus number he travelled to the Court. He did do not remember the name of aforesaid bus driver. He deposed that he had gone to Batala in connection with purchasing spare part of planner machine. He reached at about 4.00-5.00 p.m. at Batala on 24.7.2010. It took about half an hour at the shop for purchasing the spare part of the planner. He was not having the tickets by which he travelled on that day. He stated that he did not know number of seats in which he travelled from Chandigarh to Shimla on 24.7.2010 in intervening night about 1.00 to 1.30 a.m. There were about 3 and 4 lanes of seats in between his seat and seats No. 31 and



32. Those seats were also occupied by the passengers. He could not say how far Parwanoo was there from where the bus was stopped by driver. The occupant of seat No. 31 did not disclose from which place the money was stolen. Self self stated that it was stolen between Delhi and Chandigarh. He further stated that the Police carried out the personal search of the respondent but nothing was recovered from him. Self stated that charas was recovered from the bag of the respondent. Police had seen the bag with the respondent when they entered the bus. He did not go to seat No. 31 and 32. He denied that the police had told the respondent that the bag belonged to him while they saw him and the occupant of seat No. 31 quarreling. He did not know what communication took place between the police and the occupants of seat Nos. 31 and 32. Police remained inside the bus for about 45 minutes. He deposed that he has not seen that bag on the day of his deposition in which Ext. P-13, Ext. P-4 and Ext. P-5 were kept. Ext. P-4 was inside Ext. P-3. He did not know if the alleged pant was seized from the respondent by the police or not. He remained about 45 minutes at Police Station Dharampur. In his presence only witness Raj Kumar appended his signatures on memos. He had seen the bag Ext. P-3 in the hand of the



respondent when he was trying to go out of bus, but he could not say to whom it belonged.

18 PW5 Ram Pal deposed that he was posted as duty Clerk at Haryana Roadways since 2009. On 25.7.2010, Bhagwan Singh, driver No. 272 and Surinder Kumar No. CH 94 conductor were deputed on Volvo bus bearing registration No.HR-68-7529. The aforesaid bus started from Chandigarh to Shimla at 5.00 a.m. and the route of this bus was Delhi to Shimla. The duty register is maintained by him and the aforesaid driver and conductor were deputed by him on 25.7.2010.

19 In his cross-examination, he deposed that according to the official record, bus in question moved from bus stand Chandigarh to Shimla at about 5.00 a.m.

20 PW6 Surinder Kumar deposed that he was working as Manager at PNB branch Balag in the year 2009. On 24.7.2010, the respondent was present on his duty in the same bank and working hours were upto 2.00 p.m since it was Saturday being half day. He was present in the bank till 2.00 p.m and thereafter, left the bank and the bank was closed at 2.00 p.m. He has brought the record of statement of account. As per this statement, respondent had withdrawn Rs. 700/- on 24.7.2010. Next day on 25.7.2010 he came to know that the



respondent was apprehended by the police in a charas case at Dharampur.

21 In his cross-examination, PW6 stated that the respondent was working as part time sweeper in the bank on that day and was present in the bank on 24.7.2010 till 2.00 p.m.

22 PW7 HC Kanwar Singh deposed that he was posted as Reader to Dy.S.P, Parwanoo in the year 2010. On 25.7.2010, Dy.S.P Ranveer Rathore was on official tour to Solan in connection with official work. Special report Ex.PW7/A was received by Dy.S.P Ranveer Rathore at Solan on 25.7.2010.

23 In his cross-examination, PW7 deposed that he did not personally handed over the special report to dispatch clerk/Dy.S.P clerk. The Dy.S.P came to his office on 26.7.2010 at about 10.00 a.m.

24 HC Parveen Kumar was examined as PW8, who deposed that he remained posted as MHC, Police Station Dharampur in the year 2010. Constable Uma Ram handed over rukka mark-X for registration of F.I.R., on the basis of which, he entered the FIR Ex. PWB/A, which bears the signature of Inspector Jagdish Chand inside red circle 'A'.

25 In his cross-examination, PW8 admitted that SHO/Inspector did not put his signatures on malkhana register



while depositing the case property. He also admitted that the signatures of depositor or receiver of the case property are required to be obtained as per requirement of column No.7. He further denied that the articles mentioned in entry No. 468 of malkhana register were not deposited by Inspector Jagdish Chand on 25.7.2010.

26 PW9 Constable Devinder Kumar, deposed that he remained posted as constable at Police Station Dharampur since 2010. On 25.7.2010, he alongwith ASI Choli Ram, PSI Kshma Dutt, HC Hem Raj, HHC Uma Ram went to Volvo bus No. HR-68-7259 on the complaint that a passenger of the bus is quarreling with the co-passengers of the same bus. When they entered the bus the occupant of seat no. 32 (respondent) on seeing police after carrying his bag in his hand got off from his seat and started running out of the bus. The respondent was overpowered by the police and was taken to the police station. Some of the passengers and driver and conductor of the bus also came to the police station. The search of the bag of the respondent was carried out by ASI Choli Ram in presence of witnesses. On searching the bag, a black substance in the shape of balls and sticks was recovered and the same was found to be Charas. He was sent to bring the weighing machine by the I.O. He brought the weighing machine from the Punjabi



Dhaba located at Sanwara. After weighing Charas, it was found to be 2 K.g 300 gms.

27 In his cross-examination, PW9 deposed that the respondent tried to run away out of the bus from front side. The Police party consisting of five members of police officials entered the bus from front door. He did not remember exact time but it was after 7.00 a.m. when he went to bring the weighing machine. He denied that he did not bring weighing machine from Punjabi Dhaba from one Lokender Chauhan.

28 Baljeet Singh was examined as PW10, who deposed that he is an agriculturist. He remained associated with the police, however he did not know if a person namely Baljeet Singh, son of Pratap Singh resides in his village or not.

29 The witness was declared hostile and was permitted to be subjected to cross-examination by the Public Prosecutor. In his cross-examination, he stated that he does not know if the police had visited his village or not. The police had not asked him about Baljeet Singh, son of Partap Singh at any point of time. He stated that the police had not recorded his statement. He stated that there are about 600-700 houses in their village and these houses are located in one vicinity. There are 2-3 persons namely Baljeet Singh. He deposed that he knows them by name only, but he does not know their



parentage. He heard portion A to A and B to B of his statement, which he denied the same to be incorrect. He stated that no such statement was given by him to the police.

30 PW11 Constable Ajay Kumar deposed that he was posted as Constable at Police Station Dharampur since 2010. On 26.7.2010 MHC Parveen Kumar handed over a sealed parcel bearing 8 seals of impression 'M' and 8 seals of impression 'M' alongwith sample seals "M" and "N", copy of FIR, NCB form in triplicate, copy of seizure memo alongwith docket for depositing the same at FSL, Junga vide RC no. 75/10, which he deposited at FSL Junga on the same day and the receipt of depositing the articles Ex. PW8/K was handed over back to MHC on the same day.

31 PW12 Constable Ali Mohammad deposed that he remained posted as Constable at Police Station Dharampur in the year 2010. On 25.7.2010, ASI Choli Ram handed over special report in an envelope for handing over the same to SDPO Parwanoo. He further stated that the Dy.S.P Parwanoo was on official duty to Solan on that day and he handed over the special report to Dy.S.P. Parwanoo, Rajesh Kumar at S.P. Office Solan.

32 PW13 is Inspector Jagdish Chand, who deposed that he remained posted as SHO/Inspector, Police Station



Dharampur in the year 2010. On 25.7.2010 rukka, mark-X, was received at Police Station Dharampur and FIR Ex. PWB/A was recorded by MHC which bears his signature inside red circle 'A'. He made an endorsement Ex. PW13/A on rukka mark-X. ASI Choli Ram handed over a sealed parcel bearing eight seals of impression 'N' alongwith sample seal, NCB form and copy of seizure memo. He checked the entries on the parcel and re-sealed in a separate cloth parcel with eight seals of impression 'M' and seal was also taken on separate piece of cloth. One such sample is Ex. PW13/B. NCB form Ex. PW8/J was filled by him and seal impression 'M' was embossed over it. Re-sealing certificate Ex. PW8/G was prepared.

33 In his cross-examination, he denied that neither the parcel was handed over to him nor he did reseal the parcel on the said date.

34 PW15 HHC Uma Ram deposed that he remained posted as constable at Police Station Dharampur from 2008 to 2012. On 25.7.2010, an information was received at Police Station Dharampur in the morning from the driver of Volvo bus bearing registration no. HR-68-7259 that a passenger occupying seat no. 32 is quarrelling in the bus with co-passengers. He alongwith PSI Kshma Dutt, H.C Hem Raj, C. Devinder Kumar and C. Ali Mohammad went to the bus which



was parked near the gate of police station by the side of the road. When the police party entered the bus, it noticed that occupant of seat no. 32 of the said bus got up from his seat and started running towards the front door of the bus by holding green coloured polythene carry bag in his hand. The respondent was apprehended by him with the help of other police officials and the respondent was taken to the police station. The driver, conductor and other few passengers also came to the police station. On asking name, the respondent disclosed his name as Rajinder Singh, son of Sita Ram, resident of Bhalag. The carry bag of the respondent was searched in presence of witnesses Raj Kumar, Ramesh and Surinder Singh, in which one more polythene bag was found to be containing black substance in the shape of balls and sticks, which after weighing was found to be 2 kg 300 gms.

35 In his cross-examination, PW15 deposed that the information was given by the driver of Volvo bus to the police station. He stated that he does not remember who was occupying seat no. 31. He entered the bus firstly and other police officials entered the bus thereafter. He denied that other police officials did not enter the bus at that time. He feigned ignorance about the names of passengers who came to police station alongwith bus conductor and driver. Self stated that



they were Raj Kumar, Surinder, Ramesh and driver and conductor and others. He denied the suggestion that no search was carried out in his presence and no charas was recovered from the respondent.

36 The prosecution had cited driver of the bus in question as one of the prosecution witnesses, however said witness was given up by the prosecution to the reasons best known to it.

37 Before adverting to the merits of the case, it would be noticed that the Hon'ble Supreme Court, in its various decisions, has held that in the case of acquittal, scope of interference in an appeal against acquittal is very limited.

38 The Apex Court has held that unless it is found that the view taken by the Court is impossible or perverse, only in those circumstances interference can be done by the appellate court. It is not permissible to interfere with the findings of acquittal and equally, 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. The interference would be warranted only if the view taken is not possible at all.



39 The Hon'ble Supreme Court in **Criminal Appeal No. 2119/2010, titled as State of Rajasthan vs. Kistoora Ram**, decided on 28.7.2022, has held as under:-

“The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally 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. The interference would be warranted only if the view taken is not possible at all.”

40 Similarly, the Hon'ble Supreme Court in **Constable 907 Surendra Singh vs. State of Uttarakhand, (2025) 5 SCC 433**, has held as under:-

“23. Recently, in the case of Babu Sahebagouda Rudragoudar and others v. State of Karnataka, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal



position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the



court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

40. Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

"8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising



the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. 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.”

24. 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.

13. In the instant case, the learned trial judge on the basis of ocular testimony of the eyewitnesses has held that the accused No.1-Jagdish Singh is guilty of the offence punishable under Section 302/34 IPC as well as under Section 27(1) of the Arms Act. Since the appeal of the said accused No.1-Jadgish Singh is disposed of as abated, we did not go into the findings against the said accused.”

41 In **Ballu @ Balram @ Balmukund vs. The State of Madhya Pradesh, 2024 (4) Scale 513**, the Hon’ble Supreme Court has held as under:-

“9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. Though, there are a catena of judgments on the issue, we will only refer to two judgments which the High Court itself has reproduced in the impugned judgment, which are as reproduced below:

“13. In case of Sadhu Saran Singh vs. State of U.P. (2016) 4 SCC 397, the Supreme Court has held that:-



"In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded."

14. Similar, In case of *Harjan Bhala Teja vs. State of Gujarat* (2016) 12 SCC 665, the Supreme Court has held that:- "No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after reappreciating the evidence. If the charge is proved beyond reasonable doubt on record, and convict the accused."



42 The Hon'ble Supreme Court in ***Special Leave to Appeal (Crl.) Dy. 23115/2025, titled as Brijesh Singh vs. State of U.P., decided on 18.6.2025***, has held as under:-

“Law is well settled that interference in an appeal against acquittal should be made only if the view taken by the Courts below is perverse or if no two views are possible and the only logical conclusion from the evidence is to record the guilt of the accused. In the present case, we do not find any view other than that taken by the trial Court and affirmed by the High Court acquitting the respondents of the charges is permissible.”

43 Perusal of the judgments, as passed by the Hon'ble Supreme Court, demonstrates that the scope of interference in the case of acquittal is very limited. It has been held that the prosecution in order to prove its case must establish the guilt of the accused from the oral as well as documentary evidence placed on record. It has been held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. The facts so established should be consistent only with the guilt of the accused, that is to say, they should not be



explainable on any other hypothesis except that the accused is guilty. It has been further held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

44 It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

45 Now coming to the facts and merit of the case, it would be clear that the prosecution story is full of infirmities and inconsistencies. The witnesses, who have entered the witness box, have not supported the case of the prosecution and doubt has been created in the entire story, as a result of which, the prosecution story cannot be believed and accepted.

46 PW1 Raj Kumar stated in his examination-in-chief that he was occupying seat No. 32 in the bus and the respondent was sitting on seat No.31 by his side. This witness is material since it is the case of the prosecution that there



was quarrel between him and the respondent and when the conductor of the bus in question tried to inquire about the same, PW1 stated that his pant and a sum of Rs.47,000 have been stolen. This witness, as observed above, has testified that he was occupying seat No.32, whereas respondent was sitting on seat No.31. However, this statement is in conflict with the remaining prosecution witnesses.

47 PW4 Ramesh Chand has stated that the respondent was occupying seat No.32 in the bus and occupant of seat No.31, referring to PW1, told the conductor to check the bag of the respondent since he apprehended that his pant and Rs.47,000/- have been stolen by the respondent.

48 To the similar extent is the statement of PW9 Constable Devinder Kumar, PW14 ASI Choli Ram and PW15 HHC Uma Ram. Therefore, there is inconsistency in the statement of PW1 vis-à-vis other witnesses with respect to occupation of seat number.

49 Moreover, PW1 has not supported the case of the prosecution as he has categorically stated that no charas was recovered from the respondent and the police had not carried out any proceedings in his presence. In his cross-examination conducted by the Public Prosecutor, he has denied the suggestion that police had recovered the cannabis from the



bag, which was kept in a polythene envelope. He also denied that the NCB form was filled in. He after hearing his previous statement A to A denied the same to be incorrect and stated that no such statement was given by him to the police. He feigned ignorance about the white polythene envelope, Ext. P4. According to him, charas Ext. P5 was not recovered from the respondent in his presence. Therefore, this material witness has not substantiated the case of the prosecution, which is fatal in the instant case.

50 PW2 Conductor Surinder Kumar in his deposition stated that the police apprehended the respondent inside the bus along with bag and the police took the respondent along with PW2, driver and Raj Kumar to the Police Station. On the contrary, PW4 Ramesh Chand stated that the police took him to the police station along with driver, conductor of the bus and other 15-12 passengers. PW2 has not stated that PW4 Ramesh Chand also accompanied them to the Police Station. However, PW2 stated that identification of charas memo, Ext. PW2/A was prepared by the police, which bears his signature and that of witness Ramesh Chand.

51 Inconsistencies in the statement of PW2 are apparent on the face of it. In the earlier portion, he does not name Ramesh Chand to be accompanying them to the Police



Station and in the other portion of his statement, he stated that Ramesh Chand put his signatures on Ext. PW2/A in his presence. This material inconsistency and infirmity in the evidence of the prosecution has remained unexplained.

52 From the statement of PW4 Ramesh Chand it is apparent that he boarded Haryana Roadways Volvo bus bearing registration No.HR-68-7259 from Chandigarh bus stand at 1.30 p.m. This statement is contrary to the statement of PW5 Ram Pal, who was posted as Duty Clerk in Haryana Roadways. He testified that the aforesaid bus started from Chandigarh to Shimla at 5:00 a.m. and route of this bus was Delhi to Shimla. He stated in his cross-examination that according to the official record bus moved from bus stand Chandigarh to Shimla at about 5:00 a.m. Statement of Ramesh Chand is contrary to the PW5 and the record as produced by him i.e. copy of duty register, Ext. PW5/A.

53 In his cross-examination, PW4 has stated that he does not remember other bus numbers in which he travelled even on the date of his deposition in the Court. He even does not remember by which bus, he travelled on the said date. He stated that he does not remember the number of seat in which he travelled from Chandigarh to Shimla on 24.7.2010 in the intervening night about 1.00 to 1.30 a.m. The time being given



by this witness is contrary to the statement of PW5 Rampal. Even otherwise, from the deposition being scanned, he stated that he cannot say where the aforesaid bus stopped near Parwanoo. Self stated that it was dark and night time.

54 The alleged incident occurred on 24.7.20210 and generally in the month of July, the visibility is quite good during said month, therefore, PW4 has tried to conceal material facts from the Court when he says that on account of dark and night time, he cannot say how far Parwanoo was there from where the bus was stopped by the driver. Statement of PW4 does not help and corroborate the prosecution version, therefore, story, as projected, does not inspire confidence.

55 From the perusal of statement of PW7 HC Kanwar Singh, it would be clear that special report, Ext. PW7/A was received by Dy.S.P. Ranveer Rathore at Solan on 25.7.2010, which he in turn handed over to PW7 in his office. On the other hand, PW12 Constable Ali Mohammad has different story to tell. He stated that ASI Choli Ram handed over to him special report in an envelope for handing over the same to SDPO Parwanoo, but the Dy.S.P. Parwanoo was on official duty to Solan on that day. He handed over the special report to Dy.S.P. Parwanoo Rajesh Kumar at S.P. Office Solan.



56 PW7 has referred name of Dy.S.P. as Ranveer Rathore, whereas PW12 has referred the name Dy.S.P. Rajesh Kumar, which is contradictory and it seems that the said officials do not know exact name of Dy.S.P., which shatters the case of the prosecution and adverse inference is required to be drawn on this count.

57 PW10 Baljeet Singh has not supported the case of the prosecution. He stated that he remained associated with the police, however he does not know if a person namely Baljeet Singh, son of Partap Singh resides in their village. In his cross-examination conducted by the Public Prosecutor, nothing concrete could be extracted from him, therefore, he has not supported the case of the prosecution in any manner. He stated that he does not know the respondent since he had seen the respondent for the first time in the Court only.

58 Story, as projected by the prosecution, seems to be improbable, as according to prosecution, PW1 Raj Kumar had gone to Delhi for selling apples and after selling the crop, he received sale proceeds amounting to Rs.47,000/-. It is the case of the prosecution that when he reached Chandigarh, he found that his bag containing Rs.47,000/- was missing. PW1 took Volvo bus bearing No.HR-68-7259 and he was one of the occupants in the bus. It is the case of the prosecution that



PW1 noticed that the respondent was wearing his pant, which was kept by him in a bag, which was stolen from his possession. It is further case of the prosecution that PW1 had kept Rs.47,000/- in the same bag, which was not traced out.

59 The prosecution story seems to be unbelievable because it has not been proved by the prosecution that in which bus PW1 came from Delhi to Chandigarh and while travelling from Delhi, whether both PW1 and the respondent were travelling together.

60 It seems to be improbable that when PW1 travelled in Volvo bearing No. HR-68-7259, he got the seat just adjacent to the respondent and then further he noticed the respondent wearing his pant and when he confronted, the respondent started quarreling with him. The story seems to be unbelievable and does not inspire confidence and it seems that story has been constructed by the prosecution without any corroborative evidence and without any substantiation.

61 From the perusal of the prosecution witnesses, it has been tried to be projected that on seeing the police, the respondent tried to flee along with bag containing charas. All the witnesses have stated in one voice after seeing the police, the respondent tried to flee from the front portion of the bus. It seems to be strange and improbable that on seeing the



police, the respondent would carry the alleged bag with him and try to flee away, rather in normal circumstances, he would try to escape and would not carry bag with him.

62 Apart from above, there is nothing on record to even remotely suggest as to why any rapat, complaint or FIR was not got lodged qua the alleged theft against the respondent at the instance of PW1 Raj Kumar, when, it is the projected case of the prosecution that the respondent had committed theft, as aforesaid, and having failed to establish on record what prevented the police not to register even a rapat against the respondent about the alleged theft, this omission on the part of the prosecution is not only fatal, but even goes to root of the case as chain of events is not complete, which materially affects the trial or core of the prosecution's case thereby, rendering the testimony of PW1 to be not trustworthy.

63 It is the specific case of the prosecution that the seal after use was handed over to PW4, but in his cross-examination, he stated that he does not know as to whom the seal after use was handed over. In case the seal had been handed over to PW4, then he could not easily feign ignorance about this fact, whereby story, as projected by the prosecution, becomes unbelievable.



64 The prosecution has tendered in evidence copy of DDR, Ext. PW8/B and this report has been shown to have been recorded on the basis of statement of one Bhagwan Singh, driver of the bus in question. As per report, driver reported the matter to the police on 25.7.2010 at 7.05 a.m. It is a case where bus had been halted by the driver on road, which was just adjacent to the police station. Ext. PW14/B is the site plan prepared by PW14 ASI Choli Ram and the position of the bus and police station has been shown to be adjacent to each other. All the witnesses, except PW14, have deposed that after apprehending the respondent, he was taken to the police station, but PW14 tried to show that the respondent was taken to the police station complex and not to the police station. By saying so, this witness had tried to show that the recovery, sealing and seizing proceedings have not been done inside the Police Station, but had been done outside the police station.

65 There is material discrepancy in the time as mentioned in the first information report, Ext.PW8/A and the daily station diary. The station diary records the information at 7.05 A.M. on 25.7.2010 whereas formal FIR was recorded only at 9:45 A.M. on the same date. The seizure memo records that the charas of 2 kg 300 grams was seized and it records the timing as 9.30 A.M. which is inconsistent with the DDR



entry of 7.05 A.M. and it creates doubt in the mind of the prosecution story.

66 Certainly there seems to be delay between the alleged recovery and the paper work as done by the officials. The delay has not been properly explained by the prosecution.

67 One of the infirmities in the present case pertains to the property search and seizure form, Ext. PW1/A, in column No.4. It does not mention time at which the alleged contraband was seized from the respondent nor it describes the manner of such seizure. Such omission is material and it creates doubt regarding authenticity of the alleged recovery.

68 The entire case as put forth by the prosecution is full of inconsistencies and infirmities. There are material contradictions in the statement of the witnesses. Therefore, we are of the considered opinion that the learned court below has rightly appreciated the oral as well as documentary evidence placed on record after thrashing the entire evidence and material for the determination of the case and thus has rightly acquitted the respondent of the charges framed against him and passed the judgment of acquittal in favour of the respondent.

69 Consequently, the instant appeal is dismissed, so also the pending application(s), if any.



70 The bails bonds furnished by the
accused/respondent are discharged.

71 Records be sent down.

(Vivek Singh Thakur)
Judge

(Romesh Verma)
Judge

28.11.2025
(pankaj)