2026:HHC:47488-DB

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 208 of 2019
Reserved on : 28.09.2026
Decided on : 29.10.2026
Uploaded on : 29.10.2026

State of Himachal Pradesh ...Appellant.

Versus

Kapil @ Dhillo & Others …Respondents.

Coram
Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
Hon'ble Mr. Justice Bhupesh Sharma, Judge.
Whether approved for reporting? ***Yes***

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

For the Respondents: Mr. Anirudh Sharma, Advocate, for respondent Nos.1 & 2.

Mr. Tarun Mehta, Advocate, for respondent No.3.

Bhupesh Sharma, Judge

The State of Himachal Pradesh is in appeal before this Court against the judgment of acquittal dated 10.09.2018 passed by learned Special Judge-III, Solan, District Solan, H.P., in Session

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Trial No.5ASJ-II/7 of 2017 (Regd. No.4/2017), titled as '*State of Himachal Pradesh Vs. Kapil @ Dhiloo & Ors'*, whereby the respondents (hereinafter referred to as 'accused') have been acquitted for the commission of offences punishable under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The accused persons were sent to face trial for the commission of an offences punishable under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, by SHO Police Station Sadar Solan, District Solan, H.P., in Case FIR Number 297/2016 dated 26.12.2016 registered under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985. The accused persons were prosecuted for the said offences, and were subsequently acquitted by the learned Trial Court vide impugned judgment dated 10.09.2018 passed in Session Trial No.5ASJ-II/7 of 2017 (Regd. No.4/2017), titled as '*State of Himachal Pradesh Vs. Kapil @ Dhiloo & Ors'.*

3. Briefly, the facts relevant for the disposal of this appeal, in short, are as under:

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3(a) On 26.12.2016 at about 1:15 PM at Dohri Diwar near Subathu bifurcation Solan, District Solan, H.P., the accused persons were found in joint possession of 2.002 Kgs of *'Charas'* (Cannabis) while traveling in Mahindra XYLO vehicle No.HR-46C-5936.

3(b). On 26.12.2016 at 11:30 AM, ASI Ashwani Kumar Incharge, Special Investigation Unit (SIU), Solan left for routine patrolling and crime detection duty towards Solan Bazaar, Saproon Chowk, Rabbon etc. vide Rapat No.3 dated 26.12.2016. He was accompanied by other police officials of SIU namely HC Rajesh Kanwar No.05, HHC Balbir Singh No.750, HHC Ajay Kumar No.432, Constable Amit Kumar No.523 and Constable Ashwani Kumar No.760. The Police Party during the course of patrolling reached Saproon Chowk at 11:30 AM where ASI Ashwani Kumar received a secret, specific and reliable information regarding transportation of contraband in golden brown Mahindra XYLO vehicle having registration No.5936. The information was further specific that the said vehicle was enroute Chandigarh. Since the information was reliable, ASI Ashwani

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Kumar acted upon the same and recorded reasons of belief under Section 42(ii) of Narcotic Drugs and Psychotropic Substances Act, 1985 and sent the same to the Supervisory Officer of SIU, Solan through Constable Amit Kumar No.523. The Police party later setup a nakka at Subathu bifurcation, Dohri Diwar, Solan and at about 01:15 PM they intercepted the said vehicle coming from Solan bazar side. The vehicle was stopped and three persons were found travelling therein. The accused Harinder Malik @ Amit (A-3) was on the driver's seat, the accused Kapil @ Dhiloo (A-1) was sitting in the front seat and the accused Naveen Bhura (A-2) was occupying the rear seat. The Police party, thereafter searched the vehicle after associating two independent witnesses namely Rajesh Thakur and Rajesh Verma and recovered one backpack(Pithu) kept by the accused Kapil @ Dhiloo in between his legs, which was opened and checked leading to recovery of two blue colour polythene packets containing 2.002 Kgs of '*Charas'(*Cannabis). The accused persons could not account for the said contraband, which was found in the vehicle in which they were travelling. The contraband

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so recovered from the possession of the accused persons was wrapped with yellow tape in blue polythene bags, which were sealed in a cloth parcel after affixing three seals of impression ‘A’. The sample seal impression 'A' was taken on a separate piece of cloth for the purpose of record, and the same after its use was handed over to the independent witness Rajesh Thakur. The Investigating Officer i.e. ASI Ashwani Kumar filled relevant columns of NCB-I form in triplicate. Thereafter, the case property i.e. the sealed parcel along with seal impression ‘A’ and NCB-I form in triplicate were taken into possession vide recovery and seizure memo in the presence of independent witnesses i.e. Rajesh Thakur and Rajesh Verma. The signature of the accused and witnesses were obtained on the said memo. The copy of same was handed over to the accused free of cost. Thereafter, the Investigating Officer ASI Ashwani Kumar scribed rukka and sent the same to SHO Police Station Sadar Solan for registration of FIR against the accused persons through Constable Amit Kumar No.523 and in pursuance thereof, case FIR No.297/2016 dated 26.12.2016 under Sections 20 and 29 of Narcotic Drugs

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and Psychotropic Substances Act, 1985 was registered at Police Station Sadar Solan against the accused persons. The Investigating Officer thereafter, prepared spot map and recorded the statements of witnesses under Section 161 Cr.PC.

3(c). On 26.12.2026 at 8:31 PM, ASI Ashwani Kumar presented the case property i.e. one sealed parcel bearing three seals of impression 'A' containing 2.002 Kgs of '*Charas'*(Cannabis) along with sample seal mark 'A' NCB-I form in triplicate before Inspector Anil Sharma, SHO Police Station Sadar Solan for re-sealing of the case property in terms of Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The said parcel was re-sealed with three seals of impression 'T'. The relevant columns of NCB-I form in triplicate were updated and thereafter, the case property was deposited with HHC Kansi Ram No.532, Incharge Malkhana, Police Station Sadar Solan for safe custody.

3(d) On 27.12.2026, ASI Ashwani Kumar prepared Special Report under Section 57 of Narcotic Drugs and Psychotropic Substances Act, 1985 and sent the same to Dy.SP,

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Solan through HHC Balbir Singh No.750. Pursuant to the receipt of the Special Report under Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985, necessary entries regarding the said receipt were made at Sr. No.13 of the Special Reports Register.

3(e). On 27.12.2016, ASI Ashwani Kumar being Investigating Officer presented the case property before learned Chief Judicial Magistrate, Solan for certification of correctness of inventory of the seized contraband under Section 52A(3) of Narcotic Drugs and Psychotropic Substances Act, 1985. The learned Chief Judicial Magistrate having been satisfied with the said inventory, which was as per the seizure documents issued the certificate under Section 52A(2) of Narcotic Drugs and Psychotropic Substances Act, 1985.

3(f) The case property, was later sent for chemical examination to State FSL, Junga vide RC No.221/16-17 through Constable Pawan Kumar and vide State Forensic Science Laboratory Report No.3447 NDPS Division 932/2016, dated

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09.01.2017, and was found extract of Cannabis and sample of *'Charas'.*

3(g) Pursuant to the completion of investigation, the accused persons were found to have committed the offences punishable under Section 20 read with Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and final report under Section 173(2) Cr.PC was prepared against them and a case was filed before learned Special Judge Solan, District Solan, H.P. The accused persons were prosecuted for the commission of offences under Section 20 read with Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 in Session Trial No.5ASJ-II/7 of 2017 (Regd. No.4/2017), titled as '*State of Himachal Pradesh Vs. Kapil @ Dhiloo & Ors'.*

3(h). The learned trial Court after considering the oral and documentary evidence led by the prosecution acquitted the accused persons for the commission of offences punishable under Section 20 read with Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 vide impugned judgment of acquittal dated 10.09.2018 passed in Session Trial No.5ASJ-II/7

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of 2017 (Regd. No.4/2017), titled as '*State of Himachal Pradesh Vs. Kapil @ Dhiloo & Ors'.*

4. Feeling aggrieved and dissatisfied with the judgment of acquittal dated 10.09.2018*, passed in Session Trial No.5ASJ-II/7 of 2017 (Regd. No.4/2017), titled as 'State of Himachal Pradesh Vs. Kapil @ Dhiloo & Ors'*. the State of Himachal Pradesh is in appeal before this Court on various grounds.

5. **GROUNDS OF APPEAL:**

(i) *"That the impugned judgment passed by the Learned Trial Court is wrong on facts as well as on law, hence, liable to be set-aside.*

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

(iii) *That the Learned Trial Court has appreciated the evidence on record in a slip-shod and perfunctory manner and has acquitted the accused person on the flimsy grounds.*

(iv) *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 Trial Court is manifestly unreasonable and unsustainable as there was no reason for the Trial Court to discard the well reasoned and consistent testimony of prosecution witnesses on material point.*

(v) *That the Learned Trial Court has discarded the testimony of prosecution witnesses for*

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untenable reasons in the absence of any proof of enmity no reasons what so ever 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.

(vi) That the prosecution case has been supported in its material particulars by the prosecution witnesses PW-11, PW15, PW-16 & PW-17.

(vii) That there is nothing on record the suggest that the aforesaid witnesses have any malice against the accused person and have falsely implicate him in this case as such the testimony of these witnesses are cogent trustworthy to base conviction against the accused person. Thus the findings of the Trial Court are perverse and are liable to be set aside.

(viii) That the contraband seized by the IO on weighing was found to be 2.002 Kilograms (Cannabis). Further, it is settled that in the absence of corroboration by independent witnesses the version of the official witnesses cannot be disbelieved if their version inspire confidence. The contradictions as pointed are minor and do not go to the root of the case, therefore, for the aforesaid reasons, the judgment deserves to be set aside.

(ix) That no other appeal or revision arising out of the impugned judgment has been filed either in this Hon'ble Court or in the Hon'ble Supreme Court of India.

(x) That this appeal is being filed within the period of limitation."

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6. We have heard learned counsel for the parties and carefully gone through the material on record and the findings recorded by the learned Trial Court while passing the impugned judgment dated 10.09.2018.

7. Learned Deputy Advocate General has strenuously argued that the learned Trial Court failed to appreciate the material evidence adduced by the prosecution, leading to miscarriage of justice. The official witnesses of search, recovery and seizure namely Constable Ashwani Kumar No.760 (PW-11), HC Rajesh Kanwar No.05 (PW-15), Constable Amit Kumar No.523 (PW-17) and SI Ashwani Kumar (PW-16) being Investigating Officer have fully supported the factum of recovery of 2.002 Kgs of 'Charas'(Cannabis) from the possession of the accused persons while travelling in Mahindra XYLO No.HR-46C-5936 on 26.12.2016 at 11:15 AM at Dohri Diwar near Subathu bifurcation Solan, District Solan H.P. Furthermore, the Investigating Officer pursuant to the receipt of the information against the accused complied with the provision under Section 42(2) of Narcotic Drugs and Psychotropic Substances Act, 1985

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by recording reasons of belief and sending the same to the concerned officer. The recovery of the contraband was effected in the presence of two independent witnesses namely Rajesh Thakur (PW-1) and Rajesh Verma (PW-2). Although, these witnesses have not fully supported the prosecution case, but they have admitted the signatures over the recovery and seizure memo Ex.PW1/A, which is sufficient to presume their presence on the spot. It was also argued that there are no procedural lapses rendering the prosecution case vulnerable and unacceptable. The learned Trial Court failed to appreciate the material and evidence in the right perspective, therefore, the findings recorded therein are perverse and liable to be set aside and the accused persons needs to be convicted for the commission of offences punishable under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

8. Per contra, the learned counsel for respondents No.1 and 2 and respondent No.3 have defended the judgment of acquittal passed by the learned Trial Court after considering the

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oral and documentary evidence adduced by the prosecution, which does not inspire confidence.

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 proseuction evidence and accordingly acquitted the accused persons.

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**, which reads as under :-

> *"10. Lord Russell in Sheo Swarup [1], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said,*
>
> > *"... the High Court should and will always give proper weight and consideration to such*

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matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh[2] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed:

> *"7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."*

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [3], Madan Mohan Singh [4], Atley [5] , Aher Raja Khima [6], Balbir

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Singh [7], M.G. Agarwal [8], Noor Khan [9], Khedu Mohton [10], Shivaji Sahabrao Bobade [11], Lekha Yadav [12], Khem Karan [13], Bishan Singh [14], Umedbhai Jadavbhai [15], K. Gopal Reddy [16], Tota Singh [17], Ram Kumar [18], Madan Lal [19], Sambasivan [20], Bhagwan Singh [21], Harijana Thirupala [22], C. Antony [23], K. Gopalakrishna [24], Sanjay Thakran [25] and Chandrappa [26]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the

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demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

12. The Hon'ble Supreme Court in **Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471**, observed as under:-

"31. The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

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31.1. Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed up to the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [State of U.P. v. Sahai (1982) 1 SCC 352] Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. [Arunchalam v. P.S.R. Sadhanantham (1979) 2 SCC 297] An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal. [State of Haryana vs. Lakhbir]

31.2. However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarized as follows:

31.2.1.Where the approach or reasoning of the High Court is perverse;

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(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. vs. Shanker 1980 Supp SCC 489]

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. [State of U.P. v. Hakim Singh (1980)

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh (1983) 1 SCC 393]

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime. [Arunachalam vs. P.S.R. Sadhanantham (1979) 2 SCC 297]

(e) Where the High Court applied an unrealistic standard of "implicit proof" rather

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than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram (1986) 4 SCC 99]

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610]

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it necessary on the part of the prosecution to establish "motive". [State of A.P. v. Bogam Chandraiah (1990) 1 SCC 445]

31.2.2.Where acquittal would result is gross miscarriage of justice;

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a perfunctory consideration of evidence, [State of U.P. v. Pheru Singh 1989 Supp (1) SCC] or based on extenuating circumstances which were purely based in imagination and fantasy [State of U.P. v. Pussu (1983) 3 SCC 502]

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> *(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature. [State of Maharashtra v. Champalal Punjaji Shah (1981) 3 SCC 610].”*

13. 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. The relevant portion of the above judgment is as under:-

> *“8. In this appeal, were are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarized as follows:*

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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 reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is 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.

9. Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and

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documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. 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. Only recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken."

14. 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:

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> *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."*

15. 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*

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> *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*."

16. 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.

17. 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,

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since a higher degree of assurance is required to convict the accused.

18. The careful perusal of the record shows that the independent witnesses associated by the Investigating Officer during the course of proceedings namely Rajesh Thakur (PW-1) and Rajesh Verma (PW-2) have not supported the prosecution case qua the recovery of the contraband in their presence from the vehicle of the accused persons. Apparently, Rajesh Thakur (PW-1) has although admitted the sealing of the case property and seizure thereof vide recovery and seizure memo Ex.PW1/A, nevertheless he has denied the recovery of the contraband from vehicle No.HR-46C-5936 in his presence. Similarly, Rajesh Verma (PW-2) has although admitted that the contraband was weighed in his presence, but has denied that the said recovery was effected from the accused persons in his presence. He has also denied that the sealing of the contraband and its seizure thereof was carried out on the spot. Therefore, having considered the evidence of these witnesses, the material aspects of the prosecution case qua intercepting of vehicle No.HR-46C-5936 in

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their presence is not proved. Their presence on the spot during the course of recovery of the contraband, sealing thereof and vide seizure memo Ex.PW1/A is also not proved. Therefore, the non-supporting of the prosecution case by these two independent witnesses creates doubt regarding veracity of the prosecution case.

19. The official witnesses of the raiding party namely Constable Ashwani Kumar No.760 (PW11), HC Rajesh Kanwar No.05 (PW-15), Constable Amit Kumar No.523 (PW-17) and SI Ashwani Kumar (PW-16) being Investigating Officer have although, come on record supporting the prosecution case qua the recovery of 2.002 Kgs of '*Charas'*(Cannabis) from the possession of the accused persons while travelling in vehicle No.HR-46C-5936 on 26.12.2016 at 01:15 PM at Dohri Diwar, Solan, District solan, H.P., however, the careful scrutiny of their statements reveal material contradictions on the material points rendering their version unworthy of credence and unbelievable.

20. There is no cogent evidence suggesting the exact place where the Investigating Officer received the secret

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information against the accused persons for transporting contraband in vehicle No.HR-46C-5936. As per statement of the Investigating Officer ASI Ashwani Kumar (PW-16) he received the information at about 11:30 AM when he was present at Saproon Chowk. He has further testified that the information was received when he was outside of the vehicle in which the Police party was travelling, however, Constable Amit Kumar (PW-17) has contradicted the aforesaid aspect by testifying that the information was conveyed to the Investigating Officer when he was in the vehicle and after receiving the same he reduced into writing while sitting in the vehicle. However, Constable Ashwani Kumar No.760 (PW-11) has testified that ASI Ashwani Kumar received secret information when he was inside traffic Gumti at Saproon Chowk. Therefore, the aforesaid witnesses are deposing in contradiction to each other regarding the exact place where the Investigating Officer received prior information. Also there are contradictions in their respective statements as to the place where the document i.e. reasons of belief Ex.PW9/A was reduced into writing.

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21. As per the recovery and seizure memo Ex.PW1/A, the contraband after its recovery and identification was put in the blue polythene bags and was wrapped with yellow tape and was sealed in a cloth parcel by affixing three seals of impression ‘A’. This fact can also be ascertained after going through the rukka Ex.PW16/A and copy of FIR No.297/16 Ex.PW4/B. The statements of the official witnesses are consistent regarding the fact that the case property before sealing was wrapped with yellow tape. However, the case property on being opened in the Court during the course of trial on 13.12.2017 did not match with the mode and manner in which it was sealed during the course investigation. The case property was put to Constable Ashwani Kumar No.760 (PW-11) while recording his statement and as per the observation of the Court, the parcel Ex.P-1 on opening contained two polythene packets Ex.P-2 and P-3 blue in colour wrapped with brown tape containing Charas Ex.P-4. Therefore, there is discrepancy regarding the colour of the tape, which was used by the Police in wrapping the case property when it was seized. The aforesaid factum becomes more relevant since the

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independent witness Rajesh Thakur (PW-1), who was allegedly handed over the seal ‘A’ after its use has testified that the Police took the seal from him and handed over on the day of statement was recorded in the Court. Hence, the aforesaid fact cannot be brushed aside under the given circumstances.

22. There are also material contradictions in the statements of the official witnesses regarding the place of opening the Pithu bag Ex.P-5 and checking thereof. The Investigating Officer ASI Ashwani Kumar (PW-16) has testified that he searched the bag outside the vehicle, which fact is duly contradicted by Constable Ashwani Kumar No.760 examined as PW-11 and HC Rajesh Kanwar No.5 examined as PW-15. As per their statement, the bag was opened and checked inside the vehicle.

23. After carefully considering oral and documentary evidence led by the prosecution, the following points can be enumerated being fatal to the prosecution case:

(i). The recovery of the contraband from the conscious possession of the accused persons is not proved on considering

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the statements of the independent witnesses Rajesh Thakur (PW-1) and Rajesh Verma (PW-2).

(ii). The identify and safe custody of the case property is not proved on record, in view of the statement of independent witness Rajesh Thakur (PW-1) since the seal 'A' used during the course of seizure of the case property never remained in his possession and was taken back by the Police after the alleged formalities.

(iii). There are material contradictions in the statements of official witnesses regarding the place where prior information was received, recording reasons of belief under Section 42(2) of Narcotic Drugs and Psychotropic Substances Act, 1985 and the place where the bag was searched.

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

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

27. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the respondents/accused persons are directed to furnish bail bonds in the sum of ₹25,000/- each with one surety in the like amount each 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 respondents/accused persons on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

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

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

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

29th October, 2026(Kiran)

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