

# State Of U.P. vs Dinesh S/O Sri Gopal on 1 April, 2025

**Author: Siddharth**

**Bench: Siddharth**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44401-DB

Court No. - 47

Case :- GOVERNMENT APPEAL No. - 1005 of 2024

Appellant :- State of U.P.

Respondent :- Dinesh S/O Sri Gopal

Counsel for Appellant :- G.A.

Hon'ble Siddharth,J.

Hon'ble Ms. Nand Prabha Shukla,J.

Order on Criminal Misc. (Leave to Appeal) Application No. of 2023

1. Heard Sri Jitendra Kumar, learned AGA -Ist for the State-appellant and perused the material on record.
2. The above noted leave to appeal application has been filed praying for grant of leave to the appellant to prefer appeal against the judgement and order of acquittal dated 04.11.2022 passed by Additional District and Sessions Judge, Court No.3, District Aligarh, in Sessions Case No.819 of 2011 (State Vs. Dinesh).

3. By the aforesaid judgement and order, the accused-respondent has been acquitted of all charges under Sections 272, 273 IPC, which was registered as Case Crime No.203 of 2011 at Police Station G.R.P., District Aligarh.

4. The prosecution case as per FIR is that on 19.5.2011 FIR was lodged alleging that the respondent was caught at platform No.2 at Aligarh Railway Station at about 12:45 p.m. with a tea container and a bag. In the tea container, four liters of tea was found and in the bag, comet student poster colour in 10 packings were found.

5. After investigation, charge-sheet was submitted against the respondent in Case Crime No.203 of 2011, under Sections 272, 273 IPC, Police Station G.R.P., District Aligarh and the charges were framed accordingly by the trial court, which were denied by the respondent and he sought trial.

6. The prosecution in order to prove its case examined PW-1, Sukhbir Singh, informant; PW-2, Constable, Durjan Singh and PW-3, Sub Inspector, Naresh Kumar.

6A. Statement of respondent was recorded under Section 313 Cr.P.C., wherein he claimed innocence and false implication in this case.

7. Learned counsel for the appellant has submitted that trial court has wrongly acquitted the accused- respondent holding that the prosecution has failed to prove its case beyond all reasonable doubt and as such the accused-respondent is entitled for acquittal.

8. The appellate Court is usually reluctant to interfere with a judgment acquitting an accused on the principle that the presumption of innocence in favour of the accused is reinforced by such a judgment. The above principle has been consistently followed by the Constitutional Court while deciding appeals against acquittal by way of Article 136 of the Constitution or appeals filed under Section 378 and 386 (a) Cr.P.C. in State of M.P. Vs. Sharad Goswami, (2021) 17 SCC 783; State of Rajasthan Vs. Shera Ram, (2012) 1 SCC 602, Shivaji Sahabrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793.

9. The Supreme Court in the case of Ramesh Babulal Doshi Vs. State of Gujarat, (1996) 9 SCC 225 has observed that the High Court must examine the reasons given by the trial Court for recording their acquittal before disturbing the same by re-appraising the evidence recorded by the trial court. For clarity, para 7 is extracted herein below:

"Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and

sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

10. The Supreme Court in the case of Sadhu Saran Singh Vs. State of U.P., (2016) 4 SCC 357 has observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. 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.

11. The Supreme Court in the case Basheera Begam Vs. Mohd. Ibrahim, (2020) 11 SCC 174 has held that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If, upon analysis of evidence, two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and other of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have, upon analysis of the evidence on record, found the accused to be "not guilty". When circumstantial evidence points to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

12. The Supreme Court in the case of Kali Ram Vs. State of H.P., (1973) 2 SCC 808 has observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

13. The Supreme Court again examined in State of Odisha v. Banabihari Mohapatra & Ors, (2021) 15 SCC 268 the effect of the probability of two views in cases of appeal against acquittal and held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused,

and the other to his innocence, the view which is favourable to the accused should be adopted.

14. The Supreme Court in *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406 has reiterated the position that suspicion, however strong, cannot replace proof. An accused is presumed to be innocent unless proven guilty beyond a reasonable doubt.

15. In the background of the law discussed herein above, we will examine the trial court's findings and evidence adduced during the trial by the witnesses to test the legality and validity of the impugned order.

16. We have heard learned counsel for the appellant and perused the material on record. We find that the alleged poster colour recovered was sent to Central Food Testing Laboratory, North-Central Railway, Allahabad, wherein tea recovered was not found to be made of poster colour. The trial court has also found that the sample sent for testing was not prepared in accordance with rules. No independent witness of arrest of the respondent and incriminating recovery made from him were produced before the trial court. Further PW-1 admitted that during the search of the respondent in police station, only money was found from his possession. He also did not prove that the alleged adulterated tea was recovered from the respondent. He did not prove that the respondent informed him that he is selling tea, which is made from poster colour. The trial court has further found that the respondent was not challaned as illegal vendor and therefore, it has found that the prosecution has failed to prove the charges framed against the respondent beyond reasonable doubt and has rightly acquitted him.

17. After considering the evidence on record, this Court does not find any perversity in the findings recorded by the trial court. The trial court's judgement is a well merited one, this Court need not re-appreciate the evidence.

18. This leave to appeal application is rejected.

Order on Government Appeal Since leave to appeal application is rejected, therefore, the above noted government appeal is, hereby, dismissed.

Let the record of the trial court be returned and this judgement to be notified to the trial court, within two weeks.

Order Date :- 1.4.2025 Ruchi Agrahari (Ms. Nand Prabha Shukla,J.) (Siddharth, J.)