

# State vs Sartaz Singh And Ors on 9 March, 2022

**Bench: Sanjeev Kumar, Mohan Lal**

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

APPCR No. 67/2017  
SLA No. 124/2017  
CONCR No. 125/2017

Reserved on 23.02.2022.  
Pronounced on 09.03.2022.

State ..... appellant (s)

Through :- Mr. Deewakar Sharma Dy.AG

V/s

Sartaz Singh and ors .....Respondent(s)

Through :- None

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

## JUDGMENT

This is an application seeking exemption from filing fresh copy of impugned judgment.

The application, for the reasons stated therein, is allowed. 1 This is an application seeking condonation of delay of 107 days in filing the leave to appeal application seeking permission of the Court to challenge the judgment of acquittal delivered by the learned Additional Sessions Judge, Kathua ["Trial Court"] in a case titled "State vs Sartaz Singh and ors" whereby the respondents have been acquitted of the charges under Sections 18/20 NDPS Act, 120 RPC and 3/15 Arms Act. Though, no convincing explanation is tendered for filing the leave to appeal application after a delay of 107 days, yet we would like to go into the merits of the proposed appeal, so that an appropriate opinion is formed with regard to condonation of delay as well as for granting leave to appeal. 2 The case put up by the prosecution before the trial Court in brief is that the police of Police Station, Kathua led by S.P, Kathua was conducting investigation in FIR No. 124/2000 under Sections 120-B RPC and 4/5 E.C Act. The accused Sartaz Singh, who was arrested in connection with the aforesaid FIR, made a disclosure statement to the effect that he had concealed 10 kg heroine, a pistol china made along with 13 live cartridges of the pistol near the house of Mohidner Singh at old Bus Stand, Kathua. The

accused Sartaz Singh after making the disclosure statement led the police to the spot and got 10 kgs heroine along with pistol and cartridges recovered. Accordingly, two samples were lifted from the seized heroine. A docket was sent to the police station. FIR was registered at Police Station, Kathua. The Investigating Officer, who was entrusted the investigation, reached the spot, prepared the site plan and also seized the recovered contraband as well as arms and ammunitions. NCB team was also called on the spot. The samples were properly sealed in the presence of witnesses and same were got resealed through Executive Magistrate and sent to CRCL, Delhi. The CRCL report confirmed that the seized item was heroine. The accused Sartaz Singh, during the course of investigation, admitted that huge consignment of heroine weighing 75 kg along with a china made pistol and 13 live cartridges were smuggled from Pakistan by him along with and in conspiracy with other accused, namely Mohd Alam, Lekh Raj and Harminder Singh. The Police did not find any evidence against Mohd Alam, Lekh Raj and Harminder Singh and, therefore, they were not charge-sheeted and the challan was presented in the absence of the accused Mohidner Singh, Manmohan Singh, Davinder Singh and Jameel Singh, who were proceeded under Section 512 Cr.P.C vide order dated 01.01.2001. The accused Manmohan Singh and Davinder Singh were also discharged by the trial Court and the case proceeded against accused Sartaz Singh and Lakhvinder Singh.

3 With a view to sustain the charge against the accused Sartaz Singh and Sukhvinder Singh, the prosecution produced PW-3 Ajay Singh Jamwal, PW-7 Surinder Kumar, PW-11 Sher Singh, PW-12 Prem Singh, PW-14 Prithpaul Singh, PW-10 Ashwani Kumar and PW-20 Pardeep Sharma, PW-21 Jagvir Singh Sumbliia. The statements of accused under Section 342 CrPC were also recorded. They denied the recovery having been made from their possession, but chose not to lead any evidence in defence.

4 From the evidence on record, it is clear that the whole edifice of the prosecution case is built upon the disclosure statements made by the accused persons in police custody which led to recovery of heroine and arms and ammunitions. Under Section 27 of Evidence Act, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

5 As is rightly observed by the trial Court that though, there is an allegation against the accused persons that they had smuggled the contraband and arms and ammunitions pursuant to a conspiracy, yet they are not charged for criminal conspiracy. The other accused, who had allegedly conspired with the accused, were already discharged by the trial Court. The trial Court was, thus, only left with the evidence of disclosure statement of accused Sartaz. He was apprehended in FIR No. 124/2000 in which he made the disclosure statement. Interestingly, neither the arrest memo, nor any remand form in respect of the accused Sartaz Singh in FIR No. 124/2000 was seized. Even the copy of the charge-sheet or the final report in the said case was not placed on record. There was, thus, no evidence put up before the trial Court from which it could be concluded that accused Sartaz Singh was under custody in FIR No. 124/2000 when he made the disclosure statement. The I/O cited two witnesses, namely Pawan Kumar and Sukhdev Singh to prove the disclosure statement allegedly made by the accused Sartaz Singh on 06.11.2000, but again, the prosecution, for the reasons best known to it, has not examined any of them to prove the disclosure statement. Even the

prosecution witness SHO Jagbir Singh, who was shown as scribe of disclosure statement has contradicted himself and has not proved the disclosure statement beyond any reasonable doubt. The Superintendent of Police, who was heading the investigation in FIR No. 124/2000 where accused Sartaz Singh made a disclosure statement too has not been cited as a witness. There is, thus, no witness worth the name to support the version of the scribe of the disclosure statement alleged to have been made by accused Sartaz Singh.

6 The Trial Court, thus, having found serious omission on the part of the prosecution to prove the disclosure statement, rightly came to the conclusion that the prosecution had failed to prove its case against the accused. The witnesses to the recovery and seizure of the heroine i.e PW-9 Surinder Kumar too has not supported the prosecution case. Though, he admitted his signatures in the recovery and seizure memos, but has denied their contents. The other witnesses, namely Hans Raj Manhas, Jagmohan Khakhi and Sunil Kumar have not been examined. This puts the recovery and seizure of the heroine also in serious doubt.

7 In the face of the evidence brought on record by the prosecution where the prosecution failed to prove the disclosure statement allegedly made by accused Sartaz Singh and the consequent recovery of contraband from the spot indicated by the accused in his disclosure statement, the trial Court was left with no option, but to record acquittal of the accused.

8 We see no reason or justification to take a view contrary to the view taken by the trial Court. Otherwise also, the scope of interference with the judgment of acquittal recorded by the trial Court is very limited. Even if the appellate Court, on analysing the evidence on record, is of the opinion that two views are possible, yet the appellate Court would prefer the view which goes to the benefit of the accused. In this regard, reference can be made to a judgment of the Hon'ble Supreme Court in the case of Sambhaji Hindurao Deshmukh vs. State of Maharashtra, (2008) 11 SCC 186.

9 In view of the aforesaid, we do not find it a fit case, either for grant of condonation of delay, or for grant of leave to appeal against the judgment of acquittal recorded by the trial Court. Accordingly, the application seeking condonation of delay and application seeking leave to appeal are dismissed.

(MOHAN LAL)  
JUDGE

(SANJEEV KUMAR)  
JUDGE

Jammu  
09 .03.2022  
Sanjeev

Whether order is speaking:Yes

Whether order is reportable:Yes/No