

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 2286 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT

Versus

JITSINGH BALWANTSINGH LAVANA & ANR.

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Appearance:

MS JYOTI BHATT APP for the Appellant(s) No. 1

MR JAGDHISH SATAPARA(5524) for the Opponent(s)/Respondent(s)

No. 1,2

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CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**Date : 15/07/2026****ORAL JUDGMENT**

1. The appellant - State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order dated 08.05.2008 passed by the learned Additional Sessions and Fast Track Judge and Special N.D.P.S. Judge (Court No.5), Gandhinagar (hereinafter be referred to as "the trial Court") in Special (N.D.P.S.) Case No.2 of 2007, whereby the trial Court has acquitted the original accused (respondents herein) from



the offences punishable under Sections 15, 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter be referred to as “the NDPS Act”] and under Section 66(B), 65AE, 116(B), 81 of the Bombay Prohibition Act.

2. Short facts of the prosecution case are that on 19.09.2007, at about 12.30 hours, Near Bhagyoday Hotel, a raid was carried out and the accused were caught hold in raid with their truck bearing registration No.HR-03-GA-0272 with foreign liquor of 331 boxes in which 3972 bottles were loaded and raiding party seized 478 bear tin and poppy straw weighing 175 Grams. Hence, a complaint being C.R. No.II-91/2007 was lodged by the A.S.I. Takhuji Maganji complainant before Dabhoda Police Station for the aforesaid offences. The police prepared panchnama of the scene of offence, seizure panchnama and after preparing the arrest panchnama, the accused came to be arrested. On completion of investigation, charge sheet was submitted into the Court of learned J.M.F.C.

2.1 The charge against the accused came to be framed by the trial Court vide Exhibit 2 for the aforesaid offences against the accused. On being explained it to them, the accused have denied having committed any offence. The accused pleaded not guilty to the charge and pleaded for trial and hence, the case was tried by the Trial Court.

3. It appears from the records that to prove the case, the prosecution has examined the witnesses and in addition to this, the prosecution has also produced the following documentary evidence.

4. After closure of the evidence, the statements of the accused under section 313 of the Criminal Procedure Code, 1973 have been



recorded wherein they denied of having committed any offence and have stated that they are innocent.

5. After hearing both sides and considering the evidence on records, the trial Court by impugned judgment and order has acquitted the accused from all the charges levelled against them.

6. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant – State of Gujarat has preferred this appeal.

7. Heard Ms.Jyoti Bhatt, learned Additional Public Prosecutor for the appellant – State of Gujarat and Mr.Jagdish Satapara, learned counsel for the respondents – accused at length.

8. Learned Additional Public Prosecutor appearing for the appellant – State of Gujarat has submitted the same facts which are narrated in the memo of appeal and has also submitted that the prosecution has examined witnesses and produced documentary evidence, despite this fact, the trial Court has not considered the same in its true and proper perspective in passing the judgment and order of acquittal. Learned Additional Public Prosecutor, while referring to the entire oral as well as documentary evidence, has assailed the impugned judgment and order and submitted that the trial Court has not taken into consideration the evidence connecting the accused to the alleged offence in its proper perspective and even the prosecution has been able to prove the charges levelled against the accused. While referring to the evidence of the witnesses and the material collected against the accused, learned Additional Public Prosecutor has submitted that the prosecution has established the



case against the accused by examining the witnesses, who have supported the case of the prosecution, however, the trial Court has discarded and disbelieved the evidence of these witnesses. Learned Additional Public Prosecutor has submitted that the witnesses have fully supported the case of the prosecution, however, the trial Court has not appreciated the same and passed the judgment and order of acquittal which is illegal and unjust. Learned Additional Public Prosecutor has submitted that it is settled legal position that the evidence of a single witness is sufficient for conviction if the same is reliable and trustworthy and in the present case, though the evidence of all the witnesses are reliable and trustworthy, without any cogent reason, the trial Court has disbelieved and discarded the evidence of the witnesses.

8.1 Learned Additional Public Prosecutor has further submitted that the impugned judgment of acquittal is contrary to the evidence on record, based on erroneous appreciation of material evidence, and has resulted in a miscarriage of justice and the findings recorded by the learned Trial Court are perverse and unsustainable in law, thereby calling for interference by this Court in the exercise of its appellate jurisdiction. Learned Additional Public Prosecutor has also submitted that the learned Trial Court has materially erred in holding that the prosecution has failed to prove its case beyond reasonable doubt and the findings recorded by the trial Court were therefore perverse, illegal, and contrary to the evidence on record.

8.2 Learned Additional Public Prosecutor has also submitted that the accused at the time of incident, without any pass-permit were taken poppy straw weighing 175 Gram loaded in the truck under the driver seat and the same was seized during the raid. She has



submitted that the trial Court has committed an error in not considering the evidence of P.W.7 - Parasbhai Mohanlal (Exhibit 23) and P.W.13 - Gagandeep Gambhir (Exhibit 34) though these witnesses have fully supported the case of the prosecution beyond reasonable doubt. She has submitted that there was sufficient material on record of the case to prove the involvement of the accused and keeping the muddamal in conscious possession and hence, the trial Court has committed an error in acquitting the accused from the charges levelled against them.

8.3 According to learned Additional Public Prosecutor, the trial Court ought to have convicted the accused and ought to have imposed necessary sentence. Learned Additional Public Prosecutor has prayed to allow the present appeal and to quash and set aside the impugned judgment and order of acquittal.

9. Per contra, learned counsel for the respondents - accused has supported the impugned judgment and order and has submitted that the trial Court has not committed any error of law and fact in acquitting the accused from the charges levelled against them. Learned counsel for the respondents - accused has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore, the trial Court has rightly acquitted the accused as the complainant has failed to prove the charge levelled against the accused. He has also submitted that there is no iota of evidence to connect the accused with the alleged crime in question. He has submitted that the evidence led by the prosecution suffers from material contradictions, omissions, and inconsistencies, which create serious doubt about the veracity of the prosecution case and the prosecution has failed to establish the essential ingredients of

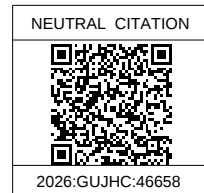


the alleged offences and has not produced reliable, trustworthy, and corroborative evidence connecting the respondent with the commission of the alleged offence. He has submitted that it is a settled principle of criminal jurisprudence that the presumption of innocence in favour of an accused is further strengthened by an order of acquittal. It is submitted that unless the findings recorded by the trial Court are shown to be perverse, illegal, or contrary to the evidence on record, the Appellate Court should be slow in interfering with an order of acquittal. It is submitted that the appellant has failed to point out any infirmity, illegality, perversity, or misreading of evidence in the impugned judgment and order and the findings recorded by the learned trial Court are based upon proper appreciation of the evidence and settled legal principles. Learned counsel for the respondents has submitted that the appeal being meritless deserves to be dismissed and the impugned judgment and order of acquittal deserves to be confirmed.

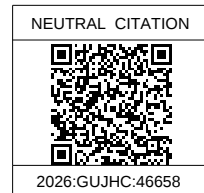
10. This Court has considered the submissions made by the respective parties, the material placed on record, the record and proceedings of the case, and has perused the impugned judgment and order of acquittal. The prosecution has raised serious contentions with regard to the impugned judgment and order passed by the trial Court, whereby the respondents were acquitted of the charges levelled against them. According to the prosecution, the raiding party found a huge quantity of foreign-made liquor in the conscious possession of the accused. The truck was initially intercepted by the Gujarat State Highway Traffic Police, who informed the Superintendent of Police, Gandhinagar. Upon receipt of the said information, the message was conveyed to the complainant, who was on night duty. The complainant received information from the



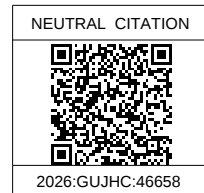
concerned officer that the Gujarat State Highway Traffic Police had intercepted a truck near Bhagyoday Hotel on the Ahmedabad-Udaipur National Highway. Upon receiving the information, the complainant proceeded to the spot in his vehicle along with ten police constables. On reaching the place, he found the truck stationed there, along with a Jeep belonging to the Gujarat State Highway Traffic Police parked beside it. Upon inquiry, it was revealed that the truck had been intercepted by the Gujarat State Highway Traffic Police. Thereafter, in the presence of the panch witnesses and other police officers, the complainant conducted a search of the truck. The truck was found to be carrying fruit cartons, and after removing the cartons, a huge quantity of foreign-made liquor concealed inside the boxes was discovered. Approximately 437 boxes, including about 100 boxes containing beer cans, were recovered. Further investigation revealed that a cloth bag was found beneath the driver's seat containing poppy straw weighing 175 grams. Out of the said quantity, 50 grams was drawn as a sample, and the remaining quantity was sent to the concerned police station. Upon receipt of the Forensic Science Laboratory (FSL) report, it was confirmed that the seized substance was poppy straw weighing 175 grams. Accordingly, the case was registered against the accused as well as other persons named in the FIR who could not be apprehended, for the alleged offences. Upon perusal of the evidence of P.W.7, who was a goldsmith, it appears that he was called for the purpose of weighing the articles seized from the possession of the accused. Through the evidence of P.W.7, the prosecution sought to establish that the accused were liable for the alleged offences and deserved to be convicted. However, upon a careful examination of the oral as well as documentary evidence led before the trial Court, it appears that although the FIR was registered by the police personnel and the prosecution witnesses were police



officials from different departments, there were several omissions and material contradictions in their evidence. On perusal of the complaint lodged by P.W.1, it appears that the prosecution case is that the truck was intercepted by the Gujarat State Highway Traffic Police, who informed the Superintendent of Police, Gandhinagar. Thereafter, the information was conveyed to the complainant, who was the In-charge of Dabhoda Police Station. However, the complainant admittedly did not make any entry regarding the receipt of such information in the station diary. In his deposition, the complainant admitted that although he received instructions from the higher authority, he neither recorded the same in the station diary nor in the case diary. At the relevant time, he was serving as an Assistant Sub-Inspector (A.S.I.). He received the information in the early hours of 19.09.2007 and proceeded to the place near Chhala Highway, where he found Truck No. HR-03-GA-0272. A police Jeep bearing Registration No. GJ-1-G-4342, belonging to the Gujarat State Highway Traffic Police and under the charge of Mr. M.N. Vankar, was also present at the spot. Mr. Vankar had informed the office of the Superintendent of Police, Gandhinagar, and based on that information, the message was conveyed to the complainant, directing him to proceed to the specified location. However, despite receiving such instructions, the complainant failed to reduce them into writing at Dabhoda Police Station. It is pertinent to note that the information was received during the early hours of 19.09.2007. The complainant remained engaged in drawing the panchnama until the early morning. However, the FIR came to be registered only at about 3:00 p.m., and no explanation whatsoever has been offered for such inordinate delay in lodging the FIR. The evidence of the complainant further reveals that different brands of foreign liquor and beer cans were recovered from the truck and were duly mentioned in the FIR. However, for reasons



best known to the Investigating Officer, the seized liquor was neither sent to the FSL for examination nor was any expert report obtained, despite the FSL being situated at Gandhinagar. With regard to the poppy straw allegedly recovered from beneath the driver's seat, it appears that during the examination of the witnesses, none of them deposed as to who was in conscious possession of the said contraband. The prosecution failed to establish conscious possession of the poppy straw by either of the accused. A perusal of the panchnama indicates that while the police officers were engaged in recovering the bottles of foreign-made liquor and beer cans, they were merely preparing the inventory of the seized articles. Thereafter, while searching the driver's cabin, they allegedly found a packet beneath the driver's seat containing another plastic packet, which, upon being opened, was found to contain poppy straw. The said sample was sent to the FSL, which confirmed through its report at Exhibit 43 that the substance was poppy straw. As regards the ownership and possession of the truck, although the complainant made inquiries, no registration certificate or any other ownership document was collected or placed on record by the Investigating Officer. The record further reveals that although the Investigating Officer recorded statements in Rajasthan from a person holding a licence for the sale and purchase of poppy straw, and also recorded statements in Haryana regarding the manufacture of Indian-made foreign liquor, he failed to collect any evidence as to who had arranged the transportation or intended delivery of the liquor into Gujarat. No investigation was conducted to ascertain where the huge quantity of liquor was to be supplied or to whom it was to be delivered. It is evident that such a large quantity of liquor was being transported in a truck, and therefore someone must have been the intended recipient in Gujarat. However, no investigation whatsoever



was carried out to identify the intended destination, consignee, or recipient of the contraband liquor. This Court has also considered the reasons assigned by the trial Court. It is noticed that the commercial quantity prescribed for poppy straw under the relevant law is one kilogram, whereas the quantity recovered in the present case was only 175 grams. The statements of the accused recorded under Section 313 of the Code were interpreted, as they were not residents of Gujarat and the evidence had been recorded in Gujarat. The accused denied the allegations in toto and asserted that they had been falsely implicated by the police. Beyond such denial, there was no evidence to indicate the purpose for which the poppy straw was allegedly possessed. It was neither the prosecution's case nor the defence case that the contraband was meant for personal consumption. In these circumstances, the prosecution failed to produce any evidence to establish whether the seized poppy straw was intended for commercial purposes or otherwise. Had it been intended for commercial purposes, the prosecution ought to have investigated the identity of the intended recipient in Gujarat. No such investigation was undertaken. Therefore, the trial Court rightly passed the impugned judgment and order after assigning cogent reasons in paragraphs 11 to 28. The trial Court also recorded, in paragraph 29, the reasons for disbelieving the prosecution case. Accordingly, this Court is of the considered view that the trial Court has not committed any error of fact or law in passing the impugned judgment and order of acquittal. No illegality, perversity, or infirmity is found in the impugned judgment warranting interference by this Court. In view of the above, I am of the opinion that the trial Court has not committed any error of facts and law in passing the impugned judgment and order and there is no any illegality and infirmity found in the judgment and order.



11. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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 their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

12. Further, 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether

the accused are connected with the commission of the crime with which they are charged.

13. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court in the case of **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, we are in complete agreement with the findings recorded by the trial Court.

14. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the



order of acquittal is founded.

(2) The Code of Criminal Procedure, 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 emphasize 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.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing



with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

15. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

16. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against them. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

17. It is observed that, having regard to the facts and circumstances of the case, while registering the FIR against the accused, the concerned Investigating Officer himself recorded that the facts disclosed the commission of a cognizable offence. Therefore, an FIR was required to be registered against all persons involved in the offence of corruption. From the evidence of P.W.13, it appears that, based on the facts stated in the FIR, statutory proceedings under the Prevention of Corruption Act were initiated against the Gujarat State Traffic Police. However, there is nothing on record to indicate



the present status or outcome of those proceedings. Therefore, this Court requests the Director of Prosecution to look into the matter. If the proceedings have not culminated in a criminal trial, appropriate action shall be taken against the concerned police officer(s) involved in the alleged acts of corruption, as referred to in the present case.

18. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith. The copy of this order be sent to the office of Director of the Prosecution for appropriate action.

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL