IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. : 271 of 2015
Reserved on : 07.09.2026
Decided on : 22.09.2026
Uploaded on : 22.09.2026

State of Himachal Pradesh

....Appellant.

Versus

Bhawan Sood

...Respondent.

Coram
The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
The Hon'ble Mr. Justice Bhupesh Sharma, Judge.
Whether approved for reporting?[1] Yes

For the appellant : Mr. I. N. Mehta, Senior Additional Advocate General.

For the respondent : Mr. Ajay Kumar Sood, Senior Advocate with Mr. Sumit Sood and Mr. Vinay Kumar, Advocates.

Bhupesh Sharma, Judge

This appeal has been filed by the State of Himachal Pradesh against the judgment of acquittal dated 08.01.2015, passed by the learned Special Judge-II (Additional Sessions Judge), Kullu, District

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

Kullu, H.P., in Sessions Trial No.15 of 2014 (2012/2008), titled as *'State of H.P. vs. Bhawan Sood'*, whereby respondent (hereinafter referred to as the 'accused') has been acquitted of the charges under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. The accused was sent to face trial for the commission of an offence punishable under Section 21 of the NDPS Act, 1985, by SHO Police Station Kullu, District Kullu, H.P., in case FIR No. 66/2008, dated 08.02.2008, under Section 21 of the NDPS Act, 1985. The accused was prosecuted for the offence under Section 21 of the NDPS Act and was acquitted by learned Trial Court, vide impugned judgment dated 08.01.2015, passed in Sessions Trial No. 15 of 2014 (2012/2008), titled as *'State of H.P. Vs. Bhawan Sood'*.

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

3(a). On 07.02.2008, at about 10:00 pm, at a place near Sheetla Mata Temple Kullu, District Kullu, H.P., the

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

accused was found in conscious and exclusive possession of 12.750 grams of '*Heroin*'.

3(b). On 07.02.2008, at 9:00 pm, a police party headed by ASI Lal Chand, In-charge, Police Post, City, Akhara Bazaar, Kullu, left for routine night patrolling, maintaining law and order and crime detection on National Highway within the jurisdiction of Police Station Kullu, vide Rapat No. 22, Roznamcha dated 07.02.2008. He was accompanied by other police officials namely Head Constable Lachhi Ram No. 40, Head Constable Lal Chand No. 321, Constable Bhim Sen No. 287, and Constable Kishori Lal No. 73. At about 10:00 pm, the police party reached near Sheetla Mata Temple, Kullu, where they spotted the accused coming from the downhill side on foot carrying a polythene bag. The accused on seeing the police party got frightened. He turned around and tried to run towards the temple. The police on seeing the suspicious conduct of the accused chased and apprehended him. The police party associated and joined two independent witnesses, namely Mukesh Rana and Lal Singh coming from the Loran side and in their

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

presence the Investigating Officer, ASI Lal Chand, gave his personal search to the accused vide separate search memo and thereafter searched the carry bag in possession of the accused in the presence of independant and official witnesses, leading to the recovery of 12.750 grams of '*Heroin'* powder alongwith other articles i.e. one cigarette pack (Four Square), a matchbox, silver foil paper and coins. Thereafter, Investigating Officer completed seizure formalities. Out of the recovered contraband i.e. 12.750 grams of '*Heroin'*, two samples of 1 gram each were drawn, which were packed and sealed separately in three separate parcels by affixing four seal impressions of seal 'T'. The sample seal impression 'T' was taken on a separate piece of cloth for record and the seal after its use was handed over to independent witness Mukesh Rana (PW-10). Thereafter, the Investigating Officer filled the relevant columns of the NCB-1 form in triplicate.Thereafter, the case property alongwith seal impression 'T' and NCB-1 form in triplicate were taken into possession vide recovery and seizure memo in the presence of official witnesses and independent witnesses

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

i.e. Mukesh Rana and Lal Singh. The signatures of the accused and the witnesses were obtained on the search, recovery and seizure memo. A copy of the recovery and seizure memo was handed over to the accused free of cost. The Investigating Officer, ASI Lal Chand after completing the search and seizure formalities, scribed *rukka* and in pursuance thereof, case FIR No. 66 of 2008, dated 08.02.2008, under Section 21 of the NDPS Act, 1985, was registered against the accused at Police Station Saddar Kullu, District Kullu (H.P.).

3(c). The Investigating Officer prepared the spot map and recorded the statements of the witnesses under Section 161 Cr.PC. The accused was arrested in accordance with law at 1:20 am. Thereafter, the Investigating Officer returned to the Police Station Sadar Kullu at 2:00 am alongwith the accused and the case property. The accused and the case property were presented before SI Tanzin, SHO Police Station Sadar Kullu, District Kullu, H.P. Re-sealing the case property as per the provisions of Section 55 of the NDPS Act, 1985 was conducted by SI Tanzin by affixing four seal

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

impressions of seal 'H'. The sample of seal 'H' was taken on a separate piece of cloth for the purpose of record. He also filled the relevant columns of NCB-1 form in triplicate. Thereafter, the case property alongwith documents were handed over to LHC Manoj Kumari No. 53, Police Station Sadar Kullu, for safe custody.

3(d). On 8.2.2008, a special report under Section 57 of the NDPS Act, 1985, was sent to the Supervisory Officer of Police Station, Sadar Kullu, through ASI Lal Singh and pursuant to the receipt of the special report, it was endorsed and its entry was made in the Special Reports Register at Serial No. 2, dated 8.2.2008. The case property was later sent for chemical examination to the State Forensic Science Laboratory, Junga, through Constable Tarsem Kumar No. 64 and vide State Forensic Science Laboratory Report Number 243, NDPS Division 23, dated 22.2.2008, a substance subjected to the examination was found sample of SMACK (Heroin).

3(e). Pursuant to completion of investigation, the accused was found in exclusive and conscious possession of 12.750 grams of *'Heroin'*. Accordingly, he

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

was found to have committed the offence punishable under Section 21 of the NDPS Act, 1985 and final report under Section 178(2) of Cr.PC was prepared and filed before the learned Special Judge, Kullu, District Kullu, H.P. The accused was prosecuted in Sessions Trial No. 15 of 2014(2012/2008), titled as '*State of H.P. vs. Bhawan Sood'* by learned Special Judge (II) (Additional Sessions Judge), Kullu, District Kullu, H.P.

4. The accused was charged for the commission of offence punishable under Section 21 of the NDPS Act, 1985, to which he pleaded not guilty and claimed trial vide order dated 4.12.2012.

5. The prosecution, in order to prove its case, examined ten witnesses. PW-1, the statement of LHC Manoj Kumari No. 33, MHC Police Station, Sadar Kullu. PW-2 Lal Singh and PW-10 Mukesh Rana are the independent witnesses of search, recovery, and seizure. PW-3 ASI Lachhi Ram is the official witness of search, recovery and seizure of the contraband. PW-4 HHC Narender Pal No. 100, is a formal witness. PW-5 Inspector Tanzin, SHO Police Station Kullu, recorded FIR

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

No. 66/2008, under Section 21 of the NDPS Act and also conducted resealing of the case property. PW-6 Inspector Pratap Singh is a formal witness. PW-7 Constable Tarsem Lal No. 264 took the case property and deposited the same at SFSL, Junga. PW-8 ASI Harbans Kumar, Reader to Dy.S.P., carried out entries in the Special Reports Register regarding receipt of the special report under Section 57 of the NDPS Act. The investigating officer, SI/SHO Lal Chand, was examined as PW-9.

6. The prosecution, apart from examining the official witnesses, has also heavily relied upon the documentary evidence placed on record, which was collected and produced against the accused during the course of investigation i.e. abstract of malkhana register (Ext.PW1/A), NCB-I form (Ext.PW1/B), extract of RC (Ext.PW1/C), personal search memo (Ext.PW3/A), seizure memo (Ext. PW3/B), arrest memo (ExtPW3/C), copy of rapat No.7(A), dated 08.02.2008 (Ext.PW4/A), copy of rapat No.8(A), dated 08.02.2008 (Ext.PW4/B), endorsement on rukka (Ext.PW5/A), copy of FIR (Ext.PW5/B), sample seal ('H') impression (Ext.PW5/C),

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

special report dated 17.07.2014 (Ext. PW8/A), abstract of special report register (Ext.PW8/B), endorsement on special report (Ext. PW8/C), sample seal ('T') impression (Ext.PW9/A), rukka (Ext.PW9/B), spot map (Ext. PW9/C), copy of statement of PW-3 Lachhi Ram under Section 161 Cr.PC (Ext.PW9/D), copy of statement of PW-10 Mukesh Rana under Section 161 Cr.PC. (Ext. PW9/E), copy of statement of PW-2 Lal Singh recorded under Section 161 Cr.PC (Ext. PW9/F), copy of rapat (Ext.PW9/G) and report of chemical examiner (Ext. PW9/H).

7. The substance of the prosecution case was put to the accused in his statement recorded under Section 313 Cr.PC., wherein he has denied the prosecution case in its entirety by raising the defence of denial simpliciter and false implication at the behest of the police.

8. The learned Trial Court after considering the material on record and hearing the parties, acquitted the accused for the offence punishable under Section 21 of the NDPS Act, 1985, vide impugned judgment dated 8.1.2015, passed in Sessions Trial No. 15 of 2014

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

(2012/2008), titled as '*State of Himachal Pradesh vs. Bhawan Sood'*.

9. Feeling aggrieved and dissatisfied with the judgment of acquittal dated 8.1.2015, passed in Sessions Trial No. 15 of 2014(2012/2008), titled as '*State of Himachal Pradesh vs. Bhawan Sood'*, the State of Himachal Pradesh is in appeal before this Court.

10. **GROUNDS OF APPEAL**

(i) *The impugned judgment is alleged to be legally and factually incorrect and therefore liable to be set aside.*

(ii) *The Trial Court allegedly relied upon hypothetical reasoning, surmises and conjectures rather than proper appreciation of the evidence.*

(iii) *The Trial Court is alleged to have appreciated the evidence in a slipshod and perfunctory manner and acquitted the accused on flimsy grounds. .*

(iv) *The Trial Court allegedly applied unrealistic standards while assessing the direct and cogent prosecution evidence and, without sufficient justification, discarded the consistent and well-reasoned testimony of the prosecution witnesses on material points. Its reasoning is alleged to be manifestly unreasonable and unsustainable.*

(v) *The Trial Court allegedly discarded the testimony of prosecution and official witnesses for untenable reasons, despite there being no proof of enmity against them. The acquittal is therefore alleged to*

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

be contrary to the material evidence on record and unreasonable.

(vi) The Trial Court allegedly overlooked the consistent and truthful testimony of official witnesses and the recovery of 12.750 grams of heroin from the accused's bag. In the absence of evidence of false implication, minor procedural lapses were insignificant and should not have resulted in acquittal.

(vii) The Trial Court allegedly treated the contradictions in the testimonies of official witnesses as material and fatal to the prosecution case, despite their evidence being cogent, natural and reliable and therefore deserving of reliance.

(viii) The Trial Court allegedly gave excessive importance to minor contradictions arising during the examination of prosecution witnesses, even though such contradictions did not undermine or disprove the prosecution case.

(ix) There was no evidence of any enmity, bias or motive on the part of the police officials to falsely implicate the accused. Therefore, their truthful testimony regarding the recovery of the hazardous substance from the accused ought to have been believed.

(x) No other appeal or revision against the impugned judgment has been filed before the High Court or the Supreme Court.

(xi) The present appeal has been filed within the prescribed period of limitation.

11. 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 8.1.2015.

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

12. Learned Senior Additional Advocate General has strenuously argued that the learned Trial Court failed to appreciate the material evidence on record, leading to a miscarriage of justice. The official witnesses of search, recovery and seizure of the contraband in their respective statements have supported the prosecution case, which proves the complicity of the accused for being in exclusive and conscious possession of 12.750 grams of '*Heroin*'.

13. *Per contra*, learned counsel for the respondent defended the judgment of the acquittal passed by the learned Trial Court and submitted that there is no material evidence on record to prove the recovery of the contraband from the possession of the accused. After considering all material adduced on record in evidence, the accused has been rightly acquitted. The findings of the learned Trial Court are based on proper appreciation of oral as well as documentary evidence and warrants no interference.

14. The learned Special Judge on considering and evaluating the material and evidence, disbelieved the

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

prosecution case on the basis of material contradictions and infirmities emerging on record. The learned Trial Court is of the opinion that the entire case of the prosecution is shrouded under the shadow of doubt, therefore, the benefit deserves to be given to the accused.

15. 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.

16. 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 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*

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

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 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,*

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

(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 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."

17. 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:

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

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;

(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

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

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 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]

(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,

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

> *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].”*

18. 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:*
>
> *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*

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

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 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."

19. It is more than settled that the powers of Appellate Court while hearing the appeals against the

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

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:*** *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."*

20. 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

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

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 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."*

21. 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 finding 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.

22. 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

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

acceptable evidence. In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused.

23. Keeping in view the above noted exposition, it appears that the view taken by the learned Special Judge is correct, considering the material and evidence adduced by the prosecution and which duly appreciated by the learned Trial Court. The judgment of acquittal dated 08.01.2015 cannot be faulted.

24. The independent witnesses of search, recovery and seizure memo, namely Lal Singh was examined as PW-2 and Mukesh Rana was examined as PW-10, have completely denied the prosecution case *qua* the search of the accused in their presence and the recovery of the contraband from his exclusive and conscious possession and seizure procedure/formalities as reflected in the recovery and seizure memo (Ext. PW3/B). Therefore, there is a complete denial on the part of these two witnesses regarding the material aspects of the prosecution case *qua* their presence on the spot at the

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

relevant time when the accused was allegedly apprehended, searched and leading to recovery of 12.750 grams of '*Heroin*'.

25. Furthermore, the official witnesses of the recovery, namely ASI Lachhi Ram was examined as PW-3 and Inspector Lal Chand was examined as PW-9, have although testified that both the independent witnesses were duly associated when the accused was apprehended prior to conducting the search of the carry bag in his possession, however, there are material contradictions in their respective statements which are sufficient to disbelieve the presence of the independent witnesses on the spot at the relevant time.

26. There is a significant contradiction in the statement of ASI Lachhi Ram (PW-3) regarding the mode of transport used while returning from Police Station Kullu to the spot. As per his evidence on record, he returned to the spot after handing over the *rukka* on a motorcycle, driven by the motorcycle rider, Bhim Sen, who was called by the investigating officer. However, PW-9, SI Lal Chand (I.O.) when examined in the Court

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

has expressly denied this fact.

27. It is also pertinent to note that there is no resealing certificate on record as required under Section 55 of the NDPS Act, 1985, issued by Inspector Tanzin (PW-5), who allegedly conducted the resealing of the case property.

28. Considering the contradictions and material discrepancies in the statements of the witnesses, it is uncertain whether the accused was apprehended in the presence of independent witnesses or prior to their arrival on the spot. Although, the official witnesses have come forward in support of the prosecution case, however, their evidence cannot be relied upon conclusively in view of the material contradictions and discrepancies contained therein on material aspects of the prosecution story. Thus, the prosecution has failed to prove the recovery of 12.750 grams of '*Heroin*' from the conscious possession of the accused.

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

30. In view of the provisions of Section 437-A of

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount 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 appellants on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

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

32. The appeal is, accordingly, disposed of, so also the pending miscellaneous application, if any.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

22nd September, 2026
(sushma)

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS

High Court of H.P.

::: Downloaded on - 13/11/2026 09:18:55 :::CIS