

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision : 31-10-2006

**State of Punjab Vs. Joginder Kumar**

CORAM: **Hon'ble Mr. Justice Virender Singh**  
**Hon'ble Mr. Justice A.N. Jindal**

Present: Mr. KS Boparai, Additional AG, Punjab.

Virender Singh, J.

The instant appeal has been filed by the State of Punjab against the judgement dated 19-11-2005 passed by the learned Special Judge, Moga, whereby Joginder Kumar respondent stands acquitted of the charge under Section 15 Narcotic Drugs and Psychotropic Substances Act.

As per the allegations of the prosecution, the respondent was allegedly found to have kept in his conscious possession 4 bags of poppy straw when he was apprehended by ASI Ram Kumar, Incharge of CIA Staff at a particular place. The learned trial Court while finding certain flaws in the case of the prosecution has extended benefit of doubt to the respondent.

We have heard Mr. Bopara, learned Additional Advocate General, Punjab and with his assistance have gone through the impugned judgement minutely.

The learned State counsel has not been able to pin-point any demonstrable perversity in the impugned judgement, which would call for our interference. The learned trial Court has not only dislodged the case of

the prosecution on account of non-handing over the seal to an independent witness-Jagtar Singh ( not examined), but has doubted the case of the prosecution with regard to missing of link evidence as non-examination of Incharge of the Malkhana (Moharrir Head Constable) has been taken seriously. Besides this, non-preparation of the CFSL form at the spot has also been considered against the prosecution. ASI Hardeep Singh one of the witnesses to recovery was also having shabby credentials . Another witness namely Gurcharan Singh ( not examined) was also involved in a case of corruption. All these factors coupled with the aforesaid flaws have given rise to a reasonable doubt on account of which the respondent has earned acquittal.

On the basis of the aforesaid infirmities in the case of the prosecution, we feel hesitant in granting leave to appeal. Consequently Criminal Misc. No. 416-MA of 2006 for grant of leave to appeal is declined.

**[Virender Singh]**  
**Judge**

**[ A.N. Jindal]**  
**Judge**

**October 31, 2006**  
**`ask'**