

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 371 of 2015

Reserved on: 28.4.2026

Date of Decision: 1.6.2026.

State of H.P. ...Appellant
Versus
Raju ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

*Whether approved for reporting?*¹ No.

For the Appellant : Mr Lokender Kutlehria, Additional
Advocate General.

For the Respondent : Ms Vandana Thakur, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 5.12.2014, passed by learned Additional Sessions Judge-II, Shimla, H.P., (learned appellate Court), vide which the judgment of conviction dated 22.4.2013 and order of sentence dated 1.5.2013, passed by learned Judicial Magistrate First Class-4, Shimla, H.P., (learned Trial Court) were set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.). It was asserted that Inspector/SHO Shakuntla Sharma (PW7), ASI Chet Ram (PW5), HC Anil Kumar (PW8), Constable Narinder Kumar (PW2) had gone for patrolling and traffic checking towards Cart Road, Shimla on 13.1.2011. Inspector Shakuntla Sharma (PW7) received secret information at Krishnanagar that accused Raju was transporting a huge quantity of liquor in the vehicle bearing registration No. HP-15-9059. Inspector Shakuntla Sharma (PW7) joined Ravi Kumar (PW1) and Hemant Kumar (PW3) and formed a raiding party. She intercepted the vehicle bearing registration No. HP-15-9059. The driver revealed his name as Raju. The police searched the vehicle and recovered a carry bag containing 09 bottles of Indian Made Foreign Liquor (IMFL) bearing Mark-Royal Stag and 09 bottles of IMFL bearing Mark Green Label, each containing 750 ML of IMFL and bearing the words "for sale in Chandigarh only". The police demanded a permit for transporting the liquor, but the accused could not

produce any permit. The police put the liquor in the bag and sealed the bag with seal 'A'. Seal impression (Ex.PW3/B) was taken on a separate piece of cloth, and the seal was handed over to Hemant Kumar after use. Inspector Shakuntla Sharma (PW7) seized the liquor vide memo (Ex.PW3/A). She prepared a rukka (Ex.PW7/B) and sent it to the Police Station, where FIR (Ex.PW7/C) was registered. Inspector Shakuntla Sharma (PW7) prepared the site plan (Ex.PW7/E) and recorded the statements of witnesses as per their version. She took the photographs of the spot (Ex.PM1 and Ex.PM2). She handed over the liquor to HC Mahidhar (PW4), who deposited it in Malkhana. HC Rajinder Singh (PW6) sent the liquor to CTL, Kandaghat, for analysis through Constable Geeta Ram (PW9) vide RC No. 18/11. Constable Geeta Ram (PW9) deposited the case property at CTL, Kandaghat and handed over the receipt to HC Rajinder Singh on his return. The results of analysis (Ex.PY1 to Ex.PY18) were issued, mentioning that samples of IMFL bearing Mark Royal contained 75.1%, and samples of IMFL bearing Mark Green Label contained 74.3% proof alcohol each. Statements of remaining witnesses were recorded as per their version, and after the completion of

the investigation, the challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.), to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Ravi Kumar (PW1) is an independent witness who has not supported the prosecution's case. Constable Narinder Kumar (PW2), ASI Chet Ram (PW5), Inspector/SHO Shakuntla Sharma (PW7), and HC Anil Kumar (PW8) were the members of the raiding party. Hemant Kumar (PW3) is an independent witness to the recovery. Mahidhar (PW4) was working as MHC with whom the case property was deposited. HC Rajinder Singh (PW6) was working as an MHC who sent the case property to FSL Junga. Constable Geeta Ram (PW9) carried the case property to CTL, Kandaghat.

5. The accused in his statement recorded under Section 313 of the Cr.PC denied the prosecution's case in its entirety. He claimed that he was innocent and that he was falsely implicated. He did not produce any evidence in his defence.

6. The learned Trial Court held that the statements of official witnesses and Hemant Kumar (PW3) corroborated each other. Ravi Kumar (PW1) did not support the prosecution's case, but he admitted his signature on the memo. The integrity of the case property was duly established, and the report of analysis showed that the bottles contained IMFL in them. The accused failed to produce any permit for transporting the liquor, hence the learned trial Court convicted the accused of the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as applicable to State of H.P.) and sentenced him to undergo simple imprisonment for three months, pay a fine of ₹500/- and in default of payment of fine to undergo further simple imprisonment for 15 days.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal which was decided by the learned Additional Sessions Judge (II), Shimla,

H.P. (learned Appellate Court). The Appellate Court held that the statement of Hemant Kumar showed that he was a stock witness. He had also deposed in another police case before a learned Chief Judicial Magistrate. Ravi Kumar has not supported the prosecution's case. The statements of official witnesses contradicted each other on material aspects. Learned Trial Court ignored the discrepancies in the prosecution's version. Therefore, the learned Appellate Court allowed the appeal filed by the accused, and set aside the judgment of conviction and order of sentence passed by the learned Trial Court.

8. Being aggrieved by the judgment and order passed by the learned Appellate Court, the State has filed the present appeal asserting that the learned Appellate Court erred in rejecting the statements of the witnesses without any cogent reason. The provisions of Sections 100 and 165 of the Cr.PC are meant to search the close premises. Inspector Shakuntla had associated Ravi Kumar and Hemant Kumar. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

9. I have heard Mr Lokender Kutlehria, learned Additional Advocate General, for the appellant-State and Ms Vandana Thakur, learned counsel for the respondent/accused.

10. Mr Lokender Kutlehria, learned Additional Advocate General for the appellant/State, submitted that the learned Appellate Court erred in reversing the well-reasoned judgment of the learned Trial Court. The prosecution witnesses have consistently stated that the search of the vehicle being driven by the accused was conducted, and 18 bottles of IMFL were recovered. The accused could not produce any permit for transporting the liquor. Hemant Thakur, the independent witness, had also supported the prosecution's case, and the learned Appellate Court erred in rejecting his testimony. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Appellate Court be set aside.

11. Ms Vandana Thakur, learned counsel for the respondent/accused, submitted that the learned Appellate Court had rightly held that the police had prior information, but they failed to comply with the requirements of Section 165 of the Cr.PC, which is a mandatory provision. The statements of official

witnesses contradicted each other on material aspects. Learned Appellate Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Therefore, she prayed that the present petition be dismissed.

12. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

13. 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) 5 SCC 433: 2025 SCC OnLine SC 176* that the Court can interfere with a judgment of acquittal if it is patently perverse, based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed on page 438:

“24. 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.

14. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC OnLine SC 1743, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

15. A similar view was taken in *Tulasareddi v. State of Karnataka*, 2026 SCC OnLine SC 89, wherein it was observed:

“29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, 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. The following principles have to be

kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

(a) whether the judgment of acquittal suffers from patent perversity;

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) 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 a possible view which could have been taken on the basis of the evidence on record;

(e) 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

(f) 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.”

16. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

17. It is an admitted case of the prosecution that the police received secret information that a vehicle bearing registration No. HP-15-9059 was transporting liquor in it. The police joined Ravi Kumar (PW1) and Hemant Kumar (PW3) and

intercepted the vehicle. Inspector Shakuntla Sharma (PW7) has not stated that she had reduced the information into writing and sent it to the Police Station.

18. Section 46(2) of the Punjab Excise Act (as applicable to the State of H.P.) provides that an officer empowered under the Act will exercise the same powers in respect of such investigation as an officer in-charge of a Police Station may exercise under Chapter XIV of Cr.P.C. Section 50 of the Punjab Excise Act provides that provisions of the Code of Criminal Procedure 1898 relating to arrest, detention and custody, searches, summons, warrant of arrest, search warrant, and investigation shall apply to all actions taken under the Act. Therefore, Inspector Shakuntla Sharma (PW7) was required to comply with the requirement of Section 165 of the Cr.PC before conducting the search.

19. It was submitted that the provision of Section 165 of the Cr.PC does not apply to the search of the vehicle but only to the search of the house. This submission is stated to be rejected.

Section 165 of the Cr.PC reads as under: -

165. Search by police officer.—(1) Whenever an officer in charge of a police station or a police officer making an

investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognisance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

20. It is apparent from the bare perusal of the Section that it applies to the search of any place within the limit of the

Police Station of which the person is in charge or to which he is attached. The term “place” under Section 2 (1) (p) of the Cr.PC includes a house, building, tent, vehicle and vessel. Therefore, the search of the vehicle would be the search of a place and Section 165 of the Cr.PC would be attracted to the search of the vehicle.

21. It was laid down by the Hon’ble Supreme Court in *ITC Ltd. v. State of Karnataka, 2025 SCC OnLine SC 1971*, that every search must be preceded by a warrant, but if it is not possible to do so, the search can be conducted by complying with the requirements of Section 165 of Cr.P.C. It was observed: -

“17. Section 165Cr. P.C. deals with circumstances and prerequisites for searches without a warrant. As a general rule, every search must be preceded by a warrant, and reasons to believe must be recorded. Section 165 applies where, due to exigent circumstances, it is not possible to obtain a search warrant. In such cases, the officer may, after recording his reasons in writing and specifying, as far as possible, the thing for which the search is to be made, conduct or cause a search of the place. Section 165(4) provides that the general provisions relating to searches contained in Section 100 also apply to searches under Section 165. It is therefore clear that even under Section 165, the existence of reasons to believe that an imminent search is necessary must be recorded, with as much detail as possible. The mandate of Section 100(4) must also be satisfied even in searches under Section 165.

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19.2. In every search conducted under a special enactment without a warrant, the requirement of recording reasons to believe is mandatory. The reasons necessitating the search must be relevant and must reflect application of mind based on some information - either from a third party or personal knowledge - and cannot be based on mere presumption or extraneous considerations. Such reasons cannot rest on mere suspicion or subjective satisfaction; something more substantial is required for a prudent person to conclude that a search and/or seizure is necessary.”

22. In the present case, Inspector Shakuntla Sharma (PW7) has not complied with the requirement of Section 165 of the Cr.P.C., and the search would be vitiated.

23. Inspector Shakuntla Sharma (PW7) stated that she and other police officials were on patrolling duty, and when they reached Krishna Nagar, she received secret information. She formed the raiding party consisting of Ravi Kumar and Hemant Kumar. Thus, as per her version, the raiding party was formed at Krishna Nagar when the police were patrolling the area.

24. Hemant Kumar (PW3) stated that he had gone to the Police Station, Sadar, to meet the SHO on 13.1.2011. SHO took him with her to Love Kush Chowk. ASI Chet Ram, HC Anil Kumar and Ravi Kumar accompanied them. Thus, as per the statement of this witness, he had accompanied the police from the Police

Station with Ravi Kumar (PW1). This testimony falsifies the prosecution's case that the secret information was received during patrolling, and a raiding party was formed near Krishna Nagar, Cart Road.

25. This witness has only named ASI Chet Ram and HC Anil Kumar. He has not mentioned the name of Constable Narinder as a member of the raiding party. Therefore, his testimony makes the presence of Constable Narinder Kumar (PW2) doubtful.

26. Hemant Kumar (PW3) admitted in his cross-examination that he had appeared before the learned Chief Judicial Magistrate and learned Judicial Magistrate First Class-4 on behalf of the State. This statement shows that he was a stock witness of the police and had appeared in other cases on behalf of the police. He further clarified that he had a cordial relationship with the SHO, which supports the inference drawn by the learned Appellate Court that he is a convenient witness for the police. It was laid down by the Hon'ble Supreme Court in *State of Gujarat v. Kumudchandra Pranjivan Shah, 1997 SCC (Cri) 750*, that where the witness had appeared in a number of cases,

and this fact was suppressed from the Court, the prosecution's case becomes doubtful. It was observed at page 752:

2...In the instant case, the panch witness, who admittedly was the president of the vegetable sellers in the city of Rajkot, had acted as a panch witness in a number of cases, and admittedly, he was a social worker. There was no reason for not remembering the fact that he appeared as a witness. He initially tried to suppress the said fact, and the police officer also did not speak out the truth about the said panch witness acting as a panch witness in other cases. In the aforesaid circumstances, the High Court felt that the prosecution's case should not be accepted in the absence of convincing independent evidence fully corroborating the evidence given by the said witnesses. We do not think that such a view is unjustified..."

27. Similarly, it was held in *Pradeep Narayan Madgaonkar v. State of Maharashtra, (1995) 4 SCC 255*, that when the police had joined the convenient witnesses during the search and the seizure, the prosecution's case becomes doubtful. It was observed at page 258:

"8. Thus, it is seen that the explanation given by PW 2 and PW 5 for their presence, in front of Building No. 93 at the relevant time, is poles apart. Both PW 2 and PW 5 are at variance about the purpose of their visit and have not been able to satisfactorily justify their presence at the site of search, when admittedly they both belonged to and lived in different far-off areas. PW 2 admitted that he had been joining police raids earlier also and had acted as a panch witness on various occasions. PW 5 is, on his own admission, a friend and associate of PW 2, for whom he had worked for 7 or 8 years, for payment, after meeting him at a gambling den. It appears to us rather strange

that in a busy locality, where the search was to be conducted, the only two '*independent*' *panches* associated by the police party were PW 2 and his friend PW 5, both not belonging to the locality. It appears to be too much of a coincidence that the raiding party, who had left for "combing operations" in the area of Tilak Nagar on receipt of information regarding the two incidents of firing in that area, should meet PW 2 and PW 5 as the only 'respectables' of the 'locality' and request them to join as "independent *panches*". For very cogent reasons, PW 2 has been disbelieved by the Designated Court itself, as it was found to be a person available and amenable to police. It appears to us that the services of PW 5 were made available to the police by his friend PW 2, who, on the finding of the Designated Court, was always available to the police and had been joining the police party during various raids. Obviously, no serious attempt was made by the raiding party to associate with them two or more *independent* and respectable *inhabitants of the locality* in which the room was located, for reasons best known to them before conducting the search. It is not the case of the prosecution that either no independent respectable witness of the locality was available or was otherwise willing to join the raid when contacted. The effort of the police party to paint and portray PW 2 and PW 5 as independent witnesses stands exposed by the Designated Court itself, which found PW 2 to be not a trustworthy witness and a person who was available at the beck and call of the police. In view of the inconsistent versions given by PW 2 and PW 5 regarding the purpose of their visit to justify their presence in the area at the time of search, we are doubtful whether the witnesses were at all joined with the raid in the manner alleged by the prosecution. While learned counsel appearing for the State frankly conceded that he could not press into aid the statement of PW 2 to support the prosecution, he submitted that the evidence of PW 5 was worthy of credence. After going through the statement of PW 5, we

have not been able to persuade ourselves to agree with the learned State counsel.

28. Hemant Kumar stated in his cross-examination that the signatures of Ravi Kumar were not obtained in his presence. This falsifies the prosecution's case that the seizure memo was prepared on the spot and signatures of the witnesses were obtained on the spot.

29. Thus, the learned Trial Court had taken a reasonable view while holding that the prosecution's case was doubtful because of non-compliance with Section 165 of the Cr.PC and projecting a stock witness as an independent witness. This Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible.

30. No other point was urged.

31. Consequently, the present appeal fails, and it is dismissed. The appeal stands disposed of, so also the pending miscellaneous application(s), if any.

32. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like

amount to the satisfaction of the learned Trial Court 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 respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

33. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

1st June, 2026
(Chander)