

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).923/2016

THE STATE OF HIMACHAL PRADESH

APPELLANT(S)

VERSUS

JITENDER KUMAR @ JATIN

RESPONDENT(S)

O R D E R

1. Heard the learned counsel appearing for the appellant/State.
2. The respondent was convicted by the Special Court for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985. In an appeal preferred by the respondent, the High Court has passed an order of acquittal. The seized contraband was produced before the Court during the examination-in-chief of PW-1 (Head Constable Duni Chand). He identified the property as recovered from the scene of offence. He referred to the seals of the FSL. However, no evidence was produced by the prosecution to show that the property produced during the examination-in-chief of PW-1 (Head Constable Duni Chand) was the property retrieved from the Police Malkhana wherein it was kept in safe custody. The High Court held that it was the duty of the prosecution to prove that the seized property produced before the Court was the same which was seized and which was lying deposited in the Malkhana. The High Court observed that even the entry in the Malkhana register showing that the property produced before the Court was withdrawn from the Malkhana was not produced. Therefore, the High Court proceeded to acquit the respondent.
3. The learned counsel appearing for the appellant/State has

taken us through the evidence of PW-3 (Head Constable Rahul Rishi). He deposed that on 10<sup>th</sup> February, 2010, a parcel was deposited with him. He stated that the parcel was sent to the FSL on 10<sup>th</sup> February, 2010 for chemical analysis. He also invited our attention to the evidence of PW-4 (Constable Manjeet Singh) who carried the parcel to the FSL.

4. The finding of the High Court is that there was no evidence produced on record either by examining the officer in charge of the Malkhana or by producing the entry in the Malkhana register to show that the parcel which was produced before the Court in the evidence of PW-1 (Head Constable Duni Chand) was the same which was deposited in the Malkhana.

5. In absence of any evidence to show that the parcel produced before the Court was retrieved from the Malkhana, it is not possible to find fault with the finding recorded by the High Court as the burden was on the prosecution to prove that what was produced before the Court was retrieved from the Malkhana.

6. Therefore, the view taken by the High Court is certainly a possible view which could have been taken on the basis of the evidence on record. There is no merit in the Appeal and the same is dismissed accordingly.

.....J.  
(ABHAY S. OKA)

.....J.  
(UJJAL BHUYAN)

NEW DELHI;  
FEBRUARY 27, 2025.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

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JITENDER KUMAR @ JATIN

RESPONDENT(S)

[PART HEARD BY : HON'BLE ABHAY S. OKA AND HON'BLE UJJAL BHUYAN,  
JJ.]

Date : 27-02-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s): Mr. Baldev Singh, Adv.  
Mr. Divyansh Thakur, Adv.  
Mr. Rajeev Kumar Gupta, Adv.  
Mr. Rishabh Kumar Singh, Adv.  
Mr. Mukesh Kumar Sharma, Adv.  
Mr. Abhimanyu Singh, Adv.  
Mr. Bimlesh Kumar Singh, AOR

For Respondent(s): Mr. Deepak Goel, AOR  
Mr. Jitendra Bharti, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The Appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of  
accordingly.

(ASHISH KONDLE)  
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)  
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]