

Court No. - 13

Case :- CRIMINAL APPEAL No. - 1466 of 2019

Appellant :- Nazeem Khan

Respondent :- Union Of India Thru. C.B.N. Lucknow

Counsel for Appellant :- Anil Kumar Pandey

Counsel for Respondent :- Rakesh Awasthi, Ajay Kumar Singh, Sm Singh Royekwar

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the appellant and Mr. S.M. Singh Royekwar, counsel for C.B.N, Lucknow and perused the available record.
2. The present appeal under section 374(2) Cr.P.C. has been filed assailing the judgement & order dated 27.07.2019 passed by Special Judge P.C. Act 1 / Adll. Sessions Judge Lucknow in Criminal Case No. 324 A of 1997 arising out of a case challaned by Central Bureau of Narcotics Lucknow convicting and sentencing the appellant under sections 8/21/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "Act of 1985") for a period of ten years rigorous imprisonment and a fine of Rs. 1,00,000/- (rs. one lakh only) and in default of payment of fine for a period of two years further imprisonment.
3. Brief facts of the case, as appears from the record including the impugned judgment dated 27.07.2019, are to the effect that:
 - (i) The prosecution case, in brief, is that the officers of Central Narcotics Bureau in short 'C.B.N.' had recovered 53.00 Kgs. of Heroin from Truck No. UP 78-B 7554 on 29.12.95 at Syed Raja, Varanasi for which complaint No.162/96 was filed against 15 accused, out of which 1 accused was apprehended on spot and nine were absconding. On 4.4.1997 one of the absconding accused Abdul Quddus was apprehended with 500 gms. Heroin, who volunteered to help the authorities in getting traffickers arrested with contraband heroin and Morphine. He was provided with telephone facility by the department. Abdul Quddus talked on telephone

No. 7414-20066 and disclosed that on 15.4.1997 Nazeem and Zulfiqar from District Ratlam (M.P.) would be reaching Lucknow by Avadh Express train, their associates would be carrying crude Morphine via road by Jeep and deliver it at house No. A-1180, Indira Nagar, Lucknow to Quddoos. The information was reduced into writing and on 15.04.1997 a preventing party was organized on the directions of Deputy Commissioner Narcotics, Lucknow and surveillance was at the railway station, possible places of stay and delivery. The in-charge of team Mr. L.K. Mangal went to platform No.2 of Charbagh N.E. (Rly.) Lucknow railway station, where the two accused Nazeem Khan and Zulfiqar Khan alighted from Avadh Express train on 15.4.1997 at 7.30 a.m., where they were recognized by the Inspectors Mr. L.K. Mangal and D.P. Srivastava, who told about them to other members of the party and themselves proceeded to the house where contraband was to be delivered. The accused Nazim and Zulfiqar stayed at Hotel Deep Avadh in room No. 217. They were under surveillance. In the meantime, one lean and thin white complexioned person aged about 24 years visited them in hotel room and both the accused vacated the hotel on the same date at 11.45 a.m. in the company of that person and boarded a bus bound for Kanpur from Charbagh Bus Stand. On way to Lucknow-Kanpur they dropped before reaching Shuklaganj and approached a person sitting in a stranded grey colour Commander Jeep which displayed no registration number. The Jeep was not in running order and could not be repaired. All the four persons, including two accused remained in the Jeep through-out night. Inspector B.R. Chatterjee and his team kept surveillance over team. Thereafter on 16.04.97 both accused and their two associates proceeded towards Lucknow at about 9.00 a.m. in the Jeep. Accused Nazeem Khan was in the driving seat and Zulfiqar Khan was sitting by his side in front seat. Other two were occupying the rear seat of the driver. The Jeep reached at about 12.00 a.m. in Indira Nagar at house No. A-1180. The members of preventive team Mr. L.K. Mangal and Mr. D.P. Srivastava were inside house and other members of the team led by the Superintendent

Mr. R.N. Yadav were scattered outside that house. The two accused Nazeem Khan and Zulfiqar Khan came out of the Jeep and knocked at the door of house No. A-1180, which was opened by Mr. Mangal. Both the accused asked about Abdul Quddus summoned two passers by Mr. Ram Asrey and Mr. Santosh and in the presence of those witnesses introduced themselves to the accused, the accused disclosed their names and addresses. They were informed that the preventive team suspected that the accused had contraband in their possession. They were informed of their right to be searched in presence of the nearest Magistrate or gazette Officer. The accused consented to be searched by the party itself. In the presence of Mr. R.N. Yadav, who happened to be a gazetted officer of C.B.N., the two accused Nazeem Khan and Zulfiqar Khan were brought to Commander Jeep on which no registration number was displayed. The members of preventive parties gave their search to the accused. Accused Nazeem Khan and Zulfiqar Khan made a disclosure statement that in the stepney of Jeep crude Morphine was kept concealed. The accuses Badri Lal and Prahlad loosened the stepney with the use of instrument, Nazeem Khan took out tyre and tube from it and in the presence of witnesses cut the tube with scissors and brought out four packets covered with white Markeen. These packets were opened, powder of brown colour resembling crude Morphine was covered with polythene packet which was confirmed to be crude morphine on testing kit. On weightment, it was found that each packet contained 1 Kg. morphine and thus 4 Kgs. Morphine in all was recovered. Two samples of 5 gms. each were taken out from one packet. In all, eight samples were drawn out and sealed in separate white envelopes. The remaining morphine was covered in Markeen packet and wrapped in a white packet separately. All the sealed packets were marked 'A', 'B', 'C', 'D' and the samples drawn from each packet were marked A-1 A-2, B-1 B-2, C-1 C-2 and D-1 D- 2. All the four accused Zulfiqar, Nazeem, Badri Lal and Prahlad Singh were arrested. After informing them, the grounds of arrest, their personal search was taken, and inventory of recovered articles

was prepared for each articles separately. The stepney and tube were kept sealed in separate gunny bag, house No.A-1180 was also sealed. Recovery memo and other documents were prepared on the spot and got signed by the witnesses and the accused, a copy of recovery memo was given to each accused. On 17.4.97 report port under. sec.57 of NDPS Act was sent by seizing Officer Mr. Mangal and accused alongwith case property were produced before the Court. The samples of contraband were sent for chemical analysis by registered. post. Chemical analysis report No. 10138 dated 28.5.1997 tested the samples to be positive for Morphine. The investigation was made by Miss. Priya Parkar, who has recorded the statement of the accused, in which they were found to be indulging in illicit traffic of Narcotics Drugs. On completion of investigation, a complaint was lodged mentioning 31 evidences. Cognisance was taken and the accused were arraigned for trail.

(ii) The accused Nazeem Khan was charged for offences under sec. 8/21, and 29 of N.D.P.S. Act. He pleaded innocence and therefore, he was put on trial.

(iii) The prosecution was examined L.K. Mangal (P.W.1), D.P. Srivastava (P.W.2) and Ravindra Nath Yadav (P.W.3). The Investigating Officer Miss Priya Parkar could not be examined as she has resigned from service and migrated to Australia. The documents prepared by her were formally proved by P.W.1. Chemical examination was also placed on record as evidence under S.293, Cr.P.C.

(iv) The prosecution in support of its case also provided documentary evidence i.e. Ext.Ka-1 recovery memo, Exts. Ka-2 to Ka-5 personal search and arrest memo of accused Prahlad, Badri Lal, Nazeem and Zulfiquar respectively, Ext.Ka-6 sample seal, Ext.Ka-7 naksha Maal, Ext.Ka-8 test memo, Ext.Ka-11 letter to Chemical Examiner dated 21.4.97, Ext.Ka-12 statement of accused Quddus from 7.4.97 to 18.4.97, which was the basis of recovery, Ext.Ka- 13 driving licence of Badri Lal, Ext.Ka-14 Sec.57 report dated 17.4.97, Ext.Ka-15 extract of Maalkhana register, Ext.Ka-16

appointment letter of Investigating Officer dated 17.4.97, Ext.Ka-17 siteplan, Ext.Ka-18 to Ext.Ka-21 confessional statement recorded by the Investigating Officer of accused Nazim on 19.4.97, Badri Lal and Prahlad on 1.5.97 respectively, Ext.Ka-22 postal receipt for sending parcel, sending sample and papers, Ext.Ka-23 complaint and Ext.Ka-24 Chemical Examiner's report. The material exhibits 1,2,3 and 4 related to Morphine bundles, Ext.5, Ext.6, Ext.7, Ext.8 four samples, Ext.9, Ext.10, Ext.11 and Ext.12 recoveries from personal search of accused Ext.13 and Ext.14 two bags, Ext.15 attachie, Ext.16 tube of stepney, Ext.18 stepney and Ext.19 Commander Jeep No.14-G 8274, besides other articles Rs.2127/- was recovered from Nazeem, Rs.1112/- from Zulfiqar, Rs. 607/- from Prahlad and Rs.1218/- from Badri Lal.

(v) After considering the statements of prosecution witnesses, the trial Court in the impugned judgment observed as under. P.W.1 L.K. Mangal has stated that he got information from accused Quddus,, who was involved in huge recovery of 53 Kg. of Heroin recovered at Varanasi, and had a telephonic conversation of 5.4.97, while in police custody, that accused Nazeem and Zulfiqar would be coming Avadh Express train on 15.4.97 to deliver Morphine at his rented house No. A-1180 situated at Indira Nagar, Lucknow. The Morphine would be carried by their associates via road route. P.W.1 gave this information to his superior officers and on their instructions a preventive party was constituted. Two Inspectors of this party were P.W.2 who reached platform No.2 of Lucknow N.E. (Rly). Railway Station at 5.30 a.m. on 15.4.97, where that train arrived at 7.30 a.m. They happened to recognize the two accused who proceeded to hotel Deep Avadh. Inspector B.R. Chatterjee, not examined, remained there with his team to keep surveillance and followed the movement of the two accused. P.W.1 and P.W.2 proceeded to the house of delivery. They kept track of events through walkie talkie and wireless set given to the members of the team. Inspectors B.R. Chatterjee and his men took notice of third person coming to hotel room, in the company of which both the accused went

away to Charbagh Bus Stand, boarded bus for Kanpur but cut short their journey before reaching Shuklaganj to join two other accused working on a stranded Jeep. As the Jeep was not in order, all the four accused remained inside the Jeep for the whole night and on the next day at about 9.00 a.m. moved in the Jeep towards house No. A-1180. P.W.1 and P.W.2 remained inside house, when there was a knock at about 12.00 a.m. by accused Nazeem, who enquired about Quddus. The accused were surrounded by the members of the preventive team and were told about the possession of contraband with them. After informing them of their right to search before the nearest Magistrate or gazetted officer and accused consenting to be searched by the team itself, the accused Nazeem and Zulfiqar made a disclosure Morphine was kept concealed. The stepney was loosened by accused Badri Lal and Prahlad Singh, Nazeem took out the tyre and tube from it and in the presence of two witnesses Ram Asrey and Santosh cut the tube with scissors and brought out four packets, which were opened and contained powder of brown colour with semblance of Morphine, on testing kit. It was weight on the spot. Each packet contained 1 kg. Morphine i.e. 4 Kgs. In all. Out of which two samples of 5 gms. each were taken out and sealed in separate envelopes. The remaining Morphine was covered in a cloth packet and wrapped separately. A recovery memo was prepared, personal possessions of accused were marked in inventory, their statements were recorded and after completion of necessary formalities the accused and recovered contraband was taken to the C.N.B. Office and deposited there.

(vi) Accused Nazeem examined under Sec.313, Cr.P.C. in which he retracted from extra judicial confession. Their case is that they were taken away from Charbagh Railway Station to Narcotics Office where the Jeep was already parked and the photographs were taken.

(vii) D.W.1 Ram Asrey was examined in defence. He is a public witness of recovery and not produced by prosecution. D.W.1 has stated that four packets were recovered from stepney of Jeep. His signatures were taken in

certain papers. He is a rickshaw puller who has not supported the prosecution in full. In his cross-examination, he has admitted his signatures on recovery memo Ext.Ka-1 over 15 pages. He has further stated that one more person had witnessed the search and in his presence stepney was taken out from Jeep and packets were recovered after cutting it. He has further stated that the documents were prepared on the place of search and statement was recorded by the Investigating Officer.

4. Before this Court, the judgment under appeal has been assailed on the ground based upon non-compliance of procedure prescribed under Section(s) 42 and 50 of the Act of 1985.

5. Accordingly, this Court finds it appropriate to consider the observations/findings recorded by the trial Court on the aforesaid aspect of the case. For ready reference, the relevant portion of the judgment under appeal is extracted herein-under:

*"10. It is contended for the accused that there is non-compliance of Sec.42 and 50 of the Act. Under Sec.42(2), it is imperative that the officer should taken down information in writing and send a copy thereof to his immediate official superior. The action of search and seizure of the officer, who claimed to have exercised on the strength of such un-recorded information would become suspect, though the trial may not vitiate on that score alone. As held in **Abdul Rashid Ibrahim Mansuri vs. State of Gujarat, 2000(1) EFR 539**, the resultant position would be one of causing prejudice to the accused. In **Rajama vs. State of Kerala 2001 (2) EFR 212**, acquittal of the accused followed on this ground alone. **Roy V.D. vs. State of Kerala 2001 (1) EFR 150** is an authority for the preposition that sub section (2) of Sec. 42 contains a procedural directive the non-observances of which would render the recovery of illicit article suspect. **State of Punjab vs. Baldev Singh, 1992 (2) EFR 491** is clear on the point that when conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provision of Sec.50 of the Act, would vitiate the conviction and sentence but not the trial. It was further contended that the I.O. Priya Parkar was member of preventive party and the witness of search and seizure. The investigation is tainted. It was further contended that Sec.100 (6) and (7) of Cr.P.C. were also not faithfully observed. Out of two public witnesses Ram Asrey and Santosh, the one is a witness for Narcotics Department in other cases against Anwarul Haq and Satish Kumar Tyagi as well. As a defence witness, he has not supported the*

prosecution case in full and other witness Satish was not examined at all. Once the recovery of contraband is suspect for violation of mandatory provision of Sec.42(2) and 50 of the Act and there is no independent witness to support the recovery, the prosecution failed to establish the case beyond reasonable doubt. See also, **State of Punjab vs. Baldev Singh 1999 (2) EFR 491. Narcotics Central Bureau, Mumbai vs. Abdullah Hussain Jumal and another, 2003 (2) JIC 765 (SC)** cited upon. In **Ranjeet Singh @ Jita vs. State of Punjab, 2003 (2) EFR 241** the witness of disclosure statement was not resident of same village, he was stock witness of the police and also not produced during trial, held that it was bounded duty of Sub-Inspector to join some persons from village atleast, which was submitted that it was the duty of public prosecutor to admit the lacunae in all fairness and should not aim at securing conviction by any means. See, **Shiv Kumar vs. Hukam Chand & anr., 1999 (2) JIC 695 (SC).**

11. The learned prosecutor has contended that the case is proved by the evidence of official witness P.W.1 to P.W.3. They had no enmity with the accused. There is no law that their evidence cannot be relied upon. In the absence of independent witnesses the presumption is that official acts have been duly performed. See **Tasawwar Ansari vs. Union of India, 1997 (3) ACC 675**. They have corroborated each other and their evidence is further corroborated by documentary evidence and the extra-judicial confessions of the accused, which are not hit by Sec.25 Evidence Act. See **Raj Kumar Karwal vs. Union of India, 1990 SCC (Cri) 331, KI Pavunny vs. Assistant Collector, Central Excise Collector, Cochin, 1997 (34) ACC 513 and Pon Adithan vs. Deputy Director, Narcotics Central Bureau, Madras, 1999 (39) ACC 330.**

12. Now the first aspect which needs to be considered is whether there was any non-compliance of Secs. 42 and 50 of the Act as pleaded. Learned counsel for the accused Nazeem Khan have submitted that there has been no compliance of the provisions of Section 50 of the Act. In reply the submission of learned Special prosecutor is that the recovery was not made from the person of the accused. The crude morphine was concealed in the stepney of the commander Jeep and was recovered from there; therefore, the provisions of Section 50 of the Act are not attracted in this case. It is not disputed that the personal search of the accused has not led to the recovery of any contraband. The Apex Court in **Krishana Kanwas (Smt.) Alias. Thakuracen Vs. State of Rajasthan reported in (2004) 2 SCC 608** has clearly held that a bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises. Placing reliance upon the Constitution Bench decision in **State of Punjab Vs. Baldev Singh (1999) 6 SCC 172**, the Apex Court further held that the language of

Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. Similarly, in **Ravindran alias John Vs. Superintendent of Customs reported in AIR 2007 SC 2040**, it has been held by the Hon'ble Supreme Court that if accused was carrying a plastic bag in which the drug duly packed has been kept, the provisions of Section 50 are not attracted. It was further held by the Apex Court in **State of Rajasthan Vs. Babu Ram Reported in AIR 2007 SC 2018** that a bag, briefcase or any such article or container carried by accused cannot be treated as body of a human being. It does not come within the definition of 'person'; therefore compliance of Section 50 is not necessary. The above case-law on the subject has made the position amply clear that the provisions of Section 50 of the Act were not to be complied with in the present case because the recovery in question was neither anticipated nor effected from the person of the accused. However, for the sake of argument, it may be assumed that the provisions of Section 50 of the Act were to be complied with in this case. In the present case, recovery was made in the presence of P.W. 3 Sri R.N. Yadav, Superintendent Narcotic Department, who was a gazette officer. The argument of learned counsel for the accused is that the recovery is that the recovery in the presence of Sri. R.N. Yadav P.W. 3 is simply an eye-wash and the safe-guards provided under Section 50 of the Act will not be taken to have been complied with by his presence at the time of recovery. The contention of learned counsel for the accused is that the case was worked out by the Narcotic Department. Sri R.N. Yadav P.W. 3, being Superintendent in the Narcotic Department, was definitely interested in the recovery of the contraband and the success of the case; therefore, it cannot be said that his presence has ensured the safeguards provided under Section 50 of the Act to the accused. Learned counsel for the accused have place reliance upon a recent decision of Apex Court, reported in **2007 (1) EFR 127 Ritesh Chakravarti Vs. State of e of Madhya Pradesh**. I have carefully gone through the ruling in Ritesh Chakravarti's case. The Hon'ble Supreme Court has found that the accused has been gravely prejudiced by non- examination of two witnesses of recovery namely, Sabiha Khatun and Shri Bajpai. Independent witnesses had not supported the prosecution case. It has come in the statements of the independent witnesses that their signature has been obtained on blank papers. for these reasons, the appellant in the said case was given benefit of doubt and the appeal was allowed. In para 45 of the judgment, the Hon'ble Supreme Court has recorded a note of caution as under:-

"In a case of this nature, the Court will move cautiously in view of the grave nature of the offence..."

Needless to say that the note of caution given by the Apex Court should always be kept in mind while deciding cases of this nature. Here, it can only be said that 'the judgment of Ritesh Chakravarti does not help the appellants because the facts of the present case are quite different. The recovery has been made in the presence of a gazette officer. Besides, two other responsible officers have also supported the prosecution case. Moreover, this recovery was not made all of a sudden. The Department of Narcotics has got prior information regarding the movement of the accused and their plan to deliver crude morphine in House No.A-1180, Indira Nagar, Lucknow. This information was quite accurate and it led to the recovery of crude morphine from the accused. Learned counsel for the accused have also referred to the statement of Sri Ram Asrey D.W.I, who was examined by the accused persons in defence. Sri Ram Asrey is said to be an independent witness of recovery of crude morphine from the possession of the appellants. He has, however, admitted that the stepney of the jeep was cut in his. presence and four packets were taken out of the stepney. He does not know where from the appellants belonged. From the statement of this witness, it is clear that the stepney of the jeep was cut in his presence and four packets were taken out of this stepney. It is also clear from his statement that he has signed the recovery memo Ext.Ka 1. On material particulars, this witness has supported the prosecution case. The crude morphine was recovered from the stepney of Commander Jeep. Stepney was cut in his presence. He has also admitted that he had signed the documents, which were written. Recovery memo Ext.Ka 1 was also signed by him. Unlike Ritesh Chakravarti's case, this witness of recovery to a great extent has supported the prosecution case. Summing up case in hand the contraband was, suspected to be hidden in the Jeep taken by the accused, and was not in his, physical possession. It was recovered from the tyre of the stepney fastened inside Jeep. A bare reading of section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag., or premises. (See Kalema Tumba vs. State of Maharashtra and another JT 1999 (8) SC 293, State of Punjab vs. Baldev Singh, supra, Gurbax Singh vs. State of Haryana 2001 (42) ACC 476 (SC). The language of section 50 is implicitly clear that the search has to be in relation to be person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra). Above being the position, the contention regarding non-compliance of section 50 of the Act is also without any substance. In Birakishore Kar vs. State of Orissa, 2001 (9) SCC 541, it was held that when there was a recovery from a plastic bag belonging to the accused on which he was found sitting on railway compartment, Section 50 was not applicable. Baldev's case (supra) was referred to hold that section 50 in

case of search by a person as distinguished from search from any premises etc. The position was also highlighted recently in **Madan Lal and another vs. State of Himachal Pradesh, 2003 (47) ACC 763 (SC)**.

13. The next argument of learned counsel for the accused is that there is no compliance of provisions of Section 42 of the Act. His contention is that the information received by the officers should be taken down in writing. Non-recording of information deprives the accused to ascertain what was the precise information. In support, he, has cited **Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat, reported in 2000(1) EFR 539 (SC)**. On the other hand, learned counsel for the respondent has asserted that the provisions of Section 42 of the Act have been fully complied with. He has drawn the court's attention towards the statement of Abdul Quddus Ext.Ka 12. The relevant information was gathered from the written statement of Abdul Quddus. His statement commences from 07th April, 1997 and concludes on 18th April, 1997. Information regarding the movement of crude morphine is contained in the statement of Abdul Quddus. The relevant statement of Abdul Quddus was recorded on 13th April, 1997, in which it was informed that the crude morphine would have reached Lucknow on 15th April, 1997 itself, but the Commander Jeep, in whose stepney the crude morphine was concealed, went out of order near Shuklaganj; due to this reason, the crude morphine reached Lucknow on 16th April, 1997. On the information received from Abdul Quddus and recorded in writing, a plan was prepared under the supervision of Deputy Commissioner Narcotics, Lucknow. The evidence on record proves beyond reasonable doubt that the provisions of Section 42 of the Act have been complied with. I find no force in the argument of the learned counsel for the accused. More over statement of P.W.-1 shows that he had informed his superior remained unshaken and there was even no cross-examination to point out any falsity in the said statement. This being the position I am not inclined to accept the plea that the provision of Sec.42 (2) and 50 were not complied with. (See **Saikou Jabbi vs. State of Maharashtra, 2004 (48) ACC 2001**)."

6. In so far as the non-compliance of Section 42 of Act of 1985 is concerned, this Court for the reasons recorded by the trial Court as also the evidence/material available on record finds that the proper compliance was made as required under Section 42 of Act of 1985 by the prosecution. It is for the reason that the information regarding the offense in issue was gathered from the written statement of Abdul Quddus whose statement was commenced on 07.04.1997 and was concluded on 18.04.1997 and the relevant statement of Abdul Quddus was recorded on 13.04.1997, the date

on which he informed that the crude morphine would reach in Lucknow on 15.04.1997 but the same was reached in Lucknow on 16.04.1997 as the Commander Jeep in whose stepney the crude morphine was concealed went out of order near Shuklagunj, and thereafter, 4,000 kg crude morphine was recovered from the stepney of Commander Jeep on 16.04.1997 bearing No. MP 14G/8472 which was in possession of accused Nazim Khan S/o Usman Khan R/o Village Parwalia, P.S. Kalukheda, Tehsil Jaora, District Ratlam on 16.04.1997 and in this regard a letter of Deputy Commissioner Narcotics, Lucknow of 17.04.1997 was placed on record and a conjoint reading of all these facts indicates that proper compliance of Section 42 of Act of 1985 was made by the prosecution.

7. In so far as the submissions pertaining to non-compliance of Section 50 of Act of 1985 in concerned, it is to be noted that 4,000 kg crude morphine was recovered, as per the case set up by the prosecution, from the stepney of Commander Jeep No. MP 14G/8472 which was in possession of accused Nazim Khan S/o Usman Khan and in cross-examination of witnesses of prosecution, nothing be elicited which finds favour to the accused and further the defense witness Ram Asrey (D.W.1) before the trial Court in his specific term stated that recovery was made from the stepney of Commander Jeep in issue. Accordingly, this Court finds that Section 50 of Act of 1985 would not apply in the instant case as such the findings on this aspect of the case recorded by the trial Court are just and proper.

8. Further it is to be noted that the appellant has served complete sentence in this case.

9. For the reasons aforesaid, this Court finds no force in the present appeal, accordingly, it is dismissed. The judgment of the trial Court is upheld.

10. Let the trial Court record be sent back.

Order Date :- 5.4.2024

Mohit Singh/-

CRIMINAL APPEAL No. - 1466 of 2019