

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**Crl.Appeal No.D-1138-DB of 2011
Date of decision : 25.2.2015**

Ranjit Singh**Appellant(s)**

Versus

State of Punjab**Respondent(s)**

**Crl.Appeal No.D-227-DB of 2012
....Appellant(s)**

Roshan Lal

Versus

State of Punjab**Respondent(s)**

**CORAM : HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Vipul Jindal, Advocate, learned counsel for appellant-Ranjit Singh.

Mr. Mansur Ali, Advocate with Mr. H.S. Deol, Advocate for appellant-Roshan Lal.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab for the respondent.

DARSHAN SINGH, J.

- 1. This judgment of our shall dispose of both the appeals arising out of the same judgment of conviction dated 7.11.2011 vide**

which both the appellants were held guilty and convicted for the offence punishable under Section 21 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'the Act') and the order of sentence of the even dated vide which they have been sentenced to undergo rigorous imprisonment for a period of 12 years each and to pay a fine of ₹ 1,20,000/- each. In default of payment of fine to further undergo simple imprisonment for a period of one year each.

2. Briefly stated the facts of the prosecution case are that on 23.6.2007, PW-4 Sub Inspector Harvinderpal Singh posted at Special Narcotic Cell, Punjab, Amritsar, was present in his office. He received the secret information against the appellants indulging in the smuggling activities. He also received the secret information that the appellants along with Harbhajan Singh were present in the area of car parking of City Centre opposite Bhagat Puran Singh Pingalwara situated near Bus Stand in connection with deal of heroin and if raid is conducted they can be apprehended with large quantity of heroin. The Investigating Officer brought this information to the notice of Sh.Tulsi Ram, SSP Special Narcotic Cell, Punjab, Amritsar and on his directions, he along with SI Balbir Singh, ASI Nirmal Singh, ASI Satnam Singh raided the disclosed place. The accused were noticed standing near the Fuji Colour Lab situated in City Centre Complex who on seeing the police party acted haphazardly, two of them were able to escape the police net and appellant-Roshan Lal along with bag was apprehended at the spot.

He also disclosed the identification of the persons who had fled away from the spot after throwing the bag as Harbhajan Singh son of Piara Singh and Ranjit Singh alias Rana (appellant) son of Harbhajan Singh, both the residents of Havelian. Sub Inspector Harvinderpal Singh disclosed his identity to the accused suspecting the narcotic substance in the possession of appellant-Roshan Lal. He apprised him of his legal right to be searched in the presence of any Gazetted Officer or any Magistrate. Accused desired for the presence of any Gazetted Officer at the time of making his search. The memo to this effect was prepared. The Investigating Officer requested DSP Rajpal Singh to reach at the spot. In the meantime, Jasbir Singh, the independent witness, was also associated in the investigation. DSP Rajpal Singh arrived at the spot. He was briefed about the facts of the case and was introduced to the witnesses. DSP Rajpal gave his introduction to appellant-Roshan Lal. He also apprised the appellant of his legal right for his search to be conducted in the presence of any Gazetted Officer or the Magistrate. Appellant-Roshan Lal reposed confidence in DSP Rajpal Singh. The consent memo to this effect was prepared. On the direction of the DSP Rajpal Singh, the search of the bag of accused was carried out which resulted in the recovery of two packets of heroin. 5 grams each were separated from each packet of heroin and the remaining heroin came to 995 grams each. The separate sealed parcels of the samples and the parcels containing remaining heroin were prepared and were sealed with the seals impression bearing 'HS' of the Investigation Officer and

'RS' of the DSP. On the further direction of the DSP, the Investigating Officer carried out the search of the bag thrown by appellant-Ranjit Singh and Harbhajan Singh (since declared as proclaimed offenders) and three packets containing heroin were recovered from the said bag. Three samples of 5 grams each were separated from each packet of heroin. The remaining heroin came to 995 grams each. The separate sealed parcels of the samples and remaining heroin were prepared and were sealed with the seals bearing impression 'HS' and 'RS'. The parcels of the case property were taken into possession. The Investigating Officer sent ruqa Ex.PL to the Police Station A- Division, Amritsar on the basis of which the formal FIR Ex.PM was registered. He also prepared the rough site plan of the place of recovery. Accused appellant Roshan Lal was arrested.

3. After completion of the necessary formalities, the report under Section 173 Cr.P.C was presented against appellant-Roshan Lal in the Court.

4. Later on appellant-Ranjit Singh was also arrested and supplementary report under Section 173 Cr.P.C was presented against him.

5. Both the accused appellants were charge-sheeted for the offence punishable under Section 21 of the Act to which they pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as 5 witnesses.

7. When examined under Section 313 Cr.P.C, appellant-Ranjit Singh pleaded that he is innocent. He does not know accused Roshan Lal. He had no concern with the present case. He was never arrested in this case and has been falsely implicated. Appellant-Roshan Lal also pleaded that nothing incriminating was recovered from his possession. He was already in illegal custody of the police much earlier than the actual date of his arrest shown by the police. He is innocent and has been falsely implicated.

8. In the defence evidence, the accused have tendered in evidence the certified copies of the statements Ex.D1 to D3.

9. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the learned trial Court held guilty and convicted both the appellants vide impugned judgment of conviction for the offence punishable under Section 21 of the Act and they were awarded the sentence as mentioned in the upper part of the judgment.

10. Aggrieved with the aforesaid judgment of conviction and the order of sentence, the present appeals have been preferred by the appellants.

11. We have heard Mr. Vipul Jindal, Advocate, learned counsel for appellant-Ranjit Singh, Mr. Mansur Ali, Advocate with Mr.H.S. Deol, Advocate, learned counsel for appellant-Roshan Lal, Mr.P.P.S.Thethi, learned Additional Advocate General, Punjab for the respondent-State and have meticulously gone through the record of the case.

12. Initiating the arguments, learned counsel for the appellants contended that it is the admitted case of the prosecution that when the Investigating Officer was present in his office, he received the secret information. It is further the admitted case of the prosecution that the said secret information was not reduced into writing nor sent to any superior officer which is a total violation of Section 42 of the Act and vitiated the whole trial/conviction. To support their contentions, they relied upon cases **State of Karnataka Versus Dondusa Namasa Baddi 2010(4) RCR (Criminal) 367, CRA No.993-DB of 2009 Sukhpal Singh Versus State of Punjab decided by this Court on 19.9.2013, CRA-S-648-SB of 2003 Hanso and another versus State of Punjab decided by this Court on 10.2.2015, Criminal Appeal No.(S) 94 of 2007 State of M.P versus Abdul Ayub Khan decided by the Hon'ble Apex Court on 7.4.2011, Criminal Appeal No.1174 of 2010 Nathu Lal versus Union Territory, Chandigarh decided by the Hon'ble Apex Court on 20.9.2013, Karnail Singh versus State of Haryana 2009 (5) RCR (Criminal) 515 and Kishan Chand versus State of Haryana 2013 (2) RCR (Criminal) 67.**

13. They further contended that as per the prosecution version PW Jasbir Singh was associated as an independent witness but he has not been produced in the witness box. The non examination of PW Jasbir Singh, the alleged independent witness, has further rendered the prosecution case doubtful. To support their contentions, they relied upon cases **State of Punjab versus**

Nachhatar Singh @ Bania 2007(3) RCR (Criminal) 1040, Lakhbir @ Giri and Manjit Kumar versus State of Punjab 2012 (2) RCR (Criminal) 491, Mella Singh versus State of Punjab 2003 (3) RCR (Criminal) 762, Hakam Singh versus State of Punjab 2008 (4) RCR (Criminal) 489, Criminal Appeal No.637-DB of 2008 Ram Pal versus State of Punjab decided by this Court on 9.5.2013, Criminal Appeal No.2387-SB of 2009 Gurmukh Singh versus State of Punjab decided by this Court on 3.11.2011.

14. They further contended that there is delay of 5 days in sending the sample to the FSL. The delay has not been explained. Thus, the tampering with the seal of the parcels of the case property cannot be ruled out. Such unexplained delay is fatal to the prosecution case and is also violative of the standing order No.1/88 and is fatal to the prosecution case. To support their contentions they relied upon cases **Union of India versus Bal Mukund @ Ors. 2009 (2) RCR (Criminal) 574, Nirmal Singh versus State of Punjab 2010 (3) RCR (Criminal) 54, Amrik Singh versus State of Punjab 2010 (3) RCR (Criminal) 653, Randhir Singh versus State of Haryana 2010 (2) RCR (Criminal) 388, Parminder Singh versus State of Haryana 2006(4) RCR (Criminal) 495 and Buta Singh versus State of Punjab 2006 (1) RCR (Criminal) 835.**

15. They further contended that the mandatory provisions of Section 50 of the Act has also been violated. The search and seizure was not conducted by DSP Rajpal Singh himself. DSP Rajpal Singh should have himself carried out the search and seizure. The non

compliance of the mandatory provisions of Section 50 of the Act also vitiates the whole proceedings. To support their contentions, they relied upon cases **Gurdip Singh versus State of Punjab 2009 (5) RCR (Criminal) 544, Ayub Khan versus State of Rajasthan 2002 (3) RCR (Criminal) 431, Dilkush G. Sinai versus State of Goa (1995) 97 BOMLR 398.**

16. Learned counsel for the appellants further contended that the investigation has been carried out by the same officer SI Harvinderpal Singh who is the complainant in this case which is also illegal and render the proceedings vitiated. To support their contentions, they relied upon cases **State By Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu versus Rajangam 2010 (15) Supreme Court Cases 369 and CRA-S No.1909-SB of 2009 Karam Singh @ Karma and another versus State of Punjab decided on 28.1.2015.**

17. Learned counsel for appellant-Ranjit Singh further contended that the prosecution version that appellant-Ranjit Singh and Harbhajan Singh had fled away from the spot is not believable at all. There were 17 police officials in the raiding party. They were also armed. It is not believable that the accused could have managed to escape from the clutches of so many armed police officials. This prosecution version is unbelievable. To support his contention, he relied upon cases **CRA-S-1602-SB of 2005 Harwinder Singh versus State of Punjab decided by this Court on 12.2.2015, Manjit Singh and another versus State of Punjab,**

2014 (3) RCR (Criminal) 683, Shashi Atwal and another versus State of Punjab 2011 (2) RCR (Criminal) 660 and Sukhpal versus State of Punjab (supra).

18. Mr. Vipul Jindal, Advocate, learned counsel for appellant-Ranjit further contended that SI Harvinderpal Singh and ASI Balbir Singh, the prosecution witnesses, have also appeared as witnesses in another case bearing FIR No.244 dated 11.12.2007 under Section 21 of NDPS Act, Police Station B-Division, Amritsar against appellant-Ranjit Singh. Copies of their statements are Ex.D3 and Ex.D1 respectively wherein they have nowhere stated that appellant-Ranjit Singh was earlier known to them rather they have stated that after he was apprehended, on interrogation, he disclosed his particulars. He further contended that later on appellant-Ranjit Singh was apprehended by these very officials in the aforementioned case. If he was wanted in this case there was no need for procuring his production warrants as he could have been immediately arrested in this case also. He further contended that no tangible evidence has been adduced by the prosecution to establish the identity of appellant-Ranjit Singh. He was not earlier known to the prosecution witnesses. No test identification parade has been held after his arrest. ASI Satnam Singh, who had allegedly chased the appellant, has not been examined. No disclosure statement of Roshan Lal has been recorded with respect to the identity of appellant-Ranjit Singh. The description/features of appellant-Ranjit Singh is also not mentioned in the Ruqa/FIR. So, the prosecution has utterly failed to

establish the identity of appellant-Ranjit Singh.

19. He further contended that none of the prosecution witnesses had deposed that they had seen the bag containing heroin in the hands of appellant-Ranjit Singh and he had thrown the bag. Mere mentioning of the name of the appellant in the Ruqa on the basis of secret information will not establish the conscious possession of the contraband by the appellants. To support his contentions, he relied upon case **Criminal Appeal No.2355 of 2010 Pala Singh versus State of Haryana decided by the Hon'ble Apex Court on 6.2.2014**. He contended that as the possession of the contraband by the appellant is not established, the presumption under Section 54 of the Act will not arise against appellant-Ranjit Singh. Section 35 of the Act also goes to the aid of the appellant as the case of the present appellant is based on preponderance of probabilities without their being any tangible evidence to prove the charges under Section 21 of the Act.

20. Thus, learned counsel for the appellant pleaded that the conviction of the appellant recorded by the learned trial Court suffers from material illegality.

21. On the other hand, Sh. P.P.S. Thethi, learned Additional Advocate General for the State of Punjab contended that the provisions of Section 42 of the Act have been complied with. On receiving the secret information, SI Harvinderpal Singh immediately disclosed the same to Sh.Tulsi Ram, Senior Superintendent of Police, Narcotic Cell, Amritsar and only on his direction, he had

proceeded to conduct raid. Even the said information was recorded in the Daily Diary Register. He further contended that as the recovery has been effected from the bags, so, provisions of Section 50 of the Act are not applicable. Moreover, the search and seizure has been supervised by DSP Rajpal Singh, a Gazetted Police Officer, which is the sufficient compliance of Section 50 of the Act. He further contended that the story of the prosecution that two accused had fled away is quite natural and probable. The occurrence has taken place in the heart of City Amritsar at a very busy place in the month of June at 7.30 A.M. It was quite easy for appellant-Ranjit and Harbhajan to mingle with the public persons present at the public place to escape from the clutches of the raiding party. He further contended that the delay of mere five days in sending the samples to the FSL has not resulted in any prejudice to the appellants as there is no evidence to establish the tampering with of the sample parcels. In the order passed by the Magistrate and the report of the FSL, it has been categorically mentioned that seals of all the parcels were found intact. He further contended that independent witness Jasbir Singh was won over by the accused. So, his non-examination will be of no legal consequences. He further contended that SI Harvinderpal Singh, SI Balbir Singh and DSP Rajpal Singh have never been confronted with the statements Ex.D1 to D3 so, these statements cannot be taken into consideration. He further contended that Rajpal and Harvinderpal were earlier known to the Investigating Officer and other prosecution witnesses as they were posted in the

narcotic cell and appellant-Ranjit Singh was also facing the other criminal cases investigated by the officers of the narcotic cell. The prosecution witnesses have seen appellant-Ranjit Singh at the spot and he was identified in the Court which is the substantive evidence of identification. He further contended that conscious possession of the appellants over the contraband is also established. Thus, he pleaded that the conviction of the appellants recorded by the learned trial Court is well founded.

22. We have duly considered the aforesaid contentions.

23. Learned counsel for the appellants have vehemently contended that the mandatory provisions of Section 42 of the Act have been violated as a result of which the trial/conviction stands vitiated but we do not find any substance in this plea. On appraisal of material on record, there is no escape from the conclusion that it is not a case of total non-compliance of Section 42 of the Act. From the Ruqa Ex.PL and the statement of PW-4 SI Harvinderpal Singh, the Investigating Officer of the case, it comes out that he was present in his office when he received the secret information. It was disclosed to him that the accused were present in the car parking of City Centre opposite Bhagat Puran Singh Pingalwara situated near Bus Stand in connection with deal of heroin and if the **immediate** raid is conducted they can be apprehended with huge quantity of heroin. Thus, the information received by SI Harvinderpal Singh was emergent and the urgency of the matter further stands certified from the fact that when the police party reached the spot, two out of three

accused managed to escape. If the police officials had not immediately reached the place of recovery after the receipt of information, in that event, all the appellants could have escaped from the place of recovery and the whole purpose of secret information would have been defeated. SI Harvinderpal Singh has categorically deposed that before proceeding to the spot, he immediately brought the secret information to the notice of Sh. Tulsi Ram, Senior Superintendent of Police, Special Narcotic Cell, Amritsar and on his direction, he alongwith police party headed towards the disclosed place. So, in this case, the secret information was immediately brought into the notice of the SSP and only on his direction, the Investigating Officer had proceeded to the spot to apprehend the accused. In case **Dalel Singh versus State of Haryana (2010) 1 SCC 149**, the information was transmitted by the Investigating Officer to his superior officers through wireless without recording it in writing. The Hon'ble Apex Court held that it would be substantial compliance of Section 42 of the Act in emergent situation. The case in hand is even on better footing as the secret information has been conveyed by the Investigating Officer personally to the SSP and only on his direction he proceeded to conduct the raid.

24. SI Harvinderpal Singh has further categorically deposed that after receiving the secret information, he did not reduce the said information in writing specifically but entry in the Daily Diary Register was made in this regard. So, immediately on receiving the secret

information and before proceeding to the spot, SI Harvinderpal Singh had also recorded the same in the Daily Diary Register. As per Rule 22.48 of the Punjab Police Rules, 1934 Vol.III, the copy of the Daily Diary Report is mandatorily to be sent to the Gazetted Officer to be designated by the SP or to the SP himself everyday at the hour fixed in this behalf. In case **State of Rajasthan versus Bheru Lal (2014) 1 SCC Criminal 592**, on receipt of the secret information regarding possession of opium by the accused, the information was recorded in the Daily Diary Register and copy was sent to the superior officer that was considered to be the compliance of Section 42 of the Act. This authority is fully application to the facts of the case.

25. Copy of the FIR Ex.PM shows that the entire facts regarding the secret information were incorporated therein. The Ruqa Ex.PL was sent to the police station by the Investigating Officer immediately after recovery at 12.35 P.M on 23.6.2007. Even the FIR was registered at 12.50 P.M on the same day. The FIR depicts that the Special Reports were issued to the higher officers through Constable Sawinder Singh on the same day. As per Section 42 (2), the Investigating Officer is required to send the information in writing to his immediate superior officer within 72 hours. But in this case the contents of the secret information incorporated in the FIR were forwarded to the superior officer well in time.

26. In case **Karnail Singh versus State of Haryana** (supra), the Constitution Bench of the Hon'ble Apex Court, in clause (d) of the conclusion has laid down that the total non-compliance of the

requirements of sub-sections (1) and (2) of Section 42 is impermissible but delayed compliance with satisfactory explanation of delay will be acceptable compliance of Section 42 of the Act. The case in hand is even on better footing as in this case on receiving the secret information, SI Harvinderpal immediately brought it to the notice of the SSP, his officer superior. Only on the direction of the SSP, he proceeded to the spot to conduct the raid. Further, before proceeding to the spot, he had made an entry of the secret information in the Daily Diary Register. Thereafter, after the recovery, he had incorporated the entire facts of the secret information in the Ruqa Ex.PL which was sent to the police station on the basis of which FIR Ex.PM was registered. The copy thereof was also transmitted to the superior police officers on the same day.

27. A Division Bench of this Court in case **Jarnail Singh s/o Jawara Ram Vs. State of Haryana 2013(2) RCR (Criminal) 580**, after taking into consideration the ratio of law laid down in cases **Abdul Rashid Ibrahim Mansuri Vs. State of Gujrat 2000(1) RCR (Criminal) 611**, **Sajan Abraham Vs. State of Kerala 2001(3) RCR (Criminal) 808**, **Karnail Singh Vs. State of Haryana (supra)** and **Kishan Chand Vs. State of Haryana (supra)** has laid down as under:-

“52. We fail to understand as to how the judgment (supra) applies to the facts and circumstances of this case to accord benefit of doubt to the appellant, especially when there was no non-compliance of Section 42 of the Act. Even, independent witness, PW-9 (Billu

Ram Chowkidar) was associated in the recovery proceedings. Even, PW-12, a gazetted Officer of Haryana Government was associated at the time of recovery. The information about the recovery was sent to the police station, where formal FIR Ex.P1 was lodged regarding the recovery in question and the copy of the FIR Ex.P1 was sent to the Illaqa Magistrate, as also, to the higher police officers, as can be seen from the testimony of PW-1 (Dharam Pal Constable), which could not be shattered during cross-examination.

It was further laid down that:-

“54. Section 42 of the Act can be divided into two parts, first if the power of entry, search, seizure and arrest without warrant or authorisation, as contemplated under sub-section (1) of the said Section. Second is reiterating any information in writing under sub-section (1) of the Act.

55. It may be mentioned here that sub-section 2 was amended by the Parliament vide Act No. 9 of 2001 w.e.f. 02.10.2001. In the case in hand the information was received by PW-8 (Sandeep Singh SHO) on 29.01.2000 and he immediately, reached the place of recovery. If, he had not reached the place of recovery immediately after the receipt of information, and if, he had consumed time in obtaining the search warrant, in that event, the appellant could escape from the place of recovery.

56. So, keeping in view the facts and circumstances of this case, PW-8 pondered it apt to enter and search the place of recovery without obtaining search warrant. The whole purpose of the secret information would have been disconcerted, if he had not acted upon this information immediately after receipt, thereof.

57. Section 42 (1) (d) of the Act empowered PW-8

(Sandeep Singh SHO) to search the place of recovery and arrest the appellant, as obtaining of search warrant would have afforded opportunity to the appellant for concealment of the contraband, as also, for his escape. The information, as already held about this recovery was sent by PW-8 (Sandeep Singh SHO) to the Illaqa Magistrate, as also to the higher police officers. So, no benefit of Kishan Chand's judgment (supra) can be accorded to the appellant.

It was further laid down that:-

“62. In the case in hand, as already observed, compliance of Section 42 of the Act stood made by the Investigating Officer by sending ruqa Ex.P4 to the police station, where formal FIR Ex.P1 was recorded whose copies were sent to the Illaqa Magistrate, as also, to the higher police officers.

63. Indeed, PW-8 (Sandeep Singh SHO) during cross-examination testified that after receiving secret information, he did not send this information in writing to the police station, nor he sent it to higher police officials of police. Indeed, PW-8 (Sandeep Singh SHO) could not literally understand question put to him in the cross-examination and, if he had understood the question literally, then he would have said that compliance of Section 42 (1) (2) of the Act had been made, which indeed had been made in this case, as he sent ruqa Ex.P4 to police station, where formal FIR Ex.P1 was recorded and copies, thereof, were sent to the Illaqa Magistrate, as also to the higher police officials.”

28. In a latest judgment titled as **Gurdev Kaur Vs. State of Punjab 2014(1) DC (Narcotics) 573**, Hon'ble Apex Court also after

taking note of cases **Karnail Singh Vs. State of Haryana** (supra) and **Sajan Abraham Vs. State of Kerala** (supra), has laid down as under:-

“We may point out, at this stage, that the matter was referred to the larger Bench. That was the sole reason that in the special leave petition filed by the appellant leave was granted, i.e. in view of the fact that the compliance of Section 42 of the NDPS Act is mandatory or not had been referred to by larger Bench. The Constitution Bench has since decided the issue in ***Karnail Singh v. State of Haryana 2009(8) SCC 539***. Not only the judgment in Sajjan Abraham case (supra) is explained, it is specifically held by the Constitution Bench that in special circumstances involving emergent situations (when the officer is on the move) and recording of information is not practical prior to search and seizure and would be detrimental to effectiveness of the search and seizure concerned, the requirement of writing down and conveying information to superior officer may be postponed by a reasonable period which may even be after the search, entry and seizure. It is further held that whether there is adequate or substantial compliance of the provisions of Section 42 of the Act or not is a question of fact to be decided in each case. It was further held that non-compliance of Section 42 may not vitiate the trial if it does not cause any prejudice to the accused.

In the present case as mentioned above, the seizure was from the open area when the officers concerned were on the move and not in their office when they received information and immediately the information was given to DSP Sushil Kumar who immediately had come to the spot. Therefore, it is clear that there was a

substantial compliance of provisions of Section 42 of the Act.”

29. In view of the aforesaid ratio of law laid down by the Division Bench of this Court and the Hon’ble Apex Court in the latest judgment that where the recording the information is not practicable prior to search and seizure and would be detrimental to the effectiveness of the search and seizure concerned, the requirement of writing down and conveying information to the superior officer may be postponed by a reasonable period, which may be after the search, entry and seizure.

30. As already mentioned, the case in hand is on much better footing as the Investigating Officer had immediately conveyed the information to Sh. Tulsi Ram, SSP, on whose direction, he proceeded to conduct the raid. The entry was also made in the Daily Diary Report. In the Ruqa Ex.PL, it is also mentioned that the raid was conducted under the supervision of Inspector Jasbir Singh who was also the immediate superior officer of the Investigating Officer. After the recovery, the Ruqa Ex.PL containing all the particulars of the secret information was sent to the police station on the basis of which the FIR Ex.PM was registered and further sent to the higher police officers. Thus, there is substantial compliance of Section 42 of the Act and absolutely no prejudice has been caused to the appellants.

31. Admittedly, one Jasbir Singh was associated as an independent witness but has not been examined by the prosecution.

As per the statement of learned Public Prosecutor dated 21.9.2011, he was given up as having been won over by the accused. It has also been argued by the learned counsel for the appellants that even the seal has not been entrusted to Jasbir Singh, the independent witness, which renders his presence at the spot doubtful and is fatal to the prosecution case but we do not find any substance in these contentions. A Full Bench of this Court in case **Piara Singh versus State of Punjab 1982 Criminal Law Journal 1176** has laid down as under:

“In the absence of any mandatory or even a directory provision in the whole of Criminal P.C. and the Punjab Police Rules requiring that the seal used by the Investigating Officer for sealing case property must be handed over to a third person forthwith and further that in cases where it might at all have been so done then the non-official must be put into the witness-box and any failure to do so would vitiate the whole proceedings, it is incorrect to say that it is mandatory for the Investigating Police Officer to hand over the seal used by him for sealing the incriminating articles and the samples to a non-official immediately or soon thereafter and that the non-appearance or non-production of such a

non-official who was entrusted with the seal would by itself be fatal to the prosecution case.”

32. A Division Bench of this Court in case **Mohan Singh versus State of Punjab 2007 (4) RCR (Criminal) 705** has also laid down that the non-examination of the independent witness associated in the investigation is not fatal to the prosecution as there is no principle of law that without corroboration of any independent witness, the testimony of the official witnesses cannot be relied upon. In case **Ram Sarup versus State (Govt. of NCT Delhi) (2013) 14 SCC 235** also, the independent witness associated the Investigating Officer was not examined and conviction was based only on the statements of the police officials. The Hon'ble Supreme Court held that there is nothing on record to show as to why their evidence should be treated as untrustworthy. There is no absolute rule that police officials cannot be cited as a witness and their depositions should be treated with suspicion. Since generally the public at large are reluctant to come forward to depose before the Court, therefore, the prosecution case cannot be doubted for non-examination of the independent witnesses. The same rule of law has been reiterated by the Hon'ble Apex Court in case **Kashmiri Lal versus State of Haryana (2013) 6 SCC 555**. The accused appellants have not been able to brought on record any material to show that the police officials had any enmity or motive for their false implication. So, there is no reason to discard their testimonies.

33. In view of the consistent ratio of law laid down by the Division Bench of this Court, Full Bench of this Court and the Hon'ble Apex Court, the non-examination of Jasbir Singh and non entrustment of seal to him is no ground to disbelieve the statements of the police officials. In view of the aforementioned authoritatively pronouncements of the Hon'ble Apex Court, the cases relied upon by the learned counsel for the appellants are of no help to them.

34. The recovery in this case had been effected on 23.6.2007. The sample parcels have been received in the FSL on 28.6.2007. So, there is delay of 5 days in sending the sample parcels to the FSL but there is absolutely no evidence on record to establish that the sample parcels were tampered with at any stage. The entire case property was produced before the learned Judicial Magistrate on 24.6.2007. It is evident from the order dated 24.6.2007 passed by the Magistrate that the parcels of the case property was examined and signed by him. The report of the FSL Ex.PK also depicts that the seals of all the parcels were found intact and tallied with the specimen seal impression. PW-5 Head Constable Sukhdev Singh had carried the sample parcels to the office of the FSL and had filed his affidavit Ex.PW5/A wherein he has categorically mentioned that so long the case property remained in his custody neither he nor anybody else tampered with the same. So, from the evidence on record, it is established that the parcels of the case property remained intact and were never tampered with at any point of time.

35. In case **Mohan Singh Vs. State of Punjab 2007(4) RCR (Criminal) 705**, there was delay of 10 days in sending the samples to the Laboratory. The Division Bench of this Court held that same was not fatal to the prosecution case as the seized articles were kept in proper and safe custody. The Hon'ble Supreme Court in case **State of Orrisa Vs. Kanduri Sahoo 2004(1) RCR (Criminal) 196** has also laid down that mere delay in sending the samples to the Laboratory is not fatal where there is evidence that seized articles were kept in proper and safe custody. The same ratio of law has been reiterated in cases **Baggar Singh alias Gaggi Vs. State of Haryana 2009(4) RCR (Criminal) 183**, **Raju Vs. State of Haryana 2009(1) RCR (Criminal) 778** and **Pritam Singh and another Vs. State of Punjab 2013 RCR (Criminal) 801**. In view of the aforesaid authorities, the cases relied upon by learned counsel for the appellant on this aspect of the case are of no help to him.

36. The recovery in this case has been effected from the bags and not from the personal search of the appellants. A three Judges Bench of the Hon'ble Apex Court in case **State of H.P. Versus Pawan Kumar 2005 Supreme Court Cases (Criminal) 943** has laid down as under:

"A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even

remotely be treated to be part of the body or a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

37. Again in case **Ajmer Singh versus State of Haryana 2010 (2) RCR (Criminal) 132**, the Hon'ble Supreme Court has laid down that Section 50 applies only in case of search of the person. Articles like bag, briefcase, container etc. cannot even remotely be treated as part of the body or a human being. In a latest judgment titled as **Krishan Kumar versus State of Haryana 2014 (3) RCR (Criminal) 170**, the Hon'ble Supreme Court has laid down that when

search and recovery from a bag, brief case, container etc. is to be made, provisions of Section 50 of the Act are not attracted. In case **State of Rajasthan versus Ram Chandra (2005) 5 SCC 151** also, the same ratio of law has been laid down by the Hon'ble Apex Court. In the instant case also, admittedly the recovery has been effected from search of the bag and not the search of the person of the appellant. So, Section 50 of the Act has no application at all. In view of the consistent ratio of law laid down in the cases referred above, the cases relied upon by the learned counsel for the appellants on this aspect of the case are of no help to them. Moreover, the search and seizure has been conducted in the presence of PW-1 Rajpal Singh, DSP, a Gazetted Police Officer, as per the option exercised by appellant-Roshan Lal.

38. As per the prosecution case, PW-4 SI Harvinderpal Singh has received the secret information. The raid was arranged by him and investigation was also carried out by him. Learned counsel for the appellants have vehemently contended that PW-4 SI Harvinderpal Singh being the complainant of the case was not legally competent to carry out the further investigation. They have also relied upon cases **State By Inspector of Police, Narcotic Intelligence Bureau, Madurai, Tamil Nadu versus Rajangam** (supra) and **Karam Singh @ Karma and another versus State of Punjab** (supra). **Rajangam's case** (supra) is based on the case titled as **Megha Singh versus State of Haryana (1996) 11 SCC 709**.

This decision was also referred before the Hon'ble Apex Court in

case **State versus V. Jayapaul, 2004 (2) RCR (Criminal) 317 (SC)**

and the Hon'ble Supreme Court in that case laid down as under:

"We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done."

39. In case **S. Jeevanantham versus State through Inspector of Police, TN, 2004 (3) RCR (Criminal) 333** also, the officer who has conducted the search and also conducted the investigation, after taking the note of **Megha Singh's** case (supra) and **V. Jayapaul's** case (supra), it was laid down as under:

"In the instant case, PW-8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellant was narcotic drug and the counsel for the appellant could not point out

any circumstances by which the investigation caused prejudice or was biased against the appellant. PW-8 in his official capacity gave the information, registered the case as part of his official duty and later investigated the case and filed charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation.”

40. In case **Hardip Singh versus State of Punjab 2008 (4) RCR (Criminal) 97** again, the Hon'ble Apex Court laid down that the investigation carried out by the Inspector, who recovered the opium from the accused, is not illegal. So, it has been consistently laid down by the Hon'ble Apex Court that mere this fact that the officer who has got the case registered and effected the recovery had carried out the investigation does not render the investigation illegal. Such investigation can only be assailed on the ground of bias or real likelihood of bias on the part of Investigating Officer which resulted into any prejudice to the accused. In the instant case, the appellants have not been able to show as to what prejudice they have suffered on account of investigation being carried out by Sub Inspector Harvinderpal Singh. There is also no material on record to show that Sub Inspector Harvinderpal Singh was in anyway biased against the appellants. So, there is nothing illegal in the investigation being carried out by SI Harvinderpal Singh.

41. Learned counsel for the appellants have also referred the standing instructions No.1/88 issued by the Narcotic Bureau New Delhi, which provides that the sample is to be drawn in duplicate and further that the sample should be dispatched to the laboratory within 72 hours. These are only the guidelines issued by the Narcotic Control Bureau which cannot take the place of the statutory provisions. A Division Bench of this Court in case **Joga Singh versus State of Punjab 2013 (1) RCR (Criminal) 47** while dealing with these very instructions laid down as under:

“But, instructions, which are just guidelines cannot override the Act or the rules made thereunder, therefore, the same cannot be said to have any binding force, may be implemented as precaution. In any case, failure to comply with such instructions will not by itself vitiate the conviction. The golden thread running through the rules or the procedure is the prejudice if caused to the accused by not doing a particular act in the manner as provided under the law.”

42. Again in case **Jarnail Singh s/o Jawara Ram versus State of Haryana** (supra) also, the Division Bench of this Court has laid down as under:

“The learned counsel for the appellant also contended that only one sample was drawn from each bag against the mandatory

requirement of drawing two sample, as per standing order No. 1/89 dated 13.06.1989 issued by the Government of India. He also placed reliance upon Jaswinder Singh and another v. State of Punjab; 2013 (1) RCR (Criminal) 257; passed by this Court. This standing order No.1/89 (supra) is not mandatory, as the same was not passed by the Parliament under a statute. In the Act, there is no such mandate that two samples from each bag of contraband should be taken. No prejudice has been caused to the appellant with the drawal of one sample from each bag, as he has no right to get the second sample analyzed from the Forensic Science Laboratory. When that was, so, no prejudice can be said to have been caused to the appellant.”

43. In view of the aforesaid ratio of law laid down by the Division Bench of this Court, the standing instructions issued by the Narcotic Control Bureau are not mandatory. The non-compliance thereof will not vitiate the conviction. The accused appellants have not been able to show as to what prejudice has been caused to them in the absence of duplicate samples and the delay in sending the samples to the FSL when it is established that the samples

remained intact and were not tampered with at any stage. The case **Union of India versus Bal Mukund and others** (supra) relied upon by the learned counsel for the appellants is of no help to them because in that case, the violation of the instructions was not the sole ground for recording the acquittal. There were various other material infirmities in the prosecution case.

44. The fact that two of the accused i.e. appellant-Ranjit Singh and his father Harbhajan Singh had managed to escape even though the raiding party consisting 17 police officials and some of them were even armed is also no ground to render the prosecution case unbelievable. In the instant case, the place of occurrence is the busy place i.e. the car parking area of City Centre opposite Bhagat Puran Singh Pingalwara situated near Bus Stand, Amritsar. It is a fact of common knowledge that Amritsar City is a city of religious importance and is thickly populated. The occurrence has taken place in the month of June at about 7.30 A.M. By that time, there is sufficient public on the roads and at such busy areas it is possible that taking the benefit of busy locality, appellant-Ranjit and his father Harbhajan might have intermingled in the public after throwing the bag containing the contraband to give a ditch to the police. It is always difficult to spot out even a known person from such a busy place. So, appellant-Ranjit and co-accused Harbhajan had enough opportunity to skip the police net and escape. The cases referred by learned counsel for the appellants on this aspect of the case are not applicable to the facts of the case.

45. Sh. Vipul Jindal, learned counsel for appellant-Ranjit has assailed the case of the prosecution with respect to the identity of appellant-Ranjit who was not apprehended at the spot. The name of appellant-Ranjit clearly figures in the FIR. As per the statements of PW-4 SI Harvinderpal Singh, the Investigating Officer of the case and PW-2 SI Balbir Singh, the witness of recovery, when the police party reached near the disclosed place, all the three suspected persons were noticed standing near the Fuji Colour Lab situated in City Centre Complex and on seeing the police party, they tried to escape. Appellant-Roshan Lal was apprehended whereas appellant-Ranjit and Harbhajan managed to escape. From the statements of both these witnesses, it come out that before appellant-Ranjit escaped he was noticed by SI Harvinderpal Singh and SI Balbir Singh standing at the disclosed place. It is only after the accused noticed the police party approaching them they escaped. SI Balbir Singh has further stated that he earlier knew appellant-Ranjit Singh but he had never joined him in any case nor arrested him before being nominated in the present case. So, SI Balbir Singh was even earlier conversant with appellant-Ranjit Singh. PW-4 SI Harvinderpal Singh, the Investigating Officer of the case, has also mentioned that photographs of accused Ranjit was displayed on the notice board of the Police Station, Special Narcotic Cell, Amritsar. Thus, it is not a case where appellant-Ranjit Singh was totally unknown person to the Investigating Officer and the witness of recovery. In these circumstances, they were certainly in a position to identify appellant-

Ranjit Singh at the time of making their statements in the Court. Mere this fact that the test identification parade of appellant-Ranjit Singh was not held after his arrest is also no ground to discard the testimonies of SI Harvinderpal Singh and SI Balbir Singh on the point of the identity of appellant-Ranjit Singh as they had sufficient opportunity to notice the appellant at the place of occurrence before he fled away. The name of appellant-Ranjit Singh clearly figures in the FIR and he was even earlier known to them. In these circumstances, the dock identification of appellant-Ranjit Singh by the prosecution witnesses can be safely relied upon even without any prior test identification parade. To support this view, reference can be made to cases **Sidhartha Vashisht @ Manu Sharma versus State (NCT of Delhi), 2010 (2) RCR (Criminal) 692** and **Mulla and another versus State of U.P. 2010 (2) RCR (Criminal) 176**.

46. Learned counsel for appellant-Ranjit Singh has pointed out that in the statements of SI Balbir Singh Ex.D1 and SI Harvinderpal Singh Ex.D3 recorded in case FIR No.244 dated 11.12.2007 under Section 21 of the NDPS Act, Police Station B-Division Amritsar, they have mentioned that they came to know about the identity of the accused on the basis of his particulars disclosed by him. These statements were recorded on 27.7.2008 and 20.5.2009 respectively whereas their statements in this case have been recorded on 7.9.2010 and 1.6.2011 respectively but they have not been confronted with the earlier recorded statements Ex.D1 and Ex.D3 as required under second limb of Section 145 of the Evidence

Act. In the absence thereof, the statements Ex.D1 and D3 cannot be taken into consideration. To support this view, reference can be made to case **Raj Kishore Jha versus State of Bihar and others 2003 (4) RCR (Criminal) 935**. Thus, there is absolutely no doubt about the identity of appellant-Ranjit Singh.

47. We also do not find any substance in the contentions of learned counsel for appellant-Ranjit that the conscious possession of the contraband by appellant-Ranjit is not established. From the statements of PW-2 SI Balbir Singh and PW-4 SI Harvinderpal Singh, it is established that on seeing the police party, appellant-Ranjit and his father Harbhajan managed to escape from the spot by throwing the bag containing contraband at the spot whereas appellant-Roshan Lal along with bag in his possession was apprehended. The search and seizure was conducted in the presence of PW-1 Sh. Rajpal Singh DSP as per the option exercised by appellant-Roshan Lal. The bag found in the possession of appellant-Roshan Lal and the bag thrown by appellant-Ranjit and Harbhajan were found containing heroin. 2 kgs heroin in 2 packets was recovered from the possession of appellant-Roshan Lal and 3 kgs heroin in three packets was recovered from the bag thrown by appellant-Ranjit Singh and Harbhajan Singh.

48. The Hon'ble Supreme Court in case **Madan Lal and another versus State of Himachal Pradesh 2003 (4) RCR (Criminal) 100** has laid down that word "conscious" means awareness of a particular fact. It is a state of mind which is

deliberate or intended. Whether there was conscious possession or not has to be determined with reference to the factual backdrop with the fact which can be culled out from the evidence on record. In the instant case, from the statements of the prosecution witnesses, it comes out that on seeing the police party appellant-Ranjit and Harbhajan managed to escape and threw the bag containing contraband at the spot. It clearly establishes that they were fully aware that the contraband was contained in the bag which was in their possession otherwise what was the need for them to fled away from the spot and to throw the bag. So, the conscious possession of the contraband by the appellants is fully established.

49. In the instant case, total 5 kgs heroin has been recovered which is quite heavy quantity, keeping in view the value of the contraband in the international market which is impossible to be planted by the police officials from their own source. Moreover, the accused have not been able to brought on record any material to show any ill will or animus on the part of the police officials for the false implication of the appellants. The search and seizure has been carried out in the presence of PW-1 Rajpal Singh, DSP, a Gazetted Police Officer. The raid was conducted as per the directions given by the Senior Superintendent of Police, Narcotic Cell, Amritsar. The case of the prosecution is also corroborated from the testimony of PW-3 Prithvi Raj Sharma, the then SHO Police Station, A-Division, Amritsar. Thus, there is no escape from the conclusion that appellant-Roshan Lal was found in conscious possession of 2 Kgs

heroin and appellant-Ranjit Singh was found in conscious possession of 3 Kgs of heroin.

50. Consequently, we do not find any legal infirmity or impropriety in the conviction and sentence of the appellants as recorded by the learned trial Court which are hereby maintained and affirmed.

51. Resultantly, the present appeals have no merits and the same are hereby dismissed.

**(M. JEYAPPAUL)
JUDGE**

**February 25, 2015
ps**

**(DARSHAN SINGH)
JUDGE**