IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 14.08.2015

1. CRA-D No. 266-DB of 2011 (O&M)

Sarabjeet Singh ……Appellant.

Versus

Intelligence Officer, Directorate of Revenue Intelligence …..Respondent.

2. CRA-D No. 785-DB of 2011 (O&M)

Intelligence Officer, Directorate of Revenue Intelligence ……Appellant.

Versus

Sarabjeet Singh …..Respondent.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.S. Rai, Senior Advocate, with
Mr. D.S. Brar, Advocate,
for the appellant in CRA-D No. 266-DB of 2011 and
for the respondent in CRA-D No. 785-DB of 2011.

Mr. D.D. Sharma, Advocate,
for the respondent in CRA-D No. 266-DB of 2011 and
for the appellant in CRA-D No. 785-DB of 2011.

***

S.S. SARON, J.

This order will dispose of Criminal Appeal No. D-266-DB of 2011 filed by Sarabjeet Singh (appellant), and Criminal Appeal No. D-785-DB of 2011 filed by the Intelligence Officer, Directorate of Revenue Intelligence, Ludhiana ('DRI' - for short) (appellant). Both the appeals arise out of the same judgment of conviction dated 10.01.2011 and order of sentence dated 12.01.2011 passed by the learned Judge, Special Court, Ludhiana, by which Sarabjeet Singh (appellant in CRA No.D-266-DB of 2011 and respondent in CRA No. D-785-DB of 2011) has been convicted for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' - for short) and Section 489-C of the Indian Penal Code ('IPC' - for short). He has, however, been acquitted of the offence under Section 25 of the Arms Act, 1959 ('Arms Act' - for short) for want of sanction of the District Magistrate, Ludhiana. Sarabjeet Singh has been sentenced to undergo rigorous imprisonment for a period of twelve years, besides, pay a fine of Rs.1,50,000/- (Rs. One lac and fifty thousand only) and in default of payment thereof, undergo rigorous imprisonment for a period of one year for the offence under Section 21 NDPS Act. He has also been sentenced to rigorous imprisonment for a period of five years, besides, pay a fine of Rs.20,000/- (Rs. Twenty thousand only) and in default of payment thereof, undergo rigorous imprisonment for a period of six months for the offence under Section 489-C IPC. Both the sentences have been ordered to run concurrently.

Sarabjeet Singh, by way of Criminal Appeal No. D-266-DB of 2011, assails the judgment of his conviction and order of sentence for the offence under Section 21 NDPS Act and Section 489-C IPC; while the Intelligence Officer, Directorate of Revenue Intelligence, Ludhiana, by way of Criminal Appeal No. D-785-DB of 2011, assails the acquittal of Sarabjeet Singh for the offence under the Arms Act.

FIR No. 89 dated 25.04.2007 (Ex. PW12/A) was registered at Police Station Payal, District Ludhiana for the offences under Sections 21, 23, 25, 28 and 29 NDPS Act, Section 489-C IPC, Section 25 of the Arms Act and Section 135 of the Customs Act, 1962 ('Customs Act' - for short). The said FIR was registered on an application submitted by Dheeraj Rastogi, Joint Director, Directorate of Revenue Intelligence ('DRI' - for short) Branch, Ludhiana on the subject of seizure of arms, fake Indian currency notes and narcotics by the DRI. It is alleged that on the basis of specific information, Intelligence Officers of the DRI intercepted a grey colour 'Maruti Esteem' Car No. DL-9CD-8290 near Ludhiana. The occupants of the car were Sarabjeet Singh (appellant in CRA-D No. 266-DB of 2011 and respondent in CRA-D No.785-DB of 2011) along with his driver namely Sandeep Tondak, both residents of Delhi. On repeated questioning, Sarabjeet Singh disclosed that he was carrying contraband including narcotics concealed in his car. They were escorted to the office of DRI, Ludhiana. On search of the car, fake Indian currency notes with a face value of Rs.9,93,000/- (993 notes of Rs.1000/- each), 7.920 kgs of heroin, two pistols, one of 'Taurus' made in Brazil and the other having markings of 'NAA800', two empty magazines, 46 live cartridges, three mobile sim cards of Pakistan, and Indian currency of an amount to Rs.1,00,000/- (Rs. One lac only) were recovered. All the recovered goods as also the car were seized. Statement of Sarabjeet Singh was recorded under Section 67 NDPS Act. He stated that the seized contraband were given to him by a person namely Sardool, who was a contact of his acquaintance namely Jagga, near Gurdaspur on the Gurdaspur-Pathankot Highway. The goods were to be delivered to another contact of Jagga at New Delhi. Jagga had met Sarabjeet Singh in Tihar Jail during his detention under the Terrorist and Disruptive Activities (Prevention) Act

('TADA Act' – for short). Since he was facing financial problems, he had accepted Jagga's offer to engage in smuggling of contraband such as narcotics, fake currency as also arms and ammunitions. The narcotics, fake currency notes and arms and ammunitions were smuggled into India from the Indo-Pak border. Sarabjeet Singh was arrested under Section 42 NDPS Act on 21.04.2007 and he was in judicial custody at the time of submitting the application. It was also learnt that his detention under the TADA Act was in relation to a bomb blast at the IGI Airport. This was a significant case and validated DRI's intelligence about the smuggling of combined consignments of fake Indian currency notes, drugs as also arms and ammunition which could have larger security implications. The above application was submitted for information. Anything of interest that may arise on account of sharing of the information with the office of DRI may be shared at the relevant point of time. The Senior Superintendent of Police, Khanna was requested that if deemed fit, a case be registered for possession and transportation of fake Indian currency notes and illegal fire arms. On the basis of said application, Senior Superintendent of Police, Khanna asked SHO, Police Station Payal to register a case as made out. Accordingly, a case for the offences under Sections 21, 23, 25, 28 and 29 NDPS Act and Section 489-C IPC, Section 25 of the Arms Act and Section 135 of the Customs Act was registered.

Thereafter, Sanjiv Kumar Sharma, Intelligence Officer, DRI, Ludhiana filed a criminal complaint dated 16.10.2007 in the Court of the learned Additional Sessions Judge-cum-Special Judge for the offences under the NDPS Act at Ludhiana. The contents as mentioned in the FIR above were reiterated. It was also mentioned that on the basis of disclosure statement of Sarabjeet Singh that he was carrying contraband goods including narcotics concealed in a red and black colour bag of 'Doolie' brand lying in the boot of the car, both i.e. Sarabjeet Singh and his driver – Sandeep Tondak were served with notices under Section 50 NDPS Act. They opted for their search being conducted by a gazetted officer. Sarabjeet Singh requested that their search as well as search of the car be conducted at a safer place instead of the search being conducted at the spot as there was a danger to his life. They along with the car and two 'Panches' were escorted by the officers to the office of DRI at Ludhiana. A personal search of Sarabjeet Singh was conducted and an amount of Rs.15,015/- was recovered from a purse kept by him in the rear pocket of his trouser which included some documents, i.e. PAN card, driving license and credit/debit cards. During personal search of Sandeep Tondak, Indian currency of Rs.165/- was recovered along with a driving license from the purse kept by him in the rear pocket of his pants. When the rear boot of the car was opened, one black colour zipper bag was found lying in it. On opening the bag, Indian currency notes of Rs.1,00,000/- were recovered. Thereafter, a thorough search of the rear boot of the car was conducted and a black and red colour bag of 'Doolie' brand was found concealed below the carpet. On opening the bag, nine polythene packets wrapped with yellowish adhesive tape and one small size pistol make 'Taurus' in a loaded condition with six rounds was recovered. Out of nine packets, one packet was of rectangular shape while one packet was of pistol shape. Both these packets were also wrapped with yellowish adhesive tape and the rest seven packets were identical squarish shape. On opening the seven packets, an off white colour substance emitting pungent smell was recovered, which on testing with the UN field drug detection kit gave positive results for heroin. The gross weight of the seven packets was found to be 8.340 kgs and the total net weight was found to be 7.920 kgs. During the course of removing the adhesive tape from one of the packets, it was observed that a small size rectangular shape card was also affixed on the packet with the help of adhesive tape. On removing that card, two sim cards of 'Telenor' Company of Pakistan in packed/unused condition, i.e. attached with outer card and one sim card with markings of 'JAZZ' in loose/usable condition were recovered. On opening the rectangular shaped packet, 993 Indian currency notes of Rs.1,000/- each were recovered. On examination, the said currency notes were found to be fake. Sarabjeet Singh confirmed that indeed these were fake. On opening the pistol shaped packet, a pistol with the mark of 'NAA800', but without having other markings like make or name of country, along with two empty magazines and 40 live cartridges were recovered. On enquiry, Sarabjeet Singh revealed that heroin, Indian fake currency notes as also arms and ammunition had been smuggled into India from Pakistan through the Punjab border. On further enquiry regarding Indian currency notes of Rs.1,00,000/-, he informed that it was the amount of commission to be handed over to one Jagga of New Delhi. This amount, it was stated, was out of the sale proceeds of the last consignment of heroin.

The heroin weighing 7.920 kgs was valued at Rs.25,74,000/- that was contained in seven packets. All the articles that were recovered were seized. The fake Indian currency notes of Rs.9,93,000/- and both the pistols along with 46 live cartridges were seized under the provisions of the Customs Act read with the provisions of the Arms Act and the IPC on a reasonable belief that the said goods had been imported into India illegally and in violation of the provisions of the Customs Act as well as Ministry of Finance's notifications dated 13.04.1999 and 06.06.1970, both issued under Section 11 of the Customs Act, respectively. The 'Maruti Esteem' car valued at Rs.3,00,000/- that was used for transportation and concealment of the seized contraband was also seized along with the documents recovered from it under the provisions of the NDPS Act.

Statement of Sarabjeet Singh was recorded under Section 67 NDPS Act and the Customs Act on 21.04.2007. He admitted the manner and factum of recovery, seizure and other incriminating facts. He *inter alia* stated that he was engaged in the business of import of electronic components. He was conducting his business from his residence at Rajouri Garden, New Delhi in the name and style of M/s Jap Deep Exim (P) Limited, which was a private limited concern. In the said business, Sarabjeet Singh and his wife Smt. Khushwinder Preet Kaur were the directors. Apart from the business, he undertook the work relating to sale and purchase of property on commission basis. His business was not going on very well and he had borrowed a huge amount of money from the market and the banks. He had to pay large amount of interest. Due to slump in business, he was unable to meet his expenses. A few days earlier, a person namely Jagga, who was his old acquaintance, approached him and gave him an offer for smuggling contraband such as narcotic drugs, fake currency, besides, arms and ammunition. Due to financial difficulties, he accepted the offer of Jagga. Jagga explained to him that he had to carry heroin, fake currency, besides, arms from Punjab side to Delhi. Jagga also informed him that he had also to invest some money initially for purchasing the smuggled contraband from his (Jagga's) contacts in Punjab and had to sell the contraband to his another contact in Delhi at a much higher price.

On further questioning, Sarabjeet Singh stated that Jagga had met him in Tihar Jail in the year 1997 when he (Sarabjeet Singh) was detained under the TADA Act. He was released from Tihar Jail in 1997 after he was acquitted of the charges by the Court. After some time, Jagga was also released from the jail and he continued to meet him. Once in a while during one such meeting, Jagga gave him the offer of smuggling. During his last meeting with Jagga, the latter told him that his contact on the Punjab side namely Sardool would ring him on his cell number. He would give him detailed instructions regarding place and the time of delivery of heroin, fake currency and arms. Sarabjeet Singh received a call from Sardool in the morning of 19.04.2007. Sardool informed him that he had received a consignment of drugs and other contraband from across the border. Sarabjeet Singh was asked to collect the consignment of smuggled heroin, fake currency as also arms and ammunition from Gurdaspur on 20.04.2007. They negotiated the deal which was fixed. He had to pay Rs.3.25 lac per kilogram of heroin out of which he would have to pay some amount in advance. The balance amount was to be paid after onward delivery of the consignment. Sardool asked Sarabjeet Singh to reach on the outskirts of Gurdaspur on the Gurdaspur-Pathankot Highway by 06:30 p.m. in the evening. Accordingly, Sarabjet Singh reached there by 06:30 p.m. in the evening. After some time, he received a call from Sardool on his cell phone. He was asked to drive towards Pathankot side. After driving for about six kilometres towards Pathankot, he saw a man on the road side who signaled him to stop. He stopped the car and the man standing on the road side approached him and asked his name, which was disclosed. Sardool informed Sarabjeet Singh that he was Sardool, a friend of Jagga. Thereafter, as promised, he paid Rs.2,00,000/- to Sardool and Sardool handed over to him a bag containing seven packets of heroin, a parcel containing fake Indian currency, two pistols and 40 live cartridges. One pistol was packed with brown adhesive tape and the other which was smaller was without any packing. All the articles of foreign origin were smuggled into India through the Indo-Pak border. Sardool also handed over to Sarabjeet Singh a bag, which contained Rs.1,00,000/-. Sarabjeet Singh was asked to hand over the same to Jagga. Sardool also told Sarabjeet Singh that the said amount of Rs.1,00,000/- was commission of Jagga arising out of the sale proceeds of last consignment of heroin. Sardool also informed him that he had already spoken to Jagga and that Jagga would take delivery of Rs.1,00,000/- from him. Sardool also informed him that the smaller pistol contained six live cartridges.

Sarabjeet Singh placed the bag containing the contraband in the rear boot of the car. Sardool went towards his blue colour 'Maruti Zen' car, which was parked nearby. Sarabjeet Singh, however, could not see its number. Thereafter, Sarabjeet Singh started back towards Delhi and on the way back, he picked up his driver Sandeep whom he had dropped on the road side before going to take delivery of the contraband. Sandeep had accompanied him right from Delhi to the point where he dropped him before going for taking delivery of contraband. Driver Sandeep did not know anything about the deal or the contraband that was collected. Sandeep was working as a driver with him for the last four months. He had nothing to do with smuggling of narcotics and other contraband items. Sarabjeet Singh further stated that near Doraha Toll barrier on Ludhiana-Delhi GT Road at about 11:00 p.m. their car was signalled to stop by some persons in plain clothes. Sandeep, who was driving the car, stopped the car. They were asked to reveal their identities. He disclosed his identity as Sarabjeet Singh and his driver also disclosed his identity as Sandeep. Thereafter, a search was conducted and the contraband was recovered.

The learned Judge, Special Court, Ludhiana, initially on 07.01.2008, charge-sheeted Sarabjeet Singh for the offences under Section 21 NDPS Act, Section 489-C IPC and Section 25 of the Arms Act. Thereafter, amended charge-sheet was framed on 07.02.2008 and it was alleged that Sarabjeet Singh on 20.04.2007 at about 10:45 p.m. in the area of G.T. Road, near Toll Barrier, Doraha was found in possession of 7.920 kgs of heroin without any licence or permit, which he was carrying in a 'Maruti Esteem' Car No. DL-9CD-8290 and he had thereby committed an offence punishable under Section 21 NDPS Act; besides, on the same date, time and place, he was in possession of fake (counterfeit) Indian currency notes to the tune of Rs.9.93 lacs knowing or having reason to believe the same to be forged or counterfeit and intending to use them as genuine and thereby committed an offence punishable under Section 489-C IPC; lastly, on the same date, time and place, he was found in possession of two pistols i.e. one pistol make 'Taurus' 6.35mm along with 6 cartridges and one pistol make 'NAA800' with two empty magazines and 40 live cartridges of the same bore and 9 cartridges of .25 bore without any permit or licence and thereby committed an offence punishable under Section 25 of the Arms Act. The contents of the charges were read over to Sarabjeet Singh and explained to him in simple Punjabi which he understood. He pleaded not guilty and claimed trial.

The prosecution, in order to establish its case, examined Sanjiv Kumar, Intelligence Officer, DRI Office, Ludhiana (PW1); Ashok Sharma, Superintendent, Central Excise Commissionerate, Service Tax Anti Evasion, Ludhiana (PW2); Paramjit Singh, Inspector Malkhana, Customs House, Amritsar (PW3); Ashwani Kumar Lau, Inspector, Service Tax, Department of Central Excise, IP State, New Delhi (PW4); Rohitash Pandey, Intelligence Officer, Directorate of Revenue Intelligence, DZU, New Delhi (PW5); Devinder Singh, Intelligence Officer, Directorate of Revenue Intelligence, DZU, New Delhi (PW6); Mukesh Gaur, Inspector, Central Excise, New Delhi (PW7); A.K. Sinha, Intelligence Officer, DRI Zonal Office, New Delhi (PW8); S.J.S. Chugh, Senior Intelligence Officer, DRI Office, Ludhiana (PW9); Roop Singh, Senior Intelligence Officer, DRI, DZU, New Delhi (PW10); Ramesh Chand, Havaldar, DRI, Ludhiana (PW11); HC Karnail Singh, Police Station Payal, Police District Khanna, District Ludhiana (PW12) and Pushapdeep Singh, Inspector, Customs, Attari Road, Amritsar (PW13). Darshan Singh, Rinku Singh, Manjit Singh and Gurdial Singh were given up by the learned Public Prosecutor being won over by the accused as informed by the investigating officer, besides Jagdish Sharan and L.M. Agarkar PWs were given up being unnecessary. Thereafter, the prosecution evidence was closed.

Statement of Sarabjeet Singh was recorded in terms of Section 313 of the Code of Criminal Procedure (‘Cr.P.C.’ - for short). Substance of the evidence appearing against him was put to him. In his defence, he stated that he had been falsely implicated in the present case. He was picked up by the officials of DRI from his house and, thereafter, he was implicated in this case as officials were inimical towards him. It is stated that a senior official of DRI at Delhi namely Anil Gupta and his wife were attacked by some persons on 14.03.2001. A case in this regard was registered at Police Station Dadri (U.P.) vide FIR No. 205 of 2001 for the offence under Section 307 IPC. Thereafter, the business partner of Sarabjeet Singh namely Gurmit Singh Sehgal was named in the said FIR and further he was also assassinated in a fake encounter case by the DRI officials. The DRI officials were suspecting his hand in the alleged murderous assault. In order to take revenge from him, this case had been registered against him. He had not suffered any voluntary confessional statement. He was forced to write so at the instance of DRI officials of Ludhiana at gun point by putting him in fear that if he showed his inability to write according to their wishes, then his whole family would be ruined. He moved an application in the Court during the remand proceedings at the earliest and the said application was part of the judicial file.

In defence, Sarabjeet Singh examined Mohinder Singh, Retired SI from Punjab Police (DW1). According to him (DW-1), FIR No. 89 dated 25.04.2007 (Ex. PW12/A) was registered at Police Station Payal for the offence under Sections 21, 23, 25, 28 and 29 NDPS Act, Section 489-C IPC and Section 25 of the Arms Act. Mohinder Singh (DW1) did not know the name of the complainant, who had got the FIR registered. In column No. 6 of the FIR (Ex. PW12/A), the name of complainant is mentioned as Dheeraj Rastogi. The case file was handed over for investigation to ASI Balkar Singh. The file was entrusted to him (Mohinder Singh - DW1) on 07.10.2007. It remained under his investigation up to 02.11.2007. He had seen the summoned file. The FIR was sent as untraced by SHO Gurmail Singh.

Amandeep Singh Sehgal (DW2) was also examined who stated that his father Gurmeet Singh Sehgal had business of import and export of electronic goods in the name and style of M/s G.M. Overseas Pvt. Limited. Sarabjeet Singh accused was a very close friend of his father and was a partner in the business. Their import and export business was regularly checked by the DRI officers in order to ascertain if there was any tax evasion or not. Twice the DRI officials had raided their office in this regard. It is stated that some unknown persons attacked the Deputy Commissioner of Customs/DRI and fired at Shri Anil Gupta IRS and his wife on 14.03.2001. In this regard, FIR No. 205 of 2001, under Section 307 IPC was registered at Police Station Sector 20, Noida/Gautam Budh Nagar. He had brought an attested copy of the same which was Ex. DW2/1. In the said case, his father namely Gurmeet Singh was arrayed as one of the accused. The list of the accused of the said FIR was Ex. DW2/2. The said case was pending against the father of Amandeep Singh Sehgal (DW2) at District Courts, Noida. In the meanwhile, his father was also murdered by some unknown persons. He got registered FIR No. 239 of 2001 at Police Station Vasant Kunj, District South West, Delhi. He (DW2) had an apprehension that the DRI officials had a hand in the said assassination (sic.- murder) of his father. He along with the accused Sarabjeet Singh released press notes and were raising voices against the DRI official namely Anil Kumar Gupta, the then Commissioner of Customs. Accused Sarabjeet Singh had been falsely implicated in this case being a close friend of his father and in order to snub him for raising voice against the illegal acts of the DRI officials for getting his father murdered. Sarabjeet Singh, it is stated, was innocent and had been falsely implicated. Mr. Anil Kumar Gupta was transferred to Punjab in 2004 and, thereafter, this false case was registered.

Original newspapers Mark DA to Mark DD and the application given in the remand proceedings Mark DAA were submitted.

The learned Judge, Special Court, Ludhiana considered the facts and circumstances of the case and held Sarabjeet Singh guilty of the offences punishable under Section 21 NDPS Act and Section 489-C IPC. He was, however, acquitted in respect of the offence under Section 25 of the Arms Act for want of sanction of the District Magistrate, Ludhiana. By a separate order, Sarabjeet Singh was sentenced to undergo rigorous imprisonment for a period of twelve years, besides, pay a fine of Rs.1,50,000/- (Rs. One lac and fifty thousand only) and in default of payment thereof, undergo rigorous imprisonment for a period of one year for the offence under Section 21 NDPS Act. He was also sentenced to rigorous imprisonment for a period of five years, besides, pay a fine of Rs.20,000/- (Rs. Twenty thousand only) and in default of payment thereof, undergo rigorous imprisonment for a period of six months for the offence under Section 489-C IPC. Both the sentences were ordered to run concurrently.

Sarabjeet Singh feeling aggrieved against his conviction and sentence has filed Criminal Appeal No. D-266-DB of 2011; while the Intelligence Officer, Directorate of Revenue Intelligence, Ludhiana, aggrieved against the acquittal of Sarabjeet Singh for the offence under the Arms Act has filed Criminal Appeal No. D-785-DB of 2011, *inter alia,* stating that Sarabjeet Singh committed an offence under Section 27 of the Arms Act for violation of Section 7 of the Arms Act and the learned trial Court erred in framing the charge for the offence under Section 25 of the Arms Act.

Mr. R.S. Rai, learned Senior Counsel appearing with Mr. D.S. Brar, Advocate, for Sarabjeet Singh - appellant in CRA No. D-266-DB of 2011 has submitted that there has been non-compliance with the provisions of Section 42 NDPS Act. It is submitted that the secret information received by the DRI officials was very specific including the details of even car number which was received initially by Roop Singh, Senior Intelligence Officer, DRI, DZU, New Delhi (PW10) at 10:00 a.m. on 20.04.2007. There was specific information and more than enough time of about twelve hours, even then no compliance to the provisions of Section 42 NDPS Act was done. This according to the learned Senior Counsel vitiates the entire prosecution case. It is further submitted that the investigating officer Sanjiv Kumar (PW1) did not obtain any search warrant; did not reduce the secret information into writing nor did he record his reasons to believe for which search was being done; he did not send a copy of the information reduced into writing to the senior officials within seventy-two hours; he passed on the information to the Joint Director - Dheeraj Rastogi, but he was neither cited as a witness nor was examined. It is submitted that there was no record as to how, i.e. by fax, by post, by phone call or by any messenger, the information was sent by Roop Singh, Senior Intelligence Officer, DRI, DZU, New Delhi (PW10) to Sanjiv Kumar, Intelligence Officer, DRI, Ludhiana (PW1). It is submitted that at a very late stage after a gap of two years in 2009 and after the cross-examination of Sanjiv Kumar, Intelligence Officer, DRI, Ludhiana (PW1) and Ashok Sharma, Superintendent, Central Excise Commissionerate, Service Tax Anti Evasion, Ludhiana (PW2), in order to fill the lacuna, the DRI filed an application under Section 311 Cr.P.C. to produce the typed secret information report prepared by Roop Singh, Senior Intelligence Officer, DRI, DZU, New Delhi (PW10). In any case, there was no time mentioned on the report. The secret information report bears signatures of Shri Dheeraj Rastogi, Joint Director, DRI, Ludhiana on 20.04.2007, but there was no mention as to how the document reached Ludhiana on 20.04.2007 and had the signatures of Dheeraj Rastogi. The prosecution had failed to explain how such a relevant document was produced after two years when it was in possession of the Joint Director, Ludhiana. The secret information contained the name of Ashok Sharma, Senior Intelligence Officer (PW2), but it did not bear his signatures. The said document did not bear the signatures of the investigating officer – Sanjiv Sharma, who had conducted the proceedings in the case. It is also submitted that the search was not done at a public place, but it was done at the office of DRI, Ludhiana, which was at a distance of 25 kilometres from the place of incident where the car was apprehended. This, according to learned Senior Counsel, was a total cover up operation so the plea of the prosecution that the accused stated that there was danger to his life was false and laced with ulterior motive of trapping Sarabjeet Singh in the false case due to past enmity. It is further submitted that no independent witness was examined. The two independent witnesses namely Darshan Singh and Rinku were not examined by the DRI officials. The plea of their being won over by the accused (Sarabjeet Singh) was baseless. It is submitted that there has been non-compliance to the provisions of Section 52-A NDPS Act. It is submitted that the owner of the vehicle and its driver were not detained, arrested or examined.

In response, Mr. D.D. Sharma, learned counsel appearing for the DRI submitted that the prosecution has established its case in every respect. The contentions as raised by learned Senior Counsel for Sarabjeet Singh it is submitted are devoid of any merit. It is submitted that there has been due compliance with statutory provisions of the NDPS Act, besides, the defect, even if any, that is pointed out is of no consequence and would not in any manner materially affect the prosecution case. Mr. Sharma has further submitted that the acquittal of Sarabjeet Singh for the offence under the Arms Act is erroneous. In fact, he was liable to be convicted under Section 27 of the Arms Act for violating Section 7 of the Arms Act. The learned trial Court erred in framing charge against Sarabjeet Singh for the offence under Section 25 of the Arms Act. He is, therefore, liable to be convicted and sentenced for the offence under Section 27 of the Arms Act also.

We have given our thoughtful consideration to the matter and with the assistance of learned counsel appearing for the parties perused the records of the case.

The prosecution case, as already noticed, is that Sarabjeet Singh was apprehended on the basis of specific information on 20.04.2007. A grey colour 'Esteem Maruti' Car in which Sarabjeet Singh was travelling was stopped and on search of the car, 7.920 kgs of heroin, two pistols, forty-six live cartridges, three mobile sim cards of Pakistan and Rs.9,93,000/- of fake Indian currency notes were recovered. Dheeraj

Rastogi, Joint Director, submitted an application dated 23.04.2007 in this regard to the Senior Superintendent of Police, Khanna. On the basis of said application, FIR No. 89 dated 25.04.2007 (Ex. PW12/A) was registered at Police Station Payal, District Ludhiana. The FIR in the said case has been treated as untraced. However, the Intelligence Officer, Directorate of Revenue Intelligence, Ludhiana, filed a complaint in the Court of learned Additional Sessions Judge-cum-Special Judge for cases under the NDPS Act at Ludhiana alleging commission of offences under Sections 21, 23, 25, 28 and 29 NDPS Act read with Section 489-C IPC, besides, Section 25 of the Arms Act and Section 125 of the Customs Act. On the basis of the same, charge-sheet was framed against Sarabjeet Singh for the offences under Section 21 NDPS Act, Section 489-C IPC and Section 25 of the Arms Act.

The contention as raised by learned Senior Counsel for appellant-Sarabjeet Singh that there has been non-compliance of Section 42 NDPS Act is devoid of merit.

Section 42 NDPS Act, which it is alleged has not been complied with provides for power of entry, search, seizure and arrest without warrant or authorization. It is provided that any officer as mentioned therein including that of the revenue intelligence if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under the NDPS Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegal acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizures or freezing or forfeiture under Chapter VA of the NDPS Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset carry out the acts as enumerated in clauses (a) to (d). Sub-section (2) of Section 42 NDPS Act enjoins that where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours sent a copy thereof to his immediate official superior. It is the said proviso of requiring the officer that the information which was to be taken down in writing had not been sent to the immediate official superior in compliance of Section 42 (2) NDPS Act.

Roop Singh, Senior Intelligence Officer, DRI, DZU, New Delhi (PW10) in fact has specifically deposed that he received special intelligence that a vehicle with registration No. DL-9CD-8290 with two occupants would be transporting the narcotic drugs, counterfeit currency and arms from Pathankot towards New Delhi via Ludhiana. The car would cross Doraha Toll Barrier at about 10:00 p.m. He (PW10) reduced into writing that intelligence report. He had seen the original intelligence report, which bears his signatures and it is Ex. POO. He put the report before the Additional Director, DRI, DZU, New Delhi for further necessary action. Therefore, it is established that the information received initially by Roop Singh, Intelligence Officer, New Delhi (PW10) was reduced into writing and his superior, i.e. the Additional Director, DRI, DZU, New Delhi was informed for further necessary action. In cross-examination, he (PW10) stated that he received the information at about 10:00 a.m. i.e. on 20.04.2007 from his own source which he could not disclose. The report was typed by him. After handing over the information to his senior officer, he did not know as to what action was taken. He had the instructions only to appear as a witness. His senior officer to whom he gave the information had the knowledge about his name and designation. He had no knowledge whether during the investigation it was incorporated in any of the document that the secret information was received by him. After he had submitted the information to his senior officer, no officer had called him about this. It is stated as incorrect to suggest that Ex. POO was prepared after cross-examination of Sanjiv Kumar, Intelligence Officer, DRI Office, Ludhiana (PW1) and Ashok Sharma, Superintendent, Central Excise Commissionerate, Service Tax, Anti Evasion, Ludhiana (PW2). It is also stated as incorrect to suggest that the report had been prepared just to fill lacuna in their case.

The report prepared by Roop Singh, Intelligence Officer, DRI, DZU, New Delhi (PW10) is Ex. POO and it mentions that the specific intelligence had been gathered that two persons travelling in a grey colour 'Maruti Esteem' car bearing No. DL-9CD-8290 would be transporting narcotic drugs, fake Indian currency and arms from Pathankot to New Delhi and the said car would cross Doraha Toll barrier on Ludhiana-New Delhi G.T. Road after 10:00 p.m. on 20.04.2007. The information was put up for necessary orders by Roop Singh, Senior Intelligence Officer (PW10).

The Joint Director, DRI, Delhi - Shri Sanjay Bansal, on 20.04.2007 itself, ordered that necessary arrangements may be made for keeping surveillance at the said barrier for interception. The case was marked to Ashok Sharma, Senior Intelligence Officer (PW2) to proceed urgently with the team and take necessary action, as discussed, on 20.04.2007 at about 07:00 p.m. A perusal of the intelligence report Ex. POO also shows that the report was prepared on 20.04.2007 and it was put up before the Joint Director, DRI, New Delhi - Shri Sanjay Bansal on the same day and the case was assigned to Ashok Sharma, Senior Intelligence Officer (PW2) on the same day, i.e. 20.04.2007. As such, it cannot be said that there has been any non-compliance with the provisions of Section 42 NDPS Act.

The further contention of learned Senior Counsel for Sarabjeet Singh is that the report was prepared after a gap of two years in the year 2009 and after the cross-examination of Sanjiv Kumar, Intelligence Officer, DRI, Ludhiana (PW1) and Ashok Sharma, Senior Intelligence Officer (PW2) is also devoid of any merit.

Sanjiv Kumar, Intelligence Officer, DRI, Ludhiana (PW1), in his cross-examination, stated that the intelligence report was received by his senior officer, i.e. Joint Director - Dheeraj Rastogi and Senior Intelligence Officer Shri A.K. Sharma (PW2). Intimation was passed on to him orally at about 08:00 p.m. on 20.04.2007. Later, he received that secret information in writing. It was received after filing of the complaint. Therefore, the contention of the learned Senior Counsel that the intelligence report Ex. POO as to how it reached Ludhiana is without basis as Sanjiv Kumar, Intelligence Officer, DRI, Ludhiana (PW1) has stated that intimation was passed on to him orally at about 08:00 p.m. on 20.04.2007 and later he received the secret information in writing, which though was received after filing of the complaint. It is to be noticed that

Dheeraj Rastogi, on the intelligence report Ex. POO, has put the date as 20.04.2007 and the time as 19.00 hours.

Ashok Sharma (PW2), who was then posted as Senior Intelligence Officer at DRI, Ludhiana, on 20.04.2007, was also cross-examined. It is stated that since he was appearing for the first time in Court, he was stating for the first time in Court that the Joint Director had shared information with him. He did not get recorded any document with the investigating officer about the information received by him from the Joint Director. However, he had shared the information with the members of the team. He was called by the Joint Director at about 07:00 p.m. After having the information from the Joint Director, he did not prepare any document with regard to the information received by him as it was not required. Therefore, the cross-examination of Sanjiv Kumar, Intelligence Officer (PW1) and Ashok Sharma, Senior Intelligence Officer (PW2) does not in any manner indicate that there was non-compliance of the provisions of Section 42 NDPS Act. Besides, it is to be noticed that it has come in evidence that Dheeraj Rastogi, Joint Director was also given the information about the intelligence report received regarding the smuggling activities.

Necessary information of the intelligence report, which was recorded vide Ex. POO on 20.04.2007 in the circumstances was given to the Joint Director, DRI namely Shri Sanjay Bansal on 20.04.2007 itself, which is evident from the intelligence report Ex. POO. Moreover, Ashok Sharma, Senior Intelligence Officer (PW2) was asked to proceed urgently with his team and take necessary action, as has been referred to above. Therefore, there is complete compliance with the provisions of Section 42

NDPS Act and there is no reason to hold that the prosecution case is vitiated for want of necessary compliance of Section 42 NDPS Act.

The other contention of the learned Senior Counsel for Sarabjeet Singh is that the search was not done at a public place where the car was apprehended, but it was done at the office of DRI, Ludhiana, which was at a distance of 25 kilometres from the place where the car had been apprehended. Therefore, according to the learned Senior Counsel this was a total cover up operation and the plea of the prosecution that the accused (Sarabjeet Singh) stated that there was danger to his life was false and laced with ulterior motive of trapping Sarabjeet Singh in the false case due to past enmity.

In this regard, it may be noticed that the car in question in which Sarabjeet Singh was carrying the contraband as also the fake Indian currency notes, besides, arms and ammunition had been apprehended on the Ludhiana-New Delhi G.T. Road near Doraha Toll Barrier. The search of the car was to be conducted there. However, according to the prosecution, Sarabjeet Singh himself requested that the search be conducted away from the public place as his life was in danger. In the said circumstances, the car was taken to the DRI office at Ludhiana, which is stated to be about 25 kilometers away from the place where the car was apprehended. The possibility of the life of Sarabjeet Singh being in danger cannot be ruled out as persons indulging in smuggling activities always have their enemies and they live in fear of being eliminated. Even otherwise, for the search of the car to be conducted at the DRI office at Ludhiana has not resulted in any prejudice to Sarabjeet Singh. It is to be noticed that it is not the case of Sarabjeet Singh that the contraband, the fake Indian currency notes as also arms and ammunition had been planted on him. The same were indeed recovered from the car in which he was travelling. This recovery was in consequence of information which the DRI already had. The plea of the search being vitiated on the ground that it was not conducted at the public place where the car was apprehended could have also been raised in respect of the search being conducted in a public place even. As such, no prejudice can be said to have been caused to Sarabjeet Singh in case the search of the car in which he was travelling was conducted at the DRI office at Ludhiana and not at the place where the car was apprehended.

The prosecution evidence shows that Sanjiv Sharma, Intelligence Officer, DRI Office, Ludhiana (PW1) had set up a check post on the G.T. Road. He was present there along with SIO A.K. Sharma (PW2), IO Pushapdeep Singh (PW13), IO R.P. Singh, Driver Kashmir Singh and HC Ramesh Chand. Two private witnesses namely Darshan Singh and Rinku were also called. The car in question was apprehended at about 11:30 p.m. on 20.04.2007. He (PW1) has specifically stated that Sarabjeet Singh had requested that he was carrying high value contraband and there was danger to his life and his search be conducted at a safer place. There is no reason to doubt the said statement of Sanjiv Kumar, Intelligence Officer (PW1) as carrying such a heavy quantity of contraband does result in danger to those who are carrying it from others. The car was taken to the DRI office at Sarabha Nagar, Ludhiana and a search was conducted. The DRI office at Ludhiana was indeed a safe place where the accused as also the DRI officials could carry out the search without fear or danger from others. The case property and set of samples that were collected were deposited by Pushapdeep Singh IO (PW13) with the 'Malkhana', Customs, Amritsar vide receipts Ex. PM and Ex. PM/1. Intimation of arrest of Sarabjeet Singh was given to his wife, vide memo Ex. PN, who had come to the Court when the accused was produced. The second set of the contraband samples were given to HC Rajesh on 23.04.2007 for depositing the same with CRCL, New Delhi by a letter (Ex. PO), duly signed by A.K. Sharma, SIO (PW2). The test memo was Ex. PP having the seal of 'DRI' with signatures. The reports of CRCL were received in the office, which were Ex. PQ and Ex. PQ/1.

Paramjit Singh, Inspector 'Malkhana', Customs House, Amritsar (PW3) had brought the 'Malkhana' register regarding the case property of the case of Sarabjeet Singh. The case property was deposited in the 'Malkhana' on 23.04.2007 vide entry No. N6/2007. As per inventory the detail of the case property was given in Ex. PM. The case property was got authenticated from the Judicial Magistrate 1st Class, Amritsar. He (PW3) had brought the second samples deposited in the 'Malkhana', which were Ex. P60 to Ex. P67. This entry was made by Sadhu Singh, the then Inspector/In-charge, 'Malkhana', Customs House, Amritsar. In cross-examination, it is stated that in the register some of the pages were lying blank and the pages had not been crossed and these could be used. It is also stated that there was overwriting in the entry of fake currency notes. The writing had been made after using a white fluid. Photostat copy of the entry was Ex. DA. It is stated as correct that the entry dated 07.09.2007 bears the signatures of Sanjiv Sharma. It is also stated that there is overwriting on the weight of heroin, which is not initialed. He had no personal knowledge of the entries. It is also stated as correct that whenever the case property is taken out of the 'Malkhana', signatures of the official who takes the case property are taken on the register. The ink of entries No. 5 and 6 is in different handwriting than the entries at serial No. 1 to 4. It is stated as incorrect to suggest that the register had been tampered from time to time. The seal of the DRI it is stated was not deposited in the 'Malkhana'.

The 'Malkhana' register from the cross-examination of Paramjit Singh, Inspector 'Malkhana' (PW3) shows that the same is not being maintained in the manner it should be maintained. However, with regard to the samples that have been taken in the present case, there is nothing to suggest that these were tampered with, besides, letter dated 23.04.2007 (Ex. PO) was written by A.K. Sharma, Senior Intelligence Officer (PW2) to the Chemical Examiner, Central Revenue Control Laboratory, New Delhi mentioning that the Unit effected a seizure of 7.920 kgs of off-white granule/powder on 21.04.2007 from Sarabjeet Singh. Seven representative samples marked as 'A2', 'B2', 'C2', 'D2', 'E2', 'F2' and 'G2' drawn from the seized off-white granule/powder put in transparent press lock polythene envelopes and sealed in white paper envelope (sealed at three place) was being sent along with its test memo (in duplicate) through Shri Ramesh Chand, Havaldar whose signatures were attested, for chemical examination/test by the laboratory of Chemical Examiner, Central Revenue Control Laboratory, New Delhi. It is further stated that the samples were exhibited before the Court of learned Chief Judicial Magistrate, Ludhiana on 23.04.2007 and he authenticated the same on the envelope itself. A request was made to test the samples immediately and send a report.

The Chemical Examiner's report (Ex. PQ), which relates to present case, mentions that each of the seven samples were positive for DAI (Digestyl Morphine and Heroin), besides, each of the seven samples were in the form of cream coloured small lumps and coarse powder. The detail of the gross weight in gms with polypack of the heroin contained in the seven samples has been given in the report Ex. PQ/1.

Ashwani Kumar Lau, Inspector (PW4) was working as Intelligence Officer, DRI Zonal Office, Delhi on 21.04.2007. On that day, his senior officer V.P. Singh, Assistant Director, directed him to conduct a search of the house premises of Sarabjeet Singh. Search was accordingly conducted by him (PW4). During search, an amount of Rs.3,90,000/- of Indian currency was found in an almirah from the bedroom of Sarabjeet Singh. There were three vehicles at his house. From the search of the vehicles, nine live cartridges and currency notes were recovered from a 'Santro' car. He did not remember the number of the 'Santro' car. The said car along with its documents was seized. The statement of Khushwinderpreet Kaur wife of Sarabjeet Singh was recorded under Section 67 NDPS Act. In cross-examination, it is stated that he had not gone to the police station in which that area fell to record any DDR with regard to search of the house of the accused.

Rohitash Pandey, Intelligence Officer (PW5), on 21.04.2007, accompanied the Intelligence Officer Ashwani Kumar Lau (PW4) to the house of Sarabjeet Singh. He has deposed on the same lines as Ashwani Kumar Lau (PW4).

Devinder Singh, Intelligence Officer, Directorate of Revenue Intelligence, DZU, New Delhi (PW6) was also examined. He (PW6) stated that he was working as Intelligence Officer, DRI Zonal Office, Delhi on 09.05.2007. On the said day, he (PW6) had called for Jaswinder Singh @ Jassi son of Harpal Singh. The latter suffered a statement before him (PW6) under Section 67 NDPS Act. The statement of Jaswinder Singh was recorded in his (PW6's) presence, which bears his signatures. His signatures and the statement was Ex. PGG. Balwinder Singh @ Ruby son of Ranjit Singh was also called in his (PW6's) office. He suffered a statement before him (PW6) under Section 67 NDPS Act. The statement of Baljinder Singh was recorded in his (PW6's) presence, which bears his signatures. His signatures and the statement was Ex. PHH. Sanjay Aneja son of Kamal Kishan Aneja was also called in his (PW6's) office on 22.05.2007. He suffered a statement before him (PW6) under Section 67 NDPS Act. The statement of Sanjay Aneja was recorded in his (PW6's) presence, which bears his signatures. His signatures and the statement was Ex. PJJ. All of them were informed that the statements that they were making could be used against them and against the persons involved in the case in a Court of law. Investigations were conducted by him at New Delhi. In cross-examination, it is stated that he (PW6) had been given oral instructions to conduct investigations in this case. They had issued summons under Section 67 NDPS Act. The said summons issued to the witnesses were in his office file. These were not on the judicial file. The statements of the witnesses were not verified by independent persons. No independent witness was called for in his office at the time of recording the statements under Section 67 NDPS Act. After recording the statements, he had sent the same to his Senior Intelligence Officer. He did not remember his name then. The statements were not sealed. He did not recommend for any action against any person.

Jaswinder Singh @ Jassi in his statement Ex. PGG stated that he had no relations with Sarabjeet Singh except regarding sale of 'Maruti Esteem' car No. DL9CD-8290. Besides, he only knew that he was a resident of Rajouri Garden. He had never visited his residence.

Baljinder Singh @ Ruby, in his statement Ex. PHH, states that Jaswinder Singh @ Jassi was his school friend and at present they were family friends. In the year 2002, he in partnership with Jaswinder Singh @ Jassi, had started the work of sale-purchase of vehicles. He stated that he had been shown the statement dated 23.04.2007 of Gurwinder Singh by the DRI office which was running into four pages. He stated that he came in contact with Gurwinder Singh through one of his friends namely Barinder Pal Singh, who was the owner of trucks' spare parts in Mangal Puri, Industrial Area, New Delhi. It is stated that Gurwinder Singh had told him that a 'Maruti Esteem' car No. DL9CD-8290 was in the name of his brother Kanwaljeet Singh and it was given by his brother to one Sanjay, who was unable to pay the instalments of the car and the bank people were visiting his house for this purpose. He (Baljinder Singh @ Ruby) and Jaswinder Singh @ Jassi proposed to Gurwinder Singh that they could purchase the car from Sanjay by giving some money to him and they would pay the money to the bank also for the settlement. After reaching at an understanding, they paid Rs.20,000/- to Sanjay and took the car in their possession. Out of Rs.20,000/-, Rs.15,000/- were paid by him (Baljinder Singh @ Ruby) and Jaswinder Singh @ Jassi to Sanjay while Rs.5,000/- were paid by Gurwinder Singh. No document was prepared for the said transaction. One day, Jaswinder Singh @ Jassi received a telephone call from Sarabjeet Singh (convict) on his mobile phone and he asked for a car with low mileage. This was told to him (Baljinder Singh @ Ruby) by Jaswinder Singh @ Jassi. After two days, Sarabjeet Singh visited M/s Ganpati Motors. The particulars of the car were informed to Sarabjeet Singh (convict) and he after seeing the car asked the price. Jaswinder Singh @ Jassi told him that they would take Rs.1,00,000/- for the car. Sarabjeet Singh was also informed about the pending payment of the HDFC Bank. Sarabjeet Singh (convict) then took the car and his own car was given to the driver. Then Sarabjeet Singh (convict) informed Jaswinder Singh @ Jassi after two days that the engine of the car was very weak as it was being run on LPG. He asked Jaswinder Singh @ Jassi to take the car back as was informed by Jaswinder Singh @ Jassi to him (Baljinder Singh @ Ruby). Jaswinder Singh @ Jassi was informed by Sarabjeet Singh that the car was out of Delhi at that time and he would send it back. When the car was not returned by Sarabjeet Singh, Gurwinder Singh informed them on mobile phone that the car had been apprehended and contraband were recovered from it and this fact also came to their knowledge through newspapers. They did not prepare any document against the delivery of the car to Sarabjeet Singh. They handed over the car to Sarabjeet Singh in good faith.

Sanjay Aneja, in his statement Ex. PJJ, stated that he had seen the statement dated 23.04.2007 of Gurwinder Singh running into four pages recorded under Section 67 NDPS Act. It is stated that he knew Kanwaljeet Singh from childhood as he was his (Sanjay Aneja's) neighbour. A 'Maruti Esteem' car with registration No. DL9CD-8290 was purchased by

Kanwaljeet Singh himself in his own name in the year 2004. He told him that he would park the car on the road below his residence. If anybody would ask him (Sanjay Aneja) about the car, he would inform that person that the car was got financed by him in the name of Kanwaljeet Singh from HDFC Bank. Kanwaljeet Singh went to Ireland in 2006. He (Sanjay Aneja) was not aware as to whom he had handed over the bags (sic.- handed over the car). The 'Maruti Esteem' car with registration No. DL9CD-8290 was seized by the DRI officials at Ludhiana on 20.04.2007 along with fake Indian currency, narcotic drugs, two pistols etc. At that time, the car was driven by Sandeep Tondak, who was not known to him.

The said statements Ex. PGG, Ex. PHH and Ex. PJJ go to show that the car in which the narcotic contraband substance was being carried was in the name of Kanwaljeet Singh and it was in possession of Sarabjeet Singh (convict) at the time when it was apprehended. In the circumstances, the contention of learned Senior Counsel for Sarabjeet Singh that the owner of the vehicle and the driver were not detained/arrested, examined or cross-examined is clearly not tenable. The driver – Sandeep Tondak was unaware of the contraband, as he was left at some distance when Sarabjeet Singh went to get the contraband. The owner of the car – Kanwaljeet Singh had given the car through others to Sarabjeet Singh. It was Sarabjeet Singh alone who was in conscious possession and custody of the car. Therefore, the prosecution has clearly explained the circumstances and the driver of the car not being detained, arrested or examined is absolutely inconsequential.

Mukesh Gaur, Inspector, Central Excise, New Delhi (PW7) was working as Intelligence Officer, DRI Zonal Office, Delhi on

21.04.2007. He conducted search of the house of Sandeep Tondak, driver of the 'Esteem' car of Sarabjeet Singh. Statement of Sudesh wife of Sandeep Kumar Tondak was recorded under Section 67 NDPS Act, which was explained to her.

A.K. Sinha, Intelligence Officer, DRI Zonal Office, New Delhi (PW8) was working as Intelligence Officer, DRI Zonal Office, Delhi on 21.04.2007. On that day, he was directed to conduct house search of Kamaljit Singh. Nothing incriminating was recovered from his house.

S.J.S. Chugh, Senior Intelligence Officer, DRI Office, Ludhiana (PW9) was posted as Senior Intelligence Officer, DRI, Ludhiana on 31.07.2007. As per order of Special Judge, Ludhiana, permission was granted vide order dated 15.06.2007 (sic. 07.06.2007) (Ex. PJJ) (sic. Ex. PKK) permitting the investigating officer to join accused Sarabjeet Singh in the jail premises and to record his statement. In fact, an application had been filed by the prosecution mentioning that Sarabjeet Singh was arrested on 21.04.2007 and 7.920 kgs of heroin was recovered from him. On the same day, another party of the complainant department searched the house of Sarabjeet Singh at Delhi. From a 'Santro' car, Rs.3,90,000/- in Indian currency, besides, nine live cartridges of 2.5mm were recovered. Therefore, the accused Sarabjeet Singh was to be joined in the investigation in order to interrogate him regarding the subsequent recovery. S.J.S. Chugh (PW9) went to the jail on 31.07.2007 to record the statement of Sarabjeet Singh. Before recording his statement notice under Section 67 NDPS Act and provisions of Section 108 of the Customs Act were informed to him to the effect that his statement could be used against him in any Court of law. The accused Sarabjeet Singh then recorded his statement in his own handwriting in the presence of S.P. Khanna, Deputy Superintendent, Central Jail, Ludhiana. The statement bears the signatures of S.J.S. Chugh (PW9) as well as accused and S.P. Khanna, Deputy Superintendent, Central Jail, Ludhiana, which is Ex. PNN. In cross-examination, it is stated that warning was not given to the accused by him in writing. He did not record the statement of Deputy Superintendent, Central Jail, Ludhiana in this regard. In view of the orders passed by the Court, an application was given to the Superintendent, Central Jail, Ludhiana. Its copy was retained, which was not on the file. He had no knowledge whether wife of the accused had given a telegram to the Supreme Court, High Court and Chief Minister, Punjab that the DRI was compelling Sarabjeet Singh to make some statement. He had no knowledge whether the accused had given any application in the Court of learned Special Judge that his statement had been obtained from him under compelling circumstances.

Roop Singh, Senior Intelligence Officer, DRI, DZU, New Delhi (PW10) was posted as Senior Intelligence Officer, DRI, DZU, New Delhi on 20.04.2007. He received special intelligence that a vehicle with registration No. DL9CD-8290 with two occupants would be transporting the narcotic drugs, counterfeit currency and arms from Pathankot towards New Delhi via Ludhiana. The car would cross Doraha Toll Barrier at about 10:00 p.m. He reduced into writing that intelligence report, which was Ex. POO. He put it before the Additional Director, DRI, DZU, New Delhi for further necessary action. In cross-examination, he stated that he received the information at about 10:00 a.m. from his own source which he could not disclose. The report was typed by him. His statement was not recorded by the I.O. during investigation. After handing over this information to his senior officers, he did not know as to what action was taken by them.

Ramesh Chand, Havaldar, DRI, Ludhiana (PW11) stated that he was posted as Havaldar at DRI Office, Ludhiana on 23.04.2007. On that day, A.K. Sharma, Senior Intelligence Officer (PW2) handed over to him eight samples along with a letter to deposit the same at CFCL, New Delhi. He took the said samples to the laboratory and deposited the same in intact condition on 24.04.2007 and receipt regarding deposit of the same was Ex. PQQ. In terms of the receipt Ex. PQQ, in fact, seven samples marked as ‘A2’, ‘B2’, ‘C2’, ‘D2’, ‘E2’, ‘F2’ and ‘G2’ were deposited. It appears that mentioning of eight samples is only a slip and does not in any manner affect the prosecution case as the prosecution case has throughout been that seven samples were taken. In cross-examination, it is stated that no affidavit had been taken by the investigating officer that he had taken the samples to deposit them with CFCL. He gave his statement for the first time on the basis of the receipt. It is stated as incorrect to suggest that stamp on Ex. PQQ was not legible. His signatures were not taken by the Incharge, Laboratory while depositing the samples with him. His signatures were not taken by the I.O. after deposit of samples on production of the receipt. He had travelled by bus. He had taken the bill and had not preserved the ticket of the bus. He had no record about the travelling. It is stated as incorrect to suggest that receipt had been prepared later on and then placed on the record.

HC Karnail Singh (PW12) brought the summoned record pertaining to FIR No. 89 dated 25.04.2007, under Section 489-C IPC, Section 25 of the Arms Act, besides, Sections 21, 23, 25, 28 and 29 NDPS

Act and Section 135 of the Customs Act. The FIR, it is stated, was got registered by Dheeraj Rastogi, Joint Director, DRI, Ludhiana against Sarabjeet Singh and Sandeep Tondak. Cancellation report was moved in the case. He had seen the copy of the FIR on the record, which was Ex. P12/A, which was correct. In cross-examination, it is stated that the cancellation report was prepared in the FIR on 31.03.2008. The name of the officer under those order the cancellation report was forwarded was not mentioned. There was no reference of any Court by which it was accepted. It is stated as incorrect to suggest that the full information had been withheld by Police Station Payal, District Ludhiana.

Pushapdeep Singh, Inspector, Customs, Attari Road, Amritsar (PW13) stated that he was posted as Intelligence Officer, DRI Office, Ludhiana on 20.04.2007. On that day, he along with Sanjiv Sharma, IO (PW1); Ashok Sharma, SIO (PW2) and other officials set up a check post before Doraha Toll Barrier at 10:45 p.m. towards Ludhiana side. They intercepted a 'Maruti Esteem' car with registration No. DL9CD-8290 at about 11:30 p.m. It was being driven by a Hindu gentleman and a Sikh gentleman was sitting in it who disclosed his name as Sarabjeet Singh. He was present in Court and he identified him. They disclosed their identity and notice under Section 50 NDPS Act was served by Sanjiv Sharma, IO (PW1). The accused admitted about the contraband in the vehicle in the presence of private witnesses, who were joined at the spot. At the request of accused, their search was conducted at a safer place and they were taken to DRI office. After that, he (PW13) was deputed to do some other work. Sanjiv Sharma, IO (PW1) on 23.04.2007, handed over to him (PW13) the case property along with inventory to deposit it in the Custom House

'Malkhana', Amritsar. He (PW13) deposited the same under his signatures at the said 'Malkhana' on the said date. He had seen the inventory Ex. PM and Ex. PM/1 which bears his signatures as well as the signatures of the officer, who received the case property. Inventory Ex. PM was received by Sadhu Singh, In-charge, 'Malkhana' and the arms were received by Inspector, Headquarter, In-charge of Arms of Custom Department. The case property was deposited by him in intact condition. The same was not tampered with till it remained in his possession. He was cross-examined at considerable length. However, nothing could be brought out which could in any manner favour Sarabjeet Singh or dislodge the prosecution case.

In the circumstances, the contentions of learned Senior Counsel for Sarabjeet Singh in support of his case are not of much significance. Roop Singh, Senior Intelligence Officer, DRI, DZU, New Delhi (PW10) received special intelligence that a vehicle with registration No. DL9CD-8290 with two occupants would be transporting narcotic drugs, counterfeit currency and arms from Pathankot towards New Delhi via Ludhiana and that car would cross Doraha Toll Barrier at about 10:00 p.m. The said information was reduced into writing by Roop Singh, Senior Intelligence Officer (PW10). The information is Ex. POO. This was put up before the Additional Director, DRI, DZU, New Delhi for further necessary action.

The contention of learned Senior Counsel for Sarabjeet Singh that after a gap of two years and after cross-examination of Sanjiv Kumar, Intelligence Officer (PW1) and Ashok Sharma, Senior Intelligence Officer (PW2), an application under Section 311 Cr.P.C. was filed to produce the typed secret information report prepared by Roop Singh, SIO (PW10) on

20.04.2007 is inconsequential, as the intelligence report Ex. POO shows that it was prepared on 20.04.2007 and was put up before the Joint Director on the same day. There is an endorsement of the Joint Director to the effect that necessary arrangements may please be made for keeping surveillance at the said barrier for the interception. The case was marked to Ashok Sharma, Senior Intelligence Officer (PW2) to proceed urgently with his team and take necessary action as had been discussed. All the endorsements are of 20.04.2007 and it being an official record cannot be said to have been prepared subsequently by the officers of the DRI. The non-mentioning of time in the report is also inconsequential as Roop Singh, Senior Intelligence Officer (PW10) has deposed in his cross-examination that he received the information at about 10:00 a.m. from his own source. It is thereafter and before preparation for making interception of the 'Maruti Esteem' car carrying the contraband was made the report was put up before the Additional Director, DRI, DZU, New Delhi. The Joint Director, DRI, namely Shri Sanjay Bansal made an endorsement on 20.04.2007 on the intelligence report (Ex. POO). It is marked by Shri Sanjay Bansal, Joint Director, DRI to Ashok Sharma, SIO (PW2). Ashok Sharma, Senior Intelligence Officer (PW2) in his deposition states that on 20.04.2007, he received information from the Joint Director, Ludhiana that two persons would be coming in a 'Maruti Esteem' car. Since check post was set up at Doraha within the area of DRI, Ludhiana, the Joint Director, DRI, Ludhiana received the information from New Delhi. The fact that the intelligence report (Ex. POO) does not contain the signatures of Ashok Sharma, Senior Intelligence Officer (PW2) is also inconsequential, as it was only an information and a check post was set up to intercept the

'Maruti Esteem' car carrying the contraband. The fact that it does not bear the signatures of Sanjiv Kumar, Intelligence Officer (PW1) is also of no significance as he apprehended the car.

The contention of learned Senior Counsel for Sarabjeet Singh that independent witnesses namely Darshan Singh and Rinku were not examined being won over by the accused is also of not much significance, as independent witnesses usually do not support the prosecution case for coming on the wrong side of those who are dealing with and indulging in smuggling activities including drugs.

It is to be noticed that the recovery was affected from the car in which Sarabjeet Singh was travelling. There is a presumption in terms of Section 54 NDPS Act regarding the possession of illicit articles, it is provided that in trials under the NDPS Act, it may be presumed, unless and until the contrary is proved, that the accused had committed an offence under the NDPS Act in respect of any narcotic drugs or psychotropic substance etc. for the possession of which he fails to account satisfactorily.

A Division Bench of this Court in **State of Punjab versus Jia Ram and others, 2013 (3) RCR (Criminal) 148**, considered a case where opium was recovered from the search of a jeep when the DSP, a gazetted officer, was already there. He was present even when personal search of the respondent in the said case was conducted. The accused only were travelling in the jeep from which the contraband was recovered. It was held that it is highly arduous to hold that they were unaware or could not spot the bulk opium lying in the jeep. Conscious possession of the accused in respect of the opium that was recovered was held to be established and they were unable to rebut the presumption under Section 35 NDPS Act and they were liable to be convicted.

In the present case as well, Sarabjeet Singh has not been able to establish as to how he was in possession of the contraband, counterfeit currency notes as also the arms and ammunition that were recovered. Therefore, in terms of Section 35 NDPS Act, there is a presumption of culpable mental state of the contraband, counterfeit currency notes as also the arms and ammunition that were recovered. The Court is, therefore, to presume the existence of such mental state in terms of Section 35 NDPS Act although it is a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution, which Sarabjeet Singh has not stated. In terms of explanation to Section 35 NDPS Act, it is provided in the said section that "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact. In terms of sub-section (2) of Section 35 NDPS Act, it is provided that for the purpose of this section, i.e. Section 35, a fact is said to be proved only when its existence is established by a preponderance of probability. The recovery of contraband of heroin, counterfeit currency notes as also the arms and ammunition is indeed established which accused Sarabjeet Singh failed to account for. Therefore, a presumption is liable to be drawn against him.

In the circumstances, there is no merit in the appeal filed by Sarabjeet Singh.

As regards the appeal i.e. CRA No. D-785-DB of 2011 filed by the Intelligence Officer, Directorate of Revenue Intelligence, Mr. D.D. Sharma, Advocate, appearing for the DRI submits that the charge framed against Sarabjeet Singh for the offence under Section 25 of the Arms Act was erroneous and, in fact, he was liable to be convicted for the offence under Section 27 of the Arms Act for violating Section 7 of the said Act.

The same in fact is of not much significance, as the learned trial Court has acquitted Sarabjeet Singh of the offence under Section 25 of the Arms Act for want of sanction of the District Magistrate. Section 39 of the Arms Act enjoins previous sanction of the District Magistrate to be necessary in certain cases. It is provided that no prosecution shall be instituted against any person in respect of any offence under Section 3 without previous sanction of the District Magistrate. Section 7 of the Arms Act relates to prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition. It is provided that no person shall acquire, have in his possession or carry; or use, manufacture, sell, transfer, convert, repair, test or prove; or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof; any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government. Sarabjeet Singh, it is stated, was in possession and carrying prohibited arms. Section 27 of the Arms Act provides for punishment for using arms etc. Sub-section (2) of Section 27 thereof envisages that whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and shall also be liable to fine. The 'Schedule' of the Arms Act classifies the arms into the category of 'prohibited arms' including artillery anti-aircraft and anti-tank firearms and arms can be considered prohibited arms when it falls within the ambit of

Section 2 (1) (i) of the Arms Act, which defines ‘prohibited arms’ to mean firearms so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, or weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing, and includes artillery, anti-aircraft and anti-tank firearms and such other arms as the Central Government may, by notification in the official gazette, specify to be prohibited arms.

Sarabjeet Singh was charged with possession of two pistols, i.e. one pistol make ‘Taurus’ 6.35 mm along with six cartridges and one pistol make ‘NAA800’ with two empty magazines of .25 bore without any permit or licence. It was, therefore, alleged that he had committed an offence under Section 25 of the Arms Act.

It has not been shown by the prosecution that the said weapons fall within the ambit of prohibited arms as defined in Section 2 (1) (i) of the Arms Act a reference to which has been made above. In other words, it is not shown that the firearms recovered were so designed or adapted that, if pressure is applied to the trigger, missiles would continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty. No evidence has been led in this regard and, therefore, it is difficult to hold that the pistol make ‘Taurus’ 6.35 mm and pistol make ‘NAA800’ were ‘prohibited’ arms, which would violate Section 7 of the Arms Act and consequentially make the accused liable for punishment under Section 27 of the Arms Act.

In the circumstances, no fault can be found with the judgment passed by the learned trial Court in acquitting Sarabjeet Singh for the offence under Section 25 of the Arms Act for want of sanction, which is required in terms of Section 39 of the said Act.

In **Vijender v. State of Delhi (1997) 6 SCC 171**, it was held that the conviction of the appellant in the said case for the offence under Section 25 of the Arms Act must fail for the simple reason that no previous sanction for such prosecution as required under Section 39 of the Arms Act was produced during trial.

Mr. R.S. Rai, learned Senior Counsel for Sarabjeet Singh has lastly contended that in any case the sentence of imprisonment of Sarabjeet Singh is liable to be reduced to the period already undergone by him. It is submitted that Sarabjeet Singh is in custody for the last more than eight years and has been living peacefully with good conduct while in custody. He has availed parole on four occasions and has never misused the same and always surrendered peacefully.

The said contention of learned Senior Counsel for Sarabjeet Singh has merit. Sarabjeet Singh has undergone substantial period of sentence of imprisonment out of the sentence of twelve years that was imposed. In the facts and circumstances, it would be just and expedient to reduce the sentence of imprisonment to actual sentence of ten years. Keeping in view the provisions of Section 32-A NDPS Act which provides for no suspension, remission or commutation in any sentence awarded by the Court, it would be just and expedient, in the facts and circumstances of the case, to reduce the period of sentence to ten years actual imprisonment.

Accordingly, both the appeals are dismissed. However, the sentence of imprisonment of Sarabjeet Singh is reduced from twelve years to ten years actual imprisonment; besides, pay a fine of Rs.1,50,000/- (Rs.

One lac and fifty thousand only) as ordered by the learned trial Court and in default of payment thereof, undergo rigorous imprisonment for a period of one year for the offence under Section 21 NDPS Act. The sentence of five years and a fine of Rs.20,000/- (Rs. Twenty thousand only) and in default of payment thereof, for a period of six months for the offence under Section 489-C IPC is upheld and shall remain intact. Both the sentences run concurrently.

(S.S. SARON)
JUDGE

(P.B. BAJANTHRI)
JUDGE

14.08.2015
Ramesh/amit

Note:- Whether to be referred to reporter : Yes