

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CRA-S-2292-SB of 2004
Date of decision : 04.12.2015**

Ravinder Kumar

..... Appellant

Versus

State of Punjab

..... Respondent

AND

**CRA-S-2464-SB of 2004
Date of decision : 04.12.2015**

Vijay Kumar @ Vijay Sidhu

..... Appellant

Versus

State of Punjab

..... Respondent

AND

**CRA-S-264-SB of 2010
Date of decision :04.12.2015**

Joga Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Abhey Sharma, Advocate with
Mr. Manish Dadwal, Advocate
for the appellant. (in CRA-S-2292-SB of 2004)

Ms. Aditi Girdhar, Advocate
Legal Aid Counsel,
for the appellant (in CRA-S-2464-SB of 2004)

Mr. B.D.Sharma, Advocate
for the appellant (in CRA-S-264-SB of 2010)

Mr. R.S.Randhawa, Addl.AG, Punjab.

1. **Whether Reporters of local papers may be allowed to see the judgement?Yes**
2. **To be referred to the Reporters or not?Yes**
3. **Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

1. This judgment of mine shall dispose of all the three appeals mentioned above which have arisen out of the same judgment of conviction dated 01.11.2004, vide which accused-appellants have been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'Act') and the order on the quantum of sentence dated 02.11.2004, vide which the appellants were sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. One lac each, in default of payment of fine they were further ordered to undergo rigorous imprisonment for a period of 1 ½ years each.

2. The sequence of the events leading to this prosecution are that on 10.08.2002, PW-6 SI Kulwant Singh along with PW-8 ASI Manjit Singh and other police officials was present at village Sangatpur in-connection with patrolling and checking of bad elements. He received secret information that appellant Ravinder Kumar along with Vijay Kumar @ Vijay Sidhu, Joga Singh and 3-4 persons were coming in Mahindra Pickup Jeep bearing registration No. HP-55-3014 from the side of village Mand Punnian and going to sell the poppy husk in large quantity to the customers and if a raid is conducted they can be apprehended. Finding this information credible, Jagjit Singh was associated as an independent witness in the police party. The Investigating Officer sent wireless message to PW-5 Sarwan

Singh Dhillon, the then Deputy Superintendent of Police, Shahkot (for short 'D.S.P'), who also reached at the spot. The Mahindra Pickup jeep in question was spotted coming from the side of village Mand Punnian. The same was signaled to stop. As soon as the jeep slow down, two persons who were sitting on the side of the driver opened the window and started running. One of them was identified as Vijay Kumar @ Vijay Sidhu by the Investigating Officer and the second was identified as Joga Singh by ASI Manjit Singh. They were called to stop, but they managed to escape. From the rear side of the jeep also two young man made good their escape. The jeep was encircled by the police officials and appellant Ravinder Kumar, the driver of the jeep was apprehended. He was produced before PW-5 DSP Sarwan Singh Dhillon, who questioned appellant Ravinder Kumar as to what was loaded in the vehicle. He replied that waste papers are loaded therein. But, the DSP told the appellant Ravinder Kumar that there seems to be some intoxicant substance loaded in the jeep. The search of the jeep is to be taken. He disclosed his identity to appellant Ravinder Kumar and gave him option for his search in presence of some other Gazetted Officer or the Magistrate. Appellant Ravinder Kumar reposed confidence in DSP Sarwan Singh Dhillon and the consent memo Ex.PE was prepared. On the instructions of DSP, the Investigating Officer carried out the search of Mahindra Pickup Jeep. 20 gunny bags were found loaded therein containing poppy husk. The Investigating Officer separated 250 grams as sample from each bag. The residue poppy husk on weighing came to 39 kg 750 grams in each bag. The sealed parcels of samples and the residue were prepared and were sealed with the seals bearing impression 'KS' of the Investigating Officer SI

Kulwant Singh and 'SS' of DSP Sarwan Singh Dhillon. The articles of the case property along with Mahindra Pickup Jeep bearing registration No. HP-55-3014 and waste papers were taken into possession vide memo EX.PF. The Investigating Officer prepared the rough site plan of the place of occurrence. The specimen of seal impressions were also prepared. Accused-appellant Ravinder Kumar was arrested.

3. On return to the Police Station, the case property along with accused was produced before PW-6 Inspector Mandeep Singh, the then SHO, Police Station, Shahkot. He also verified the investigation of the case and affixed his seal bearing impression 'MS' on all the parcels of the case property. The case property was deposited in intact condition with PW-2 Moharir Head Constable (for short 'M.H.C') Sukhjit Singh. On the next day, accused along with the case property was produced before Illaqa Magistrate. The case property was again deposited with the M.H.C with the seals intact. On 13.08.2002, co-accused Parveen Kumar (since acquitted) was arrested from village Naini Baghwad in the present case. ASI Om Parkash arrested appellant Joga Singh on 14.11.2003 and appellant Vijay Kumar @ Vijay Sidhu on 05.12.2003. Co-accused Mohan Singh, Gurmej and Surjit Singh were declared as proclaimed offender. The sample parcels were sent to the Chemical Examiner for examination. On completion of the formalities of the investigation and on receipt of report of the Chemical Examiner, the report under Section 173 of Code of Criminal Procedure (for short 'Cr.P.C') was presented in the Court.

4. The accused-appellants were charge sheeted for the offence punishable under Section 15 of the Act, to which they pleaded not guilty and

claimed trial.

5. In order to prove its case, prosecution examined as many as ten witnesses in all.

6. When examined under Section 313 Cr.P.C, accused-appellant Ravinder Kumar pleaded that he had purchased Mahindra Pickup Jeep bearing registration no. HP-55-3014 on 20.02.2002 from Parveen Jain. Then, he became the permanent member of Dev Bhoomi Traula Union, Hamirpur. On 08.08.2002, he was sitting at the aforesaid Traula stand. One Parveen Kumar along with three other persons who are accused in this case came to the traula stand to hire the jeep. Unfortunately, there was his turn. His jeep was sent with aforesaid Parveen Kumar and three other persons. Parveen Kumar said that Mashroom seeds are to be loaded for Shahkot. He paid Rs.3000/- as fare. He has never seen the poppy husk and had no knowledge at the time of loading that the bags are containing poppy husk. He was asked that the bags were of Mashroom seeds.

7. Appellant Vijay Kumar @ Vijay Sidhu pleaded that he had never indulged in any such unlawful, illegal, narcotic activities. No recovery whatsoever belongs to him. He does not know the accused. As a matter of fact, he was picked up by the police of Police Station, Shahkot and was kept in illegal detention. His family members filed a writ of habeas corpus before this Court and a Warrant Officer got him released from Police Station, Shahkot. Police Station, Shahkot also registered another false case against him, which was later on withdrawn. The Police of Police Station, Shahkot has a serious grudge against him. Because of that, he has been falsely nominated in this case.

8. Accused-appellant Joga Singh pleaded that he had love affairs with Surinder Kaur (it should be Narinder Kaur) and had ran away with her from the house. A criminal case bearing FIR No. 192 dated 09.08.2004, under Sections 363, 366 of Indian Penal Code (for short 'IPC') was registered against him. Then, he had filed a petition in the High Court. The matter was settled and due to that resentment, SHO of Police Station Shahkot falsely implicate him by introducing his name in the present case.

9. In the defence evidence, appellants examined DW-1 HC Swaran Singh, who has proved the certified copies of the FIR's Ex.DW1/A and EX.DW1/B. Gian Saidpuri, a news reporter 'Nawan Zamana' appeared as DW-2 and deposed about the detention of appellant Vijay Kumar @ Vijay Sidhu and visit of Warrant Officer to Police Station, Shahkot. Malkit Singh was examined as DW-3, who was a witness to the extra-judicial confession allegedly made by co-accused Parveen Kumar. DW-4 Banku Ram had supported the defence plea of appellant Ravinder Kumar with respect to the hiring of his jeep/pickup by accused for transporting Mashroom seeds to Shahkot. DW-5 Ravi Kumar, Criminal Ahlmad attached to the Court of learned Additional District & Sessions Judge has proved the certified copy of the record relating to FIR no.192/2002 and photocopy of the statement of Narinder Kaur mark X. Ashok Kumar a taxi operator of Hamirpur appeared as DW-6. He also supported the defence plea raised by appellant Ravinder Kumar. HC Mohan Singh appeared as DW-7. He proved the copy of FIR no.111/2002 registered against Bittu, Bhushan and Vijay and deposed that no challan was presented in that case so far.

10. Thereafter, the defence evidence was closed by the appellants.

11. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellants for the offence punishable under Section 15 of the Act. However, their co-accused Parveen Kumar was acquitted of the charges. The appellants were awarded the sentence as mentioned in the upper part of the judgment.

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

13. I have heard Mr. Abhey Sharma, Advocate with Mr. Manish Dadwal, Advocate for the appellant (in CRA-S-2292-SB of 2004), Ms. Aditi Girdhar, Advocate, Legal Aid Counsel, for the appellant (in CRA-S-2464-SB of 2004), Mr. B.D. Sharma, Advocate for the appellant (in CRA-S-264-SB of 2010), Mr. R.S. Randhawa, learned Additional Advocate General, Punjab and have meticulously gone through the record of the case.

14. Initiating the arguments, learned counsel for the appellants contended that the recovery is alleged to have been effected on the basis of secret information. The Investigating Officer has admitted that he has not reduced into writing the secret information nor the same was communicated to the superior police officer, which is the violation of Section 42 (2) of the Act. They further contended that search of the vehicle has been conducted after the sunset without obtaining any search warrant or authorization, which is again the violation of Section 42 of the Act and vitiate the entire prosecution version. To support their contentions, they relied upon case **Karnail Singh Vs. State of Haryana, 2009(5) R.C.R (Criminal) 515.**

15. They further contended that one Jagjit Singh is alleged to have

been associated as an independent witness. But, he has not been examined. So, there is no independent corroboration to the statements of the official witnesses. The non-examination of Jagjit Singh raises an adverse inference against the prosecution.

16. Learned counsel for the appellants Vijay Kumar @ Vijay Sidhu and Joga Singh contended that these appellants were not apprehended at the spot and are alleged to have run away. They contended that the vehicles were coming from the southern side. The head lights of the vehicles will be towards the northern side. The accused are alleged to have fled away after alighting from the front seat i.e. from behind the head lights. The recovery in the present case is alleged to have been effected between 8.15 p.m. to 8.30 p.m., when there was dark. So, it was not possible to identify the running accused in the dark. They further contended that there is no material to show that the police officials were earlier known to these appellants. They have not explained as to how and in which manner accused-appellant Joga Singh and Vijay Kumar @ Vijay Sidhu were known to them. They have admitted that they have not investigated any case against them nor they had appeared as a witness in any case against them. SI Kulwant Singh has admitted that he was not personally known to appellant Joga Singh. No test identification parade of appellants Joga Singh and Vijay Kumar @ Vijay Sidhu has been held after their arrest. Thus, they contended that their identity and presence at the spot is not established.

17. Learned counsel for the appellant Joga Singh contended that he has been falsely implicated in this case as a case under Section 363, 366 IPC bearing FIR No.192 was registered against appellant Joga Singh on

09.08.2002. SI Kulwant Singh was also the Investigating Officer of that case. The recovery in this case is alleged to have been effected between 08.15 p.m to 08.30 p.m. on 10.08.2002. But, the ruqa has been sent to the Police Station at 10.15. p.m. This time has been consumed to concoct the false story and to introduce the name of appellant Joga Singh in connivance with the complainant of case bearing FIR No.192/02 registered against Joga Singh for kidnapping Narinder Kaur.

18. Learned Legal Aid Counsel for appellant Vijay Kumar @ Vijay Sidhu contended that local police had a serious grudge against appellant Vijay Kumar @ Vijay Sidhu. He was earlier illegally detained by the police of Police Station, Shahkot. The relatives of appellant Vijay Kumar @ Vijay Sidhu filed the writ of habeas corpus before this Court. The warrant officer was appointed and appellant Vijay Kumar @ Vijay Sidhu was found detained in the Police Station. This fact is fully supported from the statement of DW-2 Gian Saidpuri, a newspaper reporter. She further contended that earlier also a case bearing FIR No.111 dated 01.06.2002 was registered against appellant Vijay Kumar @ Vijay Sidhu under various provisions of law, but no challan was filed in that case against the appellant. She has drawn my attention to the statement of DW-7 HC Mohan Singh to buttress her contentions.

19. Learned counsel for the appellants further contended that it is not established that accused-appellants were in conscious possession of the contraband. No question has been put to them in their statements under Section 313 Cr.P.C that they were found in conscious possession of the contraband, which is fatal to the prosecution case. To support their

contentions, they relied upon cases **State of Punjab Vs. Hari Singh and others 2009(2) R.C.R (Criminal) 143** and **Kashmir Singh Vs. State of Punjab 2006(2) R.C.R (Criminal) 477(FB)**.

20. They further contended that the prosecution witnesses have stated that the contraband was the poppy husk in powder shape. Whereas, the report of Chemical Examiner shows that it was poppy head, which is a serious contradiction. They further contended that the samples and the bags containing residue poppy husk were not marked by the Investigating Officer. But, in report of the F.S.L, the marking has been shown, which depicts the tampering with of the case property. Even, no case chit was fixed on the gunny bags and the parcels of the samples which further renders the prosecution case doubtful.

21. Learned counsel for the appellant Ravinder Kumar contended that he is innocent and had nothing to do with the contraband allegedly recovered from his Mahindra Pickup. He contended that in-fact he has purchased the Mahindra Pick from Smt. Parveen Jain and got it registered with the Traula Union, Hamirpur. He further contended that co-accused Parveen Kumar along with other accused had hired the jeep of the appellant through the said Traula Union for transporting Mashroom seeds to Shahkot. But, appellant had never seen the poppy husk and was not aware about the substance. The plea raised by the appellant is fully established from the statements of DW-4 Banku Ram and DW-6 Ashok Kumar in whose presence the vehicle of the appellant was hired by the co-accused. He further contended that accused-appellants were not known to Ravinder Kumar as he belongs to Himachal Pradesh. His vehicle was hired through the president of

the Traula Union, Hamirpur. The traula union has also issued the chit Ex.DW6/A to this effect. Thus, he contended that appellant Ravinder Kumar cannot be stated to be in possession much less the conscious possession of the contraband. He has not tried to run away from the spot. That also shows that he was not aware of the contraband loaded in jeep/pickup. Thus, he pleaded that no offence is made out against appellant Ravinder Kumar. To support his contentions he relied upon cases **State of Punjab Vs. Balkar Singh AIR 2004 (S.C) 4606, Gurdip Singh Vs. State of Punjab 2003(4) R.C.R (Criminal) 407 and Avtar Singh Vs. State of Punjab 2002(4) R.C.R (Criminal) 180.**

22. Thus, learned counsel for the appellants pleaded that conviction of the appellants has been wrongly recorded by the learned trial Court.

23. On the other hand, learned State counsel contended that 20 bags of poppy husk containing 40 kg poppy husk each have been recovered from the possession of appellants. He contended that there is no violation of Section 42 of the Act as the secret information was duly transmitted through wireless to the DSP. PW-5 DSP Sarwan Singh Dhillon has himself supervised the entire operation. The accused were apprehended in his presence. The search and seizure was also conducted by him, which is evident from the consent memo Ex.PE. He further contended that appellant Joga Singh and Vijay Kumar @ Vijay Sidhu was well known to the police officials as they had criminal background and earlier also indulged in these activities. They belongs to the area of Police Station, Shahkot. The police officials were having search light. The lights of their jeep were also on. So, they could have been easily identified. There was no reason for their false

implication. He further contended that the plea set up by appellant Ravinder Kumar also does not inspire any confidence. He has admitted that he was apprehended at the spot along with the contraband. The plea put-forward by him that his vehicle was hired for transporting Mashroom seeds has no legs to stand. He contended that in the bail application moved by him, it is mentioned that the goods were loaded from Joginder Nagar, which is at a distance of 85 kms from Hamirpur. He contended that it is not plausible that a person will hire the vehicle from a distance of 85 kms for loading the goods. Joginder Nagar is itself a big town in Himachal Pradesh and various vehicles might be available there. He further contended that all the appellants were in conscious possession of the contraband. The non-examination of PW Jagjit Singh, who was won over by the accused, cannot create any dent in the case of the prosecution. Thus, he contended that conviction of the appellants has been rightly recorded by the learned trial Court.

24. I have duly considered the aforesaid contentions.

25. As per the prosecution case, on receiving the secret information, PW-7 SI Kulwant Singh, the Investigating Officer of the case has sent the wireless message to the SHO, Police Station, Shahkot and DSP Shahkot to reach at the spot. SI Kulwant Singh while appearing in the witness box as PW-7 has also stated that he requested DSP Sarwan Singh Dhillon through wireless to reach at the spot, who reached there and thereafter at 07.30 p.m, the Mahindra Pickup jeep was spotted coming from the side of Mand Punnian. PW-5 DSP Sarwan Singh Dhillon, the then DSP Shahkot has also deposed that he had received the wireless message from SI

Kulwant Singh and he requested him to reach at the turning point of village Mand Punnian. On receipt of message, he reached at the spot, where ASI Kulwant Singh along with police officials and PW- Jagjit Singh were present. When Mahindra Pickup reached near police party, it was signaled to stop. DSP Sarwan Singh Dhillon further deposed that the driver of jeep i.e. Ravinder Kumar was apprehended at the spot. He disclosed his identity and that he had suspicion of some contraband lying in the jeep and that he had a legal right to get his search before any Gazetted Officer or Magistrate. But, accused Ravinder Kumar reposed confidence in him. The consent memo Ex.PE was recorded and thereafter, on his direction SI Kulwant Singh searched the jeep and recovered 20 gunny bags of poppy husk under tarpaulin from the said jeep. So, in this case, PW-5 DSP Sarwan Singh Dhillon, a Gazetted Officer was sent the information through wireless. He had reached at the spot even before the arrival of the accused. The accused were apprehended in his presence. The search and seizure was got conducted by PW-5 DSP Sarwan Singh Dhillon on his directions and under his supervision. The details of secret information was also incorporated in the ruqa Ex.PG. On the basis of which FIR Ex.PG/1 has been registered. The copies of FIR has been sent to the senior police officers as well as to Illaqa Magistrate.

26. In case **Bahadur Singh versus State of Haryana, 2010 (2) RCR (Criminal) 586**, the secret information was received by the Inspector of the Police that the accused was selling poppy husk in his house. On receiving this information, the raid was conducted at the house of the petitioner. The inspector of the Police had sent a wireless message to the

DSP who rushed to the spot and in his presence, the search and seizure was conducted. In that case also, the contentions were raised on behalf of the petitioner that the provisions of Section 42 of the NDPS Act, have been violated. In this background of the facts, the Hon'ble Apex Court laid down as under:

“12. It cannot but be noticed that with the advancement of technology and the availability of high speed exchange of information, some of the provisions of the Narcotic Drugs And Psychotropic Substances Act, including Section 42, have to be read in the changed context. Apart from the views expressed in Sajan Abraham's case (supra) that the delay caused in complying with the provisions of Section 42 could result in the escape of the offender or even removal of the contraband, there would be substantial compliance, if the information received were subsequently sent to the superior officer. In the instant case, as soon as the investigating officer reached the spot, he sent a wireless message to the Deputy Superintendent of Police, Kurukshetra, who was his immediate higher officer and subsequent to recovery of the contraband, a Ruqa containing all the facts and circumstances of the case was also sent to the Police Station from the spot from where the recovery was made on the basis whereof the First Information Report was registered and copies thereof were sent to the Ilaqa Magistrate and also to the higher police officers. As was held by the High Court, there was, therefore, substantial compliance with the provisions of Section 42 of the Narcotic Drugs And Psychotropic Substances Act and no prejudice was shown to have been caused to the accused on account of non-reduction of secret information into writing and non sending of the same to the higher officer immediately thereafter.

13. Apart from the decision in Sajan Abraham's case (supra), the decision of the Constitution Bench in Karnail Singh's case (supra), has also made it clear that noncompliance with the provisions of Section 42 may not vitiate the trial if it did not cause any prejudice to the accused. Furthermore, whether there is adequate compliance of Section 42 or not is a question of fact to be decided in each case.”

27. After taking note of **Karnail Singh's case** (supra) relied upon by learned counsel for the appellants, the Hon'ble Supreme Court in case **Gurdev Kaur Vs. State of Punjab, 2014 (1) DC (Narcotics) 573** 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 Sajan 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.”

28. A Division Bench of this Court in case **Jarnail Singh s/o Jawara Ram Vs. State of Haryana 2013(2) RCR (Criminal) 580** has also 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.

29. 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.”

30. In view of the aforesaid ratio of law laid down by the Hon'ble

Apex Court and the Division Bench of this Court, when the police officials are on move and not in the Police Station and it is not practicable prior to search and seizure to reduce the secret information into writing and which would be detrimental to the effectiveness of the search and seizure concerned. The said requirement of reducing into writing the secret information and conveying the same to the superior officer may be postponed by a reasonable period. It was further laid down that where the Investigating Officer was on move and not in the office and information has been conveyed to the superior police officer, who arrived at the spot, formal FIR was lodged regarding recovery in question, a copy of the FIR was sent to the Illaqa Magistrate as also to the superior police officers, the provisions of Section 42 of the Act shall stand complied with. In **Bahadur Singh's case** (supra), the Hon'ble Supreme Court has laid down that with the advancement of technology and availability of high speed exchange of information, some of the provisions of the Act including Section 42 of the Act have to be read in the changed context. In that case, on receiving the secret information, the Investigating officer has sent a wireless message to the DSP, who was his immediate higher officer and on subsequent to the recovery of the contraband a ruqa containing all the facts and circumstances of the case was also sent to the Police Station from the spot. On the basis thereof, the FIR was registered and copies thereof were sent to the Illaqa Magistrate and the higher police officers. The Hon'ble Apex Court held that there was substantial compliance of the provisions of Section 42 of the Act and no prejudice shown to have been caused to the accused on account of non reduction of secret information into writing and non-sending of the

same to the higher officers immediately thereafter. The aforesaid authorities are squarely applicable to the facts of the case. In the instant case also the Investigating Officer was on move and not in the Police Station at the time of receiving the secret information. Immediately on receiving the secret information, he sent the wireless message to SHO of the Police Station and the DSP, his immediate superior officers. PW-5 DSP Sarwan Singh Dhillon himself reached at the spot even before the apprehension of the appellants. The search and seizure was conducted on his direction and direct supervision. Thereafter, the ruqa Ex.PG was sent from the spot containing the entire details of the secret information and other necessary particulars. On the basis of which, the FIR Ex.PG/1 was registered, which shows that the copies thereof were sent to the superior police officers on 10.08.2002 itself at 11.25 p.m i.e. immediately after the search and seizure. Thus, it cannot be stated that provisions of Section 42 (1) (2) of the Act have been violated, rather, it is clear that there was substantial compliance of the aforesaid provisions and no prejudice has resulted to the appellants.

31. The search and seizure in this case was conducted on the directions and under the supervision of PW-5 DSP Sarwan Singh Dhillon, a gazetted police officer. Section 41(2) and 41(3) of the Act reads as under:-

“(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or

any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or place, **may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.**

(3) The officer to whom a warrant under sub-section (1) is addressed and **the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.”**

32. As per the aforesaid provision of law, a Gazetted Police Officer is legally competent to authorise any officer subordinate to him, but superior to the rank of peon, sepoy or a constable to arrest or search a building, conveyance or a place by day or by night. In the instant case also PW-5 DSP Sarwan Singh Dhillon, has directed and authorized PW-7 SI Kulwant Singh to carry out the search of the Mahindra Jeep loaded with the bags containing poppy husk that too in his presence and under his supervision. Thus, SI Kulwant Singh was duly authorized by PW-5 DSP Sarwan Singh Dhillon to carry out the search of the vehicle as per Section 41(2) of the Act. Thus, there is no question of any violation of the provisions of Section 42 the Act.

33. One Jagjit Singh was associated as an independent witness in the investigation of the case. But, he has been given up by the learned Additional Public Prosecutor vide his statement dated 03.08.2004 as having been won over by the accused on the basis of an application moved by SHO of Police Station, Shahkot. So, PW- Jagjit Singh, the independent witness associated in the investigation of the case, could not be examined as he was won over by the accused. It is well known fact that such independent/ punch witnesses being 'human beings' are quite exposed and vulnerable to human dealings for yielding, bro-beating, threats and inducement. Giving up of

such public witness as having been won over is fully justified in the present day situation prevailing in the society. In a recent case titled as **Kulwinder Singh and another Vs. State of Punjab 2015(2) R.C.R (Criminal) 918**, two independent witnesses were associated in the investigation. But, they were not examined by the prosecution and were won over. The Hon'ble Apex Court held that no adverse inference can be drawn for non-examination of the said witnesses and the case of the prosecution cannot be rejected solely on the ground that those independent witnesses have not been examined. It was further laid down that there is no reason not to base the conviction on the basis of the statement of the official witnesses when they are trustworthy and credible.

34. There is no principle of law that without corroboration by independent witnesses, the testimonies of the police officers cannot be relied upon. It is settled principle of law that testimonies of the official witnesses should be treated in the same manner as the testimony of any other witness. The presumption that a person acts honestly applies as much in favour of the police officials as of other persons. It is not a proper judicial approach to distrust and suspect them without good grounds. Thus, mere this fact that Jagjit Singh has not been examined is no ground to render the testimonies of the prosecution witnesses unworthy of credence.

35. In the report of Chemical Examiner, the physical appearance of the substance has not been mentioned. So, it cannot be stated that there was any difference with respect to the physical appearance of the contraband in the statement of the prosecution witnesses and the report of the Chemical Examiner Ex.PS. In the report of Chemical Examiner, it has been

categorically mentioned that the samples have been marked there i.e. in the laboratory. So, there was no question of tampering with the sample seals.

36. There is absolutely no doubt about the identity of the appellants. Accused-appellant Ravinder Kumar was apprehended at the spot itself. Whereas, appellants Vijay Kumar @ Vijay Sidhu and Joga Singh manage to escape after alighting from the jeep. It has been categorically mentioned in the FIR Ex.PG/1 that the jeep in which the appellants were traveling was signaled to stop by showing the search light and the light of the gypsy. So, the police officials were having search light and the lights of their gypsy were also on. So, they had sufficient source of light to see and identify the appellants while running away from the spot. Moreover, it has been categorically mentioned in the FIR itself that accused-appellant Vijay Kumar @ Vijay Sidhu was earlier known to SI Kulwant Singh, the Investigating Officer of the case and appellant Joga Singh was previously known to PW-8 ASI Manjit Singh, the witness of recovery/occurrence. A person, who is already known can be easily identified even while fleeing away from the spot. The name of appellants Vijay Kumar @ Vijay Sidhu and Joga Singh clearly figures in the FIR.

37. Even from the defence evidence adduced by the appellants, it comes out that official of the Police Station, Shahkot were well known to these accused. Appellant Vijay Kumar @ Vijay Sidhu as per his statement under section 313 Cr.P.C and the statement of DW-2 Gian Saidpuri was detained in the Police Station, Shahkot on 05.10.1998 i.e. about four years prior to the date of this occurrence. He was also booked in another case bearing FIR No. 111 dated 01.06.2002 of Police Station, Shahkot

Ex.DW1/A. Though, the challan was not filed in that case. It shows that appellant Vijay Kumar @ Vijay Sidhu was well known to the officials of Police Station, Shahkot and there could be no scope of any doubt about his identity.

38. PW-8 ASI Manjit Singh has categorically stated that he new appellant Joga Singh. Joga Singh has two brothers and parents. But, he does not know how many sisters Joga Singh have or that if they are married or not. He further deposed that residence of accused is in the street of village Talwandi Butian. He was posted in this Police Station for about one year before this occurrence. Both accused Joga Singh and Vijay Kumar @ Vijay Sidhu have also been identified by the prosecution witnesses in the Court. As the names of appellants Vijay Kumar @ Vijay Sidhu and Joga Singh were categorically mentioned in the FIR. They were earlier known to the police officials and were identified at the spot. So, there was no necessity to hold any test identification parade to fix their identities. Thus, there is no escape from the conclusion that the two persons who had alighted from the seat adjoining to the driver and fled away were appellants Vijay Kumar @ Vijay Sidhu and Joga Singh and their identity is fully established.

39. I also do not find any substance in the contentions raised by learned counsel for the appellants with respect to the false implication of the accused-appellants. Mere this fact that a case under Section 363, 366 IPC has been registered against appellant Joga Singh is no ground to conclude that he has been falsely implicated in this case. In his statement under Section 313 Cr.P.C, he has alleged that he has filed a petition in the High Court. Then, the matter was settled. Due to this resentment SHO, Police

Station, Shahkot wanted to implicate him in this case and he falsely mentioned in this case. The case under Section 363, 366 IPC has been registered only on 09.08.2002, which is evident from the copy of FIR Ex.DW1/B and copy of the report under Section 173 Cr.P.C Ex.DW5/A. There is no material on record to establish as to when appellant Joga Singh has filed the petition before this Court in the said kidnapping case and what order was passed by this Court in that case. The present case has been registered only on 10.08.2002 i.e. the next day of FIR No. 192 of 2002. So, it is not plausible that in single day he filed the petition in the Court and Court got the matter settled to the resentment of the SHO, Police Station, Shahkot. Ex.DW5/A shows that the report under Section 173 Cr.P.C in that case was prepared on 03.08.2003 and was filed in the Court. So, there can be no question of any resentment to the officials of police station, Shahkot due to any settlement between the parties in the kidnapping case and a ground for his false implication. There is also no material on record to show that what was the connection between the complainant of the kidnapping case with the SHO, Police Station, Shahkot and how the police can be influenced by her. Thus, there can be no reason for the false implication of the appellant Joga Singh in the present case due to the registration of case FIR no. 192 dated 09.08.2002, under Section 363, 366 IPC.

40. Appellant Vijay Kumar @ Vijay Sidhu has alleged that he was illegally detained by the officials of Police Station, Shahkot. His family members has filed the writ of habeas corpus before this Court in which the warrant officer was appointed and got him released. The Police of Police Station, Shahkot had a serious grudge against him because of that. But, from

the statement of DW-2 Gian Saidpur, it comes out that occurrence has taken place on 05.10.1998 i.e. about four years prior to this occurrence. it is not known as to who was the SHO or other police officials posted in Police Station, Shahkot at that time. Appellant Vijay Kumar @ Vijay Sidhu has also not placed on record the copy of report of the warrant officer. He has also not placed on file any material to show as to whether any action was taken against the police officials of Police Station, Shahkot in that writ petition. The occurrence of alleged illegal detention which has taken place about four years ago can not be a ground for the false implication of the appellant Vijay Kumar @ Vijay Sidhu in the present case.

41. Moreover, 20 bags containing 40 kg poppy husk each i.e. total 800 kg poppy husk has been recovered from the possession of appellants, which cannot be planted by the police officers from their own sources. If, the intention of the police officers would have been only to falsely implicate them that could have been achieved even by planting the less quantity. Thus, the plea raised by the appellants for their false implication has no legs to stand.

42. In the statements of appellants recorded under Section 313 Cr.P.C, the factum regarding the search, seizure and recovery of the contraband from the Mahindra Jeep in which the appellants were traveling are categorically mentioned. Even otherwise from the consistent statements of PW-5 DSP Sarwan Singh Dhillon, the then DSP, Shahkot, a gazetted police officer, PW-7 SI Kulwant Singh, the Investigating Officer of the case and PW-8 ASI Manjit Singh, the witness of recovery, it is established beyond doubt that 20 bags containing 40 kg poppy each were recovered

from the possession of appellants, which were being transported in jeep bearing no. HP-55-3014 being driven by appellant Ravinder Kumar and boarded by appellants Vijay Kumar @ Vijay Sidhu and Joga Singh. Thus, mere omission of word “conscious possession” in the statement of the appellants recorded under Section 313 Cr.P.C has not resulted in any prejudice to the appellants. They were fully aware of the evidence on record against them and the charges for which they were facing the trial. The Hon'ble Supreme Court in case **Paramjeet Singh @ Pamma Vs. State of Uttarakhand 2010(4) RCR (Criminal) 548** after considering large number of cases on this issue authoritatively laid down as under:-

“Thus, it is evident from the above that the provisions of Section 313 Cr. P.C make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court”

43. Similarly, in case **Gian Chand and others Vs. State of Haryana 2013(3) RCR (Criminal) 916**, the Hon'ble Apex Court has reiterated the same legal position and laid down as under:-

“So far as Section 313 Cr.P.C. is concerned, undoubtedly, the attention of the accused must specifically be brought to inculcable pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. A three-Judge Bench of this Court in **Wasim Khan v. The State of Uttar Pradesh, AIR 1956 SC 400**; and **Bhoor Singh & Anr. v. State of Punjab, AIR 1974 SC 1256** held that every error or omission in compliance of the provisions of Section 342 of the old Cr.P.C. does not necessarily vitiate trial. The accused must show that some prejudice has been caused or was likely to have been caused to him.”

44. In view of the aforesaid consistent rule of law, it would not

be enough for the accused to show that the specific question regarding conscious possession has not been put to them but they have to further show what prejudice has been caused to them due to such non-examination and how it had resulted in failure of justice. All these aspects are totally lacking in this case. The appellants have not been able to point out as to what prejudice has been caused to them due to omission of the specific question with respect to their conscious possession and how it had caused failure of justice. In case **Gian Chand and others Vs. State of Haryana** (supra), the Hon'ble Apex Court has also taken the note of case **State of Punjab Vs. Hari Singh and others** (supra) relied upon by learned counsel for the appellants. Hence it cannot advance the case of the appellants in view of the aforesaid circumstances.

45. Accused-appellant Ravinder Kumar has taken the plea that he was the owner-cum-driver of Mahindra Jeep bearing registration no. HP-55-3014, which was hired by co-accused for transporting the Mashroom seeds on payment of Rs. 3000/- as fare and he was not aware of the substance contained in the bags. But, this plea raised by appellant Ravinder Kumar does not appeal to the reasons. He has alleged that he has become the member of Dev Bhoomi Traula Union, Hamirpur and his vehicle was registered with the said traula union. In his statement under Section 313 Cr.P.C, he has not deposed as to from where the goods were to be loaded in his vehicle. On perusal of record, it comes out that the copy of his bail application No. CRM-41475-M of 2002 is available on record. In the said application, it has been mentioned that Parveen Kumar co-accused hired the jeep from petitioner for carrying Mashroom seeds and agreed to pay Rs.

3000/- for visit from Joginder Nagar to Shahkot. Again in para no. 4 of the said application, he has mentioned that his vehicle was hired by Parveen Kumar at Joginder Nagar. So, what we can made out from the contents of his bail application is that the goods were to be loaded in the vehicle from Joginder Nagar. Whereas, his vehicle was registered with Dev Bhoomi Tralla Union, Hamirpur. As per the google map, the authenticity of which cannot be disputed, the distance between Hamirpur and Joginder Nagar is 85 kms. So, it is not possible that the vehicle will be hired at Hamirpur for loading the goods from Joginder Nagar. It is not disputed that Joginder Nagar is a good town in Himachal Pradesh, where also the vehicles could be easily available. Thus, the engaging of the vehicle of appellant Ravinder Kumar from said distant place clearly shows that appellant Ravinder Kumar was fully aware of the substance going to be loaded in the vehicle for transportation from Joginder Nagar to Shahkot, District Jalandhar.

46. Appellant Ravinder Kumar has also placed on file one chit/receipt dated 08.08.2002 showing the booking of his vehicle by Parveen Kumar. He has also produced the members certificate to show that he was the permanent member of Dev Bhumi Tralla Union, Hamirpur. The fact that he was the member of the traula union will not absolve him of the charges because even being the member of the said traula union, he can indulge in transporting the narcotic substance in his vehicle. The chit/receipt dated 08.08.2002 is not proved in-accordance with law. DW-6 Ashok Kumar has stated that a Hindu gentlemen of 30-35 years old came to the taxi stand for hiring the taxi. He approached president of the traula union, Hamirpur for providing taxi again said for traula and the president Hamir Singh called

Ravinder Kumar @ Kaku as there was turn of Ravinder Kumar and the slip was issued by the president to Ravinder Kumar for Shahkot. So, the president of the traula union was the best witness to depose that it was he who was approached by co-accused Parveen Kumar for hiring the vehicle and he has instructed appellant Ravinder Kumar to carry the goods of Parveen Kumar. But, the president of the traula union, who was the most important witness has not been examined. It is specific case of appellant Ravinder Kumar that he was asked to take the goods of Parveen Kumar as per his turn in the traula union. There must be some record maintained by the traula union with respect to the booking of the vehicles attached with it and the turn of the vehicles becoming due for booking. But, no such record of traula union has been produced. Even, no office bearer of the traula union has been examined in support of the plea raised by appellant Ravinder Kumar. In the absence of that evidence, it is not proved that his vehicle was hired by co-accused Parveen Kumar through the president of traula union. DW-6 Ashok Kumar seems to be an introduced witness as he was a taxi operator and not the member of the traula union, who is not expected to be present at the traula stand at the time of hiring the vehicle of the appellant. The statement of DW-4 Banku Ram also has no substance, when appellant Ravinder Kumar has charged Rs. 3000/- as fare, then what was the necessity for him to borrow Rs. 1000/- from DW-4 Banku Ram.

47. Appellant Ravinder Kumar has also not disclosed as to from which particular place the bags were loaded in the vehicle. The seeds are the agriculture produce, which are always sold under some cash memo or bill. The seeds were to be transported *inter se* the State i.e. from Himachal

Pradesh to Punjab. Appellant Ravinder kumar was a transporter operating his own goods vehicle. He might be conversant with the legal requirements of transporting the goods from one State to another. It is not the case of appellant Ravinder Kumar that any such document were shown to him by co-accused Parveen Kumar. Even, no bilty issued by the traula union for transporting the goods by appellant has been brought on record. Thus, in these circumstances, the plea raised by appellant Ravinder Kumar that his vehicle was hired by co-accused Parveen Kumar through traula union, Hamirpur for transporting Mashroom seeds from Joginder Nagar to Shahkot is not established and it appears to be an afterthought to create the defence.

48. As already discussed from the statements of the prosecution witnesses, it is established that 20 bags containing 40 kg poppy husk each have been recovered from the possession of the appellants. Appellant Vijay Kumar @ Vijay Sidhu and Joga singh alighted from the vehicle and managed to escape when the police party signaled the vehicle to stop. Their conduct shows that they were fully aware of the contraband loaded in the vehicle. Appellant Ravinder Kumar was apprehended at the spot. All of them were traveling together in the vehicle and were in the possession of the contraband. Once, it was established that the appellants were in possession of the contraband, it was for them to show that they were not in conscious possession thereof.

49. Appellants Joga Singh and Vijay Kumar @ Vijay Sidhu have raised the plea of simple false implication, which as per my aforesaid discussion is without any substance. The plea raised by appellant Ravinder Kumar that he was not aware about the substance loaded in the bags and his

vehicle was booked through president of traula union, Hamirpur by co-accused Parveen Kumar for transporting the Mashroom seeds also does not inspire any confidence and is clearly an afterthought. So, there is no escape from the conclusion that appellants were fully aware of the contraband loaded in the vehicle. Word “conscious possession” is a state of mind, it is deliberate or intended and means awareness about a particular fact. The evidence on record shows that appellants were fully aware of the contraband loaded in the vehicle. So, they are proved to be in conscious possession thereof. To support this view, reliance can be placed on cases **Madan Lal and another Vs. State of Himachal Pradesh, 2003(4) R.C.R (Criminal) 100, Dharampal Vs. State of Punjab 2010(4) RCR (Criminal) 504 and Gian Chand's case (supra)**. The cases relied upon by learned counsel for the appellants are quite distinguishable on facts. In **Balkar Singh's case (supra)** the bags containing poppy husk were lying in the fields and the respondent was sitting on the said bags. In **Gurdip Singh's case (supra)**, the appellant was merely the driver of the vehicle. The owner of the tempo was sitting on the side of the driver. Both belongs to different places. It was observed by this Court that there was possibility that the co-accused might have engaged the driver for that day only. Whereas, in the instant case appellant Ravinder Kumar is the owner-cum-driver of the vehicle and his plea that he was engaged through traula union is not established. **Avtar Singh's case (supra)** was cited before the Hon'ble Supreme Court in **Gian Chand's case (supra)** and the Hon'ble Apex Court held that the judgment of Avtar Singh's case does not lays down the law of universal application as it has been decided on its own facts. Moreover, in view of the later consistent

view of the Hon'ble Apex Court in the cases referred above, **Avtar Singh's case** (supra) is of no help to the appellants.

50. Thus, it is established that the appellants were in conscious possession of the contraband. Appellant Ravinder Kumar was transporting the bags containing the contraband, which is also covered by Section 15 of the Act. So, I do not find any illegality or infirmity in the conviction of the appellants as recorded by the learned trial Court and the sentence awarded to them.

51. Accused-appellant Joga Singh has also moved an application under Section 427 Cr.P.C bearing Criminal Miscellaneous No. 34319 of 2014 for issuing a direction that the sentence passed upon appellant Joga Singh in FIR no. 122 dated 20.04.2003 under Section 15 of the Act, Police Station, Nakodar, District Jalandhar and the present case may run concurrently in the interest of justice, equity and fairplay. Learned counsel for the appellant contended that Swaran Singh @ Fauji, the co-accused of appellant Joga Singh in case FIR No. 122, dated 20.04.2003 has been granted the benefit of concurrent sentence with the sentence passed upon him in another case by relying upon the ratio of law laid down by Full Bench of this Court in case **Jang Singh Vs. State of Punjab 2008 (1) R.C.R (Criminal) 325**. He contended that appellant Joga Singh has also been convicted separately in two cases i.e case bearing FIR No. 122, dated 20.04.2003, Police Station, Nakodar and the present case. In view of the ratio of law laid down in **Jang Singh's case** (supra), appellant Joga Singh is also entitled to seek direction for the concurrent running of his sentence in this case with the sentence awarded in case FIR No. 122, dated 20.04.03.

52. I have duly considered the aforesaid contentions.

53. In the present application, accused-appellant Joga Singh has pleaded that sentence awarded to him in the present case should be ordered to run concurrently with the sentence awarded in case FIR No. 122 dated 20.04.2003, under Section 15 of the Act, Police Station, Nakodar. In that case, he was convicted, vide judgment dated 04.11.2006. So, the conviction of appellant Joga Singh in that case was the subsequent conviction and his conviction in the present case is the previous conviction. Section 427 Cr.P.C reads as under:-

“427. Sentence on offender already sentenced for another offence-

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

54. The aforesaid provision of law clearly shows that Section 427 Cr.P.C is applicable to the sentence awarded on subsequent conviction to a person already undergoing sentence. Section 427 Cr.P.C is not applicable for ordering the sentence awarded on previous conviction to run concurrently with the sentence awarded on subsequent conviction. In the instant case, appellant Joga Singh was convicted in the present case on 01.11.2004. In the second case, he was convicted on 04.11.2006. In the present application, appellant Joga Singh is praying that his sentence

awarded in the present case should be ordered to run concurrently with the sentence awarded on his subsequent conviction in case FIR no. 122 dated 20.04.2003, decided on 04.11.2006, which is beyond the purview of Section 427 Cr.P.C.

55. The appellant cannot claim the benefit granted to Swaran Singh @ Fauji his co-accused in case FIR No. 122 dated 20.04.2003 as said Swaran Singh @ Fauji was earlier convicted on 05.12.2001 in case FIR No. 41 dated 16.04.1999, under Section 15 of the Act. His conviction in case FIR No. 122, dated 20.04.2003 was the subsequent conviction. So, he was granted the benefit to run his sentence awarded in case FIR No. 122 dated 20.04.2003 concurrently with the sentence awarded in case FIR No. 41 dated 16.04.1999. Whereas, appellant Joga Singh is seeking relief to get his sentence awarded in the present case, on account of his previous conviction, to run concurrently with the sentence awarded on his subsequent conviction in case FIR No. 122 dated 20.04.2003, which is not legally permissible under Section 427 Cr.P.C. This Court can only see the applicability of Section 427 Cr.P.C to the present case. It cannot order the sentence awarded in case FIR No.122, dated 20.04.2003 to run concurrently with the present case as that case is not before this Court.

56. Moreover, in **Jang Singh's case** (supra), the Hon'ble Full Bench of this Court has categorically mentioned that it is the discretion of the Court to make the sentence to run consecutively or concurrently. Obviously, that decision has to be taken keeping in view the facts of the case, nature and character of the offences, criminal history and record of the offender, his age and sex. The Hon'ble Apex Court in case **Nand Kishore**

Vs. State of Haryana 2014(1) DC (Narcotics) 405 has categorically laid down that as Section 31 of the Act provides for the enhanced punishment on subsequent conviction, so the benefit of Section 427 Cr.P.C cannot be granted to the accused convicted under the provisions of the Act.

57. Thus, the application no. CRM-34319 of 2014 moved by appellant Joga Singh is without any merit and the same is hereby dismissed.

58. Consequently, I do not find any legal infirmity and impropriety in the conviction of the appellants for offence punishable under Section 15 of the Act, hence the conviction and sentence of the appellants as recorded by the learned trial Court are hereby upheld and affirmed.

59. Resultantly, the present appeals having no merits, are hereby dismissed. The accused-appellant Vijay Kumar @ Vijay Sidhu and Ravinder Kumar are on bail. Their bail stand cancelled. They shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Jalandhar, who shall send them to jail to undergo the remaining part of their sentence. If, they fails to surrender, the learned Chief Judicial Magistrate, Jalandhar, shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

December 04, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**