

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-S-979-SB-2004

Date of decision: 07.12.2015

Baldev Singh alias Nikka and another

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Ramandeep Sandhu, Advocate for the appellants.

Mr. Ajaib Singh, Additional Advocate General
for the State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 25.03.2004, passed by learned Judge, Special Court, Jalandhar, vide which accused-appellants Baldev Singh alias Nikka and Sukhwinder Singh alias Sukha have been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act')

and the order on the quantum of sentence of the even dated, vide which they have been sentenced to undergo rigorous imprisonment for a period of 10 years each and to pay a fine of ₹ 1,00,000/- each, in default of payment of fine they were further ordered to undergo rigorous imprisonment for a period of six months each.

2- As per the prosecution allegations, on 15.05.1999 PW4 Inspector Pritam Singh, the then SHO Police Station Nakodar, along with other police officials was present at Fountain Chowk, Nakodar. Where he received secret information that Baldev Singh alias Nikka, Sohan Singh and Sukhwinder Singh alias Sukha, nephew of Sohan Singh, were carrying poppy husk in truck No.PCM-9988 along with chips material. Relying upon the secret information, the Investigating Officer sent ruqqa Ex.PE to the police station through Constable Harjinder Singh and on the basis of which, formal FIR Ex.PE/1 was registered. The Investigating Officer along with the other police officials proceeded towards Bus Stand of village Littran for holding Nakabandi. They started checking the vehicles. In the meanwhile truck No.PCM-9988 was spotted coming from Nurmahal side. The truck was intercepted by the police. It was being driven by accused-appellant Baldev Singh and accused-appellant Sukhwinder Singh was sitting by the side of the driver in the cabin of truck. The Investigating Officer apprehended both the accused-appellants and asked them that he has suspicion that some contraband is concealed in the truck and he wanted to conduct the search of the truck.

The accused-appellants were also apprised of their rights of search to be conducted in the presence of any gazetted officer or a magistrate. Vide their consent memos Ex.PF and Ex.PG respectively, accused-appellants desired to get the search conducted in the presence of some gazetted officer. The Investigating Officer sent wireless message to Shri Amit Parshad, IPS, Assistant Superintendent of Police, Nakodar and requested him to reach at the spot. Meantime, the Investigating Officer tried to join the public men in the investigation but nobody came forward to join the police party. After the arrival of the ASP at the spot, search of the truck was conducted. 25 bags containing poppy husk were recovered, which were concealed under the bags of marble chips. One sample of 250 grams was taken out from each bag of poppy husk and the residue poppy husk, on weighment, came to be 39 kilograms 750 grams in each bag. The samples as well as the residue were sealed with seals bearing impressions 'PS' and 'AP' of the Investigating Officer and the ASP, respectively. Separate sample seal impressions of both the seals were prepared. The case property was taken into possession vide recovery memo Ex.PC. The Investigating Officer also prepared rough site plan of the place of recovery Ex.PH. Disclosure statements Ex.PC/3 and Ex.PC/4, respectively of both accused-appellants Baldev Singh and Sukhwinder Singh were recorded.

3- On return to the police station, the case property and sample seal were deposited with MHC Parminder Singh. On 16.05.1999,

the case property and sample seal were taken out from the Malkhana and produced before the Illaqa Magistrate vide application Ex.PJ. Thereafter, the case property was again deposited with the MHC. In due course, the sample parcel was sent to the Chemical Examiner through Constable Ranjit Singh, which was found to be of poppy husk vide report Ex.PK. On completion of formalities of investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '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 vide order dated 01.10.1999 by the learned trial Court, to which they pleaded not guilty and claimed trial.

5- In order to substantiate its case, prosecution examined as many as four witnesses.

6- When examined under Section 313 Cr.P.C., accused-appellant Baldev Singh pleaded that he is innocent. He joined the services of the owner of the truck only a week before the incident and was not familiar with the activities of the owner of the truck. He did not know what was loaded in the said truck as he was not present when the truck was loaded at Rajasthan. The owners of the goods were also accompanying the truck. The truck was stopped on the way near the roadside Dhaba to take tea, where some police officials reached and on seeing them, the owners slipped away. He also pleaded that his co-

accused took lift from roadside bus stand in between Phillaur and Nurmahal and he wanted to go to Nakodar.

7- When examined under Section 313 Cr.P.C., accused-appellant Sukhwinder Singh pleaded that he is innocent and has been falsely implicated in this case. He has no connection with the truck and the goods carried in it. He was standing on the roadside at Bus Stand Mowai, from where he took lift in the truck for coming to Nakodar and was arrested by the police near roadside Dhaba, where the driver and the owners of the goods stopped the truck. No recovery was effected from him.

8- In their defence evidence, the accused-appellants examined HC Chanchal Singh as DW1.

9- On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the accused-appellants were held guilty and convicted for the offence punishable under Section 15 of the Act and were awarded the sentence as mentioned in the upper part of the judgment.

10- Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11- I have heard Mr. Ramandeep Sandhu, Advocate, learned counsel for the appellants, Mr. Ajaib Singh, learned Additional Advocate General for the State of Punjab and have meticulously examined the record of the case.

12- Initiating the arguments, learned counsel for the appellants contended that the recovery is alleged to have been effected on the basis of the secret information and Nakabandi at a public place. It is also admitted by the prosecution witnesses that the shops were situated near the place of recovery. Even the bus stand was also situated near the place of recovery. The secret information was received at Fountain Chowk, Nakodar, which is a busy public place, but even then the Investigating Officer has not joined any public witness in the investigation of the case, which renders the prosecution case doubtful. To support his contentions, he relied upon cases *State of Punjab Vs. Ram Chand 2001(1) RCR (Criminal) 817*, *Angrej Kaur Vs. State of Haryana 2013(1) RCR (Criminal) 601*, *Gurnam Singh Vs. State of Haryana 2014(1) RCR (Criminal) 699* and *Radha Bai Vs. State of Haryana 2015(2) RCR (Criminal) 713*.

13- He further contended that the entire proceedings have been fabricated later on. It is alleged that the ruqqa was sent to the police station for registration of the case. The FIR number was supplied later on, but the Investigating Officer has already mentioned the FIR number in the seizure memo Ex.PC, consent memos Ex.PF, Ex.PG and site plan Ex.PH, which further rendered the prosecution case doubtful. To support his contentions, he relied upon cases *Ramesh Prakash Vs. State 2000(1) RCR (Criminal) 306* and *Ajay Malik & Ors. Vs. State of U.T., Chandigarh 2009(3) RCR (Criminal) 649*.

14- He further contended that the entire link evidence in this case is missing. Learned counsel for the appellants pleaded that PW1 HC Parminder Singh, the then MHC Police Station - Nakodar has produced his affidavit Ex.PA and he has also got attested his affidavit Ex.DA, which was also available on judicial record. He pointed out that PW1 has admitted that he has not mentioned in the affidavit Ex.DA that he has handed over the specimen seal impressions to Constable Ranjit Singh along with the sample parcels for taking the same to the office of the Chemical Examiner. This fact was also not mentioned by him in his statement. He further contended that PW1 has also deposed that he does not know whether the chits affixed on the case property were initialed by the Judicial Magistrate or not. He further pleaded that PW1 could not say that Constable Ranjit Singh has deposited the sample seal with the Chemical Examiner at Amritsar and admitted that there is no such reference in the affidavit Ex.DA, nor it was mentioned in that affidavit that the sample seal was handed over to Constable Ranjit Singh. He further admitted that the CFSL form was got typed from a shop on 17/18.05.1999 by Constable Narender Singh, Naib Munshi. He further deposed that he affixed the sample impressions of the seal on CFSL Form. Learned counsel contended that as per the admission of PW1 Parminder Singh MHC, the CFSL form was not prepared at the spot and it was signed by the SHO after three days on 18.05.1999. He further contended that PW2 Constable Ranjit Singh has also admitted in the

cross-examination that it was not mentioned in his statement that the sample seal was entrusted to him. Thus, he contended that there was every possibility of tampering with the case property. To support his contentions, he relied upon cases *Ramesh Prakash Vs. State 2000(1) RCR (Criminal) 306* and *Kaku Singh and others Vs. State of Punjab 2008(3) RCR (Criminal) 37*.

15- He further contended that the case property produced by the prosecution is not connected with the case. PW4 SI Pritam Singh, the Investigating Officer of the case, has admitted in the cross-examination that the bags of some other case were also produced in the Court. Thus, the non-production of the case property further rendered the prosecution case doubtful. He further contended that it is alleged that 450 bags of chips were also loaded in the truck. That was also the part of the case property but those bags of chips have not been produced in the Court. It is also not known as to how and in which manner those chips bags were disposed of.

16- He further contended that the Investigating Officer has not sent any report as required under Section 57 of the Act to the superior police officers, which is again the violation of the provisions of the Act and renders the prosecution case doubtful.

17- He further contended that accused-appellant Baldev Singh had only joined the service of the owner of the truck a week before this occurrence and was not familiar with the activities of the owner. He

was not present when the truck was loaded at Rajasthan. As such, he did not know as to what had been loaded in the truck. He further contended that the owner of the truck was also accompanying the truck when the truck was stopped on the roadside Dhaba for taking tea, where some police officials had reached and on seeing them the owner had slipped away. He contended that the owner of the truck has not been impleaded as an accused. PW3 Amit Parsad, ASP has stated that the truck was owned by one Manjit Singh son of Manohar Singh of Amritsar, whereas PW4 SI Pritam Singh has stated that the truck was owned by Sohan Singh as per the information received by him. So, the Investigating Officer has not even tried to verify the antecedents of the owner. He further contended that the accused-appellant Sukhwinder Singh has absolutely no connection with the truck and the goods loaded therein. He was standing on the roadside at Bus Stand Mowai, from there he took lift in the truck for coming to Nakodar and was arrested by the police from near the roadside Dhaba, where the driver and the owner of the goods stopped the truck. Learned counsel for the appellants contended that there is no evidence to connect the appellants with the contraband loaded in the truck. So, they are not proved to be in possession of the contraband. He further contended that no question has been put to the accused in their statements recorded under Section 313 Cr.P.C. that they were in conscious possession of the contraband. So, the possession of the appellants, much less the conscious possession, over the contraband is

not established. To support his contentions, he relied upon cases *Avtar Singh Vs. State of Punjab 2002(4) RCR (Criminal) 180* and *Sukhdev Singh and another Vs. State of Punjab 2006(4) RCR (Criminal) 263*.

18- He further contended that there are some discrepancies in the statements of the official witnesses which rendered their testimonies unworthy of credence in the absence of any independent corroboration. He further contended that the alleged recovery in this case is commercial, which carries severe punishment. So, the prosecution was required to lead strict proof to prove the charges. To support his contentions, he relied upon cases *Ajay Malik & Ors. Vs. State of U.T., Chandigarh* (supra) and *Makhan Singh Vs. State of Haryana 2015(2) RCR (Criminal) 834*. He contended that there are number of infirmities in the prosecution case. Thus, he contended that the conviction of the appellants has been wrongly recorded by the learned trial Court.

19- On the other hand, Mr. Ajaib Singh, learned Additional Advocate General for the State of Punjab contended that both the accused-appellants have admitted that they have been travelling in the truck wherein 25 bags containing 40 kilograms poppy husk in each, were loaded. So, the burden had shifted upon them to establish that they were not in conscious possession of the contraband. He contended that the defence plea raised by the appellants is not supported from any material on record. He further contended that the statements of PW3 ASP Amit Parsad and PW4 Inspector Pritam Singh are consistent on the point of

search, seizure and recovery of the contraband. The chain of link evidence is also complete. Minor omissions in the statements of PW1 HC Parminder Singh and PW2 Constable Ranjit Singh will not render any omission in the link evidence in view of the contents of the report of the Chemical Examiner. He further contended that the case property is only corroborative evidence. Even the non-production of the case property is not a ground to discard the substantive evidence. He further contended that the provisions of Section 57 of the Act are only directory and not mandatory. Moreover, the superior police officer was himself present at the spot to supervise the search and seizure. He further contended that the non-joining of the owner of the vehicle is a lapse on the part of the Investigating Officer, which also cannot render the prosecution case doubtful when accused-appellant Baldev Singh admitted that he was employed as driver on the truck in question. Thus, he contended that the charges against the appellants are fully established.

20- I have duly considered the aforesaid contentions.

21- It is not disputed that the recovery in this case is alleged to have been effected on the basis of secret information, thereafter the holding of the Nakabandi at a public place. It is also not disputed that the shops were situated near the place of recovery and obviously the public men might be present there but no independent witness has been associated by the Investigating Officer. PW4 Inspector Pritam Singh, the Investigating Officer of the case, has stated that he has tried to join some

public person but they did not come forward to join them. So, it cannot be stated that the Investigating Officer has not made any effort at all to associate the public witness in the investigation of the case. It is a fact of common knowledge that now a days the public at large show their disinclination to come forward to join the investigation. It may be due to various reasons as generally the public man does not want to invite the wrath of the accused. Moreover, the worldly people had become more self-centred and they watch their own interest even in doing any public act. There are very few persons who come forward for the social cause and are prepared to sacrifice themselves for the larger interest of the society. In case *Ajmer Singh Vs. State of Haryana 2010(2) RCR (Criminal) 132*, the efforts were made by the investigating party to join the public witness but none was willing. The Hon'ble Apex Court held that though in such cases independent evidence is required but accused cannot be acquitted merely because no independent witness was produced. In case *Kashmiri Lal Vs. State of Haryana 2013(3) RCR (Criminal) 259* also, no independent witness agreed to join the investigation though requested by the police. The Hon'ble Apex Court held that there is no absolute command of law that police officers cannot be cited as a witness and their testimony should always be treated with suspicion. The Hon'ble Apex Court further observed that ordinarily, the public at large show their disinclination to come forward to become witnesses. It was further laid down that if the testimony of police officer

is found reliable and trustworthy, the court can definitely act upon the same. In view of the aforesaid consistent ratio of law laid down by the Hon'ble Apex Court, mere this fact that no independent witness has been associated are no ground to throw away the prosecution case.

22- It is settled principle of law that the testimonies of the police officials is at par with that of any other witness. Their official designation *ipso facto* is no ground to discard or disbelieve their testimonies. The Hon'ble Apex Court in case ***Ram Swaroop Vs. State (Government of NCT of Delhi) (2013)14, Supreme Court Cases 235*** has laid down that there is no absolute rule that police officials cannot be cited as a witness and their deposition should be treated with suspicion since generally public at large are reluctant to come forward to depose before the Court and, therefore, the prosecution case cannot be doubted for the non-examination of the independent witnesses. In the absence of any animosity between the accused and the police officials, there is nothing wrong in relying upon their testimonies and accepting the documents for basing the conviction. Reliance can also be placed upon case ***Sumit Tomar Vs. State of Punjab, (2013) 1 SCC 395***. In the instant case also, the accused-appellants have not alleged or proved any animosity on the part of the official witnesses produced by the prosecution. There is no material to show that they had any motive for the false implication of the appellants. Moreover, the search and seizure has been conducted under the supervision of PW3 Amit Parsad an IPS

Officer, the then ASP, Sub Division - Nakodar. It is not expected that an IPS Officer will become a party for the false implication of the accused and will support the false version set up by his subordinate. Thus, the non-joining of the public witnesses is no ground to discard the prosecution version. At the most as a rule of caution, the Court can scrutinise the prosecution evidence minutely. Cases *State of Punjab Vs. Ram Chand* (supra), *Angrej Kaur Vs. State of Haryana* (supra), *Gurnam Singh Vs. State of Haryana* (supra) and *Radha Bai Vs. State of Haryana* (supra), relied upon by learned counsel for the appellants are quite distinguishable on facts and are of no help to the appellants in view of the consistent ratio of law laid down by the Hon'ble Apex Court in the cases referred above.

23- There was a definite and specific information available with the Investigating Officer that accused-appellants were carrying the poppy husk in their truck. Even on the basis of that secret information he had sent the ruqqa Ex.PE to the police station for registration of the case at 02:30 P.M. The FIR Ex.PE/1 was registered at 02:40/03:10 P.M. on the same day. There is no statutory violation in mentioning the FIR number in the documents. Generally the FIR number is mentioned in the documents prepared by the Investigating Officer during the investigation of the case. However, there is no dispute with the proposition of law that the FIR number could not have been mentioned in the documents till the copy of the FIR is made available to the Investigating Officer and he

comes to know about the number thereof. In the instant case, the documents Ex.PC the seizure memo, Ex.PC/1 the memos of personal search, Ex.PD the memo regarding seizure of the registration certificate and road permit of the truck in question, Ex. PF & Ex.PG consent memos and Ex.PH the site plan are the documents which have been prepared by the Investigating Officer at the spot before receiving the copy of the FIR. In all these documents no doubt the FIR number has been mentioned, but it is very significant to note that in all these documents earlier a blank space was kept by putting a line and then the FIR number was filled. No question has been put to the Investigating Officer as to when the FIR number was filled in these documents. This question has also not been put to him that the FIR number in these documents has been filled in the same ink and at the same time. So, the Investigating Officer has not been cross-examined on these material aspects of the case. If at the time of preparation of these documents, the column regarding FIR was kept vacant and later on, on receiving the copy of the FIR, the FIR number has been filled therein, there can be no adverse inference against the prosecution. In case ***Ramesh Prakash Vs. State*** (supra) relied upon by learned counsel for the appellants, the emphasis was that the number of FIR was given on top of the documents in the same ink and in the same handwriting, which indicates that these documents were prepared at the same time. But in the instant case, as already mentioned earlier the blank space by putting a line was kept and then the FIR number was filled. So,

there is no reason to render the documents relied upon by the prosecution doubtful. The substance of the contraband was already known to the Investigating Officer on the basis of the definite and credible secret information.

24- The entire thrust of the contentions raised by learned counsel for the appellants in order to allege the omission in the chain of the link evidence is on the affidavit Ex.DA of PW1 HC Parminder Singh, which has not been relied upon by the prosecution, though the same may be lying on the judicial file. In the affidavit Ex.DA, there is omission with respect to deposit of the specimen seal impression in the Malkhana along with the case property and then handing over the specimen seal impression to PW2 Constable Ranjit Singh, who carried the samples to the Office of the Chemical Examiner. However, in the affidavit Ex.PA, which has been tendered into evidence by PW1 HC Parminder Singh, the then MHC Police Station Nakodar, it has been categorically mentioned that the specimen seal impression was also deposited with him along with the case property and the same was handed over by him to PW2 Constable Ranjit Singh for carrying to the Office of the Chemical Examiner along with the sample parcels. In the statement Ex.DB, recorded under Section 161 Cr.P.C., PW1 HC Parminder Singh has categorically mentioned that the subsequent seal impression was deposited with him along with the sample parcels. However, in his statement Ex.DB there is omission about handing over the specimen seal

impression to Constable Ranjit Singh while dispatching the sample parcels to the Office of the Assistant Chemical Examiner. Similarly, in the statement of PW2 Constable Ranjit Singh, it is not mentioned that sample seal was handed over to him. These are only the omissions in their statements. It is settled principle of law that every omission in the statement cannot be considered to be fatal to the prosecution case when the fact is otherwise established from the documentary evidence. Ex.PK is the report of the Chemical Examiner. The contents of the report of the Chemical Examiner are admissible in evidence in view of Section 293 of Code of Criminal Procedure, 1973. In the report of the Chemical Examiner Ex.PK it is categorically mentioned that the seals on the exhibit were intact and agreed with the sample seals sent. Thus, the report of the Chemical Examiner shows that in fact the sample seal was duly sent to the Assistant Chemical Examiner and those tallied with the seals affixed on the sample parcels. These contents can only appear in the report Ex.PK when the specimen seals impressions have been compared by the Assistant Chemical Examiner with the seals affixed on the sample parcels. That exercise can only be done if the specimen seals impressions were available with the Assistant Chemical Examiner. So, there remains no doubt that in fact the specimen seal impressions were duly deposited along with the case property in the Malkhana and were also duly sent to the Assistant Chemical Examiner along with the sample parcels.

25- It comes out from the statement of PW1 HC Parminder

Singh that the CFSL form was got typed from a shop at Nakodar on 17/18.05.1999. The same was got typed by Constable Narender Singh, the Naib Munshi and was signed by the SHO on 18.05.1999. Thus, the CFSL form was not prepared at the spot. Learned counsel for the appellants has not been able to point out any statutory provision or the rules under the Act that it is mandatory to prepare the CFSL form at the spot itself. The instructions issued by the Narcotic Control Bureau are only the guidelines. The Division Bench of this Court in case ***Joga Singh Vs. State of Punjab 2013(1) RCR (Criminal) 47*** has laid down that the instructions which are just the guidelines cannot overriding Act or Rule therein and same cannot be said to have any binding force. Failure to comply with the instructions will not by itself vitiate the conviction. Another Division Bench of this Court in case ***Jarnail Singh son of Jawara Ram Vs. State of Haryana 2013(2) R.C.R (Criminal) 580***, has laid down that the Standing Order No.1/89 is not mandatory as the same was not passed by the Parliament under a statute. Thus, mere this fact that the CFSL form has not been prepared at the spot is no ground to vitiate the conviction as it is not the violation of any mandatory provision of the Act or the Rules made thereunder. Moreover, from the evidence on record it is established that the sample parcels were not tampered with at any point of time and had reached in the hands of the Assistant Chemical Examiner in intact condition. So, there can be no question of any omission in the chain of the link evidence and possibility of

tampering with the sample parcels.

26- In view of the aforesaid consistent view of the Division Bench of this Court, the Single Bench judgments ***Ramesh Prakash Vs. State*** (supra) and ***Kaku Singh and others Vs. State of Punjab*** (supra), cited by learned counsel for the appellants cannot advance the case of the appellants.

27- It is settled principle of law that the case property is only a corroborative evidence. Mere non-production of the part or whole of the case property would not itself vitiate the conviction. To support this view reference can be made to a Division Bench judgment of this Court titled as ***Balraj Singh Vs. State of Punjab 1983 PLR 373***. Thus, the defects in the case property produced by the prosecution during the examination of PW4 Inspector Pritam Singh by learned counsel for the appellants is no ground to discard the substantive evidence brought on record by the prosecution. The chips bags which were found loaded in the truck were not the bags containing contraband, so practically it was not the case property. There was no necessity to produce said chips bags in the Court during the trial.

28- The Division Bench of this Court in case ***Balwinder Singh Vs. State of Haryana 1998(1) RCR (Criminal) 191*** has laid down that Section 52 and 57 of the Act are not mandatory. The same legal position has been reiterated by the Hon'ble Apex Court in case ***Rangi Ram Vs. State of Haryana 2002(2) RCR (Criminal) 811(SC)***, wherein it

has been held that provisions of Section 57 are not mandatory. Non-compliance thereof by itself cannot vitiate the conviction. Thus, mere this fact that the Investigating Officer has not sent the report under Section 57 of the Act to his superior officers is also no ground to found fault with the conviction of the appellants. The purpose of sending the report under Section 57 of the Act is that the superior officers should have knowledge about the search and seizure made by the subordinates and to check the misuse of the provisions of the Act. In the instant case PW3 Amit Parsad ASP was himself present at the spot. The search and seizure was conducted in his direct supervision. So, he was fully aware about the entire facts of the case.

29- The Investigating Officer has also substantially complied with the provisions of Section 42 of the Act. Immediately on receiving the secret information, he prepared the ruqqa Ex.PE containing the entire substance of the secret information therein and sent the same to the police station for registration of the case. It was categorically mentioned in the ruqqa Ex.PE that special report may be issued. The information be also sent through control room and through wireless. Copy of the FIR Ex.PE/1 shows that the copy of the report was sent to the higher police officers through Constable Dalbir Singh No.2364 and the wireless was also sent to the control room. The copy of the FIR was even received by the Judicial Magistrate on 15.05.1999 itself at 05:00 P.M. i.e. within two and a half hour of receiving the secret information. It is also an admitted fact

that at the time of receiving the secret information the Investigating Officer was on move and was not present in the police station. Thus, in view of the law laid down by the Division Bench of this Court in case *Jarnail Singh son of Jawara Ram Vs. State of Haryana* (supra) and Hon'ble Apex Court in case *Gurdev Kaur Vs. State of Punjab 2014 (1) DC (Narcotics) 573*, there was substantial compliance of provision of Section 42 of the Act.

30- Accused-appellant Baldev Singh has raised the plea that he had joined the services of the owner of the truck a week before and was not familiar with the activities of the owner of the truck. He also pleaded that he was not present when the truck was loaded at Rajasthan as the owner of the goods were accompanying the truck. The truck was stopped on the road near the roadside Dhaba to take tea. Where some police officials reached and on seeing them, the owners slipped away. He has also pleaded that co-accused had taken the lift from the roadside bus stand between Phillaur and Nurmahal and wanted to go to Nakodar. Appellant Sukhwinder Singh has raised the plea that he was standing on the roadside at Bus Stand - Mowai, from there he took the lift for coming to Nakodar and was arrested by the police from near roadside Dhaba. Thus, both the appellants had taken the plea that the owners of the goods were also travelling in the truck but surprisingly they have not disclosed the names and particulars of the owners of the goods loaded in the truck. Appellant Baldev Singh has admitted himself to be the driver of the truck

carrying the goods. He has not produced any document about the transportation of the goods from Rajasthan as alleged by him. In the cross-examination of PW4 Inspector Pritam Singh, it has been suggest that the owner of the goods who were in the truck had left the truck in its way from Nurmahal to Nakodar, whereas in the statement under Section 313 Cr.P.C. appellant Baldev Singh has pleaded that the owners of the goods had slipped away from the roadside Dhaba on seeing the police officials. Thus, the stand of the appellants is self-contradictory. The Investigating Officer has categorically stated that it has not come in his investigation that Sohan Singh, Dulla or Pammi were also accompanying the accused in the truck on the date of occurrence. So, it was only the present appellants who were travelling in the truck at the time of apprehension. It has not been disputed that appellant Baldev Singh was the driver of the truck in question and appellant Sukhwinder Singh was travelling therein along with the driver. From the consistent statements of PW3 Amit Parsad ASP and PW4 Inspector Pritam Singh it is established that 25 bags containing 40 kilograms poppy husk were loaded in the truck which was being transported. It does not appeal to the reasons that appellants were not aware about the contents of the bags loaded in the truck. The plea raised by appellant Sukhwinder Singh that he only took lift in the truck from bus stand village Mowai for going to Nakodar is not believable as it is improbable that appellant Baldev Singh alone would be plying the truck to Rajasthan and back for loading the

goods. Appellant Sukhwinder Singh alias Sukha is resident of village Chooria, Distt. Amritsar. He has not explained as to for what purpose he was present at the bus stand of village Mowai. He has also not led any evidence in his defence to show that he has any relation at village Mowai or any other nearby village to explain his presence at village Mowai. So, it appears that this plea has been raised by appellant Sukhwinder Singh only as an afterthought to meet out his admitted presence in the truck. So, there is no escape from the conclusion that both appellants Baldev Singh and Sukhwinder Singh were fully aware that the contraband was loaded in the bags and they were transporting the same. Consequently, they were in possession of the gunny bags containing contraband being fully aware of the contents thereof.

31- It is settled principle of law that once the possession is established, the presumption under Sections 35 and 54 of the Act comes into play and it becomes the duty of the accused to show that he was not in conscious possession of the contraband. In the instant case, only the accused-appellants were present in the truck. Word “conscious” is a state of mind, it is deliberately or intended and means awareness about a particular fact. As already discussed, the appellants were fully aware about the contraband present in the bags, so, it cannot be stated that the appellants were not in conscious possession of the contraband.

32- Moreover, once it is established that the appellants were in possession of the contraband, it is for them to show that they were not

in conscious possession thereof because how they came to be in possession is within their special knowledge. Hon'ble Supreme Court in case *Madan Lal and Anr. Vs. State of Himachal Pradesh 2003(4) RCR (Criminal) 100*, has laid down as under :-

“Once possession is established the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

33- In case *Dharampal Singh Vs. State of Punjab, 2010(4) RCR (Criminal) 504*, the Hon'ble Apex Court has laid down as under :-

“9. ***** In the context of Section 18 of the Act once possession is established the accused, who claims that it was not a conscious possession has to establish it because it is within his special knowledge. Section 54 of the Act raises presumption from possession of illicit articles. It reads as follows :

"54. Presumption from possession of illicit articles. - In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of -

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic

substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily."

From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to account for satisfactorily the possession of opium. Once possession is established the Court can presume that the accused had culpable mental state and have committed the offence."

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

"14. From the conjoint reading of the provisions of Section 35 and 54 of the Act, it becomes clear that if the accused is found to be in possession of the contraband article, he is presumed to have committed the offence under the relevant provisions of the Act until the contrary is proved. According to Section 35 of the Act, the court shall presume the existence of mental state for the commission of an offence and it is for the accused to prove otherwise.

Thus, in view of the above, it is a settled legal proposition that once possession of the contraband articles is established, the burden shifts on the accused to establish that he had no knowledge of the same."

35- In the instant case the plea raised by the appellants is clearly an afterthought and is not sufficient to rebut the statutory presumption arising under Section 35 and 54 of the Act. So, there is no

escape from the conclusion that appellants were in conscious possession of the contraband.

36- No doubt, in the statements of the accused-appellants under Section 313 Cr.P.C., no specific question has been put to them with respect to their conscious possession, but that omission in the statements under Section 313 Cr.P.C. is also no ground to vitiate the conviction. In the instant case, 25 bags containing 40 kilograms poppy husk in each, have been recovered from the truck in possession of accused-appellants. Every error or omission in the statement under Section 313 Cr.P.C. does not necessarily vitiate the conviction/trial. The accused-appellants have to show that some prejudice has been caused to them due to that omission. 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”

37- Similarly, in case *Gian Chand and others Vs. State of Haryana* (supra), 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 inculpable 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.”

38- In view of the aforesaid consistent rule of law, it would not be enough for the accused-appellants 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. Hence, it cannot advance the case of the appellants in view of the aforesaid circumstances.

39- In view of the aforesaid later view of the Hon'ble Apex Court in the cases referred above, cases *Avtar Singh Vs. State of Punjab* (supra) and *Sukhdev Singh and another Vs. State of Punjab* (supra), relied upon by learned counsel for the appellants are of no help of the

appellants.

40- Learned counsel for the appellants has not been able to point out any material contradictions in the statements of the prosecution witnesses to render the apprehension of the accused, search and seizure of the contraband from their possession doubtful. The minor contradictions are bound to occur even in the statements of the truthful witnesses with the lapse of time. The recovery in this case has been effected on 15.05.1999. PW3 Amit Parsad ASP has been examined on 08.09.2003 i.e. after more than four years and PW4 Inspector Pritam Singh has been examined on 27.01.2004 after about 4 ½ years i.e. a considerable long period.

41- The statements of all the prosecution witnesses are consistent, cogent and reliable, which are sufficient to establish beyond shadow of reasonable doubt that accused-appellants were found in conscious possession of 25 bags containing 40 kilograms poppy husk in each. Thus, the conviction of the appellants as recorded by the learned trial Court and the sentence awarded to them, is well founded and is hereby maintained and upheld.

42- Consequently, present appeal has no merits and the same is hereby dismissed. The accused-appellants 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.

Dated: 07.12.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**