

CRM-M-1753-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Judgment Reserved on: 26.03.2015

Pronounced on : May 13, 2015

1. CRM-M-1753-2015

Inderjit Singh and another

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

2. CRM-M-2749-2015

Amandeep Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

AND

3. CRM-M-6191-2015

Mangal Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- | | |
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| 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 |

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Argued by: Mr. D.N.Ganeriwala, Advocate,
for the petitioners in CRM-M-1753-2015.

Mr. Vijay K. Jindal, Advocate,
for the petitioner in CRM-M-2749-2015.

Mr. Karanvir Singh Khehar, Advocate,
for the petitioner in CRM-M-6191-2015.

Mr. S.S.Chandumajra, DAG, Punjab.

Paramjeet Singh, J.

This order shall dispose of CRM-M-1753-2015, titled 'Inderjit Singh and another vs. State of Punjab', CRM-M-2749-2015, titled 'Amandeep Singh vs. State of Punjab', and CRM-M-6191-2015, titled, 'Mangal Singh vs. State of Punjab', as common questions of fact and law are involved in all these petitions.

Before proceeding, further, a brief reference to the facts is necessary which are being given in a tabular form as under:

Petition No.	FIR No./under Section/Police Station	Date of Arrest of accused	Quantity of allegedly recovered contraband	Date of filing of application moved under Section 36 (4) of NDPS Act	Application under Section 167 (2) Cr.P.C.	Any other remarks
CRM-M-1753-2015	FIR No.51 dated 17.06.2014, u/S 22/61/85 NDPS Act, P.S.Tapa	17.06.2014	30000 Maidotil intoxicant tablets, 100 intoxicant capsules and 40 vials of Rexcof	Application moved on 10.12.2014, allowed on 18.12.2014 and two months' time was granted.	Application was moved on 20.12.2014 and dismissed on 06.01.2015	Challan not presented for want of report of chemical examiner.
CRM-M-2749-2015	FIR No.205 dated 06.06.2014, 21/29/61/85 NDPS Act, 25/54/59 of Arms Act, P.S.City Tarn Taran	26.06.2014	11 kg heroin	Application moved on 15.12.2014, allowed on 24.12.2014 and four months' time was extended	Application was moved on 25.12.2014 and dismissed on 03.01.2015	Challan not presented for want of report of chemical examiner.
CRM-M-6191-2015	FIR No.66 dated 30.07.2014, 18/29/61/85 NDPS Act, P.S.Tapa	30.07.2014	3 kg opium	Application moved on 19.01.2015, allowed on 29.01.2015, time of two months was granted	Application moved on 06.02.2015 and dismissed on 10.02.2015	Challan not presented for want of report of chemical examiner.

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I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners contended that the petitioners have indefeasible right of bail, as challan has not been presented for want of report of chemical examiner. Learned counsel further contended that application for extension of time should have been filed by the Public Prosecutor independently without being influenced by the investigating agency. Learned counsel further contended that though quantity may be commercial or huge, the default bail is a right. Learned counsel further contended that the petitioners have been behind bars since long and are not required for any custodial interrogation. In support of their contentions, learned counsel relied upon *Sayad Mohamad Ahmad Kazmi vs. State, GNCTD and others* 2012 (12) SCC(1), *Janta Singh vs. State of Punjab* 1996(1) R.C.R. (Criminal) 1, *Taj Singh vs. State (Delhi Administration)* 1988(2) R.C.R. (Criminal) 313, *Krishan Lal vs. State* 1989 (2) ILR (Delhi) 446, *State of Haryana vs. Mehal Singh and others* 1978 PLR 480, *Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and Another* 2010 (1) R.C.R. (Criminal) 942, *Sham Lal vs. State of Punjab*, Criminal Appeal No.2125 of 2013 decided on 06.08.2013, *Jeevan Sharma @ Vicky vs. State of Punjab*, CRM-M-41673-2013, decided on 15.01.2014, *Sanjeev Kumar vs. State of Punjab*, CRM-M-39703-2013, decided on 04.12.2013, *Hargobind Singh vs. State of Punjab*, CRM-M-14269-2014, decided on

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14.05.2014, *Malkiat Singh @ Totti vs. State of Punjab*, CRM-M-28074-2014, decided on 04.12.2014, *Sukhpal Singh @ Kala vs. State of Punjab*, CRM-M-12991-2014, decided on 23.05.2014, *Kabul Singh @ Sahib Singh vs. State of Punjab*, CRM-M-17345-2014, decided on 11.12.2014, and *Sukha @ Sukhdev Singh vs. State of Punjab*, CRR-3837-2014, decided on 18.12.2014.

Learned counsel for the petitioners further contended that vide order dated 11.09.2014 passed by a Coordinate Bench of this Court in CRR-2087-2014, titled *Ranjit Singh @ Rana vs. State of Punjab*, similar matter has been referred to the Larger Bench of this Court and this Court should await the decision before disposal of these petitions and till then interim bail may be granted to the petitioners as has been done by the Coordinate Bench of this Court.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioners and contended that the prosecution filed application for extension of time within the stipulated period of 180 days, therefore, it cannot be considered to be at fault.

I have considered the rival contentions of learned counsel for the parties.

Before proceeding further, it would be appropriate to reproduce relevant sections. Section 173 of the Code, which envisages the submission of a report to the Magistrate after the completion of the investigation for the purpose of enabling him to take cognizance of the offence is as follows :

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"173. (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer incharge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the office incharge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police office shall forward to the Magistrate along with the report,

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(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution propose to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to a report forwarded under sub-section (2)."

Section 190 of the Code provides three different modes to take cognizance of an offence and a relevant part thereof reads as under:

"190. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other

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than a police officer, or upon his own knowledge, that such offence has been committed."

Section 36-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads as under:

"36A. Offences triable by Special Courts.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under subsection (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers

(i) when such person is forwarded to him as aforesaid;

or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

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that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27 A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973

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(2 of 1974), thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days.”

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.”

Section 36-A of the Act provides various periods for which an accused can be detained in judicial custody. Section 36-A is an overriding provision since it begins with *non obstante* clause. Section 36-A (4) of the Act stipulates that if the offence is punishable under Section 19 or 24 or 27-A or for offences involving “commercial quantity”, the period of statutory detention shall extend to 180 days instead of 90 days, as provided under Section 167(2) of the Code. This period can further be extended to one year on the report of Public Prosecutor.

Section 190 of the Code prescribes three different modes to take cognizance of an offence viz. (i) upon receiving a complaint of facts which constitute such offence; (ii) upon a police report of such facts; (iii) upon information received from any person other than a police officer, or

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upon his own knowledge, that such offence has been committed. The investigating officer has collected all evidence and facts that are detailed in sub-section (2) of Section 173 of the Code and from the evidence thus collected he is satisfied that the case deserves to be initiated against the accused.

The Public Prosecutors moved applications in the present cases for extension of time on the ground that reports of chemical examiner have not been received despite sincere efforts, therefore, challans could not be presented in the concerned Special Court. The said applications were decided by the Special Court prior to the filing of applications by the petitioners under Section 167 (2) of the Code. The Special Courts have rightly accepted the ground taken by the prosecution for extension of time that it is a compelling reason for which challans could not be presented to the Special Court and ultimately allowed the applications and extended the time for presentation of challan.

In *State of Haryana vs. Mehal Singh and others* 1978 PLR 480, a Full Bench of this Court has held under:

“16. In view of the above conclusion, the accused would be on still a weaker ground in canvassing that the report, which did not include the report of the experts such as Chemical Analyst, Serologist, Ballistic Expert, finger Print Expert etc., would not be a complete police report envisaged in sub-section (2) of section 173 of the Code, which in terms is prepared and submitted only after the completion of the investigation. So far as the investigation part of the job of the investigating officer is concerned, it is

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complete if he has collected all evidence and facts that are detailed in sub-section (2) of section 173 of the Code and from the evidence thus collected he is satisfied that the case deserves to be initiated against the accused. And, even if the investigating officer had not received the report of the expert, so far as his job of collecting of the evidence is concerned, that is over the moment he dispatches the material for the opinion of the expert and incidentally cites him as a witness if he relies on his testimony.

17. xxxx

18. xxxx

19. *It would be thereafter, at the discretion of the Court whether to permit the prosecutor to adduce in evidence the reports of the experts of the kind. If the Court permits the prosecutor to do so, then a copy thereof shall have to be furnished to the accused. The Court, under section 91 of the Code (which is reproduced below) has to determine whether to call for a document from a witness on the application of the police officer.*

“91. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

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(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed -

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872, or the Banker's Books Act, 1891 or.

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or thing in the telegraph authority."

And the provisions of section 91 of the Code further envisage that such a person need not appear before the Court in person. He may send the document directly to the Court through some other person. The Court has also the power under section 311 of the Code to permit production of the additional evidence if it is considered in the interest of justice. However, in the exercise of its discretion the Court has always to balance the interest of the accused in that he should not remain incarcerated for unduly long period as the concern on the part of the legislature spare him from unduly delayed incarceration is apparent from the provisions of the proviso to sub-section (2) of section 167 of the Code. However, the interest of justice has always to be kept in view and no prosecution evidence, which have a vital bearing on the case should be shut out.

20. For the reasons stated, I hold that the investigation of an offence cannot be considered to be

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inconclusive merely for the reason that the investigating officer, when he submitted his report in terms of sub-section (2) of section 173 of the Code to the Magistrate, still awaited the reports of the experts or by some chance, either inadvertently or by design, he failed to append to the police report such documents or the statements under section 161 of the Code, although these were available with him when he submitted the police report to the Magistrate.”

In ***Abdul Azeez P.V. And others vs. National Investigation Agency*** 2015 (1) RCR (Criminal) 239, the Hon'ble Supreme Court has held as under:

3. The petitioners filed Criminal M.C. No. 100 of 2013 on 22.10.2013 before the learned Special Court, NIA Cases submitting that they were entitled to get statutory bail under Section 167(2) of the Code of Criminal Procedure (for short "Cr.P.C.") inasmuch as the investigating agency had failed to file the final report within 180 days. It was further submitted that the bank account details and mobile phone call details of the petitioners, as stated in the charge-sheet itself, were yet to be verified and that the charge-sheet filed on 19.10.2013 was not a final report as contemplated under Section 173(2) Cr.P.C. The submissions were negated by the learned Special Court by its order dated 04.11.2013 holding that the petitioners were not entitled to statutory bail under Section 167(2) Cr.P.C., which view was challenged by filing Criminal Appeal No. 1711 of 2013 in the High Court of Kerala at Ernakulam. The High Court went through paragraph Nos. 17.1., 17.2, 17.3 and 17.8 of the charge-sheet and found that the materials so disclosed and adverted to in the charge-sheet

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did show that it was a final report. The High Court, thus, dismissed the appeal. The present special leave petition has been filed to challenge the view taken by the High Court.

4. Having gone through the charge-sheet, we are not persuaded to take a different view. The materials adverted to show that it was a final report on the facets investigated into by the investigating agency. Furthermore, the requisite sanctions as required under Sections 18 and 18A of the UAPA and so also under Section 7 of the Explosive Substances Act were also accorded by the concerned authorities. The charge-sheet so filed before the learned Special Court was complete in all respects so as to enable the learned Special Court to take cognizance in the matter. Merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report. In our opinion Section 167(2) of Cr.P.C. stood fully complied with and as such the petitioners are not entitled to statutory bail under Section 167(2) of Cr.P.C.”

In view of the law laid down in ***Mehal Singh (supra)*** and ***Abdul Azeez P.V. (supra)***, I am not persuaded to take a view different from the one taken by the Special Courts. Merely non-filing of report of chemical examiner with report under Section 173 of the Code cannot be treated as an incomplete challan. There is a provision in the Code for submitting supplementary challan also in which other documents can also be brought on the record which may be collected by the investigating agency during further investigation. In this regard, it may be apposite to observe here that it appears that the prosecution and the

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investigating agency were not handling the matter properly as challan could have been filed even without report of the chemical examiners which can be submitted subsequently. The investigating agency can submit other evidence by way of supplementary challan. It appears that the persons defending on behalf of the State are not updating themselves about the settled position of law. The investigating agency as well as the prosecuting agency are aware of the statutory provisions that delay in completing investigation and delay in filing the challan entitle the accused for statutory bail under Section 167 (2) of the Code. When the cases are of serious nature, it becomes the duty of the investigating agency as well as the senior officers having control over them to see that the investigating officers are performing their duty with due diligence and are not swayed by other reasons.

Furthermore, the Public Prosecutors moved applications for extension of time within the stipulated period of 180 days, therefore, the prosecution or investigating agency is not responsible for any delay on the part of the Special Courts for not deciding the application well within time. It is not within the control of the prosecution or investigating agency to decide the application, rather it is the function of the Court, therefore, they cannot be held responsible for the delay caused in not deciding the application and the petitioners are not entitled for benefit of the same. In this regard, reliance can be placed upon ***Japani Sahoo vs. Chandra Sekhar Mohanty*** 2007(3) R.C.R.(Criminal) 912 wherein it has been held as under:

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“50. We are unable to uphold the contention. We are equally not impressed by the argument of the learned counsel for the accused that the decision in Bharat Damodar is per incuriam. We have gone through the said decision. We have also extracted hereinabove paragraph 10 wherein the contention of the accused had been dealt with by this Court and negatived. It is true that in that case, the Court observed that taking clue from Chapter Heading (Chapter XXXVI : Limitation for taking cognizance of certain offences), an argument was advanced that if cognizance is not taken by the Court within the period prescribed by Section 468(2) of the Code, the complaint must be held barred by limitation. But, it is not true that this Court rejected the said argument on that ground. The Court considered the relevant provisions of the Code and negatived the contention on 'cumulative reading of various provisions'.

The Court noted that so far as cognizance of an offence is concerned, it is an act of Court over which neither the prosecuting agency nor the complainant has control. The Court also referred to the well-known maxim "actus curiae neminem gravabit" (an act of Court shall prejudice none). It is the cumulative effect of all considerations on which the Court concluded that the relevant date for deciding whether the complaint is barred by limitation is the date of the filing of complaint and not issuance of process or taking of cognizance by Court.

51. We are in agreement with the law laid down in Bharat Damodar. In our judgment, the High Court of Bombay was also right in taking into account certain circumstances, such as, filing of complaint by the complainant on the last date of limitation, non availability of Magistrate, or he

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*being busy with other work, paucity of time on the part of the Magistrate/Court in applying mind to the allegations levelled in the complaint, postponement of issuance of process by ordering investigation under sub-section (3) of Section 156 or Section 202 of the Code, no control of complainant or prosecuting agency on taking cognizance or issuing process, etc. To us, two things, namely; (1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent. So far as complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the Court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalized for such delay on the part of the Court nor he can be non suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the Court well within the time prescribed by law. In such cases, the doctrine "actus curiae neminem gravabit" (an act of Court shall prejudice none) would indeed apply. [Vide **Alexander Rodger v. Comptoir D'Escompte, (1871) 3 LR PC 465**]. One of the first and highest duties of all Courts is to take care that an act of*

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Court does no harm to suitors. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the Court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.

52. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a Court of Law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of 'litera legis'. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and ultra vires Article 14

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of the Constitution.

53. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings.”

It is the sorry state of affairs that in the State of Punjab specifically in the drug cases, the investigating agency is not following the mandatory provisions of law. The investigating agency could not answer as to why the challans without the reports of chemical examiners could not be presented in the Court. The State of Punjab which was known as one of the country's “crown jewels” is now in the grip of a drug epidemic of enormous dimensions and is at such a high risk of drug diseases which has literally shattered the physical and mental health of the youth. Due to the undue delay caused in conducting the test of narcotic drugs and not filing the reports under Section 173 of the Code to the Special Courts Court well within time or even during the extended period granted by the courts, the habitual offenders are repeatedly indulging in the narcotic cases. The case law cited by learned counsel for the petitioners is distinguishable to the facts and circumstances of the present case. Learned counsel for the petitioners mainly relied upon ***Sanjay Kumar Kedia's case (supra)***. In that case, application for

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extension of time was filed by the investigating officer and the Hon'ble Supreme Court came to the conclusion that it does not indicate even any application of mind on the part of the Public Prosecutor. Similarly, the situation was with regard to second application for extension of time and the Hon'ble Supreme Court held as under:

“13. Mr. Bhattacharjee has, however, pointed out that the applications for extension filed by the public prosecutor Section 36A (4) of the Act did satisfy the aforesaid conditions and merely because an independent report had not been tendered would not change the nature of the application. We reproduce herein the application dated 2nd August, 2007 for extension of time in extenso:

XXXXXXX

14. *A bare perusal of this application shows that it has been filed by the investigating officer of respondent No.1 and does not indicate even remotely any application of mind on the part of the public prosecutor. It further does not indicate the progress of the investigation, nor the compelling reasons which required an extension of custody beyond 180 days. This application was allowed by the Special Judge on 2nd August, 2007 i.e. on the day on which it was filed which also reveals that no notice had been issued to the accused and he was not even present in Court on that day.*

15. The second application dated 30th January, 2008 is even more incomprehensible. We reproduce the same hereinbelow :

XXXXXX

A bare perusal of this unsigned application would reveal that it does not even remotely satisfy the tests laid down in Vishnu Thakur's case. The Special Judge allowed this application as well on the day it was filed by a cryptic order and without notice to the accused in the following terms :

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"Accd. Sanjay Kedia is produced from J/C. Accd. Filed a vakalatnama. Prosecutor files Hazira. Prosecution also files a petition praying for time. Considered prayer for time is allowed to 13.2.2008 for production of the accd & report from I.O."

16. We are, therefore, of the opinion that the extensions granted to the investigating department under the proviso to Section 36A (4) did not satisfy the conditions laid down therein and both the extensions, therefore, being contrary to law, must be struck down accordingly."

In those circumstances, the Hon'ble Supreme Court came to the conclusion that application moved by the prosecution was not an independent application of mind of the Public Prosecutor whereas in the present case, the applications, itself, have been moved by the Public Prosecutors after applying their mind and the same has been done keeping in view the fact that due to heavy rush before the Forensic Science Labs for testing of the samples and the time was sought. It is not a case where the Public Prosecutor has not applied his mind and the application is moved by the investigating agency, rather in the present case, the applications have been filed, itself, by the Public Prosecutors. In such circumstances, ***Sanjay Kumar Kedia's case (supra)*** is not applicable to the facts of the present case.

This Court has issued instructions from time to time in various petitions with regard to the functioning of chemical labs, but till today, nothing has been done by the State Government.

In CRM-M-16589-2013, this Court has also observed in respect of malfunctioning of Chemical Examiner Laboratory, Kharar. It was also observed that there is acute shortage of trained staff and

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Forensic Science Laboratories. Order dated 04.06.2013 passed in that petition reads as under:

“Affidavit of Mr. Raj Kamal Chaudhari, Secretary to Govt. Punjab, Deptt. of Health & Family Welfare, Chandigarh has been filed in Court today which is taken on record.

Affidavit of Dr. Rakesh Kashyap, Chemical Examiner to Govt. of Punjab, Kharar has also been filed in Court today which is taken on record.

Mr. Karanvir Singh Khehar, Advocate, who was appointed Court Commissioner, has also submitted his report which is also taken on record. Copy of the same has been supplied to learned State counsel. In addition to the report, a pen-drive containing video and photographs of the Govt. Chemical Examiner Laboratory at Kharar got recorded by the Court Commissioner and a bill amounting to ₹16,010/- on account of video and photo charges and purchase of two pen-drives, have also been placed on record. The pen-drive be sealed in an envelope.

State of Punjab is directed to hand over an account payee cheque/demand draft amounting to ₹ 41,000/- (₹ 25,000/- as fee of Court Commissioner and ₹ 16,000/- expenses incurred on video as well as photo charges etc.) to Mr. Karanvir Singh Khehar, Advocate on 05.06.2013.

22 (twenty two) registers including despatch and receipt registers, seized by the Court Commissioner from the Govt. Chemical Examiner, Laboratory at Kharar have been produced in Court and the same are handed over to the officials of the aforesaid Laboratory who are present in Court. A list of the same is taken on record.

As per the report of the Court Commissioner, the state of affairs in the Govt. Chemical Examiner Laboratory at Kharar is very poor and contrary to the one explained in affidavit dated 24.05.2013 filed in Crl. Misc. No.M-842 of 2013.

In view of above, the Principal Secretary to Govt. Punjab, Department of Health and Family Welfare, Chandigarh is directed to be present in Court on 13.06.2013.

Copy of this order be given to the learned State counsel under signatures of the Bench Secretary.”

On 08.08.2013, following order was passed in that petition:

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“Dr. Rakesh Kashyap, Chemical Examiner to the Government of Punjab, Kharar, District Mohali is present in Court. He has tendered his additional affidavit and additional affidavit of Hussan Lal, Secretary to Government Punjab, Health and Family Welfare dated 08.08.2013, which are taken on record. The Chemical Examiner has assured that backlog of analysis of NDPS sample cases will be cleared preferably within four weeks. He states that approximately 2600 NDPS samples are to be examined, out of which 1000 have already been examined and reports are to be prepared and despatched. 250 samples are already under process for analysis. Some reports of the samples are ready and will be sent to the concerned officials. It is further submitted that the office of Chemical Examiner has sent a letter to the Director, Health and Family Welfare for providing the requisite software for maintaining proper records. It is hoped that this will be done by the competent authority in near future.

Having considered the affidavits of Chemical Examiner as well as the Secretary, Health and Family Welfare, this Court hopes that efforts will be made to introduce the latest technology for analysis of the sample for which on the last date, the Chemical Examiner informed this Court that matter regarding Gas Chromatograph and Mass Spectrometer and imported/indigenous Gas Chromatograph with head space sampler is pending with the Controller of Stores, Punjab, decision is yet to be taken.

This Court requests the Chief Secretary, Punjab that since the role of the Chemical Examiner is crucial in the criminal as well as civil cases, the efforts should be made to provide the requisite equipment of latest technology for being used for analysis of the samples and Chief Secretary will make an effort that all the pending proposals of the Chemical Examiner and the Secretary, Health and Family Welfare, Punjab for expediting their working are cleared as early as possible.

Adjourned to 12.09.2013.

A copy of the order be sent to the Chief Secretary, Punjab for compliance.”

On 06.12.2013, following order was passed in that petition:

“In pursuance of the order dated 26.11.2013,

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Smt. Vini Mahajan, IAS, Principal Secretary to Government of Punjab, Department of Health, is present in Court. She has informed the Court that amount of ` 3.87 crores has been sanctioned for construction of the building for setting up State Chemical Laboratory. Even two forensic science medical experts have been deputed, one on regular basis and other on temporary basis. More such experts are likely to be appointed to cope with the rush and their appointment will be made at the appropriate level. Staff having qualification of M.D. in Forensic Science would be requisitioned for this purpose. Three more posts of Analysts have been got sanctioned. This Court has also been informed by the Principal Secretary that they have already given consent for handing over the control of the State Chemical Laboratory to the Home Department, as all the material exhibits are sent for analysis and issuing reports by the police or medical officer pertaining to criminal matters. The investigating agencies are under the control of Home Department. However, no decision has been communicated to the Health Department by the Home Department with regard to taking over the control of the State Chemical Laboratory. It has also been brought to the notice of this Court that besides the State Chemical Laboratory under the control of the Health Department, there are two forensic science laboratories under the control of Police/Home Department. Since the main object of the forensic science/chemical laboratories is to render quality scientific service to analyse/examine/compare material objects by employing classical or modern scientific technology, including the latest state-of-art instruments/equipments for the cause of justice to prove innocence/guilt by applying scientific knowledge, there should be unified control over such laboratories.

Principal Secretary has also informed the Court that there is a problem regarding maintenance of secrecy of the samples as the samples are forwarded by the Police authorities by mentioning FIR number and the detailed particulars of the case etc. and the same are retained in the State Chemical Laboratory as such. Although a board has been constituted by the Chemical Examiner to ensure that sample is not tampered with before analysis but possibility of its tampering during transit i.e. Time period between the initial point till reaching the chemical laboratory cannot be ruled out. The secrecy should be maintained from the initial stage i.e. During the handling by the investigating agency or

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the agency sending the samples.

Keeping in view the information supplied by the Principal Secretary, Health, State Government is directed to release the amount which already stands sanctioned for construction of building of the State Chemical Laboratory, forthwith and not later than 31.12.2013 in any circumstances, as the delay in its construction will affect the analysis of the samples, consequential investigation and detection of crime and unnecessary advantage to the accused and may also be detrimental to the interests of innocent.

So far as the requirement of staff in the State Chemical Laboratory for analysis of samples is concerned, more officers with requisite qualification i.e. M.D. Forensic Science as well as Chemists/Analysts required for examination of samples of drugs, poppy husk, opium etc. should also be appointed keeping in view the heavy rush of samples. At least the State Government shall make an endeavour to send staff on deputation to the State Chemical Laboratory or in the alternative State should authorize the Chemical Examiner or the Principal Secretary or who-so-ever may take over the control of the State Chemical Laboratory, to employ such staff on contract basis so that samples, which are lying unanalyzed, could be analyzed promptly and the accused/innocent may not suffer or take undue benefit of delay in sending the analysis report. Keeping in view the urgency and also the fact that other States such as Maharashtra has merged the chemical examiner department into forensic science laboratory, Home Department is directed to take decision with regard to taking over the control of the State Chemical Laboratory at the earliest but not later than 15.01.2014, since other formalities are stated to be complete and proposal for taking over the control of the Chemical Laboratory was made by the Home Department and no objection has been given by the Health Department. Since large number of samples are pending for analysis, State Government shall make an endeavour to recruit more staff, if not permanently, on temporary basis to clear the pending samples keeping in view the statutory provisions specifically with regard to bail matters as mentioned in the Cr.P.C. Besides two Forensic Science Experts i.e. one regular and another on temporary basis, at least one more post of Assistant Chemical Examiner on regular basis should be sanctioned so that there may be timely analysis of the samples.

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This Court deems it fit and proper to direct all the concerned that secrecy of the samples/exhibits should be maintained from the initial stage till it reaches the concerned laboratory where the samples are to be examined. Home Department shall frame a comprehensive policy regarding maintenance of secrecy so that the department/investigating agency should maintain secrecy of the samples/exhibits from initial stage till the reports are received by the concerned agency. Henceforth, it will be boundened duty of the sample/exhibits sending agency to maintain secrecy and the State shall frame rules/guidelines for maintaining secrecy.

The Chemical Examiner has brought to the notice of this Court that thousands of samples of the NDPS cases are pending analysis and it has also been pointed out that reason for delay in analysing, preparing and sending analysis reports is non-availability of latest/modern equipments for analysis. It has been informed by the Chemical Examiner that proposal has already been sent by the Department of Health for purchasing latest equipments for this purpose but the same is lying at the level of Controller of Stores. It needs to be emphasized here that decision with regard to the purchase of equipments might have been taken much earlier but by now, with the advancement of the technology, new modern state-of-art equipments may have come in the market. The Chief Secretary shall constitute a committee of Principal Secretary Health and Home and may also associate technical experts from CFSL for the purpose of determining technical specifications of the latest equipments instead of purchasing the outdated equipments which may have been considered earlier. Decision in this regard should be taken by the committee in a month. The latest modern equipments should be purchased. The decision with regard to annual maintenance of the equipments should also be taken by the competent authority. Chief Secretary shall ensure that all concerned, including the Controller of Stores purchase latest equipments for analysis as per the policy of the State Government at the earliest. Nodal Officer or group of persons/board constituted for this purpose would purchase the latest equipments forthwith but before 31.01.2014 in any circumstances and the affidavits of the Chief Secretary as well as the concerned Secretary i.e. Principal Secretary Home and Health as well as of Controller of Stores shall be filed regarding the progress in this

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regard on or before the next date.

It has been brought to the notice of this Court by the Chemical Examiner that majority of the staff now-a-days is assisting in a vigilance enquiry which is resulting in further delay of analysis of samples and the record is under the control and supervision of the Vigilance Department.

This Court deems it fit and appropriate to direct the Vigilance Department that it should take out attested photocopies of the concerned record and original record should be handed over to the concerned branches of Chemical Examiner so that there may not be delay in analysis of the samples. Vigilance Department shall ensure that minimum staff of Chemical Laboratory be used for this purpose and it can ask its own staff to do so. Specifically the officials of the Chemical Laboratory who are engaged in analysis of samples and are not involved in the vigilance enquiry, should be spared for analysis of samples and Vigilance Department may use its staff for verifying the record at its own level. However, Chemical Examiner shall depute some persons who may guide and help the Vigilance authorities in respect to the record required by them.

This Court hopes that construction of building for State Chemical Laboratory shall commence at least with effect from 01.01.2014 because no proper building for the laboratory is available and this is very much clear from the report of Local Commissioner sent by this Court as everything appears to be in shambles in the present premises of the Chemical Laboratory.

It is pertinent to mention here that since this matter has been taken up by this Court on its own motion, the Chemical Examiner has made every effort to streamline the system, therefore, his efforts deserve appreciation. This Court strongly recommends to the Principal Secretary that they should consider his advice from time to time so that he may not unnecessarily face the wrath of the Courts. I hope, Chemical Examiner shall continue his endeavour to streamline the system so that analysis reports of samples/exhibits are delivered to the concerned quarters promptly without unnecessary delay.

The concerned authorities are directed to do the needful, as observed above, by 21.01.2014. Respective affidavits should also be filed in this Court describing the latest position and status.

Adjourned to 21.01.2014.

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Registry is directed to send copies of this order to Chief Secretary, Punjab, Principal Secretary Home, Principal Secretary Health, Controller of Stores and the Chemical Examiner.”

On 21.01.2014, following order was passed in that petition:

“Affidavits of Sh. Harchand Singh, Under Secretary to Government of Punjab, Smt. Vini Mahajan, Principal Secretary to Government of Punjab, Department of Health and Family Welfare and Sh. Pritam Singh, Assistant Inspector General of Police, FS-I, Unit-3, Punjab, Chandigarh have been filed in Court and the same are taken on record.

The Vigilance Department, Punjab, is directed to file the list of cases from 2007 onwards in which the samples have failed and quantity of contraband involved in those cases .

Affidavit filed by Sh. Harchand Singh does not indicate as to what procedure has been prescribed for maintaining secrecy of samples. It has been mentioned that every officer/official of sending agency and testing laboratory dealing with the samples / exhibits will keep full-proof secrecy of the matter. However, it has not been mentioned how it will be maintained nor any guidelines have been laid down.

Home Department is directed to furnish the complete details as to how the secrecy is to be maintained.

Mr. H.M. Bhatnagar, Director, Forensic Science Laboratory, Mohali is present in Court and states that 48 posts of Forensic Science Experts are sanctioned, but out of those 28 are lying vacant. These posts are either filled through Punjab Public Service Commission or Subordinate Selection Board. The shortage of staff in the Forensic Science Laboratories and Chemical Examiner's Department has resulted in unnecessary delay in examination/analysis of the samples and resultantly delay in decision of court cases.

The Director, Forensic Science Laboratory states that there is already shortage of staff at FSL, Mohali and they cannot spare any staff for deputing with chemical examiner.

For the time being, suitable staff may be spared from other establishments and deputed with Chemical Examiner or in the alternative temporary staff on contract may be recruited so that huge backlog of samples pending for analysis may be cleared.

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The Principal Secretary, Home, Punjab and Principal Secretary, health are requested to be present in Court on the adjourned date.

Adjourned to 31.01.2014.

Copy of the order be given to the Advocate General, Punjab for compliance.”

On 07.02.2014, following order was passed in that petition:

“Ms. Vini Mahajan, Principal Secretary to Government of Punjab, Department of Health, Mr. D.S.Bains, Principal Secretary, Home Department, Punjab, Mr. R.P.S.Brar, Inspector General, Crime, Punjab, Mr. Jaskaran Singh, DIG, Crime, Dr. Rakesh Kashyap, Chemical Examiner to the Government of Punjab, Kharar, Mohali are present in Court.

On 31.01.2014, affidavit of Mr. Pritam Singh, Asstt. I.G.P FS-1, Unit-3, Punjab was filed mentioning data in respect of examination of samples of narcotic and psychotropic substances conducted at Chemical Lab at Kharar.

It has come to the notice of this Court from perusal of data, that 207 samples of narcotic and psychotropic substances have failed tests. It appears to be a big chemical lab crisis. It has also been brought to the notice of this Court that an FIR has been registered against the Assistant Chemical Examiner and investigation in that case is going on. If the officers/officials of the Chemical Examiner Laboratory start tampering with the evidence it will result into undue benefits to the accused. In such circumstances, the Court is required to balance the public safety and rights of those directly affected by the problem, specifically in the cases under the NDPS Act, i.e. accused etc. The tainted officials and scientists need to be reined in by the concerned authorities. The proper handling and testing of the samples is necessary. To keep a check and watch on the personnel involved in the examination/analysis and testing of the samples, all the works in the forensic science and chemical examiner labs should be videographed so as to prevent occurrence of similar scandal as is alleged to have been committed by one of the Assistant Chemical Examiner of the Govt. Chemical Examiner Laboratory at Kharar. The data provided by the Vigilance Department clearly indicates a real mess in the Govt. Chemical Examiner

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Laboratory at Kharar. It has also been brought to the notice of this Court that analysis of the samples have been done correctly but incorrect reports have been issued by the Assistant Chemical Examiner. The matter is under investigation. The receipt of samples in the Chemical Examiner Lab/forensic science labs need to be computerized. The report of analysis of sample should be made accessible to the senior officers of the concerned district on internet through passwords to maintain secrecy of the lab. A large number of samples require expeditious analysis so that concerned persons may not be unnecessarily deprived of their valuable rights. A large number of cases are handled at various labs which raises a huge question mark about their functioning.

The criminal investigation, prosecution and other State's instrumentalities involved in the criminal justice system must ensure that scientists/chemical analysts should test/examine the samples in an unbiased manner. There should be a check on the integrity, reliability and credibility of these scientists/analysts etc. The data since 2007 is really disturbing. It is more surprising as to how it kept going on unnoticed for years? Rather, it can be termed as chemical/forensic lab crisis. The fact regarding the shortage of staff is adding to it. The repercussions of this problem are huge. The issue raised with regard to the working of chemical and forensic labs need to be reviewed and more staff should be provided at labs to clear the backlogs of samples pending analysis/examination.

The above named officers have assured that appropriate measures will be taken up to streamline the working of the labs and guidelines will be issued within one month from today with regard to maintenance of secrecy of samples and computerization of record of the samples received for examination and issued for analysis. An intimation in this regard will be supplied to the Court on the adjourned date in the shape of affidavits by the respective departments.

Adjourned to 07.03.2014."

On 07.03.2014, following order was passed in that petition:

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“Affidavits of H.M. Bhatnagar, Director, Forensic Science Laboratory, Punjab, and Naveen Saini, PPS, AIG/Crime, Punjab, filed in Court today, are taken on record.

Learned State counsel seeks week's more time to file comprehensive affidavit giving all the details regarding the maintenance of the secrecy with respect to analysis of samples sent by police to chemical laboratory as well as for making arrangements for filling up the vacant posts in the Forensic Science Laboratory.

Director, Forensic Science Laboratory, Punjab, has informed the Court that 28 posts have been lying vacant for the last about 2 to 5 years. This sorry state of affairs is affecting the accused languishing in jails. It appears that the authorities of the State are not serious and taking it very lightly. Home Secretary is directed to file specific affidavit in this regard as also to show cause as to why the compensation should not be awarded to the accused for the delay caused in finalization of trial on account of non-examination of the samples. Let needful be done on or before the adjourned date.

Chemical Examiner present in Court states that about 3000 samples are yet to be analysed and same number of samples is pending with State Forensic Science Laboratory. The lab officials cite shortage of trained staff and infrastructure in the labs, which is a major factor causing inordinate delay in processing samples sent for analysis. Labs are fastly losing their credibility and efficiency owing to an acute shortage of qualified staff and infrastructure as available staff is unable to analyse over 6000 samples within stipulated period.

In spite of notice taken by this Court and repeatedly reflected in numerous orders, till date no effective efforts have been made for filling up the posts. Copies of detailed orders passed in this case on different dates have already been sent to the State authorities through the State counsel. Inadequacy of staff is clear indication that it is beyond the capacity of lab staff to perform the gigantic task of speedy analysis of such a large number of samples. The lab reports are crucial piece of evidence specially in criminal cases of contraband like drugs etc.

The delay in lab reports seriously affects both prosecution and accused. Accused's liberty is also affected. Delay on the part of State agencies also results

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in lowering the image of judiciary in dispensation of criminal justice.

Adjourned to 22.3.2014.

Chief Secretary, Punjab, is directed to be present in Court on the adjourned date.

Copy of this order be sent to the Chief Secretary and Home Secretary, Punjab.”

In CRM-M-12928-2015, a Coordinate Bench of this Court has also passed the following order on 29.04.2015:

“However, before parting with this order, the Chief Secretary, State of Punjab as well as the Chief Secretary, State of Haryana, are directed to look into this matter and ensure that no undue delay is caused in presentation of the challan, particularly in NDPS matters so that hardened criminals in NDPS cases may not get the undue benefit, in this regard, only because of the laxity on the part of investigating agency. Both the Chief Secretaries of Punjab and Haryana, shall issue appropriate instructions to all the authorities concerned in their respective State and ensure meticulous compliance thereof so as to ensure that this kind of unwarranted situation, as in the present case, does not repeat in future.

Let both the Chief Secretaries of Punjab and Haryana issue the appropriate instructions at an early date and in any case within a period of two months from the date of receipt of a certified copy of this order and this Court shall be apprised by filing their own affidavits along with action taken report.

Let a copy of this order, under the signatures of Special Secretary attached to this Bench, be given dasti to the learned counsel for both the States, for onward transmission to the authorities concerned for compliance thereof.”

So far as the contention of learned counsel for the petitioners that since a similar matter has been referred to a Larger Bench of this Court and interim bail as has been granted in that case, may be granted in this case, is concerned, the same is not sustainable. It would be suffice to state that reference to Larger Bench does not lead to an inescapable

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conclusion that such matters be not decided on merit and be kept in abeyance. In a recent case reported as ***Ashok Sadarangani and Anr. vs. Union of India and Ors.***, AIR 2012 SC 1563, the Hon'ble Supreme Court has observed:

“19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

Looking into the huge quantity and peculiar facts of the case, the petitioners are not entitled to the benefit of Section 167(2) of the Code, specifically when period has already been extended by the Special Courts.

Before parting with the judgment, it would be appropriate to directed the State to ensure that refresher courses are conducted for the Public Prosecutors as well as the Investigating Officers so that they may become aware of the latest law on the subject. It has come in the notice of this Court that due to lack of supervision, the accused take the benefit of non-compliance of the statutory provisions. The possibility of connivance of investigating officers specifically in heavy recovery of contraband cases cannot be ruled out. The State should make an endeavour to streamline the entire process starting from the stage of investigation, testing of contrabands and submission of challan before

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the competent court well in time. If there is a default on the part of any individual, action should be taken.

Dismissed.

May 13 , 2015
parveen kumar

(Paramjeet Singh)
Judge