

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

CRA-S-612-SB-2004 (O&M)
Date of Decision: 25.3.2015

Bashir Ahmad

....Appellant

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Dhirender Chopra, Advocate and
Mr. Vikas Chatrath, Advocate
for the appellant.

Mr. Daljit Singh Virk, Deputy A.G. Punjab.

RAMESHWAR SINGH MALIK J.

The important question of law that falls for consideration of this Court in the present case is, as to whether in the case of a chance recovery effected from the bag of accused followed by his personal search, rigours of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), would be attracted or not.

Feeling aggrieved against the impugned judgment of conviction and order of sentence of even date, i.e. 13.10.2003 passed by the learned Special Judge, Gurdaspur, whereby the appellant was convicted for the offence punishable under Section 20 of the NDPS Act and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1 lac, appellant has approached this Court by way of instant criminal appeal.

Briefly put, facts of the prosecution case are that on 16.3.2001, SI Sulekhan Singh, Incharge Police Post (now Police Station) Sujampur, alongwith other police officials, was present on patrolling duty in the area of turning point of village Berian. At about 1:30 P.M., the appellant was seen coming from the side of river. Police party stopped him on suspicion. He was carrying a bag on his shoulder. On seeing the police party, appellant tried to escape but he was apprehended. Since the I.O./Incharge police post SI Sulekhan Singh suspected some narcotic substance in the possession of the appellant, he gave offer to the accused to get conducted his search either in presence of any Gazetted Officer or Magistrate. Appellant opted to give his search in the presence of a Gazetted Officer. A consent memo of the accused was recorded which was signed by the accused and attested by the PWs. Thereafter, the Superintendent of Police (Operation) Gurdev Singh was requested to come at the spot through wireless message, who reached at the spot. He disclosed his identity to the appellant as a Gazetted Officer and he also enquired from the appellant whether he was interested to give his search either in his presence or before Magistrate or before

any other Gazetted Officer. The appellant reposed confidence in the Superintendent of Police-Gurdev Singh. Again, a consent memo of the appellant was recorded, which was signed by the appellant and attested by the PWs. Thereafter, search of the appellant was conducted by the investigating officer, as per rules. As a result of the search conducted, charas wrapped in a glazed paper was recovered from the bag, which was being carried by the appellant. Out of the recovered contraband, 10 gms charas was separated for sample and was put in a small tin box. The remaining charas was weighed which came out to be 4.990 kgs. It was put in a separate plastic container. Both the samples and the plastic container were sealed by IO with his seal 'SS' and with the seal of S.P. (operation) bearing letters 'GS'. Specimen seal impression was prepared and after using the seals, the same were handed over to an independent witness PW-Raj Kumar. The entire case property was taken into police possession vide separate police memo which was attested by the PWs. Thereafter, personal search of the appellant was conducted and Rs. 110/- currency notes alongwith wrist watch were recovered, which were also taken into police possession vide a separate police memo and the same was also attested by Pws. Ruqa was prepared and sent to the police station on the basis of which, a formal FIR of this case was registered. Rough site plan of the place of recovery was prepared. The grounds of arrest were narrated to the accused vide separate memo. Statement of the witnesses were recorded. After returning to the police station, I.O.-PW-5 SI Sulekhan Singh kept the case property in the double lock-up and on the next day, he produced

the appellant as well as the case property before the Ilqa Magistrate. Thereafter, sample of the recovered contraband was sent to the Chemical Laboratory, Jalandhar through MHC Paramjit Kumar and Constable Jugal Kishore on 19.3.2001. On receipt of the report of the Chemical Examiner and after completion of the investigation, challan against the appellant, under Section 20 of the NDPS Act, was prepared.

The police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short), was presented to the court and copy thereof alongwith all the documents relied upon by the prosecution was supplied to the appellant free of costs, as required under Section 207 Cr.P.C. Prima facie case was found against appellant and he was accordingly charge-sheeted for the offence punishable under Section 20 of the NDPS Act. Appellant pleaded not guilty and claimed trial.

With a view to prove its case, prosecution examined as many as 5 PWs, besides producing the relevant documents in evidence. On closing of prosecution evidence, statements of the accused under Section 313 Cr.P.C. was recorded. He denied the entire prosecution evidence put up against him and claimed innocence. He opted to lead defence evidence and examined HC Rajinder Singh, who brought Register No. 19 of the Police Station. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has successfully proved its case.

Recovery of commercial quantity of charas was held to be

duly proved by the prosecution. Statements of prosecution witnesses were found to be reliable. They stood the acid test of cross examination and the defence could not elicit anything objectionable from the prosecution witnesses, which might cause dent in the prosecution story. The relevant provisions of law, including that of Section 50/52/55 of NDPS Act, were found duly complied with. Guilt of the accused was brought home by leading cogent and convincing evidence. It was further held that no prejudice was caused to the accused. It was held that prosecution has proved its case beyond reasonable shadow of doubt.

Consequently, the accused was held guilty for the commission of offence punishable under Section 20 of NDPS Act and he was convicted accordingly, by the learned Special Judge, Gurdaspur, vide impugned judgment dated 13.10.2003. Thereafter, accused was heard on sentence. Keeping in view the gravity of offence committed by the convict, he was sentenced to undergo RI for 10 years and to pay a fine of Rs. 1 lac, for the offence committed under Section 20 of the NDPS Act. In default of payment of fine, convict was ordered to further undergo RI for one year, vide order of sentence dated 13.10.2003. Hence this appeal at the instance of convict.

Learned counsel for the appellant, while raising his star argument, submits that prosecution has miserably failed to ensure compliance of Section 50 of NDPS Act. Neither the investigating officer nor the Gazetted Officer informed the appellant that he has a legal right to get his search conducted before a Gazetted Officer or a

Magistrate. Relying upon Ex.PD at page 65 of the record of learned trial court ('record' for short), he submits that mere information to the accused that he can get his search conducted either before a Gazetted Officer or before a Magistrate was not sufficient. The empowered officer was under legal obligation to inform the accused that **"he was having a legal right"** to get his search conducted either before a Gazetted Officer or before a Magistrate. It was argued on behalf of the appellant that alleged recovery of charas was effected from the bag of the appellant. His personal search was also conducted and an amount of Rs. 110/- as well as a wrist watch were recovered. Thus, it was not the case where personal search of the accused might not have been conducted.

Learned counsel for the appellant argued that in the present case, search was conducted from the bag of the appellant as well as his personal search was also conducted, without ensuring meticulous compliance of Section 50 of the NDPS Act. Learned counsel for the appellant, while referring to the statement of the appellant recorded under Section 313 Cr.P.C., at page 55 of the record, contended that all the incriminating material was not properly put to the appellant, thereby causing serious prejudice to him, because of which the impugned judgment of conviction and order of sentence cannot be sustained.

The next argument raised by the learned counsel for the appellant was that PW Raj Kumar was the only independent witness but the prosecution, has failed to examine him without disclosing any cogent reason. The only independent PW-Raj Kumar was not

examined by the prosecution, simply by saying that he has been won over by the accused. In the absence of examination of the only independent witness, the entire prosecution story became doubtful and the impugned judgment of conviction and order of sentence were liable to be set aside. He contended that PW5-Sulekhan Singh did not deposit the allegedly recovered contraband in the maalkhana, because of which a serious doubt has been created in the prosecution story.

Again, challenging the reliability of recovery of the alleged contraband from the appellant, learned counsel for the appellant refers to the recovery memo Ex.PC and personal search memo Ex.PD at page 67 and 69 of the record, to contend that since the number of FIR and sections 20/61/85 of the NDPS Act were recorded therein, recovery becomes doubtful.

In support of his contentions, learned counsel for the appellant places reliance on the following judgments:

- 1) State of Rajasthan Vs. Parmanand and another, 2014
(5) SCC 345
- 2) Man Bahadur Vs. State of H.P., 2009 AIR (SC) 369
- 3) Union of India Vs. Shah Alam and another, 2009 (16)
SCC 644
- 4) Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2011
(1) SCC 609
- 5) State of Punjab Vs. Hari Singh and others, 2009 AIR
(SC) 1966
- 6) State of Orissa Vs. Sitansu Sekhar Kanungo, 2002 (8)

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7) State of Rajasthan Vs. Gurmail Singh, 2005(3) SCC 59

8) State of Himachal Pradesh Vs. Pawan Kumar, 2005 (4) SCC 350

9) Sukhdev Singh alias Sukha Vs. State of Punjab, 2006

(1) RCR (Criminal) 4 (P&H)

10) Ramesh Prakash Vs. State, 2000(1) RCR (criminal) 306, (Delhi High Court)

He prays for setting aside the impugned judgment of conviction and order to sentence, by allowing the present appeal.

Per contra, learned counsel for the State submits that since recovery of contraband was from the bag and no contraband was recovered from the personal search of the appellant, Section 50 of the NDPS Act will not be attracted. He contented that, as a matter of fact, it was a chance recovery and in the case of chance recovery, on the basis of mere suspicion, provisions of Section 50 of the NDPS Act would not be applicable. He submits that the police officer was on patrolling duty. He had not received any prior secret information. When the appellant tried to escape after seeing the police party, he was apprehended on the basis of suspicion. Till the time, appellant was stopped, PW5-SI Sulekhan Singh had no reason to believe that charas was in possession of the appellant, because of which, there was no requirement for complying with the provisions of Section 50 of NDPS Act.

Refuting the arguments raised by the learned counsel for the appellant regarding non-examination of the independent witness

PW-Raj Kumar, learned counsel for the State submits that justified reason not to examine this witness was that he had already been won over by the accused. Neither the official witnesses were having any enmity with the appellant, nor there was any reason not to believe the testimony of the official witnesses. Replying the argument of the learned counsel for the appellant qua statement of the appellant under Section 313 Cr.P.C., he submits that the entire evidence brought on record by the prosecution and incriminating material was put to the accused, while recording his statement under Section 313 Cr.P.C. Neither any prejudice was caused to him, nor any such prejudice has been pointed out. It was argued on behalf of the State that minor discrepancies and irregularities deserve to be ignored, particularly when the evidence led by the prosecution has been found to be reliable and trustworthy. A commercial quantity of charas was recovered from the appellant, which has been duly proved by the prosecution .

Learned counsel for the State places reliance on the following judgments:

- 1) State of H.P. Vs. Sunil Kumar, 2014 (4) SCC 780
- 2) Ajmer Singh Vs. State of Haryana, 2010 (3) SCC 746
- 3) Madan Lal and Anr. vs. State of Himachal Pradesh
2003 AIR (SC) 3642
- 4) State of Punjab Vs. Balbir Singh, 1994 AIR (SC) 1872

He prays for dismissal of the appeal.

Having heard the learned counsel for the parties at considerable length, after going through the record of the case and

giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given facts and circumstances of the case, instant one has not been found to be a fit case, warranting interference at the hands of this Court. To say so, reasons are more than one, which are being recorded hereinafter.

As noticed hereinabove, present case primarily revolves around the alleged non compliance of Section 50 of the NDPS Act. Thus, it is appropriate to reproduce Section 50 of the NDPS Act for ready reference and the same reads as under:-

Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person as requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

[(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974)

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]

From a careful perusal of the abovesaid judgments of the Hon'ble Supreme Court, relied upon by the learned counsel for the parties, following three distinct situations emerge.

Firstly, whenever a search is conducted from any of the items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton etc. of varying size, dimension or weight and as a result thereof, a contraband under the NDPS Act is recovered, it would not amount to a personal search of the accused and because of this reason, Section 50 of the NDPS Act, would not be attracted. It has been held by the Hon'ble Supreme Court on more than one occasions in the cited judgments, including in **Ajmer Singh's case (supra)**.

The Hon'ble Supreme Court in Ajmer Singh's case (*supra*), reiterated the earlier view taken in the case of **Pawan Kumar's case** (*supra*). The relevant observations made in para 14 of Ajmer Singh's case (*supra*), read as under:-

In State of Himachal Pradesh vs. Pawan Kumar, [2005 4 SCC 350], this Court has stated:

“A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body or a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in Section 50 of the Act.”

After discussion on the interpretation of the word 'person', this Court concluded:

"that the provisions of section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container, etc. which (the accused) may be carrying."

The court further observed :

"In view of the discussion made, Section 50 of the Act can have no application on the facts and circumstances of the present case as opium was allegedly recovered from the bag, which was being carried by the accused."

Secondly, whenever search is conducted from a bag etc. as well as personal search is conducted, Section 50 of the NDPS Act will be attracted, irrespective of the fact that nothing incriminating might have been recovered from the personal search. In that situation, empowered officer will be duty bound to inform the accused that he has a legal right to get his search conducted either before a Gazetted Officer or before a Magistrate. Mere information to the accused that he can get his search conducted either before a Gazetted Officer or a Magistrate, will not be a sufficient compliance of Section 50 of the NDPS Act and in that situation, trial will be vitiated.

The legal position in this regard has been crystalised in Parmanand's case (supra). Again, while reiterating the earlier view taken by the Hon'ble Supreme Court on more than one occasions, it was clarified in para 9 to 12 of the judgment in Paramanand's case

(supra) and the same reads as under:-

*In this case, the conviction is solely based on recovery of opium from the bag of respondent No.1 - Parmanand. No opium was found on his person. In **Kalema Tumba v. State of Maharashtra, 1999 (4) RCR (criminal) 575**, this Court held that if a person is carrying a bag or some other article with him and narcotic drug is recovered from it, it cannot be said that it was found from his person and, therefore, it is not necessary to make an offer for search in the presence of a gazetted officer or a Magistrate in compliance of Section 50 of the NDPS Act. In **State of Himachal Pradesh v. Pawan Kumar 2005 (2) RCR (criminal) 622**, three- Judge Bench of this Court held that a person would mean a human being with appropriate coverings and clothing and also footwear. A bag, briefcase or any such article or container etc. can under no circumstances be treated as a body of a human being. Therefore, it is not possible to include these articles within the ambit of the word “person” occurring in Section 50 of the NDPS Act. The question is, therefore, whether Section 50 would be applicable to this case because opium was recovered only from the bag carried by respondent No.1 - Parmanand.*

*In **Dilip & Anr. v. State of Madhya Pradesh 2007 (1) RCR (criminal) 586**, on the basis of information, search of the person of the accused was conducted. Nothing was found on their person. But on search of the scooter they were riding, opium contained in plastic bag was recovered. This Court held that provisions of Section 50 might not have been required to be complied with so far as the search of the scooter is concerned, but keeping in view the fact that the person of the accused was also searched, it was obligatory on the part of the officers to comply with the said*

provisions, which was not done. This Court confirmed the acquittal of the accused.

In Union of India v. Shah Alam 2009 (3) RCR (criminal) 158 , heroin was first recovered from the bags carried by the respondents therein. Thereafter, their personal search was taken but nothing was recovered from their person. It was urged that since personal search did not lead to any recovery, there was no need to comply with the provisions of Section 50 of the NDPS Act. Following Dilip, it was held that since the provisions of Section 50 of the NDPS Act were not complied with, the High Court was right in acquitting the respondents on that ground.

Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.

Thirdly, whenever there is a chance recovery based on a suspicion, rigours of Section 50 of the NDPS Act will not be attracted. Present case clearly falls under this fact situation. A combined reading of the statements of the prosecution witnesses and particularly that of investigating officer PW5 SI- Sulekhan Singh, would show that it was certainly a case of chance recovery. The investigating officer was on a patrolling duty in the area of turning

point of village Berian, when the accused-appellant was seeing coming from the side of river. It was specifically deposed by PW5 that accused was stopped under suspicious circumstances. It was further deposed that accused was carrying a bag on his shoulder and on seeing the police party, he tried to escape. He further deposed that accused was apprehended under suspicious circumstances and on asking, he disclosed his name as Bashir Ahmed.

During the course of hearing, learned counsel for the appellant could not deny this material fact that present one was a case of chance recovery and rightly so because it was a matter of record. Once it has been so found, as a matter of fact, the star argument raised by the learned counsel for the appellant falls flat. It is so said, because in the cases of chance recovery, rigours of Section 50 of the NDPS Act will not be applicable. It was so held by the Constitution Bench of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Baldev Singh, 1999 (6) SCC 172.**

Following the law laid down by the Constitution Bench in Baldev Singh's case (supra), the Hon'ble Supreme Court in its judgment in **Sunil Kumar's case (supra)**, held that whenever it is an accidental or chance recovery of narcotic drugs, Section 50 of the NDPS Act will not be attracted. The Hon'ble Supreme Court in Sunil Kumar's case (supra), had a detailed deliberation on the issue of chance recovery as well as applicability of Section 50 of the NDPS Act.

Relevant observations made by the Hon'ble Supreme Court in Para Nos. 1 and 11 to 21 of the judgment in Sunil Kumar's case

(supra), which can be gainfully followed in the present case, read as under:-

“The question before us is whether the accidental or chance recovery of narcotic drugs during a personal or body search would attract the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act). In our opinion, the issue is no longer res integra having been answered in the negative by the Constitution Bench in State of Punjab v. Baldev Singh, 1999(3) R.C.R.(Criminal) 533 : (1999)6 SCC 172.

xx xx xx xx

Chance Recovery

The State is in appeal against the acquittal of Sunil Kumar and the broad submission is that the recovery of charas from him was a chance recovery. Under these circumstances, in view of the Constitution Bench decision in Baldev Singh which endorsed the view taken in State of Punjab v. Balbir Singh, 1994(1) R.C.R. (Criminal) 736 : (1994)3 SCC 299 the personal search of Sunil Kumar resulting in the recovery of contraband did not violate Section 50 of the Act. Reliance was placed by learned counsel on paragraph 25 in Balbir Singh which was also endorsed by the Constitution Bench. It was submitted that it is only after a chance or accidental recovery of any narcotic drug or psychotropic substance by any police officer that the provisions of the Act would come into play. It is then that the empowered officer should be informed and that empowered officer should thereafter proceed to investigate the matter in accordance with the provisions of the Act.

The relevant extract of paragraph 25 of Balbir Singh reads as follows :

"(1) If a police officer without any prior information as

contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Cr.P.C and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act."

In view of the opinion expressed by the Trial Court and the High Court, we need to firstly understand what a 'chance recovery' is. The next question would be whether the provisions of Section 50 of the Act would apply when there is a chance recovery.

*The expression 'chance recovery' has not been defined anywhere and its plain and simple meaning seems to be a recovery made by chance or by accident or unexpectedly. In **Mohinder Kumar v. State, Panaji, Goa, 1995(2) R.C.R (Criminal) 599 : (1998)8 SCC 655** this Court considered a chance recovery as one when a police officer "stumbles on" narcotic drugs when he makes a search. In **Sorabkhan Gandhkhan Pathan v. State of Gujarat, 2006(2) Apex Criminal 214 : (2004) 13 SCC 608** the police officer, while searching for illicit liquor, accidentally found some charas. This was treated as a 'chance recovery'.*

Applying this to the facts of the present appeal, it is clear that the police officers were looking for passengers who were travelling ticketless and nothing

more. They accidentally or unexpectedly came across drugs carried by a passenger. This can only be described as a recovery by chance since they were neither looking for drugs nor expecting to find drugs carried by anybody.

It is not possible to accept the view of the High Court that since the police officers conducted a random search and had a "positive suspicion" that Sunil Kumar was carrying contraband, the recovery of charas from his person was not a chance recovery. The recovery of contraband may not have been unexpected, but the recovery of charas certainly was unexpected notwithstanding the submission that drugs are easily available in the Chamba area. The police officers had no reason to believe that Sunil Kumar was carrying any drugs and indeed that is also not the case set up in this appeal. It was plainly a chance or accidental or unexpected recovery of charas - Sunil Kumar could well have been carrying any other contraband such as, smuggled gold, stolen property or an illegal firearm or even some other drug.

We are not going into the issue whether the personal or body search of Sunil Kumar (without a warrant) was at all permitted by law under these circumstances. That was not an issue raised or canvassed before the Trial Court or the High Court or even before us, although it has been adverted to in the written submissions by learned counsel assisting us on behalf of Sunil Kumar.

Applicability of Section 50 of the Act:

As far as the applicability of Section 50 of the Act in a chance recovery is concerned, the issue is no longer res integra in view of the decision of the Constitution Bench in Baldev Singh.

It is true that Sunil Kumar behaved in a

*suspicious manner which resulted in his personal search being conducted after he disembarked from the bus. However, there is no evidence to suggest that before he was asked to alight from the bus, the police officers were aware that he was carrying a narcotic drug, even though the Chamba area may be one where such drugs are easily available. At best, it could be said the police officers suspected Sunil Kumar of carrying drugs and nothing more. Mere suspicion, even if it is 'positive suspicion' or grave suspicion cannot be equated with 'reason to believe', **Joti Parshad v. State of Haryana, 1993(1) R.C.R.(Criminal) 554 : 1993 Supp (2) SCC 497 and Sheo Nath Singh v. Appellate Assistant CIT, (1972) 3 SCC 234.** These are two completely different concepts. It is this positive suspicion, and not any reason to believe, that led to the chance recovery of charas from the person of Sunil Kumar.*

*Similarly, the positive suspicion entertained by the police officers cannot be equated with prior information, **Bharatbhai Bhagwanjibhai v. State of Gujarat, 2006(1) Apex Criminal 445 : (2002) 8 SCC 327.** The procedure to be followed when there is prior information of the carrying of contraband drugs is laid down in the Act and it is nobody's case that that procedure was followed, let alone contemplated.*

We are not in agreement with the view of the High Court that since the police officers had a positive suspicion that Sunil Kumar was carrying some contraband, therefore, it could be said or assumed that they had reason to believe or prior information that he was carrying charas or some other narcotic substance and so, before his personal or body search was conducted, the provisions of Section 50 of the Act ought to have been complied with. The recovery of charas on the body or personal search of Sunil Kumar was clearly

a chance recovery and, in view of Baldev Singh, it was not necessary for the police officers to comply with the provisions of Section 50 of the Act.”

In view of the abovesaid authoritative pronouncement of law by the Hon'ble Supreme Court, on the issue of non applicability of Section 50 of the NDPS Act in the cases of chance recovery, it can be safely concluded that police officers in the present case were not obliged to comply with the provisions of Section 50 of the NDPS Act, because it was an admitted case of chance recovery.

Coming to the next argument regarding non examination of the independent witness-Raj Kumar, as raised by the learned counsel for the appellant, although the same appeared attractive at a first blush, yet when considered in the given fact situation of the instant case, it has been found without any substance and the same is hereby rejected. Learned counsel for the appellant could not point out any discrepancy in the statements made by the official witnesses. Once the official witnesses have successfully stood the acid test of cross examination, their evidence cannot be brushed aside, only for the reason that the independent witness was not examined, having been won over by the accused.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as of this Court:-

1) *State of Haryana Vs. Mai Ram son of Mam Chand*,
2009 (1) SCC (Cri) 663

2) *Balbir Kaur Vs. State of Punjab*, 2009 (15) SCC 795

3) *Jarnial Singh Vs. State of Punjab*, 2011 (3) SCC 521

4) *Kashmiri Lal Vs. State of Haryana*, 2014 (1) SCC (Cri)
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5) *Ram Swaroop Vs. State (Govt. NCT) of Delhi*, 2013
(14) SCC 235

6) *Gurdev Kaur Vs. State of Punjab (Criminal Appeal No.
82 of 2006, decided on 21.5.2014)*.

The observations made by the Hon'ble Supreme Court in para 7 to 10 of its judgment in Ram Swaroop's case (supra), which aptly apply to the facts of the present case, read as under:-

*“.....We may note here with profit there is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect. In this context we may refer with profit to the dictum in **State of U.P. v. Anil Singh 1990 (3) RCR (criminal) 585**, wherein this Court took note of the fact that generally the public at large are reluctant to come forward to depose before the court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses.*

*8. At this juncture a passage from **State, Govt. of NCT of Delhi v. Sunil and another 2001 (1) RCR (criminal) 56** is apt to quote : -*

“21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made

by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

*In **Ramjee Rai and others v. State of Bihar** 2006 (4) RCR (criminal) 289, it has been opined as follows: -*

“26. It is now well settled that what is necessary for proving the prosecution case is not the quantity but quality of the evidence. The court cannot overlook the changes in the value system in the society. When an offence is committed in a village owing to land dispute, the independent witnesses may not come forward.”

10. Keeping in view the aforesaid authorities, it can safely be stated that in the case at hand there is no reason to hold that non-examination of the independent

witnesses affect the prosecution case and, hence, we unhesitatingly repel the submission advanced by the learned counsel for the appellant.”

Similarly, the arguments raised by the learned counsel for the appellant regarding statement of the accused-appellant recorded under Section 313 Cr.P.C., alleged non deposit of recovered contraband in the maalkhana as well as doubts raised on the authenticity of the recovery, referring to recovery memos Ex.PC and PD, have been found to be without any merit, which are to be noted to be rejected. It is so said, because once the factual story putforth by the prosecution as well as evidence led by it, has been found to be trustworthy and reliable, minor discrepancies and technicalities have to be ignored, particularly when no prejudice has been shown to have been caused to the appellant, nor any such prejudice has been found to have been caused by this Court also in spite of the careful perusal of the evidence brought on record.

So far as the judgments relied upon by the learned counsel for the appellant are concerned, there is no dispute about the law laid down therein. However, on a careful perusal of the cited judgments, the same have been found to be of no help to the appellant, being distinguishable on facts. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of**

Tamil Nadu and others, 2002 (3) SCC 533.

Reverting back to the peculiar fact situation of the case in hand and respectfully following the law laid by the Hon'ble Supreme Court in the cases referred to hereinabove, this Court feels no hesitation to conclude that learned trial court has rightly come to the judicious conclusion, thereby recording conviction of the appellant, awarding him sentence of 10 years RI as well as fine of ₹ one lac. Thus, the impugned judgment of conviction and order to sentence deserve to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Consequently, the appellant is directed to be taken into custody forthwith to serve his remaining sentence.

Resultantly, with the abovesaid observations made, instant appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

25.3.2015
AK Sharma