

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 526 of 2014

1. Rajesh Vashnik S/o Madanlal Vashnik, aged about 27 years, R/o Ward No.12, Jharan Dallirajhara, P.S. Dallirajhara, Distt. Durg (Now Balod) (CG)
2. Durgesh Sahu, S/o Kanshi Ram Sahu, aged about 24 years, R/o Village Loharsi, P.S. Arjuni, Distt. Dhamtari (CG)

---- Appellants

Versus

- State Of Chhattisgarh Through Police Station – Dhamtari (C.G.)

---- Respondent

For Appellants	:	Smt. Renu Kochar, Advocate.
For Respondent/State	:	Shri V. Goverdhan, Panel Lawyer.

CRA No. 624 of 2014

- Moon Musalman S/o Ainu Musalman Aged About 26 Years R/o Patel Colony, Gupta Chowk, Dallirajhara, PS Dallirajhara, Civil And Rev. Distt. Durg C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Arjuni, Distt. Dhamtari, Civil And Rev. Distt. Dhamtari C.G.

---- Respondent

For Appellant	:	Shri Y. C. Sharma, Advocate.
For Respondent/State	:	Shri V. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board by Justice Pritinker Diwaker

15.02.2018

As both these appeals arise out of the common judgment of conviction and order of sentence dated 8.5.2014 passed by the Special Judge (NDPS Act), Dhamtari in Special Criminal Case No. 03/2010, convicting each of the accused/appellants under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act and sentencing them to undergo RI for 20 years and to pay a fine of Rs.1 lac each, in default whereof to suffer additional RI for three years, they are being disposed of by this common judgment.

02. Facts of the case in brief are that on 11.3.2010 at about 10.05 am when the police party was in search of accused in some other case, a secret information was received that three persons are coming from Nagri carrying contraband ganja in Maruti Van towards Dhamtari. The secret information was reduced into writing vide Ex.P/16. The said information was forwarded to the superior officer vide Ex.P/2 through police constable PW-2 Jamvant Deshmukh, who carried that information to the superior officer, got acknowledgement thereof and after returning from there made entry in the reverse side of duty certificate vide Ex.P/2. Apprehending the escape of the accused persons and concealment of evidence of the offence, the accused persons were intercepted for being checked and searched without obtaining warrant vide Ex.P/3. Notice was given to the accused persons under Section 50 of the Act vide Ex.P/4 and vide Ex.P/21 after

obtaining their consent where the accused persons agreed for their personal search as also for search of the vehicle from the police, the search was made. On search of the vehicle i.e. Maruti Van bearing registration No. CG 04 B 0971, in 11 gunny bags certain objectionable thing was found. After examining the same through tasting, smelling, rubbing and burning, it was found to be ganja vide identification memo Ex.P/5. Prior to search of the accused and their vehicle, the police party gave their own search to the accused, on which nothing objectionable was found from their possession. The electronic weighing machine was called, weighment of the contraband was done which came to be 85.800 kg and accordingly weighment panchanama was prepared vide Ex.P/7. Thereafter, homogenization of the contraband was done; 22 samples from each bag were drawn; gunny bags and the samples were duly sealed on the spot vide Ex.P/7; seizure report Ex.P/8 was prepared and in the said memo specimen seal was also affixed. The accused persons were arrested vide Ex.P/12, P/13 & P/14 and all the proceedings were recorded in the Rojnamchasanha vide Ex.P/25C. Thereafter, FIR (Ex.P/1) was registered at 6.40 pm against the accused persons under Section 20(b) of the Act. On 11.3.2010 itself the samples along with the seized contraband were deposited in the Malkhana vide Ex.P/17C. The samples so drawn were sent for chemical examination to FSL vide Ex.P/28 and as per FSL report Ex.P/20, the samples were confirmed to be ganja. In the FSL report it has been mentioned that the samples which were sent for examination were duly sealed and the seals tallied with the specimen seal. Sending of samples to the FSL and depositing the same with FSL was reduced into writing in the Rojnamchasanha vide Ex.P/18C and P/19C. After

filing of charge sheet, the trial Court framed charge under Section 20(b)(ii)(C) of the Act against the accused persons.

03. So as to hold the accused/appellants guilty, the prosecution examined 10 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

(i) that there is total non-compliance of Section 42 of the Act. Secret information so received was required to be forwarded as it is i.e. the information received in a form was required to be transmitted as it is. She placed reliance on the judgment in the matter of ***State of Rajasthan Vs. Jag Raj Singh, AIR 2016 SC 3041*** and ***Dilip and another Vs. State of MP, AIR 2007 SC 369***.

(ii) that there is non-compliance of Section 50 of the Act. It has been argued that even if the case is of a vehicle search or search of house, compliance of Section 50 is mandatory. Reliance is placed on the decision in the case of ***State of Rajasthan Vs. Parmanand and another, AIR 2014 SC 1384***.

(iii) that the prosecution has utterly failed to comply with the

provisions of Section 52 of the Act. It has been argued that the seized articles were never kept in safe custody and most importantly, affixing of the seal and drawing specimen of the seal has also not been proved which was required to be done in a separate memo.

(iv) that there is non-compliance of Section 55 of the Act. The seal of the officer-in-charge alone ought to have been affixed and not of some other officer. Reliance has been placed on the judgment in the matter of ***Gurbax Singh Vs. State of Haryana, 2001 SAR (Criminal) 310.***

(v) that independent witnesses have not supported the prosecution case and conviction cannot rest only on the basis of statements of official witnesses.

(vi) lastly it has been argued that if this Court finally comes to the conclusion that conviction of the appellants is in accordance with law, then at least considering the facts and circumstances of the case, age of the accused persons and their detention period, their jail sentence may be reduced suitably and further considering their poor financial condition, the fine amount and the default sentence may also be reduced reasonably. Reliance has been placed on the judgment in the matter of ***Shahejad Khan Maheeb Khan Pathan Vs. State of Gujarat, (2013) 1 SCC 570.***

06. On the other hand, supporting the impugned judgment it has been vehemently argued by learned counsel for the State as under:

- that there is strict compliance of Section 42 of the Act. Immediately after receiving secret information the same was reduced into writing at 10.05 am on the same day i.e. within 20

minutes vide Ex.P/16 and vide Ex.P/2 the said information was forwarded through PW-2 Jamwant Deshmukh to the superior officer which was received in the office of superior officer at 11.30 am and acknowledgement was given by PW-8 Kumbhkaran Netam. After return, entry was made in the reverse side of Ex.P/2. Though in the present case, there is strict compliance of Section 42, but even assuming that there is no strict compliance of this section, considering the fact that the police party received the secret information during the course of investigation into some other offence, it was exempted from making strict compliance of this section as there was every likelihood of concealment of the evidence or escape of the offender. Reliance has been placed on the decision in the matters of ***Darshan Singh Vs. State of Haryana, (2016) 14 SCC 358*** and ***Hamidbhai Azambhai Malik Vs. State of Gujarat, (2009) 3 SCC 403***.

➤ that compliance of Section 50 of the Act in the case in hand is not mandatory because it is not a case of personal search. Reliance has been placed on the judgment in the matter of ***Dilbagh Singh Vs. State of Punjab, (2017) 11 SCC 290*** and ***Ajmer Singh Vs. State of Haryana, (2010) 3 SCC 746***.

➤ in respect of compliance of Sections 52 & 55 of the Act, it has been argued that:

(i) from weighment panchanama (Ex.P/7), it is apparent that after drawing samples, the samples and seized contraband were duly

sealed. Likewise, from seizure memo (Ex.P/8) it is apparent that the samples were duly sealed, specimen seal was also affixed in seized contraband as well as the samples and the seizure memo.

(ii) vide Ex.P/17C, the seized contraband as also the samples were deposited in the Malkhana which was subsequently kept in the police station as per direction of the District & Sessions Judge vide Ex.P/17, and entry in the Rojnamchasanha to this effect was also made vide Ex.P/18C and P/19C.

(iii) that specimen seal along with samples were sent to FSL vide Ex.P/28 which was found intact and tallied with the specimen seal by the FSL vide Ex.P/20.

Thus, in view of the above, it cannot be said that there was any chance of tampering with the samples, contraband or the seal.

➤ that conviction of the accused persons can rest only on the basis of evidence of the official witnesses provides it inspires confidence of the Court and is free from the suspicion of falsity. Reliance has been placed on the decision in the matters of ***Baldev Singh Vs. State of Haryana, (2015) AIR (SCW) 6174*** and ***Gian Chand and others Vs. State of Haryana, (2013) AIR (SCW) 4810***.

➤ so far as delay in sending the samples to FSL is concerned, the defence has not been able to show as to what prejudice has been caused thereby and as such, delay, if any, is of no consequence in the given facts and circumstances of the case. Reliance has been placed on the judgments in the matters of

Mohan Lal Vs. State of Rajasthan, (2015) AIR (SCW) 3043
and *Gulsher Mohd. Vs. State of Himachal Pradesh, 2015 (12)*
SCALE 1.

07. Heard counsel for the respective parties and perused the material on record.

08 PW-1 S. Nirmalkar, Sub Inspector, registered the FIR (Ex.P/1). PW-2 Jamvant Deshmukh, Police Constable, carried the secret information to the superior officer – Dy. Superintendent of Police, Dhamtari, gave the same to the Reader to Dy.S.P. and after return, made entry to this effect vide Ex.P/2. PW-3 Devesh Soni is an independent witness who has partly supported the prosecution case. Though on some points he has been declared hostile, however, he has admitted his signature on all the documents. PW-4 Bhenuram Verma, Police Constable, has duly supported the prosecution case. He has proved the police party search memo Ex.P/11 as well as the weighment and seizure proceedings.

09. PW-5 Prahlad Banchhor, Police Constable, has proved the secret information Ex.P/16 which was signed by him. He has also stated that when the vehicle was intercepted the accused persons were found sitting in the same and during search, from 11 bags kept in the vehicle total 85.800 kg of ganja was seized. Out of the same, 22 samples, each of 50 gm, were drawn, the samples and the bags were sealed. He has further stated that police officers also gave their personal search and on such search, nothing objectionable was found from their possession. PW-6 Rameshwar Tandia is the Malkhana Muharrir. He has stated that he received 11 bags, 22 packets in sealed condition, total weight of the ganja was 85.800 kg, entry was made in

the Malkhana register vide Ex.P/17 and then sealed packets were sent for chemical examination to FSL. PW-7 Pradeep Singh, Head Constable, has also proved the prosecution case by stating that the vehicle was intercepted on receipt of secret information and the accused/appellants were found sitting in the vehicle. He is also a witness to Ex.P/11. He states that weighment of ganja was done in his presence, samples were drawn, numbered FIR was registered and sealed samples and ganja were deposited in the Malkhana. PW-8 Kumbhkaran Netam, Reader to Dy.S.P., has proved receipt of secret information vide Ex.P/2. PW-9 BL Sahu did part of investigation. He had sent the samples to FSL and has proved the documents of Ex.P/18, P/19 & P/20.

10. PW-10 Ramesh Sahu, investigating officer, has duly supported the prosecution case. He has stated that on 11.3.2010 am when the police party was in search of accused in some other case, a secret information was received that three persons are coming from Nagri carrying contraband ganja in Maruti Van towards Dhamtari, which was reduced into writing vide Ex.P/16 and soon thereafter was forwarded to the superior officer vide Ex.P/2 through police constable PW-2 Jamvant Deshmukh. Thereafter, independent persons were summoned through Constable Bhenuram Verma (PW-4) and in presence of those independent persons namely Devesh Soni (PW-3) and one Prakash Satnami, search without warrant panchanama was prepared vide Ex.P/3. The vehicle of the accused persons was intercepted, the accused persons were informed about the secret information, notice was given to the accused persons under Section 50 of the Act vide

Ex.P/4 and vide Ex.P/21 after obtaining their consent, the search was made by the police. Before their search, the police party also gave their search to the accused persons on which nothing objectionable was found. On search of the vehicle in 11 gunny bags certain objectionable thing was found which after examination through tasting, smelling, rubbing and burning, was found to be ganja vide identification memo Ex.P/5. On weighment of the contraband being done, it came to be 85.800 kg and accordingly weighment panchanama was prepared vide Ex.P/7. Thereafter, homogenization of the contraband was done; 22 samples from each bag were drawn; gunny bags and the samples were duly sealed on the spot vide Ex.P/7; seizure report Ex.P/8 was prepared and in the said report specimen seal was also affixed. The accused persons were arrested vide Ex.P/12, P/13 & P/14 and all the proceedings were recorded in the Rojnamchasanha vide Ex.P/25C. Thereafter, FIR (Ex.P/1) was registered at 6.40 pm against the accused persons under Section 20(b) of the Act. On 11.3.2010 itself the samples along with the seized contraband were deposited in the Malkhana vide Ex.P/17C. The samples so drawn were sent for chemical examination to FSL vide Ex.P/28 and as per FSL report Ex.P/20, the samples were confirmed to be ganja. In the FSL report it has been mentioned that the samples which were sent for examination were duly sealed and the seals tallied with the specimen seal. Sending of samples to the FSL and depositing the same with FSL was reduced into writing in the Rojnamchasanha vide Ex.P/18C and P/19C. In cross-examination, nothing could be elicited from him by the defence which could suggest that the appellants were falsely implicated in the crime in question.

11. Close scrutiny of the evidence makes it clear that on 11.3.2010 am a secret information was received by the police party during search of accused in some other case that three persons are coming from Nagri carrying contraband ganja in Maruti Van towards Dhamtari, immediately thereafter the same was reduced into writing at 10.05 am vide Ex.P/16 and vide Ex.P/2 the said information was forwarded through PW-2 Jamwant Deshmukh to the superior officer which was received in the office of Dy.S.P., Dhamtari at 11.30 am vide acknowledgement given by PW-8 Kumbhkaran Netam (Ex.P/2). PW-2 and PW-8 have duly supported the prosecution case with regard to forwarding of secret information and receipt of the same in the office of Dy.S.P. Admittedly, the secret information was received by the police while they were moving around in search of accused in connection with some other offence and therefore, having received such information, apprehending the escape of the accused persons and concealment of evidence of the offence, the accused persons were intercepted for being checked and searched without obtaining warrant vide Ex.P/3. In such circumstances, it is not mandatory to make strict compliance of the provisions of Section 42 of the Act. In the matter of ***Hamidbhai Azambhai Malik*** (supra) the Supreme Court observed as under:

12. The search was made by the raiding party at about 4.30 P.M. on 15. 12.1995. [Section 42](#) will be invocable only if the search is made by the police officer or the concerned authority, upon the prior information. If such a person has reason to believe from personal knowledge or information given by any person and obliged to take down in writing as such the information about the accused having possessed of and dealing with contraband article

like 'charas' came to be appraised of by the concerned PSI Mr. K,D,Pandya, LCB Branch of Bharuch Police Station, in course of his investigation of an offence, registered vide CR No.II-135 of 1995. *Therefore, it is settled proposition of law when such an information or intimation or knowledge comes to the notice of the Investigating officer in course of the regular patrolling or an investigation of some other offence, it is not necessary to follow in all cases the conditions incorporated in [Section 42](#).*

13. However, it may also be noted that by way of abundant precaution, the PSI Mr. Pandya though he was investigating the offence registered with CR No. 135 of 1995 under the [NDPS Act](#), upon receipt of an intimation or information about the present offence, also noted down such an information taken down in writing, which is produced at Exh. 30, and such information was transmitted through a messenger immediately to the higher officers. Not only that this part of the procedure, by way of abundant precaution, exercised and followed by the PSI, is also manifestly recorded in the complaint at Exh.32.

12. In the matter of ***Sukhdev Singh Vs. State of Haryana***, reported in ***(2013) 2 SCC 212***, the Supreme Court while dealing with the applicability of Section 42 of the Act, held as under:

“15. Section 42 can be divided into two different parts. First is the power of entry, search seizure and arrest without warrant or authorisation as contemplated under sub-section (1) of the said section. Second is reporting of the information reduced to writing to a higher officer in consonance with sub-section (2) of that section. Sub-section (2) of Section 42 had been a matter of judicial interpretation as well as of legislative concern in the past. Sub-section (2) was amended by the Parliament vide Act 9

of 2001 with effect from 2nd October, 2001. After amendment of this sub-section, the words 'forthwith' stood amended by the words 'within 72 hours'. In other words, whatever ambiguity or leverage was provided for under the unamended provision, was clarified and resultantly, absolute certainty was brought in by binding the officer concerned to send the intimation to the superior officers within 72 hours from the time of receipt of information. The amendment is suggestive of the legislative intent that information must reach the superior officer not only expeditiously or forthwith but definitely within the time contemplated under the amended sub-section (2) of Section 42. This, in our opinion, provides a greater certainty to the time in which the action should be taken as well as renders the safeguards provided to an accused more meaningful. In the present case, the information was received by the empowered officer on 4th February, 1994 when the unamended provision was in force. The law as it existed at the time of commission of the offence would be the law which will govern the rights and obligations of the parties under the NDPS Act."

13. Notice was given to the accused persons under Section 50 of the Act vide Ex.P/4 and vide Ex.P/21 after obtaining their consent where the accused persons agreed for their personal search as also for search of the vehicle from the police, the search was made. On search of the vehicle i.e. Maruti Van bearing registration No. CG 04 B 0971, in 11 gunny bags certain objectionable thing was found.

14. So far as compliance of 50 of the Act is concerned, a bare reading of the said section makes it clear that provisions of this section do not apply to any search or seizure where the article was not being carried on the person of the accused. It can be invoked only in cases

where the drug/narcotic substance is recovered as a consequence of the body search of the accused. In case, the recovery of the narcotic is made from a container being carried by the individual, the provisions of Section 50 would not be attracted.

15. In the matter of ***Makhan Singh Vs. State of Haryana*** reported in ***(2015) 12 SCC 247***, the Supreme Court considering the scope of Section 50 of the Act, held as under:

“14. A Constitution Bench of this Court in [State of Punjab v. Baldev Singh](#), (1999) 6 SCC 172, while dealing with the scope of [Section 50](#) of the NDPS Act, had emphasized upon the aspect of availability of right of an accused to have 'personal search' conducted before a Gazetted Officer or a Magistrate and held as under:

"32...The protection provided in the section to an accused to be intimated that he has the right to have his personal search conducted before a Gazetted Officer or a Magistrate, if he so requires, is sacrosanct and indefeasible- it cannot be disregarded by the prosecution except at its own peril.

33. The question whether or not the safeguards provided in [Section 50](#) were observed would have, however, to be determined by the court on the basis of the evidence led at the trial and the finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish at the trial that the provisions of [Section 50](#), and particularly, the safeguards provided in that section were complied with, it would not be advisable to cut short a criminal trial."

15. Compliance with [Section 50](#) of the NDPS Act 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 ought to be searched. [In State of H.P. v. Pawan Kumar](#), (2005) 4 SCC 350, this Court in Para (11) has held as under:

"11. 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 of 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."

The same view was reiterated in [Ajmer Singh v. State of Haryana](#), (2010) 3 SCC 746.

16. In the present case, since the vehicle was searched and the contraband was seized from the vehicle, compliance with [Section 50](#) of the NDPS Act was not required. In the absence of independent evidence connecting the appellant with the *fitter-rehra*, mere compliance with [Section 50](#) of the NDPS Act by itself would not be sufficient to establish the guilt of the appellant. It is a well-settled principle of the criminal jurisprudence that more stringent the punishment, the more heavy is the burden upon the prosecution to prove the offence. When the independent witnesses PW1 and DW2 have not supported the prosecution case and the recovery of the contraband has not been satisfactorily proved, the conviction of the appellant under [Section 15](#) of the NDPS Act cannot be sustained."

16. Thus, in view of the above settled legal position, if the evidence of the present case is examined, it stands proved that the prosecution while effecting search and seizure has duly complied with the provisions as contained in Sections 42 and 50 of the Act.

17. As regards compliance of Sections 52 & 55 of the Act, from the oral and documentary evidence on record it is clear that after drawing

samples, the samples and seized contraband were duly sealed, specimen seal was also affixed in seized contraband as well as the samples and the seizure memo. The seized contraband as also the samples were deposited in the Malkhana which was subsequently kept in the police station as per direction of the District & Sessions Judge vide Ex.P/17, and entry in the Rojnamchasanha to this effect was also made vide Ex.P/18C and P/19C. Further, as per FSL report Ex.P/28, the sealed samples were found intact and specimen seal tallied with the seal affixed on the samples. Thus, it cannot be said that there was any chance of tampering with the samples, contraband or the seal.

18. So far as delay in sending the samples to FSL is concerned, the defence has not been able to show as to what prejudice has been caused by such delay and no evidence could be led by it to substantiate that during this period there was any tampering with the contraband. In the matters of ***Gulsher Mohd.*** (supra) it has observed as under:

“10. With that, when it comes to the next submission of learned Counsel for the Appellant, namely, the samples which were placed before the Court could not have been accepted as the same was tampered was rightly rejected by the learned Sessions Judge. According to the learned Counsel, after the samples were sealed with the impression “T” on it and the seal was stated to have been handed over to independent witness Yusuf Ali and the said Yusuf Ali was not examined, there was every scope for the prosecution to tamper with the sale and also duly alter the contents of the parcels. Though the contention, in the first instance, appears to be quite appealing, we find that on behalf of the Appellant no acceptable

evidence was produced before the Court or even suggested to the witnesses examined in support of the prosecution to remotely suggest that there was any scope at all for tampering. In fact, according to the prosecution, initially samples were created under Ext.P6 and P8 with the seal marked "T" and the same was handed over to P.W. 8/SHO for keeping it in the Malkhana, who in turn put those parcels in a composite cover and sealed it with the mark "H", which, according to P.W.8 was not tampered. In his cross-examination, it was not even suggested with to PW 8 or PW 11 that any such attempt of tampering was made to the parcels which were duly stamped in the presence of PW 2. Therefore, we do not find any substance in the said submission made on behalf of the Appellant. In the light of the above conclusion, we do not find any merit in this appeal. The appeal stands dismissed."

19. In the present case, though the independent witnesses have not fully supported the prosecution case but the other witnesses, though police personnel, have unequivocally stated about search and seizure of the contraband, the defence has utterly failed to elicit anything from them which could suggest that they had any interest or enmity with the accused/appellants for their false implication; their evidence appear to be trustworthy and supported by the documentary evidence on record and in these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the police personnel.

20. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable,

trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

21. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [**AIR 2013 Supreme Court 3344 between [Pramod Kumar v. State \(GNCT\) of Delhi](#) and [Gian Chand and others Vs. State of Haryana \(2013\) AIR \(SCW\) 4810](#)**].

22 Thus, having examined the overall evidence, oral and documentary, available on record in light of the aforesaid principles of law laid down by the Supreme Court, it stands proved beyond all reasonable doubt that it is the appellants who were found in illegal

possession of the contraband—ganja weighing 85.800 kg and as such, findings recorded by the trial Court holding them guilty under Section 20(b)(ii)(C) of the Act cannot be faulted with and is hereby affirmed.

23. The next question which arises for consideration is as to what would be the appropriate sentence to be awarded to the appellants for the aforesaid offence.

24. Admittedly, quantity of contraband i.e. 85.800 kg in the present case is much more than the commercial quantity and being so, substantive jail sentence cannot be less than 10 years and likewise, fine amount can also not be less than Rs.1 lac as per the statutory requirement. However, in the present case, the jail sentence of 20 years and default sentence of 03 years awarded by the trial Court appear to be harsh and excessive. Therefore, considering the fact that the incident occurred about eight years back, the age of the appellants and their poor financial condition, we are of the opinion that ends of justice would be served if the substantive jail sentence is reduced from 20 years to 15 years and the default sentence is reduced from 03 years to 06 months.

25. In the result, the appeals are allowed in part. While maintaining conviction of the appellants under Section 20(b)(ii)(C) of the Act, their substantive jail sentence is reduced to RI for 15 years from RI for 20 years and likewise, the default sentence is also reduced to RI for 06 months from RI for 03 years.

**Sd/
(Pritinker Diwaker)
Judge**

**Sd/
(Sanjay Agrawal)
Judge**