

CRA-D No.1136-DB of 2013

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

**CRA-D No.1136-DB of 2013
Date of decision : 18.05.2018**

NISHA SINGH AND ANOTHER

....APPELLANTS

V/S

STATE OF PUNJAB

....RESPONDENT

**CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. Nandan Jindal, Advocate for appellant No.2.

Proceeding against appellant No.1 abated vide order dated 16.03.2017.

Mr. H.S. Grewal, Additional Advocate General, Punjab.

B.S. WALIA, JUDGE

[1] Appeal has been filed, challenging judgment of conviction dated 02.09.2013, passed by the learned Judge, Special Court, Sangrur, convicting the appellants to undergo Rigorous Imprisonment for 12 years each and to pay a fine of ₹ 1,00,000/- each under Section 15 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 (hereinafter referred to as the 'Act'), and in default of payment of fine, to further undergo Rigorous Imprisonment for three years each with the period of imprisonment undergone during the investigation, inquiry or trial to be set off as per law.

[2] Appellant No.1-Nisha Singh stated to have died during the pendency of the appeal, therefore, proceedings against appellant No.1-Nisha Singh were abated vide order dated 16.03.2017.

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[3] Brief facts of the prosecution case are that on 09.04.2010, SHO/SI Bhagwant Singh, while posted at P.S. Amargarh along with ASI Pritpal Singh and other police officials, while going on patrolling duty on official vehicle No.PB-13R-8709 from village Bagrian towards village Bhatian Kalan at about 8.00 p.m. while at a distance of 200 yards from the bridge of minor canal in the revenue estate of village Bhatian Kalan saw two males and one female sitting on a heap of poly bags in the ditches towards the western side of the road. Thereupon, SI-Bhagwant Singh stopped the vehicle and on seeing the police party, the aforesaid persons tried to run away out of whom one fell down and was apprehended by SI-Bhagwant Singh, while two police officials namely PHG-Lachhman Singh and HC-Jasbir Singh proceeded to chase the man and woman who had run away. In the meanwhile, one Bhim Singh s/o Sita Ram, r/o Giani Jail Singh Colony, Amargarh came there and he was joined in the police party as a witness. The person who had been apprehended disclosed his name to SI Bhagwant Singh as Nisha s/o Khayla r/o village Samundgarh Chhana and said accused appellant No.1-Nisha Singh on being informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate refused to get his search conducted by SHO/SI-Bhagwant Singh and opted to be searched in the presence of a gazetted officer whereupon SHO/SI-Bhagwant Singh requested Gurpreet Singh, DSP, Amargarh to reach the spot through wireless. Said DSP reached the spot after some time on official vehicle bearing registration No.PB-13Q-6823 and after completing formalities, search of poly bags numbering seven was conducted which led to recovery of poppy husk and out of the seven bags, two samples of 250 grams each were separated from each bag and converted into separate parcels, remaining poppy husk on weighing was found to be 19.5 Kg in each bag. All the parcels were sealed by

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SI-Bhagwant Singh with a seal bearing impression “BS” which after use was handed over to PW-Bhim Singh. The DSP also sealed all the parcels with his lac seal bearing impression “GS” and all the parcels and specimen of seals were taken into possession vide memo Ex. PC, attested by the witnesses as well by the DSP. Ruqa Ex.PE was sent to Police Station on the basis of which formal FIR Ex.PF was registered, accused was arrested vide memo Ex.PG, Report Ex. PJ was sent under Section 57 of the Act. Accused appellant No.2- Piara Singh was arrested on 04.06.2010 and after completion of investigation and on receipt of report of Chemical Examiner, challan was presented in the Court. Accused were charge sheeted under Section 15 of the Act and on their pleading not guilty to the charges, prosecution was asked to lead evidence in support of the charges.

[4] The learned Special Judge, rejected the defence plea of the prosecution case being doubtful due to non examination of an independent witness-Bhim Singh, consequentially the best evidence having been withheld, thereby rendering the prosecution case doubtful on the ground that said independent witness had been won over, therefore had been given up by the APP for the State and further that the evidence of the prosecution witnesses was credit worthy and inspired confidence in the mind of the Court. The learned Special Judge further held that there was no allegation of malice against any of the police officials nor any incriminating circumstances had been pointed out against them in the conduct of the investigation.

[5] Likewise, the plea of 12 days delay in sending the samples to the office of the Chemical Examiner was also rejected on the ground that the said provision was only directory and not mandatory, particularly when it had been

proved that samples were not tampered with and seal impressions on the

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sample parcels were intact. The third plea of there being different versions of the prosecution with regard to place of recovery was also rejected by observing that there may be variation regarding deposition qua place of recovery due to manner of observation varying from person to person. The plea that conscious possession of the accused had not been proved was rejected on the ground that recovery in the case was during the night at 11.30 p.m. and when the accused were caught with such a huge quantity of contraband at such a point of time, no other inference except of conscious possession could be drawn. Plea of presence of DSP Gurpreet Singh being doubtful at the spot and of his signatures having been obtained on the memos later on was also rejected on the ground that counsel for the accused had been unable to show any convincing evidence to said effect. Plea of there being no chances of winning over of the independent witness since he was from far of village was rejected on the ground that in view of development in transportation and telecommunication, approaching witness even if located overseas was not impossible. Plea of enmity in falsely implicating appellant No.2 by reference to the complaints moved to the Chief Justice, Punjab and Haryana High Court, DIG, Patiala Range, Patiala, Chief Minister, DGP, Punjab, SSP, Sangrur, Chairman, Human Rights Commission was rejected on the ground that there was no cogent and convincing evidence in respect of the allegation, therefore, the defence was improbable and not believable.

[6] In the light of the position as noted above, the learned Special Judge, Sangrur, convicted the accused-appellants and sentenced them to undergo Rigorous Imprisonment and to pay a fine as detailed in the opening paragraph of this judgment.

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[7] Learned counsel for the appellant contended that the judgment and order of conviction dated 02.09.2013 was based upon conjectures and surmises, that there was non-compliance with the provisions of Sections 50 & 57 of the Act, independent witness had not been examined, therefore, foisting of recovery upon the appellants could not be ruled out, all the witnesses in the case were police officials, who were obviously interested in the success of the case and no independent witness had been examined, the same created a serious dent in the prosecution story, even the independent witness-Bhim Singh to whom the seal was given after use at the time of alleged recovery was not examined, therefore, vital link evidence was missing. Prosecution had failed to prove that the appellants were in conscious possession of the alleged contraband as recovery had been effected from poly bags lying in the fields and not from the possession of the appellants. The alleged recovery was made on 09.04.2010 but sample parcels were deposited in the office of the Chemical Examiner on 19.04.2010 after a gap of 10 days, whereas as per standing instructions of the Government, samples were to be deposited within 72 hours. CFSL form was not prepared when the alleged recovery was effected. Plea of false implication was not dealt with. The investigation in the case was biased and tainted and as much as the evidence was created and records fabricated to suit the prosecution story. There were material contradictions and discrepancies in the statement of witnesses which went to the root of the matter to prove that the prosecution story was highly improbable, unnatural, untrustworthy and did not inspire any confidence whereas the defence version was far more probable and merited acceptance.

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[8] Per contra, Mr. H.S. Grewal, Additional Advocate General, Punjab reiterated the reasoning in the impugned judgment to contend that the appellants had been rightly convicted and awarded punishment.

[9] We have heard learned counsel for the parties and considered the submissions and are of the view that for the reasons recorded hereunder, the appeal must succeed and appellant No.2 be acquitted of the charges levelled against him.

[10] A perusal of the ruqa sent on 09.04.2010 at 11.30 p.m. by SHO/PS Amargarh reveals time of incident as 8.00 p.m and further that on refusal of accused-appellant No.1-Nisha Singh to get his search conducted from the SHO/SI Bhagwant Singh, DSP Gurpreet Singh was requested and he reached the spot in government vehicle Tata Sumo bearing registration No.PB-13Q-6823. The ruqa categorically mentioned accused Nisha and one unknown man and woman having committed an offence under Sections 15/61/85 of the Act and further that the person who was apprehended at the site was Nisha Singh, whereas the man and woman, who slipped away were chased by two officials deputed by the SHO/SI and further that Bhim Singh son of Sita Ram was joined as a witness.

[11] PW-1, SI Bhagwant Singh, Incharge, CIA Staff, stated that on 09.04.2010, he was posted as SHO at PS, Amargarh and at about 8.00 p.m. while patrolling they saw two men and one woman sitting on a heap of plastic bags, out of whom one was apprehended, while the other man and woman who ran away were chased by PHG Lachhman Singh and HC Jasbir Singh on his instructions and in the meantime, Bhim Singh son of Sita Ram, resident of Giani Jail Singh Colony, Amargarh who came from the side of village Bhatian

Kalan was joined as a witness in the police party. He further deposed that on

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his requesting, the DSP Amargarh Shri Gurpreet Singh reached at the spot after a while. In his cross-examination, PW-1 stated that it was correct that till the sealing of the samples and bags, the name of the accused Piara Singh was not to the knowledge of the police party. He has further stated that accused Piara Singh and Nisha Singh were not known to him earlier, that the place from where the accused were apprehended did not belong to the accused. Place of recovery was fields, he could not tell the name of the owner of the fields from where the recovery was effected. The place of recovery was adjoining the fields and its trenches which were adjoining the road which was a thoroughfare. The jeep in which they were travelling was at the speed of about 15/20 kmh. The number of the jeep was mentioned in the DDR when they started from the Police Station. When accused Piara Singh ran away from the right side towards the fields, they did not fire though, they were seven police officials in police party. He had deputed PHG Lachhman Singh and Constable Jasbir Singh to chase and apprehend accused Piara Singh, said officials chased and searched for the accused for about four hours and returned to the spot at about 1.30/2.00 a.m., there were trees near the place of recovery, that PW Bhim Singh met them at the spot at about 8.00 p.m. and was allowed to go from the spot at about 3.30 a.m. and that he was about 50/55 years old and he did not remember to whom he had handed over the seal after use, that he had informed the DSP on a wireless set at about 8.45 p.m. and he reached the spot at 9.15 p.m, non consent statement of Nisha Singh was recorded at 8.15/8.30 p.m, he did not arrest the supplier of the contraband when he disclosed the source of the contraband, DSP himself affixed his seal on the case property at about 10.30 p.m. and retained his seal with him after using the same, the ruqa was sent at 11.30 p.m. through Constable Narinder Singh and returned at about

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1.30/2.00 a.m. that HC Jasbir Singh told him the name of accused Piara Singh at about 2.00 am at the spot and they raided the house of Piara Singh at about 3.30 a.m. at village Samundgarh Chana on the same day but the house which was situated in the middle of the village was locked, that they had taken the Sarpanch of the village along with them and after that day, he was transferred from the Police Station. No CFSL form or form No.29 was filled at the spot or later on by him and it was correct that he was not only complainant but had also conducted the entire investigation and had not handed over the investigation of the case to the DSP or other senior officers, place of recovery was thoroughfare, there was liquor vend on the road situated at a distance about 2 killas from the place of recovery but no person was called from said liquor vend, he was not aware of the status of accused Lachho, who had absconded from the spot and that he did not arrest her in the case nor filed challan against her and he did not take into possession the log book of his vehicle and vehicle of DSP. He had taken into possession record regarding wireless message to DSP. Recovery memo was prepared at about 10.00 p.m. He did not lift footprints nor preserved any module of accused who ran away from the spot nor he sent any alert message to adjoining police stations or police posts regarding the absconding accused.

[12] PW-2 HC Joginder Singh, in his cross-examination stated that no CFSL form was deposited with him along with the case property, no seal of SHO was affixed on samples. Samples were taken into police station. Receipt was handed over to him on 21.04.2010 by Constable Narinder Kumar in morning but he did not remember the exact time.

[13] PW-3 ASI Pritpal Singh, stated that on his return, HC Jasbir Singh disclosed that the lady who had run away and could not be arrested was

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Lachhmi @ Lachho w/o Piara Singh r/o Samundgarh Channa, whom he had identified with the help of torch, but that she succeeded in fleeing and that PHG Lachhman Singh on his return disclosed that the person who had run away from the spot was Piara Singh s/o Mika Singh r/o village Samundgarh Channa. In his cross-examination, he admitted that it was correct that till the sealing of the sample and bags, the name of the accused Piara Singh was not to the knowledge of police party. He further admitted that it was correct that place of recovery was thoroughfare, that the DSP had reached at the spot at about 9.15 p.m. and had left the place of recovery at about 12.30 a.m. and the DSP had also put his seal on the case property at about 10.30 p.m. He did not remember if form No.29 or CFSL form was filled, as it was the investigating officer, who knew about the same and that log book of the vehicle was not filled by the I.O. and he could not tell whether vehicle number PB-13R/8709 was used anywhere or not and when they started from the Police Station departure entry was made by the I.O., which was only signed by the I.O. and he could not tell the DDR number now but the vehicle number was entered in the DDR, the persons who chased the accused returned at the spot after three four hours. Private witness Bhim Singh was not known to the police party earlier and he was aged about 30/35 years and he did not know whether PW Bhim Singh had been cited as a witness in any other case. The DSP reached at the spot at about 9.15 p.m. The consent statement of accused-Nisha Singh was recorded by the DSP at about 9.30 p.m. The person who had gone to chase the accused who had run away from the spot did not return in the presence of the DSP. The case property was weighed at about 10.30 p.m.

[14] PW-7 PHG Lachhman Singh, stated that on 10.04.2010, he was posted at P.S. Amargarh and on that day, he along with ASI Pritpal Singh, HC

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Jagtar Singh, S.I. Bhagwant Singh and other police officials on government vehicle bearing No. PB-13R/8709, which was being driven by HC Harjit Singh while on patrolling duty saw two Hindu gentlemen and one lady and on suspicion, S.I. Bhagwant Singh asked to stop the vehicle whereupon said persons tried to escape, out of whom one fell down and was apprehended whose name was disclosed to be Nisha Singh and that he and HC Jasbir Singh chased the lady and the other person, who had run away and that he saw the Hindu gentleman in the light of torch whom he identified as Piara Singh son of Meena Singh resident of Samundgarh Chhana and he was a criminal type of person and he knew him earlier and lady whom HC Jasbir Singh chased was Lachhmi @ Lachho wife of Piara Singh, resident of Samundgarh Chhana and they both ran away in the darkness. In cross-examination, he stated that he could not tell whether the log book of the vehicle was filled-up by the driver or not and on that day, vehicle No.PB-13R/8709 was not used anywhere except the present case and when they started from the police station, departure entry was made which was signed by all the police officials including him but he could not tell the DDR number and DDR which was entered by the IO-Bhagwant Singh and he could not tell whether the registration number of the government vehicle was entered in the DDR or not. They had started from the police station at about 6.00 p.m and that he had been informed by the SHO that three persons were sitting at a distance of 400 karams but he could not tell when SHO informed them regarding the accused and that none of the accused was not known to him earlier to the recovery. He had chased accused Piara Singh for a distance of 10/15 killas. The entire police party was in uniform and armed with weapons and that he returned to the spot after one hour of chasing the accused, the DSP did not come at the spot in his presence when he

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returned at the spot, the case property had already been weighed and samples were also separated and his signatures were not obtained on any paper at the place of recovery while I.O. was doing the writing work, that he had never visited the house of Piara Singh earlier, he could not tell the house number or the names of the neighbors adjoining the house of accused of Piara Singh, he could not tell how many brothers and sisters accused Piara Singh had or whether they were married, he had never remained posted at police Station, Amargarh, prior to the registration of the present case, he never joined any sorrow or joy ceremony at the house of accused Piara Singh, the accused ran away towards the kachha fields, no foot prints were taken nor any moulds were preserved at the spot, there was a wireless set which was fitted in the government vehicle and the entire policy party was having their respective mobile phones, no wireless message was flashed nor mobile phone call was made from the spot to the police posts and Police Stations regarding the running away of the accused. No shot was fired in the air with an intent to stop the accused and he returned to the police station after half an hour when the recovery was effected. He could not tell what proceedings were conducted at the spot by any police official. The constable who took the ruqa had not gone in his presence nor returned at the spot in his presence and his statement was recorded after fifteen days from the date of recovery but he could not tell who recorded his statement and he could not tell how much time, the police party remained at the spot nor he could tell the time when the police party reached the police station. The case property was never weighed nor samples taken in his presence. He could not tell which village fell from the place of recovery in the north, south, west or east side and that he had seen the accused Piara Singh

today in the Court for the first time. It was wrong to suggest that the version

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regarding identification of accused Piara Singh was concocted and fabricated and he had been cited as a witness to strengthen the prosecution case.

[15] PW-8 Gurpreet Singh, ACP (R), Ludhiana, stated that on 09.04.2010, he was posted as DSP Amargarh. In his cross-examination, he admitted that he had reached the spot at about 9.15 p.m., that the village of the private witness was at a distance of 78 kms from the place of recovery. The constable who had taken the ruqa had not returned in his presence. It was correct that the place of recovery was not owned by both accused present in Court and the owner of the adjoining fields were not joined in the investigation nor he could tell the names of the owners of the fields. The place of recovery was towards right hand if somebody came from Bagdian to Bhatian Kalan and was a thoroughfare and he did not know as to what action was taken against the supplier by the police and that he did not mix the case property to make it homogeneous.

[16] We have considered the submissions of learned counsel for the parties. Admittedly, the incident is of 8.00 p.m. on 09.04.2010 and as per ruqa sent by SHO Police Station Amargarh on 09.04.2010 at 11.30 p.m., it was mentioned that accused Nisha Singh and one unknown man and woman committed an offence under Sections 15/61/85 of the Act and that out of the two males and female seen at the place of incident, Nisha Singh was apprehended while the other two who ran away were chased by PHG Lachhman Singh and HC Jasbir Singh on being deputed by the SHO/SI Bhagwant Singh. Admittedly, DSP-Gurpreet Singh, stated that he reached the place of incident at 9.15 and remained there till 12.45 a.m., that the village of the private witness was at a distance of 78 kms from the place of recovery.

Constable, who took the ruqa had not returned in his presence and the place of

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recovery was a thoroughfare, while PW-3, SI-Pritam Singh, stated in his cross-examination that the DSP put a seal on the case property at 10.30 p.m. and further that log book of the vehicle was not filled by the IO, he could not tell whether vehicle No.PB-13/8709 was used anywhere or not and when they started from the Police Station, departure entry was made by the IO which was signed by the IO but he could not tell the DDR number but vehicle number was entered in the DDR and the person who chased the accused returned at the spot after 3-4 hours. Entire proceedings were completed till the return of the officials after chasing the accused and that private witness Bhim Singh was 30-35 years of age and he did not know whether he had been cited as witness in any other cases. The persons, who had gone to chase the accused, who had run away from the spot did not return in the presence of the DSP and the case property was weighed at about 10.30 p.m.

[17] On the other hand PW-7, PHG Lachhman Singh, stated that on 10.04.2010, while posted at Police Station, Amargarh, he alongwith ASI Pritpal Singh, HC Jagtar Singh, SI Bhagwant Singh and other police officials on government vehicle bearing No.PB-13R/8709, while doing patrolling from village Bagdian to village Bhatian Kalan Khurd saw two Hindu gentlemen and one lady and on stopping the vehicle, one of them who was later identified as Nisha Singh was apprehended, while the other two ran away and that he and HC Jasbir Singh chased the lady and other person and he saw the Hindu person in the light of torch, who he identified as Piara Singh son of Meena Singh resident of Samundgarh Channa to be a criminal type of person known to him earlier but the lady to whom Jasbir Singh chased was Lachhmi @ Lachho w/o Piara Singh, resident of village Samundgarh Channa. In his cross-examination,

he admitted that on the date of occurrence vehicle No.PB-13R/8709 was not

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used anywhere except the present case. He further deposed that when they had started from the police station, departure entry was made, which was signed by all the police officials including him but he could not tell the DDR number. DDR was entered by IO-Bhagwant Singh and he could not tell whether the registration number of government vehicle was entered in the DDR or not and that none of the accused was not known to him earlier to the recovery. He had chased accused Piara Singh for a distance of 10/15 killas. DSP had not come to the spot in his presence and when he had returned at the spot, case property was already weighed and samples separated. The evidence of PW-7, PHG Lachhman Singh, is totally contradictory to the evidence of the other witnesses in the aforementioned aspect of the matter for in examination-in-chief, he admitted that he had identified accused Piara Singh and his wife Lachhmi @ Lachho but in his cross-examination, he admitted that none of the accused was not known to him earlier to the recovery and that he had never visited the house of Piara Singh earlier, nor he could tell the house number or names of neighbours of accused Piara Singh, nor as to how many brothers and sisters accused Piara Singh had, whether they were married and that he had never remained posted at Police Station Amargarh prior to the registration of the case nor had he ever attended any sorrow or joy ceremony at the house of accused-Piara Singh. Another aspect of the matter is that PW-7 mentions the incident having taken place on 10.04.2010(not 09.04.2010). He further admitted that he returned to the Police Station after half an hour, when the recovery was effected.

[18] As per PW-1, recovery was effected at 10.00 p.m. as per PW-8, Gurpreet Singh, ACP(R), Ludhiana, DSP, Amargarh, consent statement of the accused

was recorded by the IO at about 9.30 pm on his directions and that he remained

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at the site till 12.45 a.m. Whereas as per the evidence of PW-7, PHG Lachhman Singh, he returned to the spot after one hour i.e. around 9.00 p.m. after chasing the accused and according to him the DSP had not come to the spot in his presence and that he had returned to the police station half an hour after the recovery was effected. As per PW-8 DSP, the consent memo was recorded at 9.30 p.m. whereafter recovery was made and if PW-7 had returned after one hour i.e. by 9.00 p.m. and had returned half an hour after the recovery had been effected, then there is no question of his not making a deposition of not having seen the DSP at the site because as per the DSP, PW-8, he remained at the site from 9.15 p.m. till 12.45 a.m. The only conclusion which can be drawn is that neither the DSP was present at the spot nor was PW-7 present at the spot and the story as put forth by the prosecution is nothing but a concoction of facts.

[19] At one place, PW-7 deposed that he had seen Piara Singh in the light of the torch when he was fleeing, whereas in his cross-examination, he admitted that none of the accused were known to him, prior to the recovery and further that he had never seen his house nor knew of his house nor of his family members details nor had ever participated in any function and further that he had seen him for the first time in the Court on that day. PW-HC Jasbir Singh was given up as unnecessary, as the said PW had chased accused Lachhmi @ Lachho and challan had not been presented against her and she was still to be arrested. While PW-7 said that he had returned after one hour, PW-1 SI-Bhagwant Singh stated that PW-7, PHG Lachhman Singh and Constable Jasbir Singh chased and searched the accused for about four hours and returned at about 1.30/2.00 a.m.. The same is in contradiction to the stand of PW-7 who

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killas, in other words by 9.00 p.m. Thus, the entire story is full of inherent contradictions, which point only towards one conclusion i.e. of the prosecution story being false.

[20] Since, the very presence of appellant/accused Piara Singh at the place of incident is highly doubtful and there is nothing to connect him with the recovery as he was arrested after two months from the date of incident and obviously his consent could not be taken, therefore, the entire prosecution story is highly doubtful besides nothing incriminating was found from the house of accused Piara Singh, which was raided at 8 p.m. on 10.04.2010 after allegedly being initially raided in the morning at 3.00 a.m. and finding the house locked. Deposition of PW-7, when viewed in the context of raid having been conducted on the house of Piara Singh on 10.04.2010 at 8.00 p.m. goes to show that PW-7 was never a part of the alleged police party on 09.04.2010. Therefore, the question of his having seen Piara Singh accused in the torch light or having chased him did not arise.

[21] One more aspect of the matter, which needs mention is that form No.29/CFSL form was not prepared at the site and as is evident from the evidence of PW-2, HC Joginder Singh, who deposed that no CFSL form was deposited with him along with case property, no seal of SHO was affixed on samples, samples were taken to Police Station, receipt was handed over to him on 21.04.2010, whereas the incident is of 09.04.2010. In '**Bhola Singh** versus **State of Punjab**', 2005(2) RCR (Cri.) 520, it was held that CFSL form number No.29 should be prepared by the IO at the spot and should be deposited in the *malkhana* along with seal contraband and that after sealing the sample parcels of the contraband as well as remained contra band, the seal should be handed

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Science Laboratory, so that the same is not available to the prosecution agency as the same is necessary to safe guard the possibility of sealed contraband and the samples being tampered with by the police officials. In the case in hand, once it is admitted by PW-2, HC Joginder Singh, that no CFSL form was deposited with him along with the case property, nor seal of SHO was affixed on samples, besides the receipt was handed over to him after 11 days, then the safeguard provided to ensure that the tempering does not take place is vitiated. In the light of the position as noted in the preceding paragraphs, we are of the view that the judgment of conviction and sentence is legally unsustainable and liable to be set aside.

[22] Accordingly, the judgment of conviction and order of sentence dated 02.09.2013, passed in Sessions' case No.273 dated 25.08.2010 is set aside. Appellant Piara Singh is acquitted of the charges framed against him and he is ordered to be set at liberty if not required in any other case. Fine if already paid by appellant-Piara Singh be refunded to him.

(A.B. CHAUDHARI)
JUDGE

(B.S. WALIA)
JUDGE

18.05. 2018
'rajneesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No