

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-917-DB-2011

Baljinder Singh

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-D-923-DB-2011

Ms.Khushi Khan

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 10.12.2018
Date of decision : 22.01.2019

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Ms.Manjit Kaur, Advocate
for Mr.S.S.Gill, Advocate
for the appellant in CRA-D-917-DB-2011.

Mr.J.S.Bedi, Senior Advocate with
Mr.Karan Sidhu, Advocate
for the appellant in CRA-D-923-DB-2011.

Mr.Rajesh Bhardwaj, Sr.DAG, Punjab.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in both
these appeals, therefore these are taken up together and disposed of by a
common judgment.

2. These appeals have been instituted against the judgment and order dated 08.09.2011 rendered by the learned Judge, Special Court, Patiala, in Sessions Case No.11T/17.11.2009/11 whereby the appellants were charged with and tried for offences punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act” for the sake of brevity). The appellants were convicted and sentenced to undergo rigorous imprisonment for a period 12 years and to pay a fine of Rs.2 lacs each and in default of payment of fine, they were ordered to further undergo rigorous imprisonment for a period of two years, for the offence punishable under Section 15 of the NDPS Act.

3. The case of the prosecution in a nutshell is that on 19.08.2009 ASI Rakesh Kumar along with other police officials in connection with patrolling duty were present at Sirhind bye-pass, Rajpura. Lachhman Singh son of Sarwan Singh came on the spot. When Rakesh Kumar was talking with Lachhman Singh, a Qualis bearing registration no.PB-13-D-7000 was seen coming from Ambala side. On seeing the police party, the driver of the vehicle tried to reverse the vehicle. On suspicion, the vehicle was stopped. One lady was sitting with the driver. On enquiry the driver and passenger disclosed their identities. ASI Rakesh Kumar suspected them to be carrying some contraband in the bags lying in the vehicle. He wanted to search them. He apprised the accused of their right to get the search conducted in the presence of Magistrate or gazetted Police Officer. However accused reposed confidence in him. Joint consent statement of accused was reduced into writing. On search, 7 bags containing poppy husk were recovered. Two samples of 250 grams each from each bag were separated and the residual poppy husk of each bag weighed 34 kgs. All the sample parcels and bulk

parcels were sealed with the seals bearing impression 'RK'. Specimen seal was prepared and the seal after use was handed over to HC Malwinder Singh. The case property was taken into possession. Ruqa was sent to the police station, on the basis of which FIR was registered. The case property was deposited in the Malkhana. On receipt of chemical report and after completing all the codal formalities, challan was put up in Court against the accused.

4. Prosecution examined a number of witnesses. The statement of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence these appeals.

5. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the judgment and order dated 08.09.2011.

7. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

8. PW-1 HC Udham Singh deposed that he was posted in Police Post Bus Stand, Rajpura. He tendered his evidence by filing his affidavit Ex.PX. According to him, he took the case property on 24.08.2009. The case property was deposited on the same day.

9. PW-2 HC Sukhdev Singh tendered his evidence by filing his affidavit Ex.PA. He deposed that the case property was deposited with him by the Investigating Officer on the direction of SHO at about 10.15 P.M.

The case property was in seven bags apart from 14 sample parcels and one

Qualis car, jamatalashi, i.e. currency notes and one mobile. The case property was sent on the next day for producing it before the court and on 21.08.2009 it was deposited in Judicial Malkhana. On 24.08.2009 samples were sent to the Chemical Examiner. He admitted that seven sample parcels remained with him from 19.08.2009 to 24.08.2009. He handed over the seven sample parcels to HC Udham Siungh on 24.08.2009.

10. PW-3 HC Malwinder Singh deposed that on 19.08.2009 Lachhman Singh son of Sarwan Singh came on foot where *naka* was laid. Investigating Officer was talking with him. At about 4.00 P.M. one Qualis car bearing registration No.PB-13G-7000 of Cherry colour came from Ambala side. On seeing the police party, the driver tried to reverse it. The vehicle was stopped. One bulky lady was sitting on the seat adjacent to the driver. They got down from the vehicle. The accused disclosed their identities. Thereafter ASI Rakesh Kumar asked both the accused that he suspected some contraband in the bags lying in the Qualis. He intended to conduct its search. He also apprised the accused about their right to get the search of bags conducted in the presence of some gazetted officer or Magistrate but both the accused reposed faith in Investigating Officer. Investigating Officer recorded the consent statement of accused Ex.PB. It was signed by accused Baljinder Singh, thumb marked by accused Khushi Khan and attested by him and Lachhman Singh. Then Investigating Officer sent message to Police Station City Rajpura to send some lady official at the spot. The bags lying in Qualis was seven in number. Those were brought down from the Qualis. In the meantime, lady constable Paramjit Kaur arrived at the spot. Then Investigating Officer conducted search of the bags and from all those seven bags, poppy husk was recovered. Two samples of

250 grams each out of seven bags were drawn and residue poppy husk on weighment in each bag came to be 34 kgs. which was put in the same bags. The same were converted into parcels. Investigating Officer sealed all the 14 sample parcels and 7 bulks of poppy husk with his seal bearing impression 'RK'. The seal after use was handed over to him. The case property including sample seal was taken into police possession vide recovery memo Ex.PC. The bags were numbered 1 to 7 and their corresponding 14 sample parcels were also numbered 1, 1 to 7, 7. The Qualis vehicle was also taken into possession. On return to the police station, the Investigating Officer produced the case property, both the accused and witnesses including himself and Qualis before the SHO. In his cross-examination, he deposed that they noticed Qualis from a distance of about 20/25 paces. He could not tell the speed of Qualis car at that time but it was moving slowly. There were some other vehicles ahead of Qualis when the driver of the Qualis tried to reverse it. They remained at the spot for about six hours i.e. upto 10.00 P.M. The Investigating Officer had asked some persons to join the investigation but none was ready. The contraband was weighed with the help of weighing scale. He was recalled for further cross-examination. He deposed that during the *nakabandi*, number of vehicles, i.e. 20/25 were checked by them but he could not tell the numbers or makes of those vehicles. Apart from Lachhman Singh, no other person was ready to join investigation despite efforts made by the Investigating Officer. He did not know from where PHG Dilbar Singh brought the computerized scale.

11. PW-4 Tirath Singh is formal witness.

12. PW-5 HC Balbir Singh deposed that on 21.08.2009 he was posted in PP Bus Stand, PS City Rajpura. On that day, MHC Sukhdev Singh

handed over him the case property of this case, i.e. seven bags of poppy husk weighing 33.750 kgs. All were sealed with the seal bearing impression 'JK' and 7 sample parcels each containing 250 grams of poppy husk sealed with the seal bearing impression 'JK' along with other 7 sample parcels each containing 250 grams of poppy husk sealed with the seal bearing impression RK/MS along with sample seal. He was directed to deposit the said case property in the Judicial Malkhana, CJM, Patiala. On the same day, he deposited the entire case property in the Judicial Malkhana, CJM, Patiala.

13. PW-6 ASI Rakesh Kumar is a material witness. According to him, on 19.08.2009 he was present with other police officials on *naka* duty. Lachhman Singh came on the spot. He also corroborated the statement of PW-3 HC Malwinder Singh the manner in which the vehicle was stopped. He apprised both the accused about their right to get the search conducted in presence of some gazetted officer or Magistrate, who could be called at the spot if they so desire. Both the accused reposed confidence in him. He conducted the search of Qualis vehicle and recovered the contraband. He arrested the accused. He produced the entire case property, sample seals, witnesses and both accused before SI Manjit Singh, SHO. SHO prepared the application for inspecting the case property and to deposit the same in Judicial Malkhana, CJM, Patiala, vide Ex.PW6/D on 20.08.2009. He had deposited the entire case property with MHC Sukhdev Singh. Lachhman Singh remained with them during the entire proceedings. He was permitted to go at about 6.30 P.M. Where did Lachhman Singh go, he also did not know. Consent statement of accused, personal search memo, recovery memo of case property and other codal formalities were completed on the spot. The poppy husk was lying in the white plastic bags in the Qualis.

Nearest locality i.e. residential area and village Pilkhani was at a distance of about 3 / 3½ kms. Ruqa was sent after about 2 hours and 20 minutes of arrival of independent witness.

14. PW-7 SI Manjit Singh deposed that ASI Rakesh Kumar had produced before him the case property of this case as well as sample seals. He also affixed his seal bearing impression 'MS' on all the sealed parcels. He himself deposited the entire case property with MHC Sukhdev Singh of Police Station City Rajpura. On the next day, he had prepared application for inspection of the case property and deposit of the same in the Judicial Malkhana, CJM, Patiala vide Ex.PW6/E. He also deposed that one PW Lachhman Singh was accompanying the police party. He did not remember the physical characteristic of Lachhman Singh. Lachhman Singh remained with him for few minutes and immediately thereafter he left the police station.

15. Qualis was stopped at a busy junction. The police had not joined any independent witness at the time of effecting recoveries from the accused. The case of the prosecution is that Lachhman Singh was present on the spot when the vehicle was stopped. However he was not examined as a witness. ASI Rakesh Kumar had obtained a joint consent statement of the appellants vide consent memo Ex.PB. Thereafter the memo of personal search of Baljinder Singh vide Ex.PE and Khushi Khan vide Ex.PF was prepared. There could not be joint consent of the accused. The consent has to be singular. Every accused has a right to be told that he has legal right to be searched in the presence of the gazetted officer or a Magistrate. Lachhman Singh and HC Malwinder had signed the consent statement and memo of personal search. The seal was handed over to PW-3 HC

Malwinder Singh though independent witness was available. PW-3 Malwinder Singh deposed that seal after use was handed over to him.

16. Learned counsel appearing on behalf of the State vehemently argued that in this case since recovery was made from the vehicle it was not necessary to comply with Section 50 of the NDPS Act. The fact of the matter is that personal search of the accused was also carried out and vehicle was also searched. In view of this, compliance of Section 50 of the NDPS Act was mandatory. The sample should also have been sent for chemical examination immediately. In the instant case as per statement of PW-2 HC Sukhdev Singh, sample parcels remained with him from 19.08.2009 to 24.08.2009. The FSL report is Ex.PX. In the present case, the complainant was ASI Rakesh Kumar. He had conducted the investigation. This Court in ***Ramji Singh vs. State of Haryana, 2007(3) RCR (Criminal) 452; Gurmukh Singh vs. State of Punjab, 2008(2) RCR (Criminal) 442,*** and ***Ganga Dhar vs. State of Haryana, 2011(1) RCR (Criminal) 624,*** has held that sample seal should not have been given to a constable when the independent witness was present. In the instant case it was mandatory for the police to search Khushi Khan by the lady police official.

17. Their Lordships of the Hon'ble Supreme Court in ***State of Rajasthan vs. Parmanand and another, 2014(2) RCR (Criminal) 40*** have held that there cannot be joint consent. Their Lordships of the Hon'ble Supreme Court have held as under:-

“12. 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.

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14. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval. It bears repetition to state that on the written communication of the right available under Section 50 (1) of the NDPS Act, respondent No.2 Surajmal has

signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent No.2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent No.1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.”

18. Their Lordships of the Hon'ble Supreme Court in ***S.K.Raju @ Abdul Haque @ Jagga vs. State of West Bengal, AIR 2018 (SCW) 4255*** have held that a strict compliance of Section 50 is mandatory. Their Lordships of the Hon'ble Supreme Court have held as under:-

“11. As evidenced by Exhibit-3, a first option was given to the appellant. PW2 informed him that it was his legal right to be searched either in the presence of a magistrate or in the presence of a gazetted officer. The appellant was then asked to give his option by indicating whether he wanted to be searched by a magistrate or a gazetted officer. The appellant indicated that he wanted the search to be carried out in the presence of a gazetted officer. When PW-4 arrived, he was introduced to the detainee as a gazetted officer. As evidenced by Exhibit-4, PW-4 then gave the appellant a second option. He inquired of him again, whether he wanted to be searched in the presence of a gazetted officer or in the presence of a magistrate. The appellant reiterated his desire to be searched in the presence of a gazetted officer. Before the search of the appellant commenced, the gazetted officer asked the appellant whether he wanted to search PW-2 before his own search was carried out by PW-2. The appellant agreed to search PW-2 before the latter

carried out his search. On conducting the search, only personal belongings of PW-2 were found by the appellant. On the search of the appellant in the presence of the gazetted officer, a biscuit colour jute bag was recovered from the appellant, and Rs. 2,400/- cash in the denomination of 24 notes of Rs. 100/- each was found in the left pocket of the appellant's trouser. When the bag was opened, a black polythene cover containing nineteen rectangular broken sheets of a blackish / deep brown colour weighing 1.5 kilograms was recovered. The sheets were tested and were found to be charas. PW-2 conducted a search of the bag of the appellant as well as of the appellant's trousers. Therefore, the search conducted by PW-2 was not only of the bag which the appellant was carrying, but also of the appellant's person. Since the search of the person of the appellant was also involved, Section 50 would be attracted in this case. Accordingly, PW-2 was required to comply with the requirements of Section 50(1). As soon as the search of a person takes place, the requirement of mandatory compliance with Section 50 is attracted, irrespective of whether contraband is recovered from the person of the detainee or not. It was, therefore, imperative for PW-2 to inform the appellant of his legal right to be searched in the presence of either a gazetted officer or a magistrate. From Exhibit-3, it can be discerned that the appellant was informed of his legal right to be searched in the presence of a magistrate or a gazetted officer. The appellant opted for the latter alternative. Exhibit-4 is a record of the events after the arrival of PW-4 on the scene. After the arrival of PW-4, the appellant was once again asked by him, whether he wished to be searched in the presence of a gazetted officer or a magistrate. This was the second option which was presented to him. When he reiterated his desire to be searched before a

gazetted officer, PW-4 inquired of the appellant whether he wished to search PW-2 before his own search was conducted by PW-2. The appellant agreed to search PW-2. Only the personal belongings of PW-2 were found by the appellant. It was only after this that a search of the appellant was conducted and charas recovered. Before the appellant's search was conducted, both PW-2 and PW-4 on different occasions apprised the appellant of his legal right to be searched either in the presence of a gazetted officer or a magistrate. The options given by both PW-2 and PW-4 were unambiguous. Merely because the appellant was given an option of searching PW-2 before the latter conducted his search, would not vitiate the search. In Parmanand, in addition to the option of being searched by the gazetted officer or the magistrate, the detainee was given a 'third' alternative by the empowered officer which was to be searched by an officer who was a part of the raiding team. This was found to be contrary to the intent of Section 50(1). The option given to the appellant of searching PW-2 in the case at hand, before the latter searched the appellant, did not vitiate the process in which a search of the appellant was conducted. The search of the appellant was as a matter of fact conducted in the presence of PW-4, a gazetted officer, in consonance with the voluntary communication made by the appellant to both PW-2 and PW-4. There was strict compliance with the requirements of Section 50(1) as stipulated by this Court in Vijaysinh.

12. As we have already held that Section 50 was attracted in the present case, we do not need to decide on the applicability of Namdi to the facts of the present case. We have held that Section 50 was complied with. Having regard to the above position, we do not find any merit in the appeal."

19. Their Lordships of the Hon'ble Supreme Court in *Arif Khan @ Agha Khan vs. State of Uttarakhand, AIR 2018 (SC) 2123* have held that Section 50 is mandatory. It is mandatory on the part of authorised officer to make suspect aware of existence of his right to be searched before Gazetted Officer or Magistrate, if so required by him and it requires strict compliance. In this case the police party had apprised the accused of their legal right to be searched before the gazetted officer / Magistrate. The accused gave his consent to be searched by the raiding party. Their Lordships of the Hon'ble Supreme Court have held as under:-

“25. In our considered view, the evidence adduced by the prosecution neither suggested and nor proved that the search and the recovery was made from the appellant in the presence of either a Magistrate or a Gazetted Officer.

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28. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband “Charas” was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband “Charas” from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband “Charas” as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles

from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.”

In the instant case, search was not made before the Magistrate and gazetted officer.

20. Learned counsel appearing for the appellants have vehemently argued that in the present case the complainant and the investigation officer was the same. He has placed reliance upon of the judgment of the Hon'ble Supreme Court in ***Mohan Lal vs. State of Punjab, AIR 2018 Supreme Court 3853***. Their Lordships of the Hon'ble Supreme Court have held as under:-

“11. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well

lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.

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14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

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25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will

leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

21. In ***State of Uttar Pradesh vs. Bhagwant Kishore Joshi, AIR 1964 Supreme Court 221***, their Lordships of the Hon'ble Supreme Court have held that a practice, if it exists, is to be condemned when such practice enables a police officer below the rank of Deputy Superintendent of Police to make an investigation free from the statutory safeguards (such as S.5A of the Prevention of Corruption Act, 1947) designed to prevent the abuse of police powers, to secure the necessary information and thereafter to take the requisite permission of the Magistrate and then to shape his investigation to achieve the desired result or to implement his scheme. However, the question in such a case is not whether in investigating an offence the police have disregarded the provisions of the Act, but whether the accused has been prejudiced by such disregard in the matter of his defence at the trial. It is, therefore, necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. Their Lordships have further held that where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set

aside on the ground of some irregularity or illegality in the matter of investigation: there must be a sufficient nexus, either established or probabilized, between the conviction and the irregularity in the investigation. Their Lordships of the Hon'ble Supreme Court have held as under:-

“13. The argument of the learned counsel for the respondent may be elaborated thus: Whenever there is a consistent disregard of the provisions of the Code of Criminal Procedure in the matter of investigation it must be held almost in all cases that it has prejudiced the accused in the matter of trial, for otherwise it would enable a police officer below the rank of Deputy Superintendent of Police to make an investigation free from the statutory safeguards designed to prevent the abuse of police powers, to secure the necessary information and thereafter to take the requisite permission of the Magistrate and then to shape his investigation to achieve the desired result or to implement his scheme. No doubt this practice, if it exists, must be condemned; but the question is, does the infringement of the salutary provisions of the Act in the matter of investigation, without more, invalidate the trial? If we accept the broad proposition advanced by the learned counsel, we would be disregarding the provisions of S. 537 of the Code of Criminal Procedure; we would be ignoring an honest body of compelling evidence on the basis of the dereliction of duty by the police. The question is not whether in investigating an offence the police have disregarded the provisions of the Act, but whether the accused has been prejudiced by such disregard in the matter of his defence at the trial. It is, therefore, necessary for the accused to throw a reasonable doubt that the prosecution evidence is such

that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. But where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegality in the matter of investigation: there must be a sufficient nexus, either established or probabilized, between the conviction and the irregularity in the investigation. In this case, as we have earlier pointed out, not only the trial was fair and the evidence convincing, but even the earlier defect was rectified by having practically a de novo investigation in strict compliance with the provisions of the Code of Criminal Procedure. We cannot, therefore, hold that the accused has been prejudiced by the illegality committed by the police in the first stage of the investigation.

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15. I have perused the judgment prepared by Subba Rao, J., and I agree with him that the appeal should be allowed and the respondent who was a booking clerk at Saharanpur at the relevant time should be convicted and sentenced as proposed by him. I also agree that a mere irregularity in investigation would not be a ground for setting aside the conviction of an accused person unless the court is satisfied that the accused has been prejudiced by it. I, however, find it difficult to agree with his conclusion that there was in fact a defect or irregularity in the investigation in this case.”

22. In **Bhagwan Singh vs. The State of Rajasthan, (1976) 1**

Supreme Court Cases 15, their Lordships of the Hon'ble Supreme Court

have held that investigation by the complainant Head Constable himself of

offence of offering bribe was improper. Their Lordships of the Hon'ble Supreme Court have held as under:-

“5. Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial Court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial Court and the High Court and that has resulted in serious miscarriage of justice calling for interference from this Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial Court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made and by the appellant and he was the informant or complainant who lodged the first information Report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation of the case. How could the complainant himself be the investigator? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the first information Report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case.”

23. In ***Megha Singh vs. State of Haryana, (1996) 11 Supreme Court Cases 709***, their Lordships of the Hon'ble Supreme Court have held that the investigation by the very police officer who lodged the complaint, was not conducive to fair and impartial investigation. Their Lordships of the Hon'ble Supreme Court have held as under:-

“4. After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of the P.Ws. 2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW-3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.”

24. Their Lordships of the Hon'ble Supreme Court in ***Dhanaj Singh alias Shera and others vs. State of Punjab, (2004) 3 Supreme Court Cases 654*** have held that even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused

person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Their Lordships of the Hon'ble Supreme Court have held as under:-

“5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

25. In ***State represented by Inspector of Police, Vigilance & Anti-Corruption, Tiruchirapalli T.N. vs. V. Jayapaul, (2004) 4 Supreme Court Cases 223***, their Lordships of the Hon'ble Supreme Court have held that the investigation by the same police officer who lodged the FIR is not barred by law. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the I.O. Their Lordships of the Hon'ble Supreme Court have held as under:-

“4. We have no hesitation in holding that the approach of the High Court is erroneous and its conclusion legally unsustainable. There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognizable offence. A sup motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code

or any other provisions of the Code. The scheme of Sections 154, 156 and 157 was clarified thus by Subba Rao, J. speaking for the Court in State of U.P. v. Bhagwant Kishore Joshi.

"Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognizable offence. Section 156 thereof authorizes such an officer to investigate any cognizable offence prescribed therein. Though ordinarily investigation is undertaken on information received by a police officer; the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise."

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6. Though there is no such statutory bar the premise on which the High Court quashed the proceedings was that the investigation by the same officer who 'lodged' the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay

down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack.

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13. Viewed from any angle, we see no illegality in the process of investigation set in motion by the inspector of Police (appellant) and his action in submitting the final report to the Court of Special judge.”

26. In ***S.Jeevanantham vs. State through Inspector of Police, T.N., (2004) 5 Supreme Court Cases 230***, their Lordships of the Hon'ble Supreme Court have held that when investigation by the complainant police officer himself and nothing pointed out to show that the said investigation has caused prejudice or was biased against the accused, the same was valid.

Their Lordships of the Hon'ble Supreme Court have held as under:-

“2. We heard the learned counsel for the appellants.

The counsel for the appellants contended that PW-8 the Inspector after conducting search prepared the FIR and it was on the basis of the statement of PW8 the case was registered against the appellants and it is argued that PW-8 was the complainant and he himself conducted the investigation of the case and this is illegal and the entire investigation of the case is vitiated. Reliance was placed on the decision in Megha Singh v. State of Haryana wherein this Court observed that constable, who was the de facto complainant, had himself investigated the case and this affects impartial investigation. This Court said that Head Constable who arrested the accused, conducted the search, recovered the pistol and on his complaint FIR was lodged and the case was initiated and later he himself recorded the statement of the witnesses under section 161 Cr.P.C. as part of the investigation and such practice may not be resorted to as it may affect the fair and impartial investigation. This decision was later referred to by this Court in State v. V.Javapaul, wherein it was observed that :

"We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done."

3. *In the instant case, PW-8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellant was*

narcotic drug and the counsel for the appellant could not point out any circumstances by which the investigation caused prejudice or was biased against the appellant. PW-8 in his official capacity gave the information, registered the case as part of his official duty and later investigated the case and filed charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation.”

In the instant case also, the appellants have failed to point out how the investigation has caused prejudice or PW-6 Rakesh Kumar was biased against the accused.

27. In ***Hardip Singh v. State of Punjab, (2008) 8 Supreme Court Cases 557*** submission was made before the Hon'ble Supreme Court that Inspector Jarnail Singh was the complainant he should not have been made the investigating officer. Their Lordships of the Hon'ble Supreme Court have relied upon ***2004(5) Supreme Court Cases, 223*** and have held as under:-

“21. As far as the submission that as Inspector Jarnail Singh was the complainant he should not have been made the investigating officer is concerned we may make reference to the decision of this Court in State v. V. Jayapaul, wherein it was held as under:

“6..... We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each

case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased.”

22. *Concurring with the Courts below we have already held that the version of the defense is nothing more than a got up story of his own whims and caprices, thus in the facts and circumstances of the present case the question of bias does not arise. Shri Jarnail Singh made the recoveries of the opium and seized the same and therefore, he was rightly made the Investigating Officer in the case. The defense case which is found to be a got up story was sought to be made out only during the trial by which time investigation was complete. This contention therefore is also found to be without merit.”*

28. In ***Bhaskar Ramappa Madar and others vs. State of Karnataka, (2009) XI Supreme Court Cases 690***, their Lordships of the Hon'ble Supreme Court have held that investigation by the complainant is not barred. Merely because the complainant conducted the investigation, that would not be sufficient to cast doubt on the prosecution version to hold that the same makes the prosecution version vulnerable. Their Lordships of the Hon'ble Supreme Court have held as under:-

“8. So far as the desirability of the complainant undertaking investigation is concerned there is no legal bar. The decisions of this Court in Bhagwan Singh v. The State of Rajasthan (1976 (1) SCC 15 at para 18) and Megha Singh v. State of Haryana (1996 (11) SCC 709 at para 4) have to be confined to the facts of the said cases. Merely because the complainant conducted the investigation, that would not be sufficient to cast doubt

on the prosecution version to hold that the same makes the prosecution version vulnerable. The matter has to be decided on case to case basis without any universal generalization.”

29. In ***Vinod Kumar Vs. State of Punjab, (2015) 3 Supreme Court Cases 220***, their Lordships of the Hon'ble Supreme Court after considering the entire case law have held as under:-

“25. There is no doubt that the status of PW8 is that of an interested witness. There is no cavil over the fact that he had sent the FIR and conducted the investigation, but the question posed is whether the investigation by him is vitiated. In this context we may, with profit, refer to the decision in Bhagwan Singh V. State of Rajasthan, where one Ram Singh, who was a Head Constable, was the person to whom the offer of bribe was alleged to have been made by the appellant therein and he was the informant who had lodged the First Information Report for taking action against the appellant. He himself had undertaken the investigation. In that factual backdrop the Court ruled thus:

“5. Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial court and the High Court and that has resulted in serious miscarriage of justice calling for interference from this Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial court and the High Court. Head Constable Ram Singh was the person to whom the

offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation of the case. How could the complainant himself be the investigator? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the first information report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case”.

26. In Megha Singh V. State of Haryana, the Court noticed the discrepancy in the depositions of PW-2 and PW-3 and absence of independent corroboration. Be it noted, the Court was dealing with an offence under Section 6(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985. In that context the Court observed that the testimony of the said witnesses did not inspire confidence about the reliability of the prosecution’s case. Proceeding further, the Court held:

“4.... We have also noted another disturbing feature in this case. PW 3, Siri Chand, Head Constable arrested the accused and on search

being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation”.

27. *In this regard, it is useful to refer to the pronouncement in State vs. V. Jayapaul wherein the Court posed the question whether the High Court was justified in quashing the criminal proceedings on the ground that the police officer, who had lodged/recorded the FIR regarding the suspected commission of certain cognizable offence by the respondent should not have investigated the case. The case against the accused was that he was indulging in corrupt practices by extracting money from the drivers and owners of the motor-vehicles while conducting check of the vehicles and making use of certain bogus notice forms in the process. The charge-sheet was filed under Sections 420 and 201 I.P.C. and Section 13(2) read with Section 13(1)(d) of the Act. The Court referred to the decision in the State of U.P. V. Bhagwant Kishore Joshi, wherein it has been ruled thus:*

“8.....Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognizable offence. Section 156 thereof authorises such an officer to investigate any cognizable offence prescribed therein. Though ordinarily

investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise.”

28. After reproducing the said paragraph, the Court proceeded to state thus:

“6. Though there is no such statutory bar, the premise on which the High Court quashed the proceedings was that the investigation by the same officer who “lodged” the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore

made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack.”

Be it noted, the Court distinguished the decisions in Bhagwant Kishore and Megha Singh (supra).

29. At this juncture, it would be fruitful to refer to S.Jeevanatham V. State. In the said case, the appellant was found guilty under Section 8(c) read with Section 20 (b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. One of the contentions that was canvassed was that PW8, who lodged the FIR had himself conducted the investigation and hence, the entire investigation was vitiated. The Court referred to the decision in Jayapaul (supra) and opined thus:

“3. In the instant case, PW 8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellants was narcotic drug and the counsel for the appellants could not point out any circumstances by which the investigation caused prejudice or was biased against the appellants. PW 8 in his official capacity gave the information, registered the case and as part of his official duty

later investigated the case and filed a charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation.”

30. In the instant case, PW-8, who was a member of the raiding party had sent the report to the police station and thereafter carried the formal investigation. In fact, nothing has been put to him to elicit that he was anyway personally interested to get the appellant convicted. In our considered view, the decision in S. Jeevanatham would be squarely applicable to the present case and, accordingly, without any reservation we repel the submission so assiduously urged by Mr. Jain, learned senior counsel for the appellant.”

30. In the instant case, PW-6 Rakesh Kumar was the complainant and has investigated the matter. He had prepared the samples and deposited with the SHO. The appellants have not taken the plea of being biased by the investigation carried out PW-6 Rakesh Kumar before the trial Court. They had an opportunity to take the objection when they were examined under Section 313 Cr.P.C. and also at the time of arguments were made during the trial. There should have been sufficient nexus either established or probabilized, between the conviction and the irregularity/illegality in the investigation. The appellants were not prejudiced in the matter of their defence during the trial. They were given ample opportunity to defend themselves and also adducing evidence in support of their case.

31. Whether the investigation carried with the complainant has vitiated the trial or not will depend upon the facts and circumstances of each case. The appellants had ample opportunity to cross-examine the I.O. but he was not cross-examined on this aspect by the appellants. Thus it has neither resulted in miscarriage or cause any prejudice to the appellants.

32. Their Lordships of the Hon'ble Supreme Court in *Zahira Habibulla H. Sheikh and another vs. State of Gujrat and others, (2004) 4 Supreme Court Cases 158* have held that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. Interests of society not to be treated with complete disdain. In fact, public interest in proper administration of justice to be given as much importance, if not more, as interests of the individual accused. In this Courts have a vital role to play. The crimes are public wrongs, in breach and violation of public rights and duties which affect the whole community as a community and are harmful to society in general. Similarly, their Lordships of the Hon'ble Supreme Court have held that the power under Section 311 Cr.P.C. read with Section 165 of the Evidence Act, 1872 is exercised and the evidence is examined neither to help the prosecution nor the defence. However, if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective, i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court can certainly be guided by metaphor, separate the grain from the chaff. Their Lordships of the Hon'ble Supreme Court in the same judgment have held that Section 391 Cr.P.C. is an exception to the ordinary rule and if the appellate Court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered, to enable the appeal to be considered and disposed of in the light of the additional evidence as well. The appellate court can direct the taking up of further evidence in support of the prosecution: a fortiori it is open to the court to direct that the accused persons may also be given a

chance of adducing further evidence who may file an application in this regard in appropriate case. The legislative intent is enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted by arriving at the truth, that is, the prevention of the guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused. Their Lordships of the Hon'ble Supreme Court have held as under:-

“30. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

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35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non

grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be

correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

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42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interest of the Individual accused. In this courts have a vital role to play.

43. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act

confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

44. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In Mohan Lal v. Union of India, this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, 'any Court' 'at any stage', or 'any enquiry or trial or other proceedings' 'any person' and 'any such person' clearly spells out that the Section has expressed in the

widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case - 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

45. It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a

routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.

46. *Ultimately, as noted above, ad nauseam the duty of the Court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.*

47. *Section 391 of the Code is another salutary provision which clothes the Courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the Court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate Court considers additional evidence to be*

necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate Court to call for further evidence before the appeal is disposed of. The appellate Court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the Court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, specially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the Court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

48. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391.

49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the appellate Court

thinks that it is necessary in the interest of justice to take additional evidence it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretion of the appellate Court. As re-iterated supra the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions.

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55. The Courts at the expense of repetition we may state, exist for doing justice to the persons who are affected. The Trial/First Appellate Courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The Court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.

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58. Though it was emphasised with great vehemence by Mr. Sushil Kumar and Mr. KTS Tulsi that the High Court dealt with the application under Section 391 of the Code in detail and not perfunctorily as contended by learned counsel for the appellants; we find that nowhere the High Court has effectively dealt with the application

under Section 391 as a part of the exercise to deal with and dispose of the appeal. In fact the High Court dealt with it practically in one paragraph, i.e. Paragraph 36 of the judgment accepting the stand of learned counsel for the accused that the consideration of the appeal has to be limited to the records set up under Section 385(2) of the Code for disposal of the appeal under Section 386. This perception of the powers of the appellate Court and misgivings as to the manner of disposal of an appeal per se vitiates the decision rendered by the High Court. Section 386 of the Code deals with the manner and disposal of the appeal in the normal or ordinary course. Section 391 is in the nature of exception to Section 386. As was observed in Rambhau's case if the stand of learned counsel for the accused as was accepted by the High Court is maintained, it would mean that Section 391 of the Code would be a dead letter in the statute book. The necessity for additional evidence arises when the Court feels that some evidence which ought to have been before it is not there or that some evidence has been left out or erroneously brought in. In all cases it cannot be laid down as a rule of universal application that the Court has to first find out whether the evidence already on record is sufficient. The nature and quality of the evidence on record is also relevant. If the evidence already on record is shown or found to be tainted, tailored to suit or help a particular party or side and the real truth has not and could not have been spoken or brought forth during trial, it would constitute merely an exercise in futility, if it considered first whether the evidence already on record is sufficient to dispose of the appeals. Disposal of appeal does not mean disposal for statistical purposes but effective and real disposal to achieve the object of any trial. The exercise has to be taken up together. It is not that the

Court has to be satisfied that the additional evidence would be necessary for rendering a verdict different from what was rendered by the trial Court. In a given case even after assessing the additional evidence, the High Court can maintain the verdict of the trial Court and similarly the High Court on consideration of the additional evidence can upset the trial Court's verdict. It all depends upon the relevance and acceptability of the additional evidence and its qualitative worth in deciding the guilt or innocence of the accused.”

33. In ***Vikas Kumar Roorkewal vs. State of Uttarakhand and others, (2011) 2 Supreme Court Cases 178***, their Lordships of the Hon'ble Supreme Court have explained the power and duty of the Presiding Judge under Section 165 of the Evidence Act as under:-

“The necessity of fair trial hardly needs emphasis. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases. The learned Judge has failed to take participatory role in the trial. He was not expected to act like a mere tape recorder to record whatever has been stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confers vast and wide powers on Court to elicit all necessary materials by playing an active role in the evidence collecting process. However, the record does not indicate that the learned Judge presiding the trial had exercised powers under Section 165 of the Evidence Act which is in a way complimentary to his other powers.”

34. In ***Patel Maheshbhai Ranchodbhai and others vs. State of Gujrat, (2014) 14 Supreme Court Cases 657***, their Lordships of the Hon'ble Supreme Court have held that it is the duty of Judge to be alert and actively participate in court proceedings, so as to reach real truth and the prime duty

of trial Court is to carefully appreciate evidence. Their Lordships of the Hon'ble Supreme Court have held as under:-

“15. After hearing learned counsel for the parties and perusing the papers including the impugned order, we are in conformity with the opinion and conclusion of the Division Bench of the High Court. The courts are expected to perform its duties and functions effectively and true to the spirit with which the courts are sacredly entrusted with the dignity and authority and an alert judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly to reach at truth. In the present case, the trial court has failed to perform its duties to reach to the real truth and to convict the accused. As observed by the High Court, we are also at pain to notice that the role of prosecuting agency during the trial along with the trial judge appears to be dubious. Besides dying declaration, there was available evidence on record to prove the factum of cruelty and death of Renukaben, but it was not brought on record by the prosecuting agency. Instead, all concerned were in hurry to finish the case in a day. Prosecution submitted a list of 17 documents to be produced and exhibited, but the trial Judge exhibited only four documents and prosecution also did not raise any objection.

xxx xxx xxx

18. In view of the above, we do not find any reason to interfere with the impugned decision of the High Court. The Criminal Appeals are accordingly dismissed and the bail bonds of the accused-appellants stand cancelled. They shall surrender forthwith to serve out the remaining period of the sentence, failing which, the trial court is directed to take appropriate steps for sending them to prison to undergo the remaining period of

sentence.”

35. News items have appeared in the daily edition of The Tribune dated 16.01.2019 under the captions “De-addiction centre's scary numbers” and “Tackling drugs with multi-prolonged strategy: DGP”. According to the contents of the news item, under the Drug Policy 2017, the State Government regulates the sale of six habit-forming drugs, i.e. Tramadol, Tapentadol, Codeine, Diphenoxylate, Alprazolam, Buprenorphine. The dose is to be dispensed only for seven days in a single visit. There are at least 10 centres in the State which dispensed more than 15 lakh tablets in just a year. The figures clearly indicate that one centre was just acting as a bulk sale point for the medicine. It is required to be regulated by the Punjab Food and Drug Administration. According to the Director General of Police, Mohammad Mustafa, Special Task Force, Punjab, 25,579 persons were arrested in the past 20 months. 573.86 kgs. Heroin was recovered from their possession. The police has also recovered ice (synthetic drug), cocaine and charas from the peddlers as well as banned tablets. 21,430 cases have been registered under the NDPS Act in the last 20 months. More than 63,000 drug addicts were being treated in Outpatient Opioid Assisted Treatment (OOAT) clinics. Approximately 3 lakh addicts have been treated in both government and private de-addiction/rehabilitation centres during the last year.

36. The drug abuse is very serious issue. The drug abuse has broken the social fabric and has destroyed number of families. The main concern of the Court is that Charas, Heroin and artificial drugs should not be available in the State at all. It is intriguing to note that the students i.e. boys and girls are getting the prohibited drugs but the police is not in a

position to catch hold of kingpins and peddlers. The focus of the entire police force should also be to catch hold of kingpins and to bring them to justice. The kingpins should also be booked under the provisions of the Prevention of Money Laundering Act, 2002 to uproot this menace from the society.

37. The Parliament has enacted the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the Act" for short) to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith.

38. Money laundering has the meaning assigned to it in Section 3 of the Act. The scheduled offences are defined in section 2(y) of the Act as under:

- (i) the offences specified under part A of the Schedule; or
- (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
- (iii) the offences specified under Part C of the Schedule.

39. Section 3 provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. Punishment has been provided under Section 4 of the Act. Section 5 provides for attachment of the property involved in money-laundering. The Director or any other officer not below the rank of Deputy

Director authorized by the Director for the purpose of this Section, if has reason to believe to be recorded in writing on the basis of material in his possession that any person is in possession of any proceeds of crime, and such proceeds of crime are likely be concealed, transferred or dealt with in any manner which may reason in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III, he may by order in writing, provisionally attach such property for a period not exceeding 180 days from the date of order, in such manner as may be prescribed. The composition of adjudicating authority is provided under Section 6 of the Act and adjudication is provided under Section 8 of the Act. Section 17 provides for search and seizure. The search of persons is provided under Section 18. The retention of the property is provided under Section 20.

40. Paragraph 2 of Part A of the Schedule of the Narcotic Drugs and Psychotropic Substances Act, 1985 prescribes offences for contravention in relation to poppy straw, coca plant and coca leaves, prepared opium, opium poppy and opium, opium by cultivator, cannabis plant and cannabis, manufactured drugs and preparation and Psychotropic Substances etc. The Director, Directorate of Enforcement/ Additional/ Joint/Deputy or its delegates are directed to register cases against all the convicts, who are convicted under section(s) 15, 16, 17, 19, 20, 21, 22, 23, 24, 25-A, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 throughout the State of Punjab within a period of three months from today to curb the illegal transportation of narcotic drugs and psychotropic substances and also to prevent money laundering. The Principal Secretary (Home) to the Government of Punjab is also directed to

issue directions to all the Investigating Officers throughout the State of Punjab to register cases against the person(s) under section 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, who are involved in financing, directly or indirectly in any of the activities specified under the Act or harbours any person engaged in any of the activities as per the Act, to reduce the menace of drugs abuse in the society, immediately.

41. Hon'ble Delhi High Court in the case WPCRL No. 2401 of 2017, in the case of ***Aasha Vs. State Government of N.C.T of Delhi and another*** has dealt with this issue in depth. The relevant paragraphs are as under :-

“4. CONTROL OVER SUPPLY CHAIN

4.1 Setting up Narcotics Squad in each district: *The Commissioner of Police, Delhi has approved to constitute a Narcotics Squad in each district, which shall be supervised by an Inspector rank Officer, who in turn shall work under the supervision of ACP Operation. Each Squad shall have manpower of two Upper (S.Insp/ASI) and eight lower subordinates (H.Ct./Ct.). Once the man-power proposal pending with MHA is cleared, the strength of these squads will be increased appropriately. The Narcotics Squad and the local police shall immediately undertake the following work:*

a. Identification of hot spot of drugs sale: *Each Squad shall identify such area in the district in which there are complaints of sale of drugs or where the drugs addicts are found operating. Based on these information, the local police shall immediately take necessary steps to bust/apprehend such peddlers who are active in drugs*

trafficking.

b. Identification of potential suppliers: *As a further action, such potential suppliers shall also be identified by Narcotics Squad as well as local police and action as per law will be taken against them.*

4.2 Action u/s 29 of NDPS Act against abettors & conspirators: *Action u/s 29 of NDPS Act for taking legal action against the abettors and conspirators, aiding the sale of drugs shall also be stepped up.*

4.3 Identification of persons with previous convictions or pending cases for taking substantive as well as preventive actions: *Each Police Station shall prepare database/record of all individuals, who were previously involved in NDPS Act cases or have pending cases registered against them under NDPS Act and requisite surveillance will be undertaken qua on them so that substantive as well as preventive actions can be taken against them.*

4.4 Enhanced action under Section 77 JJ Act: *Section 77 of Juvenile Justice Act prescribes punishment to offenders also for selling narcotics material to the juveniles. Action under this section shall be stepped up.*

4.5 Regular visits to vulnerable schools identified by GNCT Agency to identify the peddlers: *State Project Director5-SSA, Department of Education, GNCT of Delhi provides the list of vulnerable schools for monitoring and curbing availability and peddling the drugs and narcotics substances among school going children. Local police shall take proactive and ensure Zero Tolerance on this issue. All out efforts shall be made to identify such elements and in case any peddler is identified, immediate action against him will be taken.*

4.6 Help from Drug Dept./GNCT by getting a Nodal Officers appointed at district level: *Use of Pharmaceutical drugs specially the Habit Forming*

drugs (schedule H1) drugs are a real menace. Liaison with the Drug Dept. Is required to be for initiating action under the Drugs & Cosmetics and NDPS Act against the unscrupulous elements, who are involved in sale of Pharmaceutical product without prescription which is to be used as a narcotics substance.

4.7 Training session for police officers for capacity building and improving the investigation skills:

Regular training is required to be conducted for capacity building and improving the investigation as well as intelligence collection skills of the investigating officers with regard to detection and investigation of NDPS Act related cases. This is likely to have a deterrent impact on supply chain. Dy. Commissioner of Police/Narcotics Branch will hold regular training sessions in this regard.

4.8 Dy. Commissioner of Police/C.R.O. shall collate information on drug dealers to prepare a booklet which shall be circulated among all concerned for taking preventive as well as substantive action.

6. Mr. Mehra submits that in-so-far as enhanced action under Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is concerned, the Delhi Police shall taken action keeping in view the 8 order passed by the Juvenile Justice Board – III on 20.03.2017, wherein the said Board has widely interpreted the expression “intoxicating liquor” to include substances such as whitener, thinner and vulcanizing solutions/sulochans. Mr. Mehra submits that the expression ‘intoxicating liquor’ used in Section 77 of JJ Act needs to be interpreted widely to inclue not just the traditionally understood liquors-which are consumed as alcoholic beverages, but also other liquids/fluids, which have the effect of intoxication and which may not be beverages per se. As at present, advised, we agree

with the submission of Mr. Mehra, Keeping in view the purpose and object with which Section 77 of the JJ Act has been enacted, and considering the fact that the consumption of such like substances/intoxicating liquors by the children is with the object of deriving the effect of intoxication, and the children are not likely to be aware of harmful effects of the liquid/fluids that they may consume, and also the fact that the same may not actually be a beverages, we are, prima facie, of the opinion that such like substances should be treated as “intoxicating liquor” within the meaning of Section 77 of the JJ Act.

7. Mr. Mehra stated that in terms of order passed by the Juvenile Justice Board III dated 20.03.2017, the Government of NCT of Delhi has issued a notification dated 28th July 2017 which, inter-alia, direct that a “mandatory warning should be made on the application devise (pens or otherwise) of correcting fluids/thinners and vulcanized solutions/sulochans regarding the effects on health on inhalation of vapour/consumption of chemicals contained therein”. The Government of NCT of Delhi, though the Chief Secretary was directed to issue appropriate instructions by way of notification, circular or otherwise, banning the sale of correction fluids/whiteners, thinners/diluters and vulcanised solutions/sulochans to children below the age of 18 years unless the child is accompanied by parents/guardians, or has a letter from the school authorities signifying their assent to purchase of the same.”

42. The Hon’ble Delhi High Court has considered the order of the Juvenile Justice Board-III dated 20.03.2017 wherein the Board has widely interpreted the expression “intoxicating liquor” to include substances such as whitener, thinner and vulcanizing solutions/sulochans. Their lordships

have held that whitener, thinner etc. are to be treated as “intoxicating liquor” falling within the ambit of Section 77 of the Juvenile Justice Act. The Hon’ble Delhi High Court has also issued certain directions to the Delhi Police to have a control over the supply chain.

43. According to National Policy on Narcotic Drugs and Psychotropic Substances, the drug addiction is increasingly becoming an area of concern as traditional moorings, effective social taboos, emphasis on self-restraint and pervasive control and discipline of the joint family and community are eroding with industrialization and urbanization. Both traditional and semi-synthetic and synthetic drugs are abused. Intravenous drug use and HIV/AIDS driven by such use have added a new dimension to the problem, especially in the Northeastern states of the country. The Policy has also addressed the issue of sale of drugs to schools children. It is highlighted in the policy that Local police shall pay special attention to areas surrounding schools and colleges in their efforts to tackle drug peddlers. Schools and colleges shall be encouraged to look out for peddlers in their vicinity and report them to police. Schools and Colleges shall be encouraged to conduct surveys. The issue of street peddlers has also been discussed in paragraph no. 52 quoted hereinabove. According to this paragraph, the peddlers sell drugs to addicts and often carry a small quantity of drugs at a time. Many of them are also addicts themselves and peddle drugs to earn for meeting their own requirement of drugs. Peddlers are the final link in the chain from manufacturer to addicts and hence an effective strategy is required to handle them.

44. The issue of smuggling of drugs in prisons has also been discussed in the Policy. Prison staff is required to be sensitized and trained

in detecting and apprehending drugs. Prisons shall be equipped with sniffer dogs to check the visitors and packages for drugs. All addicts within the prison are to be registered and compulsorily sent for drug de-addiction etc.

45. Accordingly the appeals are allowed and judgment and order dated 08.09.2011 are set aside. The appellants are acquitted. The appellant Baljinder Singh is on bail. His bail bonds and surety bonds are discharged. The appellant Khushi Khan is in custody. Registry is directed to prepare her release warrants immediately.

46. However before parting with the judgment, we issue following mandatory directions to the State of Punjab to eradicate the menace of drugs in the State of Punjab including on the analogy of the directions issued by the Hon'ble Delhi High Court in the case WPCRL No.2401 of 2017, in the case of ***Aasha vs. State Government of N.C.T. of Delhi and another:-***

1. The State Government is directed to launch special awareness drives to make the people aware of the ill-effects of drugs on the society. The Deputy Commissioner of the district shall be the Nodal Officer to make the citizens aware of the ill-effects of the drugs and controlling the same. The State Government shall make sufficient provisions for awareness drives through electronic media, print media, internet, radio television etc.

2. The State Government is directed to provide latest kits to the Investigating Officers to investigate the matters under the Opium Act, NDPS Act and other allied Acts and also to hold refresher course periodically to

apprise the police personnel the procedure to be adopted while conducting investigation under the NDPS Act. The State of Punjab is directed to issue direction to the police department that complainant should not be I.O. to obviate bias.

3. The State Government through the Director General of Police is directed to register cases against the kingpins under the Prevention of Money Laundering Act, 2002 at the time of lodging the FIR under the NDPS Act and Opium Act and also, if necessary, by attaching their properties provisionally relating to supply of poppy straw, coca plant and coca leaves, prepared opium, opium poppy and opium, opium by cultivator, cannabis plant and cannabis, manufactured drugs and preparation and psychotropic substances including artificial drugs etc.

4. Since the drugs menace has attained alarming proportion, the State Government is directed to establish Rehabilitation Centers in each district of the State within a period of six months from today. The rehabilitation centers shall provide all the basic necessities to the inmates including boarding, lodging, counseling etc.

5. The State Government is directed to appoint one Psychiatrist for counseling in each Rehabilitation Center. The Counselor appointed in rehabilitation center shall

also visit all the schools falling in his jurisdiction advising the students about the ill-effects of drugs.

6. All the educational institutions i.e. government run, government aided, private schools, minority institutions, are directed to appoint the senior-most teacher as the Nodal Officer to counsel the students on every Friday of the month about the ill-effects of drugs. In case, he finds any drugs abuse or symptoms, he shall be at liberty to summon the parents of students. The parents will be sensitized against the drugs abuse in parent-teacher meetings.

7. The State Government is directed to ensure to post one plain-clothes policeman from 8 AM to 6 PM around all the educational institutions to nab the drugs peddlers and kingpins. The local intelligence units are directed to keep a close watch on the shops including Dhabas, tuck shops, Khokas, tea stalls to ensure that the owners thereof are not permitted to indulge in the sale of drugs etc.

8. The Drugs Inspector while raiding the factories, industries, medical shops shall be accompanied by a person not below the rank of the Assistant Commissioner of Police including the Gazetted Officer from the Food and Supplies Department.

9. The Assistant Commissioner of Police of the concerned district shall personally monitor all the cases

registered under the Opium Act and the NDPS Act, 1985 to plug the loopholes during the course of enquiry and investigation to increase the conviction rate.

10. The Executive Magistrates and the Gazetted officers throughout the State shall be informed about their duties to be discharged under the NDPS Act more particularly, under Section 50 and the latest law laid down by the Hon'ble Supreme Court of India and by this Court from time to time.

11. The Police Officers shall ensure that no minor is served any drugs, alcoholic beverages in any medical shops, bars, restaurants and through vend. No vend shall supply/sell the liquor to any minor. In the eventuality of liquor being supplied/sold to a minor, the licence issued for bar/vend shall be cancelled after putting them to notice. This direction shall be complied with by the police force as well as by the Excise Department. The concerned Assistant Commissioner of Police shall visit every medical shop at least within 24 hours to check the supply of drugs to any minor.

12. The Director General of Police, State of Punjab, is directed to revamp, restructure strengthen special task force.

13. The District Narcotics Cells constituted by the State of Punjab shall immediately undertake the following tasks:-

- i). Each Anti Narcotics Cell is directed to identify such area in the district in which there are complaints of sale of drugs or where the drugs addicts are found operating based on these information, the local police shall immediately take necessary steps to bust/apprehend such peddlers who are active in drugs trafficking.
- ii). As a further action, such potential suppliers shall also be identified by Anti Narcotics Cell as well as local police and action as per law should be taken against them.
- iii). The Anti Narcotic Cell shall take action against the abettors and conspirators, aiding the sale of drugs as per Section 29 of the NDPS Act.
- iv). Each Police station throughout State of Punjab shall prepare database/record of all individuals, who were previously involved in NDPS Act cases or have pending cases registered against them under NDPS Act and requisite surveillance will be undertaken qua on them so that substantive as well as preventive actions can be taken against them.
- v). The Director, Education is directed to provide the list of vulnerable Government schools, Government aided Schools, Public Schools and Minority Schools for monitoring and curbing availability and peddling the drugs and narcotics substances among school going children to the police authorities. Local Police shall take proactive and ensure Zero Tolerance on this issue. All out efforts shall be made to identify such elements and in case any peddler is identified, immediate action shall be taken against him.
- vi). The Anti Narcotic Cell shall take action against unscrupulous elements who are involved in sale of Pharmaceutical product without

prescription which is to be used as a narcotics substance.

vii). There shall be regular training for capacity building and improving the investigating as well as intelligence collection skills of the investigating officer with regard to detection and investigation of NDPS Act related cases.

viii). The emphasis shall also be on the public schools. The Director Higher Education and Director School Education shall also visit the public schools. The free access shall be given to the Management to the School to the high ranking officers.

14. The State Government is directed to increase public awareness in the society. The Police shall be sensitized qua street peddlers. The Police shall be trained to deal with peddlers.

15. The State Government is directed to develop special, mobile, anti-peddling squads of police with jurisdiction of all over the cities and adjoining areas.

16. The State Government through the Secretary, Education is directed to include a mandatory and comprehensive chapter on drug abuse and illicit trafficking and its socio-economic cost to self, society and the country in the syllabus for 10+1 and 10+2 students.

17. The local police is directed to pay special attention to areas surrounding schools including Government schools, Government aided Schools, Public Schools and

Minority Schools, colleges, Universities and coaching Centres in their efforts to tackle drug peddlers.

18. The School Management, Principals and Teachers shall be encouraged sensitized to look out for peddlers in their vicinity and report them to police immediately.

19. All the schools throughout of State Government including Government, Government aided, minority institutions, public schools, Universities, colleges, Polytechnic colleges and Coaching Centres are directed to constitute anti-drug clubs to promote a drug free life among its members and also in the institution.

20. The State Government is also directed to sensitize the Prison staff in detecting and seizing drugs in prisons.

21. The Prisons shall be equipped with sniffer dogs to check the visitors and packages for drugs in the entry and exiting points. All the addicts within the prison including open jail shall be registered and compulsorily sent for de-addiction.

22. Every prisoner entering in the prison shall be tested for addiction and shall be de-addicted if he is found to be addicted.

23. All the prisoners who are arrested in crimes before their production in a court by an arresting agency shall be examined by the doctor and Doctor shall record their history or symptoms, if any of drug abuse. Wherever an arrested person shows signs of addiction, the police

should take him to a doctor or a hospital to determine, if he is an addict, and if so, take measures to treat him.

24. There should be coordination amongst the school authorities, police authorities and hospitals/ rehabilitation centres.

25. The State is directed to strictly enforce Section 71 of the NDPS Act.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 22, 2019.
Davinder Kumar

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