

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-624-DB-2017

Surmukh Singh

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-D-715-DB-2017

Rajeef Mohammad and another

... Appellants

Versus

State of Punjab

... Respondent

Reserved on : 01.05.2019
Date of decision : 07 .05.2019

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE AVNEESH JHINGAN***

Present: Ms.Aparna Singhal, Legal Aid Counsel
for the appellant in CRA-D-624-DB-2017 &
for appellant No.2-Mohammad Aakab Khan
in CRA-D-715-DB-2017.

Mr. Vipul Jindal, Advocate
for appellant No.1-Rajeef Mohammad
in CRA-D-715-DB-2017.

Mr.S.P.S.Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid 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 17.05.2017 rendered by the Additional Sessions Judge-cum-Judge, Special Court, Amritsar, in Sessions Case No.387 of 2015. The appellants along with co-accused Sukhdev Singh were charged with and tried for offences punishable under Sections 307 read with Section 34 of the Indian Penal Code (in short 'IPC') and Section 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'). All the appellants were charged and tried with for offence punishable under Section 29 of the NDPS Act. Appellant Rajeef Mohammad was also charged under Section 25 of the Arms Act. Co-accused Sukhdev Singh was also charged and tried with offence punishable under Sections 21(c) and 25 of the NDPS Act and Section 25 of the Arms Act. The appellants along with co-accused Sukhdev Singh were convicted and sentenced as under:-

Name of the convict	Offence under Section	Sentence
Sukhdev Singh	21(c) of the NDPS Act	To undergo rigorous imprisonment for a term of twelve years (12 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.
	307/34 of the IPC	To undergo rigorous imprisonment for a term of five years (5 years) and to pay fine of Rs.five thousand (Rs.5000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of two months.
	27-A of the NDPS Act	To undergo rigorous imprisonment for a term of ten years (10 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.
	25 of the Arms Act	To undergo rigorous imprisonment for a term of three years (3 years) and to pay fine of Rs.Three thousand (Rs.3000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one month.
Surmukh Singh	29 of the NDPS Act	To undergo rigorous imprisonment for a term of twelve years (12 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.

	307/34 of the IPC	To undergo rigorous imprisonment for a term of five years (5 years) and to pay fine of Rs.five thousand (Rs.5000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of two months.
	27-A of the NDPS Act	To undergo rigorous imprisonment for a term of ten years (10 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.
Mohammad Aakab Khan	29 of the NDPS Act	To undergo rigorous imprisonment for a term of twelve years (12 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.
	27-A of the NDPS Act	To undergo rigorous imprisonment for a term of ten years (10 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.
	307/34 of the IPC	To undergo rigorous imprisonment for a term of five years (5 years) and to pay fine of Rs.five thousand (Rs.5000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of two months.
Rajeef Mohammad	307 of the IPC	To undergo rigorous imprisonment for a term of five years (5 years) and to pay fine of Rs.five thousand (Rs.5000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of two months.
	29 of the NDPS Act	To undergo rigorous imprisonment for a term of twelve years (12 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.
	27-A of the NDPS Act	To undergo rigorous imprisonment for a term of ten years (10 years) and to pay fine of Rs.One lac (Rs.1,00,000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one year.
	25 of the Arms Act	To undergo rigorous imprisonment for a term of three years (3 years) and to pay fine of Rs.Three thousand (Rs.3000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one month.

All the sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 01.06.2015 Inspector Gurinder Pal Singh was present in his office of Counter Intelligence, Amritsar. He received a secret information that Sukhdev Singh, Surmukh Singh and Avtar Singh @ Tar were in

with the Pakistani smugglers. They with the help of Pakistani smugglers, took consignments of the heroin, fake Indian currency notes, arms and ammunition to supply the same in India and in other countries. Two Pakistani smugglers have entered illegally in India along with the consignment of heroin, arms and ammunition. They used to reside in the house of Sukhdev Singh. These Pakistani smugglers were helping Sukhdev Singh, Surmukh Singh and Avtar Singh @ Tar in the smuggling activities. Informer also disclosed that on that day Sukhdev Singh and Surmukh Singh on the swift car white colour, bearing No.PB-10-DS-4298, Avtar Singh @ Tar on his motor cycle bearing No.PB-02-BG-4252 along with two Pakistani Muslim smugglers with the consignment of the heroin, arms and ammunition along with drug money were present at Amritsar-Jalandhar Road, near New Amritsar, at T-point Housefed Colony, near water tank. If raid was conducted, they could be apprehended. Information being credible, Inspector Gurinder Pal Singh informed Sh.Ashwani Kumar, PPS, AIG, Counter Intelligence, Amritsar. After receiving instructions from AIG, Inspector Gurinder Pal Singh along with his police party reached at Amritsar-Jalandhar Road, Inside New Amritsar, T-point Housefed Colony, new water tank turning. One white colour swift car was parked there. On seeing the police party, the occupants of the car were alarmed. When the police party tried to apprehend them, the person wearing *salwar kameez* sitting next to the driver seat, pointed the revolver towards police party with an intention to kill them. However, ASI Inderdeep Singh snatched the revolver from him. The person who was on the motor cycle fled away from the spot. Accused disclosed their identities. Inspector Gurinder Pal Singh apprised them about their legal right to be searched in the presence of a

gazetted officer or a Magistrate. They opted to be searched in the presence of a gazetted officer. Accordingly Inspector Gurinder Pal Singh requested Sh.Ashwani Kumar, PPS, AIG, Counter Intelligence, Amritsar through mobile phone to come to the spot. As per instructions of Sh.Ashwani Kumar, AIG, Inspector Gurinder Pal Singh conducted search of accused Sukhdev Singh. He was sitting on the backside of driver seat. He had kept one bag of black colour on his lap. On checking the bag, one transparent polythene envelope containing heroin was recovered. It weighed 2 kg. 500 grams. Out of the same, two samples of 5 grams each of heroin were drawn. These were marked as S-IA and S-IB. The bulk quantity, i.e. 2 kg. 490 grams was put in separate plastic container. It was marked as Mark I. Inspector Gurinder Pal Singh affixed his seal 'GPS' on all the parcels. Ashwani Kumar, AIG also affixed his seal 'AK' on all the parcels. Form M-29 was filled on the spot. Inspector Gurinder Pal Singh conducted search of the vehicle. One bag of black colour was recovered from the dicky of car. It contained Indian currency. The same was found to be Rs.65 lacs. It was drug money. Separate parcels were prepared. It was marked as Mark II. He also put his seal impression 'GPS'. AIG Ashwani Kumar also put his seal bearing impression 'AK' on the said parcel. One .315 bore rifle along with five live cartridges was recovered from the dicky of car. It was converted into parcel. It was marked as Mark III. Inspector Gurinder Pal Singh and AIG Ashwani Kumar put their respective seals 'GPS' and 'AK' on the same. . 32 bore revolver was also recovered from accused Rajeef Mohammad. Five live cartridges were also recovered from .32 bore revolver. These were converted into parcel. Seal impressions 'GPS' and 'AK' were put. The car was also taken into possession. The seal after its use was handed over to

ASI Inderdeep Singh by Inspector Gurinderpal Singh whereas Ashwani Kumar, AIG, kept his seal with him after using it. Ruqa was sent to SSOC, Amritsar. FIR was registered. Rough site plan of place of recovery was prepared. Inspector Gurinder Pal Singh handed over three parcels containing heroin along with sample seals, Form M-29 to SHO/Inspector Harvinder Pal Singh. He checked the seals of parcels and also affixed his seal bearing impression 'HS'. He also put his seal on Form M-29. On 02.06.2015 SHO Harvinder Pal Singh handed over the custody of accused to Inspector Gurvinder Pal Singh along with three parcels, specimen seals, Form M-29 after taking out from the double lock of Malkhana. He accordingly produced the same before the Illaqa Magistrate. 5 grams heroin was drawn as representative sample from the bulk parcel after breaking the seals. Representative sample was sealed with seal 'SPS' and 'GPS' and bulk parcel was resealed with seal 'SPS' and 'GPS'. The case property was produced before the SHO. He kept the same in the double lock of Malkhana. Seizure report was sent to AIG Ashwani Kumar. On 03.06.2015, bulk parcel marked as Mark I sealed with seal 'SPS'/'GPS' along with one sample parcel marked as S-IB sealed with seal GPS/AK/HS and one representative sample parcel sealed with seal SPS/GPS were deposited in judicial malkhana as per orders of the Illaqa Magistrate. Accused Sukhdev Singh made disclosure statement. Accused Surmukh Singh also made disclosure statement that he had kept money in the drawer of bed. Money was got recovered. Accused Rajeef Mohammad and Mohammad Aakab Khan made disclosure statements. They disclosed that on the intervening night of 20/21.05.2015 they had crossed the Indo-Pak border with the help of waterproof plastic kit. They crossed the border by swimming the river at

village Bal Labhe Darya, Police Station Ramdas. They had kept the said waterproof plastic kit concealed. They got the kit recovered. Rough site plan of recovery was prepared. Sukhdev Singh disclosed that he along with his companion Pargat Singh, Avtar Singh and Surmukh Singh in connivance with each other used to smuggle consignments of heroin from Pakistan to be supplied in different cities in India. He could get the phones recovered. Thereafter five mobile phones, i.e. 4 of Samsung and 1 of Nokia were got recovered. Rough site plan was prepared. Rajeef Mohammad and Mohammad Aakab Kahn also disclosed that they had kept concealed one mobile phone containing Pakistani SIM in a black polythene. They could get it recovered. They got it recovered by removing soil from the designated place. One mobile phone make Nokia containing Pakistani SIM was taken into possession. Rough site plan was prepared. Surmukh Singh also suffered disclosure statement that he used to take heroin from Sukhdev Singh. He used to sell the same through mobile phone. For weighing the heroin, electronic *kanda* and mobile phone were kept concealed by him in the kitchen. The same were got recovered from the kitchen. Sukhdev Singh also deposed that he had purchased two laptops. He could get the same recovered. Two laptops make of HP and ASUS of grey and black colour were got recovered. Recovered property was deposited with the MHC. Investigation was completed. Challan was put up after completing all the codal formalities.

4. The prosecution examined a number witnesses in support of its case. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The accused also examined four witnesses in their defence. The accused were convicted and sentenced, as noticed

hereinabove. Hence these appeals. Co-accused Sukhdev Singh appears to have not filed any appeal.

5. Learned counsel appearing on behalf of 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 prosecution case.

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

8. PW-1 HC Gurwinder Singh has led his evidence by filing his affidavit Ex.P1. According to him, one sample parcel was handed over to him on 04.06.2015. He deposited the same.

9. PW-4 HC Bikramjit Singh deposed that Inspector Gurinderpal Singh produced before him one parcel of .32 bore revolver along with 5 live cartridges of same bore and one parcel of rifle .315 bore along with 5 live cartridges of same bore vide road certificate No.54/21 in the office. He mechanically checked the .315 bore rifle. He broke the seal GPS/AK Mark IV of parcel of revolver .32 bore. He mechanically checked the same.

10. PW-5 ASI Vishal Rajput deposed that he moved application Ex.PW5/A in the Court of Sh.K.K. Goyal, Addl. Sessions Judge, Amritsar and the learned Court allowed the application vide order Ex.PW5/B. He deposited the sample parcel of heroin in judicial malkhana.

11. PW-7 Nirmal Singh deposed that on 19.10.2015 he was posted at Police Station, SSOC, Amritsar. On that day, he received one parcel which was marked S-1A sealed with FSL Chem Pb. He kept the same in the double lock malkhana. On 20.10.2015 he operated the double lock of

malkhana and took out the parcel in intact condition. He handed over the same to ASI Vishal Rajput for producing the same in the Court of Sh.K.K.Goyal, Addl.Sessions Judge, Amritsar.

12. PW-10 SI Inderdeep Singh deposed the manner in which the appellants were apprehended. The police was informed that Sukhdev Singh and Surmukh Singh were standing with swift car. Avtar Singh alias Tar was on motor cycle. They had brought consignments of heroin along with two Pakistani smugglers. If the raid was conducted, they could be apprehended. Police reached the spot. Accused were apprehended. Accused disclosed their identities. I.O. told that it was their legal right to get searched by him, any gazetted officer or any Magistrate. The accused did not repose faith in the I.O. I.O informed the gazetted officer. In the meantime I.O. had prepared non consent memo. Inspector Gurinder Pal Singh requested AIG Ashwani Kumar to reach the spot. He came to the spot. He apprised the accused for their right. They reposed faith in him. The consent memos were prepared. Sukhdev Singh was sitting on the back seat of the driver seat. He had kept a bag black in colour in his lap. It was searched. It contained 2 kg. 500 grams heroin. The samples were drawn in accordance with law. Form M-29 was filled up. The dicky of the car was also searched. A sum of Rs.65,00,000/- was recovered. .315 bore rifle was also recovered. .32 bore revolver made in Germany was also recovered form the dicky. These were converted into parcels. I.O. and Ashwani Kumar put their seals on them. Accused made disclosure statements on the basis of which recovery of mobile phone, plastic kit, laptop and money was effected.

13. PW-11 (wrongly numbered) Gurinder Pal Singh was the I.O. According to him, he along with other police officials was present in the

Counter Intelligence Office, Amritsar, on 01.06.2015. He received secret information that Sukhdev Singh, Surmukh Singh and Avtar Singh in connivance with Pakistani smugglers had obtained consignment of heroin; fake Indian currency notes; arms and ammunition. The senior officer was informed. Accused were nabbed. They were apprised of their legal right. Inspector Gurinder Pal Singh conducted search of car. Heroin was recovered from the bag carried by Sukhdev Singh. A sum of Rs.65,00,000/- was recovered from the dicky along with a rifle of .315 bore and a .32 revolver. Accused made disclosure statements on the basis of which money, mobile phone, laptop and plastic kit were got recovered.

14. PW-12 AIG Ashwani Kumar has also given version in the manner in which the search of accused was carried out. All the codal formalities were completed on the spot including search of accused under his supervision.

15. PW-14 ASI Sukhwinder Singh deposed that Inspector Gurinder Pal Singh produced the case property before SHO Harvinder Pal Singh, i.e. two sample parcels of 5 grams each of heroin marked S-IA, S-IB, one bulk parcel of 2 kg 490 grams of heroin marked as Mark I duly sealed with seal AK and GPS along with Form M-29 and sample seal. SHO Harvinder Pal Singh affixed his seal HS on all the parcels including Form M-29. He prepared the sample seal and kept the parcels along with Form M-29 and sample seal in his custody in double lock of the police station. Inspector Gurinder Pal Singh deposited with him in malkhana one parcel of currency notes of Rs.65,00,000/- sealed with seal GPS and AK, one parcel of rifle .315 bore along with cartridges sealed with seal GPS and AK, one parcel of revolver .32 bore with cartridges sealed with seal GPS and AK along with

sample seals. On the same day, i.e. 02.06.2015 SHO Harvinder Pal Singh again operated the double lock of malkhana with his key and with the key of witness and took out all the parcels of heroin, sample seal and Form M-29. He handed over the same to Inspector Gurinder Pal Singh for verification from the Illaqa Magistrate. The case property along with accused were produced before the Illaqa Magistrate. One representative sample parcel of 5 grams was drawn which was sealed with seal SPS, GPS and the bulk parcel was resealed with seal SPS, GPS. The order of Illaqa Magistrate is Ex.PW11/F. On return to the police station, Inspector Gurinder Pal Singh handed over all the four parcels of heroin, Form M-29 and sample seal to SHO Harvinder Pal Singh. He kept the same in double lock of malkhana. On 03.06.2015, SHO Harvinder Pal Singh again operated the double lock with his key and handed over to Inspector Gurinder Pal Singh one sample parcel, bulk parcel and representative sample parcel. These were deposited on the same day by Inspector Gurinder Pal Singh. On 04.06.2015 the case property was handed over to Constable Gurwinder Singh for depositing the same in FSL, SAS Nagar vide road number 30/21. The guns were also taken out for mechanical examination. These were tested and redeposited.

16. PW-16 Inspector Harvinder Pal Singh has deposed that on the basis of ruqa, FIR was registered. After registration of the FIR, special reports were sent to Illaqa Magistrate and senior officers through HC Jhirmal Singh. Inspector Gurinder Pal Singh produced case property before him. He affixed his seal HS on all the parcels and form M-29. He kept the case property in double lock of malkhana. On 02.06.2015 he again operated the double lock of malkhana. He took out the case property and handed over the same to Inspector Gurinder Pal Singh for verification from the Illaqa

Magistrate. Inspector Gurinder Pal Singh produced the arrested persons along with the case property before Illaqa Magistrate. The Illaqa Magistrate verified the correctness of the seals. One representative sample parcel of 5 grams was drawn. Inspector Gurinder Pal Singh deposited the case property with him. He again operated the double lock on 03.06.2015 and handed over the case property to Inspector Gurinder Pal Singh for depositing the same in judicial malkhana. He deposited the same in judicial malkhana. The case property was sent to FSL.

17. DW-1 Sardool Singh deposed that he was elected Sarpanch of the village Fattu Bhila. On 01.06.2015 at about 06.00 A.M., some police officials came to his village. They forcibly entered in the house of Surmukh Singh. He received a mobile call from the house of Surmukh Singh. He along with other panchayat members and Nambardar of village reached the house. Police was present in the house. They searched the house of Surmukh Singh. They passed a resolution. In his cross-examination, he admitted that he never appeared before any higher police official regarding the facts that they were not heard by the Commission of Police. He has not taken any permission from the BDPO to produce the resolution book in the Court. He also admitted that proceeding book was not paginated. There was no stamp or seal of concerned BDPO.

18. DW-2 Swinder Singh deposed that police came to the house of Sukhdev Singh. Police took Sukhdev Singh along with them. In his cross-examination, he deposed that he had not moved any written complaint before any higher official regarding facts mentioned in his examination-in-chief.

19. DW-3 Manpreet Singh deposed that Sukhdev Singh was his

paternal uncle. He was present in his house. Police told him that Sukhdev Singh was required for some inquiry. He called Swinder Singh. He came to his house. Nothing was recovered from Sukhdev Singh. Police took away Sukhdev Singh with them. In his cross-examination he admitted that he had not made any written complaint to any higher authorities.

20. The statements of DWs do not inspire confidence and have rightly been discarded by the trial Court. Police reached the spot after seeking permission from Ashwani Kumar, PPS, AIG. The statement of official witnesses can be relied upon. It is not the case of false implication. Huge quantity of heroin was recovered from the accused. The Court can take judicial notice to the fact that the persons do not join investigation of criminal cases more particularly of NDPS cases. According to FSL report Ex.PX, seals on the parcels were found intact and tallied with the specimen seal impression.

21. It has come on the record the appellant Sukhdev Singh along with his co-accused Surmukh Singh, Rajeef Mohammad and Mohammad Aakab Khan were involved in smuggling of heroin and weapons. They were nabbed by the police. All the codal formalities were completed in accordance with law. The samples were sent to the FSL examination. The samples were found to be of heroin as per the FSL report Ex.PX. All the accused knew about the presence of contraband being carried by Sukhdev Singh. All of them hatched criminal conspiracy to smuggle the heroin in India along with weapons. The samples reached to the FSL intact. Rajeef Mohammad and Mohammad Aakab Khan entered India illegally. They had ventured into Amritsar City. They were carrying weapons and one of the accused aimed gun at police. The gun was snatched by the alert police

official. Recovery of mobile phone, laptop, money and plastic kit is at the instance of accused. Disclosure statements were voluntary in nature.

22. PW-10 Inderdeep Singh has deposed that a secret information was received by Inspector Gurinder Pal Singh. Investigating Officer informed AIG Ashwani Kumar, PPS. He after getting orders from him reached the spot. PW-11 Gurinder Pal Singh has also deposed that he received secret information to the effect that the local smugglers along with Pakistani smugglers took the huge consignment of heroin, fake Indian currency and they should be nabbed immediately. He was also informed that Sukhdev Singh and Surmukh Singh along with two Pakistani smugglers were standing with the swift car at Amritsar Jalandhar road, near New Amritsar at T-Point Housefed Colony, New Water Tank, along with one Avtar Singh on motor cycle. He informed AIG Ashwani Kumar. He along with police party, after obtaining instructions/directions, went to the spot in Scorpio, Tata Sumo and one private vehicle. PW-12 Ashwani Kumar has admitted that he was present in his office. Inspector Gurinder Pal Singh informed him regarding the receipt of secret information to the effect that Sukhdev Singh, Surmukh Singh along with Pakistani smugglers took the consignment of heroin, fake Indian currency and arms and ammunition to supply the same in India and in other countries. Gurinder Pal Singh further informed that two Pakistani smugglers have entered illegally into India along with the consignment of heroin and arms and ammunition. These Pakistani smugglers used to help Sukhdev Singh, Surmukh Singh and Avtar Singh alias Tar. Sukhdev Singh and Surmukh Singh were standing with swift car bearing No.PB10-DS-4298 along with two Pakistani Muslim smugglers. They were standing at Amritsar Jalandhar road near New

Amritsar at T-Point Housefed Colony, Near Water Tank. Informer had told them that they could be apprehended. He had received information on telephone from Gurinder Pal Singh. He gave directions to Inspector Gurinder Pal Singh. He constituted police party and left the Counter Intelligence Office for conducting the raid. In the instant case the recoveries were made from a public place and not a private place. Thus the Section 42 of the NDPS Act is not attracted.

23. The entry qua secret information was recorded in the DDR which has been placed on record. The police had received the information and they had to proceed immediately to the spot failing which the accused could escape. The senior officer was also informed. Section 42 of the NDPS Act has been duly complied with in substance.

24. A Constitution Bench of Supreme Court in ***Karnail Singh vs. State of Haryana, (2009) 8 Supreme Court Cases 539*** has held that in special circumstances and emergent situations when the officer is on the move, and recording of information is not practical prior to search and seizure, and would be detrimental to effectiveness of the search and seizure concerned, the requirement of writing down and conveying information to superior office may be postponed by a reasonable period which may even be after the search, entry and seizure. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. Non-compliance with Section 42 may not vitiate the trial if it does not cause any prejudice to the accused. Their Lordships of the Supreme Court have held as under:-

“35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan

Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

