

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

Date of Decision: November 20, 2019

1. CRA-S-540-SB of 2018

Bittu SinghAppellant

Vs.

State of PunjabRespondent

2. CRA-S-1009-SB of 2018

Shampy SinghAppellant

Vs.

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

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Present:- Mr.P.S. Sekhon, Advocate
for the appellants in both appeals.
Mr.V.G.Jauhar, Sr. DAG, Punjab.

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MAHABIR SINGH SINDHU, J.

This order shall dispose off the above mentioned two appeals filed by Bittu Singh and Shampy Singh, respectively, arising out of the common judgment of conviction and order of sentence dated 17.01.2018 passed by learned Judge, Special Court, Sangrur (hereinafter referred as 'Special Court'). The conviction has been recorded under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'Act') and sentence awarded is Rigorous Imprisonment for a period of 10 years along with fine of Rs.1 lac each; with default clause to further undergo Rigorous Imprisonment for a period of 1 year.

Brief facts of the present case are that on 01.12.2014, SI Surinderpal Singh, PW2 along with other police officials were on

patrolling duty at River bridge, Mahorana. At about 1.00 pm, he received a secret information to the effect that Shampy Singh, Bittu Singh, Pinka Singh, Amrik Singh and Laddi Singh are indulged in selling poppy husk after bringing it from Rajasthan; today, they all have brought the poppy husk in Innova Car, which is to be unloaded at cremation ground situated on Manvi-Bulapur mettled road in the area of Village Manvi, for further supply. In case a raid is conducted, all the above can be apprehended along with the heavy quantity of poppy husk. Believing the information credible, PW2 recorded the same into writing and sent it to Police Station, Amargarh, through HC Daljit Singh, No.384, to register an FIR against all five. Consequently, an FIR No. 164 dated 01.12.2014 under Section 15/61/85 of NDPS Act, Police Station Amargarh, was registered against all of them including the present appellants. Police party headed by PW2 along with one independent person, namely, Gurmeet Singh son of Joginder Singh, resident of Bulapur raided the disclosed place and found that both the appellants were sitting on the plastic bags at the backside of room constructed within the boundary wall of cremation ground and thus, the appellants were apprehended. After disclosing his identity, PW2 apprised the appellants about their legal rights to be searched in the presence of either Gazetted Officer or a Magistrate; who can be called at the spot, but they declined the same vide memos (Ex.PC and Ex.PB), respectively. Thereafter, PW2 informed the police control room Sangrur through his mobile phone for sending some Gazetted Officer at the place of occurrence and upon which, Nahar Singh, DSP (D) (PW6) came present. After disclosing his identity, PW6 apprised both the

appellants, separately, about their legal rights to be searched in the presence of any other Gazetted Officer or a Magistrate, but they reposed confidence with him vide consent memos (Ex.PD and Ex.PE), respectively. Consequently, PW2, on the direction of PW6, searched five plastic bags leading to the recovery of total 117.5 kg of poppy husk (23.5 kg in each bag). Two samples, 250 grams from each plastic bag were drawn and which were marked as 1A/1B to 5A/5B. Residue of the contraband i.e. 23.00 kg each bag was converted into five separate parcels and all were sealed by PW2 with his seal bearing impression 'SS'. Seal after use was handed over to HC Gurtej Singh (PW3). PW6 also affixed his seal bearing impression 'NS' on all the parcels and his seal after use was kept by himself. Sample seal (Ex.PF) was also prepared. Entire case property was taken into police possession vide recovery memo. (Ex.PG), witnessed by PW3 and independent person Gurmeet Singh. Site plan Ex.PG/1 was prepared with marginal notes. Both the appellants were interrogated by PW2 and upon their physical search Rs.50/- from Bittu Singh and Rs.150/- from Shampy Singh, were also recovered vide Memo. (Ex.PJ) and (Ex.PH), respectively. PW2 recorded the statements of PW6 as well as of other witnesses under Section 161 Cr.P.C. Both the appellants were arrested vide memos (Ex.PL and Ex.PK), respectively. Special report (Ex.PM) was prepared in the matter, and thereafter entire case property along with both the accused were produced before SHO/SI Sukhwant Singh (PW1), Police Station, Amargarh, who after verifying the facts of the case affixed his seal bearing impression 'SS' on the case property. PW2, on the directions of SHO, deposited the entire case property with the malkhana

Incharge, namely, MHC Chamkaur Singh (PW5) and the appellants were sent to police custody. On next day i.e. 02.12.2014, case property along with the appellants were produced before learned Judicial Magistrate Ist Class, Malerkotla (for short 'JMIC') by PW2 along with an application (Ex.PN) for inventory. Learned JMIC after removing the seals and on verification of the case property, drew five representative samples of 250 grams each from all five bags of bulk parcels and re-sealed the same with her seal impression 'RK' and that of PW2 as 'SS'. After preparing sample seals (Ex.PN/2 to Ex.PN/4), photographs (Ex.PO to Ex.PP) were also clicked. Learned JMIC passed the order Ex.PQ and directed PW2 to deposit the case property with Judicial Malkhana, Sangrur. Since copy of the order was not available, therefore, the case property was re-deposited with Malkhana Incharge, PS Amargarh by PW2 on that day i.e. 02.12.2014. On next day i.e. 03.12.2014, a report was received from Malkhana Nazir that there is no space in Judicial Malkhana, therefore, he was directed by learned CJM, Sangrur, to deposit the five sample parcels of poppy husk (each containing 250 grams) bearing seal impression 'SS/NS/SS' as well as other five samples of poppy husk, each containing 250 grams bearing seal impression 'RK/SS' in Judicial Malkhana; whereas the five bulk parcels of poppy husk each containing 22.750 kg. bearing seal impression 'RK/SS' was returned to the IO with a direction to keep the same in police Malkhana in safe custody. Five sample parcels bearing impressions 'SS/NS/SS' were sent for chemical examination to the Laboratory.

Records reveal that initially, co-accused Sarabjit Singh and Amrik Singh were declared as proclaimed offender; whereas accused Laddi Singh was arrested on 23.06.2015. After receipt of chemical examiner report (Ex.PX), challan was presented against the present appellants as well as third co-accused, namely, Laddi Singh. Copy of challan/ report under Section 173 Cr.P.C. was supplied to all three accused free of cost, as per provisions of Section 207 Cr.P.C.

Learned Special Court prima facie found that all three above have committed offence under Section 15 of the Act, therefore, on 09.11.2015, they were charge-sheeted accordingly; to which all three pleaded not guilty and claimed trial. Thereafter, remaining two co-accused, namely, Amrik Singh and Sarabjit Singh @ Pinka were also arrested on 30.01.2016 and 24.02.2016, respectively and supplementary challan was presented against both of them. Thereafter, charges were re-framed by learned Special Court against all the five accused on 01.04.2016 under Section 15 of the Act, but they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined following nine witnesses:-

PW 1: Inspector/SHO (Retd.) Sukhwant Singh,

PW2 : SI (Retd.) Surinderpal Singh, I.O.

PW3 : ASI (Retd.) Gurtej Singh, recovery witness.

PW4 : Lady Constable Gagandeep Kaur

PW5 : HC Chamkaur Singh

PW6 : DSP Nahar Singh

PW7 : ASI Mehma Singh

PW8 : HC Gurtej Singh

PW9 : SC Darshan Singh

Prosecution also produced documentary evidence, which are as under:-

Ex.PA: Ruqa
Ex.PA/1: FIR
Ex.PB: Non-consent memo of Shampy Singh
Ex.PC: Non-consent memo of Bittu Singh
Ex.PD: Consent memo of Shampy Singh
Ex.PE: Consent memo of Bittu Singh
Ex.PG: Recovery memo
Ex.PG/1: Site plan
Ex.PH: Physical search of Shampy Singh
Ex.PJ: Physical search of Bittu Singh
Ex.PK: Arrest-cum-intimation memo of Shampy Singh
Ex.PL: Arrest-cum-intimation memo of Bittu Singh
Ex.PM & Special report.
Ex.PM/1
Ex.PN: Application to learned JMIC, Malerkotla
Ex.PN/1: Inventory report.
Ex.PQ: Order dated 02.12.2014 by learned JMIC.
Ex.PR: Application before CJM, Sangrur
Ex.PR/1: Report regarding Ex.PR
Ex.PS & Report of Nazir Malkhana.
Ex.PR/2:
Ex.PF: Sample seal chit of SS, NS and SS.
Ex.PX: Report of Chemical Examiner

Entire incriminating material was put to the accused under Section 313 Cr.P.C., but they claimed innocence and stated to be falsely implicated by the police.

In support of their defence, appellants produced four witnesses, namely, Senior Constable Amrik Singh-DW1, Const. Harsimrat Singh DW2, ASI Tarsem Singh, DW3 and Gurmeet Singh, as DW 4, respectively and also produced documentary evidence which is as under:-

Ex.DA: Form M-29.

Ex.DW2/A: Log Book of DSP

It transpires that accused Laddi Singh died during trial and proceedings qua him stood abated vide order dated 17.11.2016.

After hearing both sides and taking into consideration the entire material on record, learned Special Court, held both the appellants guilty under Section 15 of the Act and sentenced to undergo Rigorous Imprisonment for a period of 10 years and a fine of Rs.1 lac each; with a default clause to further undergo Rigorous Imprisonment for a period of 1 year; whereas accused Amrik Singh and Sarabjit Singh were acquitted of the charges giving them benefit of doubt and there is no further challenge to their acquittal.

It is contended on behalf of the appellants that learned trial Court has committed grave error of law while passing the impugned judgment of conviction and order of sentence, thus, the same is not legally sustainable while raising the following points:-

- i) *As per the allegations of the prosecution in this case, a secret information was received, but the same was not reduced into writing, thus, there is violation of Section 42 of the Act;*

- ii) *There is no evidence on record to prove that appellants were in conscious possession of the contraband;*
- iii) *Entire writing work was done by PW2 while sitting in the police station and not on the spot;*
- iv) *Independent person, namely, Gurmeet Singh, was not examined by the prosecution, therefore, the recovery becomes doubtful;*
- v) *“Seal” after use was not handed over to the independent witness and as such caused a great prejudice to the appellants; and*
- vi) *Innova Car was not found or recovered by the police;*

On the other hand, learned State counsel has vehemently opposed the contentions raised on behalf of the appellants and submitted that charges against both the appellants have been duly proved. He further submitted that so far independent witness is concerned, he was won over by the appellants, therefore, rightly given up as a prosecution witness.

Heard both sides and perused the paper book.

PW2, investigating officer, deposed that he apprehended the appellants and after conducting their search, recovered the contraband. He has duly supported the prosecution case and reiterated his version as detailed in ruqa (Ex.PA). This witness deposed that he along with other police officials were present on the bridge of River Mahorana in the area of Village Mohrana. At about 1.00 PM, a secret information was received to the effect that appellants along with three others were indulged in selling of poppy husk after bringing it from Rajasthan. Information being credible, a ruqa (Ex.PA) was sent to the police station through HC Daljit Singh and on the basis of which, formal FIR No.164 dated 01.12.2014 under Section 15 of the NDPS

Act, Police Station Amargarh, (Ex.PA/1) was registered against all the five accused by Inspector Sukhwant Singh (PW1). Thereafter, police party headed by PW2 along with independent person, namely, Gurmeet Singh resident of Bulapur raided the disclosed place and found that both the appellants were sitting on the plastic bags at the backside of room constructed within the boundary wall of cremation ground. This witness after disclosing his identity, apprised the appellants about their legal rights to be searched either in the presence of a Gazetted Officer or a Magistrate, but both of them declined vide memos (Ex.PC and Ex.PB), respectively. Consequently, an intimation was sent by him to Police Control Room, Sangrur through his mobile phone for sending some gazetted officer at the place of recovery. Upon which, Nahar Singh, DSP (D) (PW6) reached on the spot; after disclosing his identity to the appellants he apprised them, separately, about their legal rights to be searched in the presence of any other Gazetted Officer or a Magistrate, but they reposed confidence in him by way of consent memos (Ex.PE and Ex.PD), respectively. Thereafter, on the directions of DSP (PW6), five bags were searched by PW2 leading to the recovery of contraband i.e. 117.5 kg of poppy husk. Two samples of 250 grams from each of the five bags were drawn and these were marked as 1A/1B to 5A/5B. Remaining contraband i.e. 115 kg (23 kg in each bag) was converted into five separate parcels. All the parcels were sealed by PW2 with his seal impression bearing 'SS'. Sample seal chit (Ex.PF) was prepared and seal after use was handed over to HC Gurtej Singh (PW8). DSP PW6 also put seal impression 'NS' on all the parcels and his sample seal was also prepared. Entire case property was taken into

police possession vide recovery memo.(Ex.PG). Site plan (Ex.PG/1) was prepared with marginal notes. Both the appellants were interrogated by PW2 and upon their physical search, Rs.50/- and Rs.150/-, respectively, were recovered vide Memo. (Ex.PJ and Ex.PH). PW2 recorded the statement of DSP Nahar Singh as well as of other witnesses and the appellants were arrested vide memo (Ex.PL and Ex.PK), respectively. Special report Ex.PM was prepared which was duly signed by independent witness Gurmeet Singh and DSP (PW6). Thereafter entire case property along with both the appellants were produced before SHO/SI Sukhwant Singh (PW1), who after verifying the facts of the case affixed his seal bearing impression 'SS' thereon. Case property was deposited with the malkhana Incharge and accused were sent to police custody. On next day i.e. 02.12.2014, case property along with both the appellants were produced before learned JMIC, Malerkotla. Learned JMIC, upon verifying the case property drew five representative samples of 250 grams each from the five bags of bulk parcels after removing the seals thereof and thereafter, re-sealed the same with seal impression 'RK/SS'. The sample seals were prepared as Ex.PN/2 to Ex.PN/4 and the photographs Ex.PO to Ex.PP were also clicked. Learned JMIC passed the order (Ex.PQ) and directed PW2 to deposit the case property with Judicial Malkhana, Sangrur, however, due to non-availability of certified copy of the order, the case property was re-deposited with Malkhana Incharge, PS Amargarh, on 02.12.2014. Thereafter on 03.12.2014, a report was received from Malkhana Nazir that there is no space in Judicial Malkhana, therefore, he was directed by learned CJM, Sangrur, to deposit the five sample

parcels of poppy husk each containing 250 grams bearing seal impression 'SS/NS/SS' as well as other five samples of poppy husk, each containing 250 grams bearing seal impression 'RK/SS' in Judicial Malkhana; whereas the five bulk parcels of poppy husk each containing 22.750 kg. bearing seal impression 'RK/SS' was returned to him with a direction to keep the same with police Malkhana in safe custody. Five sample parcels bearing impressions 'SS/NS/SS' were sent for chemical examination to the Laboratory.

During cross-examination, this witness stated that although no separate written information was sent to senior officers, but apart from ruqa (Ex.PA), an information was forwarded to DSP (PW6) through Control Room, Sangrur. He has also stated that independent witness Gurmeet Singh was joined by the police on the spot. Again deposed that he affixed his seal on the case property in the presence of DSP (PW6). He denied the suggestion that writing work was done while sitting in CIA Staff, Bahadur Singh Wala.

DSP Nahar Singh (PW6) stated that on 01.12.2014 he was posted as DSP (Investigation) Sangrur. After receiving a message, he along with his gunman reached near the cremation ground, where PW2 along with other police officials were present. He disclosed his identity to both the appellants and apprised them about their legal rights to be searched in the presence of any other Gazetted Officer or Magistrate, but both of them reposed faith in him. Consent memos (Ex PD and Ex.PE) of the appellants were prepared, which were duly signed by them as well as witnessed by HC Gurtej Singh (PW8) and independent witness Gurmeet Singh. He further stated that after recovery of the

contraband, samples were prepared; he affixed his seal bearing impression 'NS' and sample seal chit (Ex.PF) was also prepared. Form No.29 as well as sample seal chit (Ex.PF) were taken into police possession vide memo (Ex.PG). He further deposed that arrest and personal search memos of the appellants were duly attested by him.

During cross-examination, this witness denied the suggestion that he is an interested witness in the case. He also denied that PW2 has obtained his signatures on the recovery memos or that his seal was affixed on the case property while sitting in his office. He further stated that site plan was prepared by PW2 in his presence.

PW1 Inspector Sukhwant Singh (Retd.) deposed that on 01.12.2014, he was posted as SHO P.S. Amargarh. After receiving ruqa (Ex.PA) from PW2, an FIR was registered and copy of the same was handed over to HC Daljit Singh. Both the appellants were produced by PW2 along with case property consisting of 10 samples marked as 1A/1B to 5A/5B as well as five bulk parcels each containing 23 kgs. each sealed with 'SS/NS'. After verification, this witness also put his seal bearing impression 'SS' on the case property and prepared a sample seal chit (Ex.PF). Also stated that PW2 deposited the case property with HC Chamkaur Singh (Munshi/ Incharge Malkhana).

During cross-examination, this witness denied the suggestion that PW2 had completed all the written work while sitting in CIA Staff, Bahadar Singh Wala.

PW3 HC Gurtej Singh, reiterated the prosecution version to the effect that on 01.12.2014, he was posted as Head Constable, CIA Staff Bahadar Singh Wala and on that day at about 1.00 PM, when they

were on bridge of Canal Mohrana, a secret information was received regarding the selling of poppy husk by the present appellants along with other co-accused after bringing it from Rajasthan. After receipt of the information, ruqa (Ex.PA) was sent to police station for registration of an FIR and consequently, formal FIR (Ex.PA/1) was registered against all the accused by Inspector Sukhwant Singh (PW1), whose signatures he duly identified. Further stated that independent person Gurmeet Singh was joined during raid and both the appellants were found sitting on plastic bags at the backside of room situated in boundary wall of cremation ground at Manvi-Bulapur mettled road, in the area of Village Manvi, but on seeing the police party, they stood up, however, SI/IO (PW2) apprehended them at the spot. Separate offers were given to the appellants for their search, but they declined the same vide memo (Exs.PC and PB), respectively. Thereafter, PW2 sent an intimation to the Police Control Room, Sangrur, through his mobile No.8054545809 for sending some Gazetted Officer at the place of recovery. Consequently, DSP Nahar Singh (PW6) reached on the spot; after recording the consent memos (Ex.PD and Ex.PE), he directed SI/ IO (PW2) to conduct the search of the appellants and that led to the recovery of contraband in question. This witness has disclosed about the preparation of the sample parcels and affixation of seal impression bearing 'SS/NS' of PW2 and PW6, respectively. He has also deposed about the preparation of special report (Ex.PM) and duly identified the appellants before the learned Special Judge.

During cross-examination, this witness stated that secret information was received by PW2 in his presence at about 1.00 pm on

01.12.2014 at Canal Bridge, Mohrana. Police party reached on the spot at about 2.00 pm and the appellants were standing near the bags, but remaining three accused i.e. Laddi, Amrik and Pinka were not there. He further stated that independent person, Gurmeet Singh was joined for investigation at about 2.00 PM and he left the Police Station, Amargarh at about 11.00 PM. According to this witness, the writing work was done by him with the help of Laptop on asking of PW2; whereas site plan was prepared by IO (PW2) himself. He denied the suggestion that independent person Gurmeet Singh was a procured witness.

PW4 Lady Constable Gagandeep Kaur stated that she deposited the sample parcels with the Chemical Laboratory and which was neither tampered by her; nor anyone else was allowed to do so.

PW5 HC Chamkaur Singh deposed that on 01.12.2014, he was posted as Malkhana Munshi at P.S. Amargarh. On that day, case property consisting of ten (10) sample parcels each of 250 grams poppy husk marked as 1A/1B to 5A/5B along with five bulk parcels each containing 23 kg. sealed with 'SS/NS/SS', form No.29, sample seals, letter and memos of personal search of the appellants were deposited with him by PW2. Thereafter on 02.12.2014, PW2 withdrew the case property for producing of the same before the Illaqa Magistrate, but due to non-availability of zimni order, he re-deposited the same with him along with five (5) representative samples sealed with 'RK/SS'; five bulk parcels each containing 22.750 kg poppy husk duly sealed with 'RK/SS', sample seals and envelopes containing personal search of the

appellants. Thereafter on 03.12.2014, PW2 deposited the case property in Judicial Malkhana, Sangrur. Then, on 14.12.2014 he withdrew five sample parcels sealed with impression 'SS/NS/SS' marked as 1A to 5A from the police malkhana and handed over the same to Lady Constable Gagandeep Kaur (PW4) vide Rod chit No. 189 dated 14.12.2014 with a direction to deposit the same in the office of Chemical Examiner, Mohali. After obtaining the unique number from the office of SSP, Sangrur, PW4 deposited the sample parcels with Chemical Examiner, on 15.12.2014 and handed over the receipts to him.

PW7 ASI Mehma Singh, PW8 HC Gurtej Singh and PW9 SC Darshan Singh, deposed about the arrest of co-accused Amrik Singh and Sarabjit Singh on 30.01.2016 and on 24.02.2016, respectively.

Senior Constable Amrik Singh (DW1) brought the summoned record pertaining to Police Control Room, Sangrur, as Ex.DW1/A recorded at 2.40 p.m.

During cross-examination this witness clearly stated that a telephone call from PW2 was received on 01.12.2014 at 2.40 pm.

It is necessary to observe here that there is no record available pertaining to the testimony of DW2, in this case.

DW3-ASI Tarsem Singh brought the record relating to wireless log-book for 01.12.2014 from Police Station, Amargarh. According to log-book, no information was received from PW2 at Police Station, Amargarh for sending of a Gazetted officer from Police Lines, Sangrur, at the place of recovery.

But during cross-examination, this witness stated that in case PW2 had sent information to the police control room through his mobile phone without using wireless system, then, there is no need to make any entry in the wireless log-book.

DW4- independent person Gurmeet Singh identified the appellants present in Court. He deposed that nothing incriminating was recovered from the appellants in his presence and he was procured as a false witness by the police. He further deposed that his signatures were obtained on nine papers (Ex.PB to Ex.PL), which were already typed by the police, but he has not denied the signatures. He also deposed that he is not aware about the contents of the papers and police never recorded his statement (Ex.DA). Again stated that both the appellants were innocent and he never joined the investigation in the present case.

During cross-examination, this witness denied the suggestion that he got recorded his statement Ex.DA before the police as well as going to Village Manvi on motorcycle. He also denied the suggestion that police party met him at cremation ground or that PW2 recorded the memos (Ex.PC and PB), respectively, of the appellants in his presence.

So far as point No.1 i.e.-**non-compliance of Section 42 of the Act** is concerned, the Hon'ble Supreme Court in **(2009) 8 SCC 539- Karnail Singh Vs. State of Haryana**, while dealing with the matter in para 35, held as under:-

“35. In conclusion, what is to be noticed is that 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 Sections 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.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001.”

Hon'ble Supreme Court in clause (d), reproduced hereinabove, clearly held that “whether there is adequate or substantial compliance with Section 42 or not, is a question of fact to be decided in each case”.

In the present case, it is duly proved that a secret information was received by PW2 at 1.00 PM, and after reducing the same into writing, it was sent to SHO, Police Station, Amargarh, being

the immediate superior officer, at 1.30 PM through HC Daljit Singh No.384 (Ex.PA) and translated version of the same (except caste of the accused), reads as under:-

“SHO, Police Station, Amargarh.

“Today, I SI along with HC Gurtej Singh, 1001, HC Gurtej Singh, 2319, HC Daljit Singh, 384, C. Harmanpreet Singh, 936, C.Nirbhay Singh 1233 and L/C Ranvir Kaur, 1397, were on patrolling duty in a government vehicle No. PB-12-G-9046, driven by PHG Harbans Singh, for checking of suspected elements at 1.00 PM, over Canal bridge, Moharana, near Village Moharana. Then, a special informer gave a secret information to me that Shampy Singh and Panka Singh, sons of Kesar Singh, Caste, Amrik Singh son of Sukhchain Singh, Caste, Laddi Singh, son of Bhola Singh, caste, residents of Jolian and Bittu Singh, son of Kesar Singh, caste, resident of Sherpur, are indulged in selling of poppy husk after smuggled from Rajasthan. Today, all the above persons have brought the poppy husk from Rajasthan in Innova Car and after unloading the same in cremation ground situated at Manvi-Bullapur mettled road, will further supply. In case a raid is conducted on the spot in Village Manvi, then all the above along with Innova Car can be apprehended. Secret information is believed to be credible. Possession and selling of poppy husk by Shampy Singh, Panka Singh, Amarik Singh, Laddi Singh and Bittu Singh amounts to commission of an offence under Section 15-61-85 ND&PS Act. Therefore, the information (ruqa) is sent to Police Station, through HC Daljit Singh, 384, for registration of an FIR under the offence disclosed above, against Shampy Singh,

Panka Singh, Amrik Singh, Laddi Singh and Bittu Singh. After registration, the FIR number be intimated. I, along with police party proceed to cremation ground in Village Manvi-Bulapur, mettled road, for conducting raid and recovery.

Sd/-Sukhwinder Singh

Village Moharana

CIA, Bahadar Singh Wala,

Time: 1.30 PM

Dated 01.12.2014.”

On the basis of above written information, a formal FIR No.164 dated 01.12.2014 under Section 15 of the Act, Police Station Amargarh, was registered by Inspector SHO Sukhwant Singh (PW1) at 1.50 PM (Ex.PA/1). Intimation of the FIR was duly sent to Incharge Control Room, Sangrur, through wireless message, and the copies of the FIR were forwarded to Illaqa Magistrate as well as senior police officers. Then only, at 2.00 PM, police party headed by PW2, raided the compound of cremation ground and found both the appellants sitting on five bags of poppy husk. Thereafter, in compliance of Section 50 of the Act, both the appellants were given offer for search of the five bags in the presence of Gazetted Officer or a Magistrate, but they declined the same. Then, an intimation was sent to Police Control Room, Sangrur, by PW2 through his mobile phone for deputing a Gazetted Officer. Acting upon the request of PW2, DSP Nahar Singh (PW6) reached on the spot and both the appellants were given second offer for their search either in the presence of some other gazetted officer or a Magistrate, but they reposed confidence in PW6. Thereafter, on directions of PW6, all five bags were searched by PW2 and that led to the recovery of 117.50 kg of poppy husk. Therefore, the complete chain of sequence reveals that search was conducted after recording

the formal FIR leading to the recovery of contraband. No doubt, the communication (Ex.PA) sent by PW2 has been termed as a '*ruqa*', but neither under the Act, nor under Cr.P.C. the word '*ruqa*' has been defined; rather in common parlance, this word is construed as an initial information to the concerned police station /post regarding the commission of an offence. For example, in an injury case, Medical Officer sends '*ruqa*' to the nearest Police Station/ Police Post about the admission of an injured while sending an intimation that such and such person has suffered injury on account of assault or accident or as the case may be. Thus, within the jurisdiction of this Court, the word '*ruqa*' has become the *lingua franca*, not only for the police, but among the medical professionals also for sending an initial information to the Police Station/ Police Post about the commission of an offence.

From the perusal of communication (Ex.PA) extracted hereinabove, it is apparently clear that secret information received in this case was reduced into writing by PW2 while disclosing not only the detailed particulars of all the accused, but nature of contraband and *modus operandi* for commission of the offence. Thus, taking into consideration the substance of ruqa (Ex.PA), the secret information received by PW2 was duly reduced into writing and the same was sent to his superior officer i.e. SHO (PW1) well within time preceding the entry, search and seizure of the contraband; as such there is proper compliance of requirement stipulated under Section 42 of the Act. Resultantly, in the opinion of this Court, it can be safely observed that steps taken by PW2 while making recovery of the contraband in this

case from the appellants, were in consonance with clause (c) of Para 35 of **Karnail Singh's** case (supra) and as such, the plea raised on behalf of the appellants is liable to be rejected on point No.1.

2. CONSCIOUS POSSESSION:-

It has been amply proved from the testimonies of PW2 and PW3 that appellants were sitting on the plastic bags at the backside of room situated within the boundary walls of cremation ground at Manvi-Bulapur mettled road, and upon noticing the police party, both of them stood up, but were apprehended on the spot. It has also been duly proved that both the appellants were given separate offers by PW2 for their search in the presence of some Gazetted Officer or a Magistrate, but they declined the same vide memos (Ex.PC and Ex.PB), respectively. Thereafter, the intimation was sent to Police Control Room, Sangrur, through mobile phone by PW2 for sending some gazetted officer for conducting search at the place of recovery. Acting on the intimation, DSP Nahar Singh (PW6) reached on the spot and he again offered both the appellants for the search of five bags in the presence of some other gazetted officer or a Magistrate, but they consented to be searched in his presence, vide consent memo. (Ex.PE and PD), respectively. Thereafter only, on the directions of PW6, all the five bags were searched by PW2, leading to the recovery of 117.50 kg of poppy husk. After conducting necessary formalities, ten (10) parcels were prepared separately which were duly sealed with the seal impressions of 'SS/NS' (PW2 and PW6), respectively. Also note-worthy that sending of message to the DSP (PW6) through mobile phone of PW2, is duly acknowledged by DW2 himself.

Although, it is argued on behalf of the appellants that in view of the testimony of ASI Gurtej Singh (PW3), both the appellants were not sitting on the bags of poppy husk; rather they were standing nearby, therefore, conscious possession is not proved, but that plea is not acceptable for the reasons that recovery in this case is considerable i.e. 117.5 kg poppy husk contained in five (5) gunny bags which were lying in cremation ground and except the appellants, no one was present there. There is no explanation coming forward on behalf of the appellants as to for what purpose they had gone to the cremation ground at that relevant point of time and who had stacked the five bags of poppy husk, which was under their direct gaze. Thus, the conscious possession of the contraband by both the appellants is very well proved from their mental alertness as well as solitary presence at a secluded place. Consequently, this plea of the appellants is also liable to be rejected.

3. WRITING WORK NOT ON THE SPOT:

Testimonies of PW2, PW3 and PW6 are consistent regarding the recovery of contraband, offer to the appellants for search in terms of Section 50 of the Act while preparing consent memos (Exs.PB, PC, PD and PE) as well as recovery memo. (Ex.PG). Still further, preparation of site plan (Ex.PG/1), physical search memo (Ex.PH and Ex.PJ), arrest memo (Ex.PK), ten (10) samples (1A/1B to 5A/5B), sample seal (Ex.PF), Form 29 (Ex.DA) and special report (Ex.PM) are duly proved from the testimonies of above three prosecution witnesses. PW2 and PW3 duly proved that they affixed their seals bearing impressions 'SS/NS' on the sample parcels as well

as bulk contraband at the spot and from their cross-examination nothing adverse has come out to doubt the writing work on the spot. Consequently, this argument of the appellants is also rejected.

4. GIVING UP OF INDEPENDENT PERSON, NAMELY, GURMEET SINGH:-

No doubt, as per the prosecution version, Gurmeet Singh was joined as an independent person by the police during the entire process of recovery of contraband and he was given up without even recording his examination-in-chief as a prosecution witness, therefore, this Court does not approve the course adopted by learned Special Court in such a serious matter. But at the same time, it is necessary to emphasize here that said Gurmeet Singh was examined by the appellants themselves as a defence witness (DW4), thus, they cannot take any benefit on account of his non-examination as a prosecution witness. Although, DW4 tried to belie the prosecution case while deposing that his signatures were obtained by the police on nine papers which were already typed, but it is necessary to mention here that during cross-examination, this witness has acknowledged his signatures on all the documents i.e. Ex.PB to Ex.PL. Moreover, no complaint or grievance was ever made to any police authority, either by the appellants or DW4 to the effect that police obtained the signatures of Gurmeet Singh on any blank paper(s), therefore, this witness cannot be termed as a reliable person. Thus, the version of DW4 is nothing, but after-thought just to save the appellants from bringing them to justice. Consequently, in the opinion of this Court, giving-up of independent person, namely, Gurmeet Singh, as a prosecution witness

has not caused prejudice to the appellants, in any manner. Therefore, this point is also liable to be rejected.

5. SEAL NOT HANDED OVER TO INDEPENDENT PERSON:-

Since this Court has already discarded the testimony of DW4 being not a reliable person, therefore, only on this count, no fault is found with the course adopted by the prosecution while not handing over the seal to such an independent person. Still further, it has been duly proved from the testimony of Lady Constable Gagandeep Kaur, (PW4) that neither the samples were tempered by her; nor anyone else was allowed to interfere with the same. PW5 HC Chamkaur Singh, also supported the prosecution case that entire contraband along with parcels were kept in safe custody and on the directions of SSP, Sangrur, the samples were deposited with the Chemical Examiner on 15.12.2014. Even the Chemical Examiner report (Ex.PX) also corroborates that sample parcels were found duly intact in the following manner:-

“Five sealed parcels already marked as 1A, 2A, 3A, 4A and 5A and each sealed with three seals one each of ‘NS’, ‘SS’ and ‘SS’ alleged to contain Poppy husk. Seals on the parcels were found intact and tallied with the specimen seal impression.”

In view of the above, the contention on behalf of the appellants that seal was not handed over to independent person is also liable to be rejected.

6. INNOVA CAR WAS NOT RECOVERED FROM THE SPOT:

No doubt, as per prosecution version all the accused were alleged to have brought the poppy husk from Rajasthan in Innova Car and the same was neither recovered; nor found on the spot, but it is duly proved that both the appellants were found in possession of 117.5 kg of poppy husk contained in five (5) bags, thus, mere non-recovery of Innova Car will not absolve them from the legal consequences.

Above all, Hon'ble Supreme Court in **Dilbagh Singh Vs. State of Punjab, (2017) 11 Supreme Court Cases 290**, has held as under:-

“The haul of six bags of Poppy Husk is substantial so much so that it negates even the remote possibility of the same being planted by the police. Furthermore no evidence with regard to bias or malice against the Investigating Agency has been adduced.”

Since in the present case, recovery of the contraband is 117.5 kg of poppy husk; that too in presence of a Gazetted Officer (PW6); and there is nothing on record to prove that appellants have been prosecuted on account of any malice or enmity by the police, therefore, in view of the discussion made above, this Court has no option except to dismiss both the appeals.

Ordered accordingly.

November 20, 2019
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.