

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.01.2021

+ **CRL. A. 919/2017& CRL.M. (BAIL) 1601/2019**

MOHD. SHAHID @ MOHD. SAHID

.....Appellant

versus

THE STATE OF N.C.T. OF DELHI

..... Respondent

AND

+ **CRL. A. 924/2017**

AMIR KHAN @ NAHARU

.....Appellant

versus

THE STATE OF N.C.T. OF DELHI

..... Respondent

Advocates who appeared in these cases:

For the Appellants : Mr. Sumit Sharma, Advocate.

For the Respondent : Ms. Meenakshi Chauhan, APP for State.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the present appeals impugning a judgment dated 19.07.2017 passed by the Special Judge (NDPS), South District, Saket Courts, whereby the appellants were convicted

for the offence punishable under Section 21(c) of the Narcotics, Drugs and Psychotropic Substances Act, 1985 (hereafter the 'NDPS Act'). The Trial Court found that the prosecution had established that the appellants were found in possession of commercial quantity of Heroin, without any permission or license under the NDPS Act.

2. The appellants also impugn an order on sentence dated 09.08.2017, whereby they were sentenced to ten years of rigorous imprisonment for the offence punishable under Section 21(c) of the NDPS Act along with a fine of ₹1 lakh and in default of payment of fine, to undergo six months of simple imprisonment.

3. The prosecution's case is that on 09.06.2011 at about 09:30 am, SI Rajbir Singh received secret information that two persons namely Amir Khan (a resident of Madhya Pradesh) and Mohd. Shahid (a resident of Rajasthan) are engaged in supplying Heroin and they will supply Heroin to someone between 11:30 am and 12:30 pm on the pavement of I.P. park gate, near bus stop Sarai Kale Khan, Delhi. If a raid is conducted, the said two persons could be apprehended along with the contraband. SI Rajbir Singh produced the informant before Insp Kuldeep Singh, Narcotic Cell at about 09:45 am. After being satisfied about the information, Insp Kuldeep Singh telephonically informed ACP Bir Singh, Narcotic Cell who directed further proceedings. On the directions of Insp Kuldeep Singh, SI Rajbir Singh formed a raiding party consisting of himself, HC Parminder Singh,

Ct.Kheta Ram, Ct. Jai Prakash and Ct. Sandeep. At about 10:20 am – after making an entry as DD no. 14 – they all left the office for the spot in two cars -one government vehicle bearing registration number DL-1CH-5839 driven by Ct. Jai Prakash, and a private vehicle bearing registration number DL 7CL 1342 driven by Ct Sandeep. The secret informer, SI Rajbir Singh, HC Parmender and Ct Kheta Ram travelled in the government vehicle. They proceeded to the spot via Pushta road, Vikas Marg and reached the gate of I.P. park at about 11:00 am. Near Ramesh Park bus stop, they asked five public persons to join the police proceedings, but none agreed, and they all left the spot without disclosing their names and addresses on one or other genuine grounds. The raiding party parked their vehicles fifty meters ahead of IP park on the service road towards ITO.

4. SI Rajbir Singh, Ct Kheta Ram and the secret informer took their positions outside the gate of IP park. At about 11:50 am, two persons came on foot from the direction of Sarai Kale Khan. They were carrying bags on their right shoulders. The secret informer identified the person wearing a cream-coloured shirt, black trousers, and, holding a greenish coloured bag as Amir Khan and, the other person in a white shirt, blue jeans, and holding a black bag, as Mohd. Sahid. At about 12:00 noon, the said two persons (appellants herein) were apprehended by the raiding party.

5. SI Rajbir Singh introduced himself to the apprehended persons and disclosed that he had information that they were in possession of Heroin and told them that their search was to be conducted. He also informed them that if they required, they could be searched in the presence of a Gazetted Officer or a Magistrate. The accused were informed that they could search the police party and their vehicles as well. Thereafter, notices under Section 50 of the NDPS Act (Ex. PW6/A and Ex. PW6/C) were served on the accused. The accused refused to exercise their right to be searched before a Gazetted Officer or a Magistrate and wrote their replies (Ex. PW6/B and Ex. PW6/D). Many persons from the general public had gathered at the spot, however, none joined the proceedings despite SI Rajbir Singh requesting them to do so. SI Rajbir Singh checked the bag of the accused Mohd. Sahid, which had 3-4 compartments. The main compartment had one transparent polythene containing a light brown (*matiala*) coloured substance tied with a rubber band. The rubber band was removed and some of the substance was removed for checking. The said material tested positive for Heroin on using the field testing kit. The recovered polythene bag was weighed and it was found to be 2 kg and 200 grams. Two samples of 5 grams each were taken out and kept in small plastic pouches and were converted into separate cloth *pullandas* sealed with the seal of 2BPS NB Delhi. The remaining Heroin was put back and sealed with the seal of 2BPS NB Delhi. Accused Amir Khan's bag was also searched and one transparent polythene containing a brown (*matiala*) coloured substance was found, which tested positive for Heroin upon being tested using the

field testing kit. The said polythene bag weighed 2 kg. Two samples of 5 grams each were taken out. They were kept in small plastic pouches and were converted into separate cloth *pullandas*, each sealed with the seal of 2BPS NB Delhi. The remaining Heroin was put back and sealed with the seal of 2BPS NB Delhi.

6. Thereafter, SI Rajbir Singh prepared the *rukka* (Ex. PW7/B) and handed over the same along with the *pullandas*, FSL forms and carbon copies of the documents, to Ct Kheta Ram at around 3:30 pm with directions to register an FIR. At about 05:00 pm, ASI Mahender Singh came to the spot as the investigation was assigned to him. SI Rajbir Singh handed the custody of the accused persons to him, along with seizure memos and notices under Section 50 of the NDPS Act. ASI Mahender Singh prepared the site plan at the instance of SI Rajbir Singh (Ex. PW7/A). The appellants were arrested vide arrest memos (Ex. PW6/H and PW6/K). SI Rajbir Singh prepared the information under Section 57 of the NDPS Act (Ex. PW4/D) and forwarded the same to the ACP. The case property, samples, FSL forms with copies of seizure memo were deposited by ASI Mahender Singh in the *malkhanna* under entry nos. 1084 and 1085 in Register no. 19. On 21.06.2011, sample parcels with FSL forms were sent to the FSL, Rohini. The FSL report (Ex. PW7/E) dated 05.08.2011, indicates that the exhibits were found to contain Diacetylmorphine.

7. The accused (the appellants) were charged with the offence punishable under Section 21(c) of the NDPS Act. They pleaded not guilty and the matter was set down for trial. In order to prove its case, the prosecution examined ten witnesses. Amir Khan and Mohd. Shahid examined one witness each in their defence.

Evidence

8. WHC Rojalia, PS Chanakya Puri, deposed as PW1. She stated that on 09.06.2011, she was posted at PS Crime Branch, Nehru Place. On that day and at about 4:10 PM, one *rukka* was brought by Ct. Kheta Ram, which was sent by SI Rajbir Singh. On the basis of the same, she registered an FIR No. 156/11 under Sections 21/29 of the NDPS Act through computer operator Ct. Gaurav. In her cross-examination, she denied receiving written instructions to direct the person who came with the *rukka*, for registration of the case.

9. HC Parminder, Security, Vinay Marg, Chanakyapuri, deposed as PW6. He stated that on 09.06.2011, he was present in the office of the Narcotic Cell and on that day, SI Rajbir Singh under his supervision had constituted a raiding party consisting of himself, Ct Kheta Ram, Ct Sandeep and Driver Ct Jai Prakash. He told them that two persons who are residents of Rajasthan and Madhya Pradesh (the accused herein) would be coming to IP Park, Sarai Kale Khan after getting down at Nizamuddin Railway Station between 11:30 am to

12:30 pm to supply Heroin to someone at IP Park. The raiding party and the secret informer proceeded to the spot in a government vehicle bearing no. DL-7CL-1342 driven by Ct Sandeep. They left their office at about 10:20 am and reached IP Marg at about 11:00 am. SI Rajbir Singh requested 4-5 public persons standing at Ramesh Park Bus Stand as well as Sarai Kale Khan Bus Stand to join them however, none agreed to do so. The raiding party parked their vehicle about 50 meters ahead of IP Park Gate towards ITO side road. At about 11:50 am, two persons came from Sarai Kale Khan side with bags on their right shoulders. The secret informer informed the raiding party that the person wearing a cream-coloured shirt and black coloured pants was Amir Khan and, the person wearing a white shirt and blue coloured jeans is Mohd. Shahid. Both accused came and stood in front of the gate on the pavement and were waiting for someone (*chori chori se kisi ka intezaar kar rahe the*). They waited for 3-4 minutes and after that, they tried to leave the spot but were overpowered by the raiding party. SI Rajbir Singh thereafter, introduced himself to the accused persons and told them that their search would be conducted and if they desired, a Gazetted Officer or a Magistrate could be called and the search could be conducted in their presence. They were also informed that they could take a search of the police party and their vehicles. Separate notices under Section 50 of the NDPS Act were served upon the accused. It was clearly stated in the notices that the accused had a right to be searched in the presence of a Magistrate or a Gazetted Officer. Both refused their search under the supervision of a Gazetted Officer or a Magistrate. Since many people had come to the spot, the

IO requested four-five public persons to join the investigation, but, none of them agreed and left the spot. SI Rajbir Singh checked the bag of the accused Mohd. Shahid, which had three-four compartments. The main compartment had one transparent polythene containing a light brown (*matiala*) coloured substance tied with a rubber band. The rubber band was removed and some of the substance was removed for checking. The said material tested positive for Heroin using the field testing kit. He stated that when they had left their office, the IO had taken his bag which contained a field testing kit, electronic weighing machine and sealing material. Upon being weighed, the said polythene bag was found to weigh 2 kg and 200 grams. The IO took two samples of 5 grams each, stored them in small plastic pouches and converted them into cloth *pullandas* sealed with 2BPS NB Delhi and were marked Sl. No. A and B. The remaining Heroin was put back into the bag and sealed with the same seal. The FSL form was also filled up by the IO at the spot and the *pullandas* were seized vide memo Ex. PW6/E.

10. He further testified that thereafter, the accused Amir Khan's light green coloured bag was also checked. The bag had three zips and two strings hanging from it. One polythene containing a light brown (*matiala*) coloured substance was found tied with a rubber band. The same was found to be Heroin on being tested by the field testing kit. It weighed 2 kg, on being weighed on the electronic weighing machine. The IO took two samples of 5 grams each and these were kept in small plastic pouches, sealed with the seal of 2 BPS NB Delhi and converted

into cloth *pullandas* seized vide memo Ex. PW6/F. The IO prepared a *rukka* and handed over the same along with all *pullandas*, FSL forms as well as a carbon copy of the seizure memos to Ct.Kheta Ram at about 3:30 pm in order to get an FIR registered. The investigation was assigned to ASI Mahender. At about 05:00 pm, ASI Mahender came to the spot along with HC Rajesh and driver Ct. Jai Prakash in government vehicle no. DL-1CH-5839. SI Rajbir handed over the custody of the apprehended persons to him along with all other documents. ASI Mahender Singh prepared the site plan at the instance of SI Rajbir. Accused Mohd. Shahid was arrested vide memo Ex. PW6/G and his personal search vide memo Ex. PW6/H was conducted. One notice under Section 50 of NDPS Act, currency of ₹940 and one ticket from Bhopal to Nizamuddin in his name was found on him. His disclosure statement (Ex. PW6/J) was recorded. The accused Amir Khan was arrested vide arrest memo Ex. PW6/K and his personal search was conducted (Ex. PW6/L). His search yielded a notice under Section 50 of the NDPS Act, a purse containing ₹370 in currency, some visiting cards and a railway ticket from Bhopal to Nizamuddin in his name. His disclosure statement was recorded as Ex. PW6/M. PW6 stated that they left the spot at about 8:30 pm and reached PS Crime Branch, Nehru Place at about 09:00 pm, where the accused were produced before Insp Kuldeep. All recovered articles were deposited in the *malkhana* by the IO. In his cross-examination, he stated that on 08.06.2011 he could not recall the time at which he came to, or left from the office. He denied that a register was maintained with regard to his arrival and departure time at the office.

No entry or exit register was maintained in their PS with regard to any person in their PS. He deposed that apart from stopping at two places where the IO requested some public persons to join the proceedings, they had not stopped anywhere on their way to the spot. They were in two vehicles. Ct. Sandeep was driving the privately owned vehicle bearing no. DL 7CL 1342. No other person accompanied him in that vehicle. All other members of the raiding party were in the other car. PW6 denied ever sitting in that car. At the spot, Ct Kheta Ram, SI Rajbir Singh and the informer stood on one side of the gate, and he, himself stood on the other side while, Ct Sandeep and Ct Jai Prakash were in their respective vehicles parked about 50 metres away. During this period, he did not make any effort to join any public person and nor did the IO do so. After apprehending the accused, the writing work commenced after about fifteen minutes. The first document to be prepared were the notices under Section 50 of the NDPS Act to the accused persons, prepared by the IO. Since both vehicles were parked near the spot, they were called to the spot and all proceedings took place at the spot itself. He affirmed that the accused had written their refusal in their own handwriting in Hindi language. He affirmed that all document such as the notices, seizure memos, *rukka* and FSL form were prepared by the IO in his own handwriting. He stated that he could not tell as to who was the nearest Gazetted Officer or Magistrate. The persons (five to seven in number) who had gathered at the spot were requested to join the proceedings by the IO, but none agreed. He affirmed that till the time he was present at the spot, no other police official had joined them. PW6 could not tell the number

of the gate at which the raiding team had taken their positions. He affirmed that the raiding party had reached PS Crime Branch at about 10:00 pm and their office at Shakurpur at about 11:00 pm. He denied the suggestion that the IO had made a written document with regard to receiving or handling of the seal by PW6.

11. ASI Mahender Singh, PS Kashmere Gate, deposed as PW7. He stated that on 09.06.2011, he was posted at Narcotic Cell, Shakarpur. At about 05:00pm, Ct Jai Prakash came in a government vehicle and took him to the spot where they reached at about 05:20 pm. There, SI Rajbir Singh met them along with the accused persons. SI Rajbir Singh handed over custody of the accused persons, two original copies of the seizure memos and two original notices under Section 50 of the NDPS Act. PW7 stated that he prepared the site plan (Ex. PW7/A) at the instance of SI Rajbir Singh. PW7 stated that he recorded the statement of HC Parminder Singh. Upon reaching PS Nehru Place at about 09:00 pm, he deposited the personal search items in the *malikhana* and recorded the statement of SHO, Crime Branch and the statement of the MHC(M). Thereafter, they reached Narcotic Cell, Shakurpur at about 10:50 pm. PW7 stated that he had made DD entry no. 34 viz. the accused being produced and questioned by Insp Kuldeep Singh. He stated that he recorded the statement of Insp Kuldeep Singh and Ct Kheta Ram and, the supplementary statement of HC Parminder Singh. In his cross-examination, PW7 affirmed that he had filed the chargesheet after carefully examining all the annexures. He affirmed that before filing the chargesheet, all the documents were

with him. He denied that signatures of the accused were taken on the site plan. He stated that the site plan was prepared by him while standing next to the official vehicle Maruti 800 and the rest were prepared while he was sitting inside the said car. The other vehicle used in the raid was a Hyundai i10 brought by SI Rajbir Singh, but PW7 denied knowing who it belonged to. He denied asking SI Rajbir Singh the specific location at which the members of the raiding team had positioned themselves and nor did he mention the gate number of the IP park where the accused were apprehended. However, he stated that he had mentioned that the accused were apprehended outside the gate having the board of Rajiv Gandhi Smriti Park, which is present outside gate no. 1 only. He stated that he remained at the spot from 5:20 pm till 08:30 pm. He denied having tried to join public persons from the nearby bus-stop where there were 10-15 people already present.

12. He further denied the suggestion that accused Amir Khan had disclosed the name of the buyer and neither the buyer's mobile number. No source of supply was found from accused Amir Khan even after five days of police custody remand. He denied trying to join any public person in the investigation even though the area sees heavy traffic. On him inquiring, SI Rajbir told him that the private car belongs to his friend. He could not recall the name of the person from who he made inquiries about the railway tickets found on the accused persons. He denied having recorded his statement. He could not say as to why he had not sent the sample parcels to the FSL before

21.06.2011. He stated that he remained at the spot for about three hours and in this period, no public person collected at the spot. No PCR or any other police official from the area visited them either.

13. SI Rajbir Singh, PS Jamia Nagar, deposed as PW8. He stated that on 09.06.2011, he was posted at Narcotic Cell, Shakarpur, Delhi. On that date, a secret informer came to his office at about 09:30 am and told him that two persons namely Amir Khan and Mohd. Sahid will supply Heroin in Delhi in huge quantity and will come to HN Din Railway Station by train and will hand over the said contraband to some person near the gate of IP Park. PW8 produced the said secret informer before Insp Kuldeep Singh who informed ACP Bir Singh, who then directed them to conduct further proceedings. On Insp Kuldeep Singh's instructions, he formed a raiding party (consisting of himself, HC Parminder Singh, Ct Kheta Ram, Ct Jai Prakash and Ct Sandeep) and recorded the said information vide DD no. 13A (Ex. PW4/A). PW8 took his field bag containing field testing kit and electronic weighing scale with him. The raiding party left the office in two government vehicles (DL1CF5839 driven by Ct Jai Prakash and DL7CL1342 driven by Ct Sandeep). They left their office at about 10:20 am vide DD no. 14. And, they reached the gate of IP Park at about 11:00 am. Near Ramesh Park bus stop, they asked 4 public persons to join the proceedings after apprising them about the secret information. They also asked 5 public persons near Nizamuddin Flyover, however, none agreed. PW8 along with Ct Kheta Ram and the secret informer took their position on the south side of the IP park

gate and HC Parminder Singh on the North side. At about 11:55 pm two persons came who were pointed out by the secret informer. At about 12:00 pm, they were apprehended by the raiding party. Thereafter, PW8 stated that he informed the accused persons about the secret information and informed them of their legal right to be searched before a Gazetted Officer or Magistrate and the right to search the search party. He prepared notices under Section 50 of the NDPS Act. Even at this point, he asked 5-6 persons to join the proceedings, but none agreed. PW8 stated that in Mohd. Sahid's bag, he found a brownish substance packed in a transparent polythene. A small portion of the same was tested and it was found to be Heroin. It weighed 2.2 kg. He took 2 samples of 5 grams each and kept them in separate parcels. He conducted the same procedure with the material found in Amir Khan's bag, which also tested positive for Heroin and it weighed 2 kg. After marking the samples taken by him, and converting them to *pullandas*, he prepared the *rukka* (Ex. PW7/B). He handed all the *pullandas* to Ct Kheta Ram with directions to go to the PS and get an FIR registered, who left the spot in the vehicle driven by Ct Jai Prakash. At about 05:20 pm, ASI Mahender Singh (second IO of the case) came at the spot in the vehicle driven by Ct Jai Prakash. PW8 handed over the custody of the apprehended persons to ASI Mahender Singh along with all documents. PW8, thereafter, identified all the case property showed to him by MHC(M) during his examination in chief.

14. In his cross-examination, PW8 affirmed that he had written down the entire contents of the secret information in DD no. 13 (Ex. PW4/A). However, the said information did not contain information as to which gate number the accused persons were expected to come from. He denied any knowledge of the number of gates to the IP park. He stated that the length of IP Park must be about 1-1½ km from one end to another. He could not recall at which gate the accused were apprehended. He stated that there was a bus stop at a distance of about 20 metres from the spot. He stated that the accused were apprehended on the footpath outside the park. He affirmed that vehicle no. DL 7C L 1342 belongs to him and is make Hyundai i10. He could not recall if he had told ASI Mahender Singh regarding the position of the raiding party at the IP park gate. He stated that the nearest Magistrate was available at the Patiala House Courts and the nearest Gazetted Officer would be the ACP available at the PHQ, Delhi Police, ITO. He affirmed that the first document prepared by him were the notices under Section 50 of the NDPS Act. He could not recall if any security guard had been deputed near the gate or not, however, on the said date, no guard was present.

15. Insp CR Meena, SHO, PS Seemapuri deposed as PW9. He stated that on 09.06.2011, he was posted as SHO, PS Crime Branch, Nehru Place. At about 04:15 pm, Ct Kheta Ram came to his office and produced about six *pullandas* (sealed with seal of 2 BPS NB Delhi) marked A, B, C, D, E and F, two FSL forms and two copies of seizure memos before him. WHC Roja Alia informed him about the FIR

number (156/11) and he put the same on all the documents. At about 04:35 he called MHC(M) Jag Narain in his office and handed over all the aforesaid to him and he made entries in Register no. 19 regarding deposit of the said articles in the *malkhana*. In his cross-examination by the APP, he affirmed that of the four samples taken from the accused, only two were sent by him to the FSL for testing. In his cross-examination, he stated that only Ct Kheta Ram had come to his office and spent around half an hour over there. He denied having handed over his seal to anyone after its use in this case and the same remained with him from 09.06.2011 to 22.06.2011. He denied having mentioned the time of deposit of the above articles along with his signature in register no. 19.

16. Ct Kheta Ram, Security, Vinay Marg deposed as PW10. He stated that on 09.06.2011, he was posted at Narcotics Cell, Shakurpur, Delhi. He was a part of the raiding party formed by SI Rajbir Singh which consisted of himself, HC Parminder Singh, Ct Jai Prakash and Ct Sandeep. He stated that the IO arranged a vehicle bearing DL1CH5839, and the same was being driven by Ct Jai Prakash. And, a private vehicle was being driven by Ct Sandeep. On their way to the spot, the asked five to six persons to join the raiding team however, none agreed and left without disclosing their names or addresses. Their vehicles were parked around 50 metres from the main gate of IP Park towards ITO. PW10 and SI Rajbir Singh took their positions on the southern side of the gate and HC Parminder Singh took his position on the northern side. Thereafter, two persons were pointed out

by the secret informer. At about 12:00 am, the two persons were apprehended by the raiding party and the IO introduced himself and they also introduced themselves to the raiding party. Thereafter, the IO apprised the two persons about their legal rights that they could get searched by a Gazetted Officer or a Magistrate and that they could search the raiding party before the latter conducted his search. Separate notices under Section 50 of the NDPS Act were also given to the accused and its contents were read over to them. In the meanwhile, some public persons had gathered at the spot, however, none agreed to the IO's request to join the proceedings. In accused Mohd. Shahid's bag, they found one white coloured transparent polythene containing a brown coloured (earth like colour) powdery substance, which tested positive for Heroin on the field testing kit. The same weighed 2.2 kg. The IO prepared 2 small polythene packets of the said contraband and the same were converted into *pullandas*. Accused Amir's search also produced a similar substance, which tested positive for Heroin. The same process was followed and the IO prepared *pullandas* of the material seized from accused Amir. Thereafter, the IO prepared one *tehrir* and handed over the same along with the *pullandas* to PW10 with directions to register the case and deliver the parcels and documents to the SHO for proceedings under Section 55 of the NDPS Act. He left the spot at about 3:30 pm in the official vehicle driven by Ct Jai Prakash. At the PS, he handed over the *tehrir* to the DO of the PS and then met the SHO at about 04:15 pm and handed him all the material he was instructed to. The SHO affixed his seal on the parcels and took note of the FIR no. 156/11 and wrote the same on all the

parcels. He called the MHC(M) and instructed him to deposit all the material in the *malkhana*. The MHC(M) made an entry in register no 19 regarding the same.

17. In his cross-examination, he denied using any mobile phone on 09.06.2011. He affirmed having worked with SI Rajbir Singh and ASI Mahinder Singh in the Narcotics Cell for about one/one and a half years between 2011-2012. He affirmed that a case was registered against him (FIR No. 200/12) in the Anti-Corruption branch of the Delhi Government on the basis of a complaint made by one accused Riazuddin, who was arrested in a NDPS case. He stated that the said person had made a false accusation against him and that he was not involved in any other case. He stated that the private vehicle used in the raid was arranged by the IO but he could not tell who the said vehicle belonged to. He could not recall the gate number of the park where the raid was conducted. He stated that whenever they left their office for official work, they would normally record a DD entry. However, he could not recall recording anything in the DD in his handwriting and stated that the same may be recorded by the duty officer. He denied having recorded the DD entry in the present case in his handwriting. He affirmed that he was at the spot for about 4½ hours, however, no one (except the secret informer) left or came to the spot. He stated that the personal search of the accused persons was not conducted in his presence. He denied being aware of where a Gazetted Officer or Magistrate could be found. He affirmed that the MHC(M) at the PS had made entries in Register no. 19 before the SHO.

Thereafter, he denied that SI Rajbir Singh told the accused as to who was the nearest Gazetted Officer or Magistrate. He denied that a senior officer had visited the spot.

18. In his statement under Section 313 of the Cr.PC, accused Mohd Shahid denied the allegations against him and stated that he was apprehended in the morning hours of 09.06.2011 when he had gone to Hazrat Nizamuddin to pay obeisance along with his family members. He denied that the police officials had explained to him the meaning of Gazetted Officer or Magistrate or that he was apprehended from the spot. He stated that his signatures were forcibly taken on many blank papers. He denied any illicit material was seized from him. He stated that he had been falsely implicated in the case.

19. In his statement under Section 313 of the Cr.PC, accused Amir Khan denied the allegations against him and stated that no contraband was recovered from him. He denied that a notice under Section 50 of the NDPS Act was served to him. He stated that he was apprehended from the Nizamuddin Dargah and that all documents were prepared at the PS. He stated that the case against him is false and fabricated.

20. Mohd Salam was examined as DW1 for the accused Mohd. Shahid. He stated that he knew the accused Mohd Shahid for the last 20/25 years as he is his brother in law. He stated that on 08.06.2011, he along with the accused had started from Kota, Rajasthan to visit

Hazrat Nizamuddin Dargah. At about 07:30/08:00 am, when they were buying a chadar for the dargah, 4-5 people in civil clothes approached them and asked them if they knew anything about a smuggler in Kota, Rajasthan. Thereafter, the said persons took DW1 and the accused to the PS where they were kept separately. He stated that while DW1 was released, the accused was not. In his cross-examination, he stated that accused Mohd Shahid worked as an electrician. He could not recall if he had been in jail for an offence under the NDPS Act prior to this occasion. He denied knowing Amir Khan. He denied that tickets in the name of the accused were seized from them.

21. Sameer Khan was examined as DW1 in defence of Amir Khan. He stated that on 07.06.2011, he along with his father (accused Amir Khan) had come to Delhi to attend the Umra function on 08.06.2011 at the house of one Salim, who was going for Umra to Saudi Arabia. On 09.06.2011, he and the accused had gone to Hazrat Nizamuddin Dargah to offer chadar and when they came out, four persons approached them and asked the accused his name. Thereafter, they took them to PS Shakurpur and DW1 kept waiting outside. The next day, he was informed that a case under the NDPS Act was registered against his father. In his cross-examination, he stated that he and his father had come to Hazrat Nizamuddin Station from Bhopal at 06:30 am on 07.06.2011. He could not recall the number of the flat where they had to attend the *Umra* function. He stated that his father had earlier been in custody but he did not know the details of that case. He

denied that at the time of apprehension of his father, a ticket from Bhopal to Hazrat Nizamuddin was recovered from him. He denied that Heroin was recovered from his father.

Submissions

22. Mr. Sumit Sharma, learned counsel appearing for the appellants assailed the impugned judgment on several fronts. First, he contended that the provisions of Section 50 of the NDPS Act were not complied with, inasmuch as, the appellants were not searched in the presence of a Gazetted Officer or a Magistrate. He also referred to the cross-examination of PW6 (HC Parminder) wherein he had admitted that he did not know who was the nearest Gazetted Officer or a Magistrate from the spot where the appellants were apprehended. And, neither was PW10 (Ct. Kheta Ram) aware of the location of the nearest Gazetted Officer or Magistrate. Mr Sharma contended that it was evident that the police officials had no intention of taking the appellants to a Magistrate or a Gazetted Officer for searching them in their presence. He submitted that the notices under Section 50 of the NDPS Act were just a formality and the evidence on record established that the appellants were given no real opportunity to be searched in presence of a Gazetted Officer or a Magistrate. He relied upon the decision of the Supreme Court in *Vijaysinh Chandubha Jadeja v. State of Gujarat: AIR 2011 SC 77*; *Narcotics Central Bureau v. Sukh Dev Raj Sodhi: AIR 2011 SC 1939*; and *Arif Khan*

@ *Agha Khan v. State of Uttarakhand: (2018) 18 SCC 380* in support of his contention that a search conducted in violation of Section 50 of the NDPS Act was invalid and the alleged recovery of contraband without compliance of Section 50 of the NDPS Act, could not be proved.

23. Second, he contended that the provisions of Section 41 of the NDPS Act were not complied with. He referred to the provisions of Section 41 of the NDPS Act as in the present case, no warrants from the Magistrate were obtained for searching the appellants. He referred to the decision of a Coordinate Bench of this Court in *Directorate of Revenue Intelligence v. Manjinder Singh: (2014) 2 DLT (Cri) 99* in support of his contention.

24. Third, he contended that the possibility of the samples being tampered with was not ruled out, as there was an inordinate delay of twelve days in sending the samples to the FSL. He submitted that, in addition, the weight of the samples drawn and the weight of the samples received at the FSL was also different. He also contended that the prosecution had failed to establish that the seal used for sealing the samples and the case property was handed over to an independent witness. He contended that since the seal in question remained with police officials, the samples could have been tempered with. He submitted that this apprehension was also not unfounded as the substance when produced in Court was not in powdery form but was

in hard and lumpy form. The substance was light brown in colour but when the samples were drawn, the colour of the substance was described as *matiala*.

25. Fourth, Mr Sumit Sharma contended that there was a doubt as to the vehicles used by the police officials to take them to the spot. According to the prosecution, two vehicles were used; one was a Government vehicle bearing No. DL-1CH-5839 and the other was a private vehicle bearing no. DL-7CL-1342. However, no documents were produced to show the use of the said vehicles. Although a Government vehicle was used, no logbook was produced regarding the same. Further, PW8 had in his examination-in-chief stated that two Government vehicles were used. However, in his cross-examination, he admitted that the vehicle bearing registration no. DL-7CL-1342 was his personal vehicle. PW7 (ASI Mahender Singh) stated in his cross-examination that he had inquired from SI Rajbir Singh (PW8) regarding the private vehicle and was informed by him that the said vehicle belonged to his friend, but his name was not disclosed. Thus, he did not know who was the owner of the said vehicle.

26. Fifth, he submitted that no independent witnesses had been examined and this itself raised doubts as to the prosecution's case. He relied upon the decision of a Coordinate Bench of this Court in ***Gunesh Kumar v. State: Crl. A. 1696/2015 decided on 18.07.2016*** in support of his contention.

27. Sixth, he submitted that HC Rajesh was not examined although he was a relevant witness. He further submitted that the evidence of Ct. Kheta Ram (PW10) could also not be relied upon as an FIR (FIR No. 200/2012) was registered against him with the Anti-Corruption Branch of the Delhi Government on the basis of a complaint made by one Riyazuddin; he submitted that the evidence of a police official who was already under a cloud was liable to be rejected.

28. In addition to the above, Mr Sharma also submitted that there were other aspects which raised doubts as to the case set up by the prosecution. He submitted that (i) no chemical expert had been examined; (ii) there was a discrepancy in the description of the spot as PW7 and PW10 had deposed that there was one bus stop but PW8 had stated that there were two or three; (iii) each one of the said witnesses also gave varying descriptions as to the distance of the spot from the bus stop, as PW7 stated that it was twenty to twenty five meters but PW8 stated that it was twenty meters and PW10 stated that it was fifty to sixty meters; (iv) none of the witnesses had deposed as to the number of the gate of IP Park; and (vi) although a ticket had allegedly been recovered from the appellant, no investigation was conducted regarding the said railway ticket.

Reasons and Conclusion

29. The first and foremost issue to be examined is whether any of the provisions of the NDPS Act have been violated warranting rejection of the case set up by the prosecution.

30. The contention that the provisions of Section 50 of the NDPS Act were not complied with is clearly unpersuasive. There is no requirement that a person suspected of carrying narcotic drugs and other banned substances must be searched only in the presence of a Magistrate or a Gazetted Officer, even if he declines to be searched. Indisputably, in terms of Section 50 of the NDPS Act, a suspect has a right to be searched in the presence of a Magistrate or a Gazetted Officer. He is also required to be informed of his right to be searched in the presence a Magistrate or Gazetted Officer. Undeniably, in the event the suspect exercises the said right, then he would necessarily have to be searched before a Magistrate or a Gazetted Officer. However, if he declines to be so searched, there is no requirement for him to be searched in presence of a Magistrate or a Gazetted Officer.

31. In the present case, PW6 had testified that both the accused (appellants herein) were informed that if they wanted, they could be searched in presence of a Gazetted Officer or a Magistrate. PW6 testified that separate written notices under Section 50 of the NDPS Act were also served on the appellants and he identified his signatures

on the notices (Ex.PW6/A and Ex.PW6/C). He testified that after going through the notices, accused Mohd. Shahid declined to be searched before the said officers or to search the police party or their vehicles and wrote the same in his reply (Ex.PW6/B). Similarly, accused Amir Khan also refused to be searched before the said officers. He also replied to the aforesaid effect (Ex.PW6/D). PW6 further testified that the accused Amir Khan signed in English while Mohd. Shahid signed in Hindi.

32. The testimony of PW8 is also consistent with the testimony of PW6. PW8 (SI Rajbir Singh) testified that he had prepared the notices under Section 50 of the NDPS Act and had served the same to the accused. He also identified his signatures on the said notices. He further testified that he had informed the accused of their legal rights to be searched before a Gazetted Officer or a Magistrate but both of them had refused to be so searched. Ct. Kheta Ram (PW10) also testified that separate notices under Section 50 of the NDPS Act were served on the accused. He also deposed that the IO had informed them that they had a right to be searched in presence of a Gazetted Officer or a Magistrate. Although PW6, PW8 and PW10 were extensively cross-examined, there is nothing in their responses which would lead this Court to doubt their testimony in regard to informing the appellants of their rights under Section 50 of the NDPS Act or their refusal to be searched in the presence of a Magistrate or a Gazetted Officer.

33. The next question to be addressed is whether the provisions of Section 41 of the NDPS Act were complied with. Mr Sharma had earnestly contended that the provisions of Section 41(1) of the NDPS Act were applicable and it was necessary for the concerned officers to secure an authorization from a Magistrate.

34. Ms Meenakshi Chauhan, learned APP, on the other hand had contended that there was no requirement to comply with Sections 41 or 42 of the NDPS Act as the appellants were searched and apprehended at a public place. She contended that in the given circumstances, Section 43 of the NDPS Act was applicable and not Sections 41 or 42 of the NDPS Act.

35. At this stage, it would be relevant to refer to Sections 41, 42 and 43 of the NDPS Act, which are reproduced below:

“41. Power to issue warrant and authorisation.—(1)
A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding

any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed:

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorized the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

42. Power of entry, search, seizure and arrest without warrant or authorisation.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may

furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

43. Power of seizure and arrest in public place.—Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or

controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”

36. In *State of Punjab v. Balbir Singh: (1994) 3 SCC 299*, the Supreme Court had explained as under:

“10. It is thus clear that by a combined reading of Sections 41, 42, 43 and 51 of the NDPS Act and Section 4 CrPC regarding arrest and search under Sections 41, 42 and 43, the provisions of CrPC namely Sections 100 and 165 would be applicable to such arrest and search. Consequently the principles laid down by various

courts as discussed above regarding the irregularities and illegalities in respect of arrest and search would equally be applicable to the arrest and search under the NDPS Act also depending upon the facts and circumstances of each case.

11. But there are certain other embargoes envisaged under Sections 41 and 42 of the NDPS Act. Only a Magistrate so empowered under Section 41 can issue a warrant for arrest and search where he has reason to believe that an offence under Chapter IV has been committed so on and so forth as mentioned therein. Under subsection (2) only a Gazetted Officer or other officers mentioned and empowered therein can give an authorization to a subordinate to arrest and search if such officer has reason to believe about the commission of an offence and after reducing the information, if any, into writing. Under Section 42 only officers mentioned therein and so empowered can make the arrest or search as provided if they have reason to believe from personal knowledge or information. In both these provisions there are two important requirements. One is that the Magistrate or the officers mentioned therein firstly be empowered and they must have reason to believe that an offence under Chapter IV has been committed or that such arrest or search was necessary for other purposes mentioned in the provision. So far as the first requirement is concerned, it can be seen that the Legislature intended that only certain Magistrates and certain officers of higher rank and

empowered can act to effect the arrest or search. This is a safeguard provided having regard to the deterrent sentences contemplated and with a view that innocent persons are not harassed. Therefore if an arrest or search contemplated under these provisions of NDPS Act has to be carried out, the same can be done only by competent and empowered Magistrates or officers mentioned thereunder.”

37. Under Section 43 of the NDPS Act, the concerned officer may detain a person. However, he can do so only where he has reason to believe that the said person has committed an offence punishable under the NDPS Act. And, if he is in possession of any narcotic drug or psychotropic substance and his possession appears to be unlawful.

38. In *Directorate of Revenue and Anr. v. Mohd. Nisar Holia: (2008) 2 SCC 370*, the Supreme Court had emphasized that a distinction must be drawn in cases where action is taken on the basis of prior information received and a case where an authority accidentally or by chance comes across a case of commission of an offence under the NDPS Act. The relevant extract of the said decision is set out below:-

“11. Power to make search and seizure as also to arrest an accused is founded upon and subject to satisfaction of the officer as the term “reason to believe” has been used. Such belief may be founded upon secret information that may be orally conveyed by the informant. Draconian provision which may lead to a harsh sentence

having regard to the doctrine of “due process” as adumbrated under Article 21 of the Constitution of India requires striking of balance between the need of law and enforcement thereof, on the one hand, and protection of citizen from oppression and injustice on the other.

12. This Court in *Balbir Singh* [(1994) 3 SCC 299 : 1994 SCC (Cri) 634 : AIR 1994 SC 1872] referring to *Miranda v. State of Arizona* [16 L Ed 2d 694 : 384 US 436 (1966)] while interpreting the provisions of the Act held that not only the provisions of Section 165 of the Code of Criminal Procedure would be attracted in the matter of search and seizure but the same must comply with right of the accused to be informed about the requirement to comply with the statutory provisions.

13. Requirements of Section 42 was read into Section 43 of the NDPS Act. A somewhat different view, however, was taken subsequently. Decisions were rendered opining that in conducting search and seizure in public place or a moving vehicle, provisions appended to sub-section (1) of Section 42 would not be attracted. Decisions were also rendered that in such a case even sub-section (2) of Section 42 need not be complied with.

14. Section 43, on plain reading of the Act, may not attract the rigours of Section 42 thereof. That means that even subjective satisfaction on the part of the authority, as is required under sub-section (1) of Section 42, need not be complied

with, only because the place whereat search is to be made is a public place. If Section 43 is to be treated as an exception to Section 42, it is required to be strictly complied with. An interpretation which strikes a balance between the enforcement of law and protection of the valuable human right of an accused must be resorted to. A declaration to the effect that the minimum requirement, namely, compliance with Section 165 of the Code of Criminal Procedure would serve the purpose may not suffice as non-compliance with the said provision would not render the search a nullity. A distinction therefore must be borne in mind between a search conducted on the basis of a prior information and a case where the authority comes across a case of commission of an offence under the Act accidentally or per chance. It is also possible to hold that rigours of the law need not be complied with in a case where the purpose for making search and seizure would be defeated, if strict compliance therewith is insisted upon. It is also possible to contend that where a search is required to be made at a public place which is open to the general public, Section 42 would have no application but it may be another thing to contend that search is being made on prior information and there would be enough time for compliance of reducing the information to writing, informing the same to the superior officer and obtain his permission as also recording the reasons therefor coupled with the fact that the place which is required to be

searched is not open to public although situated in a public place as, for example, room of a hotel, whereas hotel is a public place, a room occupied by a guest may not be. He is entitled to his right of privacy. Nobody, even the staff of the hotel, can walk into his room without his permission. Subject to the ordinary activities in regard to maintenance and/or housekeeping of the room, the guest is entitled to maintain his privacy. The very fact that the Act contemplated different measures to be taken in respect of search to be conducted between sunrise and sunset, between sunset and sunrise as also the private place and public place is of some significance. An authority cannot be given an untrammelled power to infringe the right of privacy of any person. Even if a statute confers such power upon an authority to make search and seizure of a person at all hours and at all places, the same may be held to be ultra vires unless the restrictions imposed are reasonable ones. What would be reasonable restrictions would depend upon the nature of the statute and the extent of the right sought to be protected. Although a statutory power to make a search and seizure by itself may not offend the right of privacy but in a case of this nature, the least that a court can do is to see that such a right is not unnecessarily infringed. Right to privacy deals with persons and not places.”

39. In the present case, SI Rajbir Singh (PW8) had reduced the secret information into writing and had entered the same as DD No. 13A. A copy of the same was handed over to Inspector Kuldeep

Singh. The Trial Court found that this was in due compliance with provisions of Section 42(1) of the NDPS Act. The said information was transmitted to Sh. Bir Singh, ACP, Narcotic, telephonically who directed that further proceedings be taken up. The Trial Court found that this was also in compliance with provisions of Section 42(1) of the NDPS Act.

40. ACP Bir Singh was examined as PW4. He testified that on 09.06.2011 at about 09:50/09:55 am, he had received a telephonic call from Inspector Kuldeep Singh informing him that two persons named Mohd. Shahid and Amir Khan, who were residents of Madhya Pradesh and Rajasthan respectively, would come by train to Nizamuddin Railway Station to supply Heroin to some person on the footpath, outside IP Park. He testified that he directed Insp Kuldeep Singh to take further action on the above information and to conduct a raid. He also testified that on the same day, he received DD No. 13 which recorded the aforesaid information in writing.

41. Plainly, there was no requirement of an expressed authorization from a Magistrate under Section 41(1) of the Act as contended on behalf of the appellants. This Court finds no infirmity with the aforesaid view.

42. The contention that tampering of the samples could not be overruled is also unpersuasive. Undeniably there was an inordinate delay in sending the samples to the FSL. However, that by itself is not sufficient to conclude that the samples could have been tampered with.

Indisputably, the seals on the samples were intact. The FSL report (Ex.PW7/E) also records that the parcels were received with the seal of “2BP.S./N.B. Delhi” and “CRM” and the said seals were intact.

43. The contention that since the weight of the samples was in excess of 5 grams, the same indicated that the samples had been tampered with, is also unmerited. It is noticed that there was only a small difference in the weight of the samples as drawn and the samples as received at the FSL. The samples drawn were weighed 5 grams each. But the exhibits received by the FSL indicated the weight of the samples drawn as 5.15 grams and 5.87 grams. However, it is relevant to note that the said weight included the weight of the polythene in which the samples had been tied. Further, a minor variation in the weight is expected due to the uncontrolled conditions in which the samples are drawn and the accuracy of the machines on which the same are weighed. This Court is of the view that the difference in the weight of the samples is not material.

44. This Court also does not find any merit in the contention that the delay in sending the samples to the FSL is fatal to the case of the prosecution. In *Hardip Singh v. State of Punjab: (2008) 8 SCC 557*, there was a delay of forty days in sending the samples to the chemical examiner. However, the Supreme Court held that the said delay did not establish that the samples had been tampered with since the seals were intact. The relevant extract of the said judgement is reproduced below:

“It has also come on evidence that till the date the parcels of sample were received by the Chemical Examiner, the seal put on the said parcels was intact. That itself proves and establishes that there was no tampering with the aforesaid seal in the sample at any stage and the sample received by the analyst for chemical examination contained the same opium which was recovered from the possession of the appellant. In that view of the matter, delay of about 40 days in sending the samples did not and could not have caused any prejudice to the appellant. The aforesaid contention, therefore, also stands rejected.”

45. In *Jarnail Singh v. State of Punjab: AIR 2011 SC 964*, the Supreme Court had rejected the contention that a delay of twelve days in sending the samples to the chemical examiner was sufficient to conclude that the samples were tampered with. The Supreme Court also referred to an earlier case in *Balbir Kaur v. State of Punjab: (2009) 15 SCC 795*, wherein it had expressed a similar view.

46. The contention that since no independent witness had been joined in the proceedings, the evidence of the police officials ought to be rejected is also unpersuasive. In the case of *Kalp Nath Rai v. State: AIR 1998 SC 201*, the Supreme Court had observed as under: -

“There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during the raid would cast an added duty on the court to adopt greater care while scrutinizing the evidence

of the police officers. If the evidence of the police officer is found acceptable, it would be an erroneous proposition that court must reject the prosecution version solely on the ground that no independent witness was examined.”

47. In the present case, the testimony of the official witnesses is consistent and this Court finds no reason to doubt the same.

48. Merely because the seal had not been handed over to the independent witnesses also does not, in any manner, raise any doubts that the samples were tampered. The possession of the seal was accounted for.

49. The contention that the witnesses did not know that one of the vehicles used by them belonged to SI Rajbir Singh is also insufficient to doubt the case set up by the prosecution. The discrepancies in the estimated distances between the bus stop and the spot are also not significant. The other contentions advanced are also unsubstantial.

50. In view of the above, this Court finds no infirmity with the conclusion of the Trial Court. The appeals are, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

**JANUARY 27, 2021
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