

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

CRA-S-2164-SB-2003 (O&M)

Reserved on:21.11.2022

Date of Decision: 16.12.2022

Suba	Versus	...Appellant
State of Haryana		... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Namit Sharma, Advocate
for the appellant.

Mr. Vipin Pal Yadav, Advocate
as Amicus Curiae for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction dated 06.11.2003 and order of sentence dated 07.11.2003 passed by the Court of learned Special Judge, Sonapat, whereby, the appellant had been convicted under Section 20 (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/- alongwith default stipulation.

As per the case of the prosecution that on 12.05.2002, ASI Chatter Singh alongwith EHC Raj Pal No. 443, constable Satbir Singh No. 85 was on patrolling duty in front of Tehsil Road Gohana and a secret informer informed that one person is engaged in the business of selling *charas* and opium. He was coming on foot from

the side of shop of Dr. Dharam Chand towards Tempo Stand, Gohana and if he was apprehended, contraband could be recovered from him. In the meantime, one person of the similar physical description was seen coming from the side of tempo stand and on seeing the police party, he turned back. However, he was apprehended by the ASI Chatter Singh with the help of fellow police officials. On inquiry, he told his name and address to be Suba son of Sheo Ram caste Saini resident of Bal Jatan District Panipat. He was informed that he was to be searched and it was suspected that he was carrying some contraband. Notice was given to him as per the rules and he was asked as to whether he wanted to give personal search to ASI Chatter Singh or some Gazetted Officer or before the Magistrate. He gave in writing on the notice that he wanted to get himself searched in presence of a Gazetted Officer. On this, Shyam Singh, Deputy Superintendent of Police, Gohana was informed telephonically and on getting the information, the Deputy Superintendent of Police, reached at the spot in the official vehicle. On the directions of the the Deputy Superintendent of Police, Gohana, ASI Chatter Singh conducted the personal search of Suba Singh and *charas* was recovered from the front pocket of the pyjama, wrapped, in a black polythene, which was found to be 250 grams on weighing the same. 20 grams of *charas* had been taken out as a sample out of the recovered quantity and was kept in the match box. The parcel of the *charas* was prepared and 230

grams of *charas* was wrapped in the same polythene and the parcel was prepared and both the parcels were sealed with the seal bearing inscription 'CS'. Sample seal was given to HC Raj Pal No. 443. Accused Suba could not produce any licence or permit for keeping 250 grams of *charas* and both the parcels were taken into possession by the police by preparing separate memos and the signatures of the witnesses had been obtained on the same. Consequently, it was found that Suba had committed offence under Section 20 of the NDPS Act and the FIR Ex.PA/1 was registered on the same. The sample was sent to FSL and as per the FSL report Ex.PD, the sample was identified as *charas* (cannabis).

After completion of usual formalities of investigation, the final report under Section 173 Cr.P.C., was presented against the accused.

After consideration of the material on record, the learned trial Court charge sheeted the accused for the offence punishable under Section 20(B) of the NDPS Act, to which, he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined eight witnesses.

The prosecution examined PW1 HC Wazir Singh, who recorded formal FIR Ex.PA/1 on the receipt of ruka Ex.PA. He also dispatched the special report of this case to the Illaqa Magistrate and

the senior police officers through constable Jasbir Singh. Two sealed parcels bearing seal inscriptions 'CS' and AD' were deposited with him and he sent parcels to the Director, FSL, through constable Satbir Singh on the same day. The prosecution examined PW2 Shyam Singh, the Deputy Superintendent of Police, Gohana, who was called at the spot by ASI Chatter Singh and on his directions the search was conducted on the person of the accused. 250 grams of *charas* was recovered from the front side pocket of the trousers of the accused wrapped in a glazed paper. Both the sealed sample parcels as well as the remainder were taken into possession by the police vide recovery memo Ex.PB. He admitted that the place of recovery was a thickly populated area and they had asked many persons to join the investigation, but they expressed their inability and no action was taken against them. ASI Raj Pal was examined as PW3, who was part of the police team, which effected the recovery and supported the case of the prosecution. He also admitted that the place of recovery was a busy place and they asked the public to join the investigation, but they expressed their inability. However, he could not tell their names and no action was taken against them. The prosecution further examined PW4 SI Amar Dass, who was posted as SHO of Police Station City Gohana and on that day ASI Chatter Singh produced the accused, the witnesses, two sealed parcels before him. He verified the investigation and affixed his own seal on the sample seals as well as

the remainder. Still further, the testimonies of PW5 Constable Jasbir Singh, PW6 Constable Satbir Singh and PW7 Sunita Gupta, learned Judicial Magistrate, Gurugram were formal in nature. The prosecution further examined PW8 ASI Chatter Singh, who was heading the raiding party on 12.05.2002. On getting the secret information, the accused was apprehended on suspicion and on inquiry, he disclosed his name and address to be Suba son of Sheo Ram, resident of Bal jatan, District Panipat. He was served with a notice under Section 50 (Ex.PC) of the NDPS Act for giving him an option to be searched before a Gazetted Officer or a Magistrate. The accused opted vide his statement Ex.PC/1 to be searched before a Gazetted Officer. On this, the Deputy Superintendent of Police was called at the spot and on his instructions, the search was conducted. 250 grams of *charas* was recovered from the right side pocket of his trousers, which was wrapped in a black glazed paper. The parcels of the samples and the remainder were prepared and were sealed. He sent ruka Ex.PA through Constable Satbir Singh to the police station on the basis of which the FIR Ex.PA/1 was registered. He arrested the accused and, thereafter, the accused, parcels and the witnesses were produced by the Station House Officer, Police Station City, Gohana. In his cross-examination, he admitted that the place of occurrence was a thoroughfare and many people were present at the tempo stand, however, nobody was ready to join the recovery proceedings and the

arrest. He admitted that regarding joining independent witness, he had not mentioned in the zimini.

After the evidence was closed, the entire evidence was put to the accused under Section 313 Cr.P.C., and he pleaded his false implication. He submitted that nothing was recovered from him and he was caught by the police from his house and had been falsely implicated in this case. He did not examine any witness in his defence.

I have heard learned counsel for the appellant as well as learned State counsel and with their able assistance, I have gone through the trial Court record very carefully.

The learned counsel for the appellant submitted that the provisions of Section 42 and 50 of the NDPS Act had not been complied with in the instant matter. On suspicion the appellant was apprehended and a notice was served upon him as to whether he wanted to get his search conducted in the presence of the Investigating Officer or a Gazetted Officer or a Magistrate. Still further, there was non-compliance of Section 42 of the NDPS Act. The search and recovery was on the basis of a prior secret information, but the secret information was neither reduced into writing nor any information was sent to the superior officers. Apart from that, there was a delay of 08 days in sending the sample parcels to the FSL as it was collected on 12.05.2002 but was sent to FSL on

20.05.2002. Apart from that, no independent witness was joined during the search and seizure proceedings and non joining of an independent witness creates a serious doubt on the veracity of the prosecution story and benefit of doubt should have been extended to the appellant.

The submissions made by the learned counsel for the appellant have been vehemently opposed by the learned State counsel by submitting that the provisions of Sections 42 and 50 of the NDPS Act have been duly complied with. A proper notice Ex.PC was served as per the requirement of law and even special report was sent to the superior officers of the police. Still further, the testimonies of the official witnesses could not be rejected on the ground of their official status and they had no enmity with the present appellant. Thus, the learned State counsel prayed for upholding the impugned judgment and the order.

The relevant extract of Section 50 of the NDPS Act has been reproduced as below:-

“50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any

of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

xxx xxx xxx xxx xxx xxx xxx xxx xxx”

In the instant case, on getting the secret information, the accused was apprehended at the spot. There was a suspicion that he was carrying some contraband and a notice Ex.PC was served upon him by ASI Chatter Singh. In the notice Ex.PC, it was mentioned as to whether he wanted to get his search conducted in the presence of the Investigating Officer or some Gazetted Officer or Magistrate. In reply to said notice, the appellant stated that he wanted to get his search conducted in the presence of some Gazetted Officer and Shyam Singh, the Deputy Superintendent of Police was called at the spot and the recovery was made in his presence. It is evident that only a simple question put to the appellant and he was never apprised about his right of being searched in the presence of a Gazetted Officer or a Magistrate. The Hon'ble Supreme Court, while dealing with Section 50 of the NDPS Act has held in number of judgments that merely asking to the accused to be searched in the presence of a Gazetted

Officer or a Magistrate would not suffice. Indeed, it should have been informed to the accused that it is his right under the law to be searched before a Magistrate or a Gazetted Officer. Not only this, in the present case, the Investigating Officer had given an offer that the accused could get his search conducted in the presence of the Investigating Officer, Gazetted Officer or the Magistrate. Consequently, the offer is defective in the eyes of law and the provisions of Section 50 of the NDPS Act have not been strictly complied with. The learned trial Court completely overlooked this aspect of the matter while delivering the impugned judgment.

It has been held by the Hon'ble Supreme Court in the matter of *Myla Venkateswarlu vs. State of A.P., 2012 AIR (SC), 1619.*

“7. On account of divergence of opinion between the two decisions of this court with regard to the dictum laid down by the Constitution Bench in Baldev Singh, another Constitution Bench in Vijaysingh Chandubha Jadeja v. State of Gujarat, 2010(4) RCR (Criminal) 911; 2010(6) R.A.J. 326; (2011)1 SCC 609, considered the question whether Section 50 of the Narcotic Drugs and Psychotropic Substances Act casts a duty on the empowered officer to inform the suspect of his right to be searched in the presence of a gazetted officer or a Magistrate, if he so desires or whether a mere enquiry by the said officer as to whether the suspect would like to be searched in the presence of a Magistrate or a gazetted

officer can be said to be due compliance with the mandate of the said section. The Constitution Bench held that although Baldev Singh did not decide in absolute terms the question whether or not Section 50 of the Narcotic Drugs and Psychotropic Substances Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 makes it imperative for the empowered officer to inform the person concerned about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to inform the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act. The Constitution Bench noted that in Baldev Singh, it was clarified that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. The Constitution Bench reiterated the principles laid down by this court in Baldev Singh and added that the concept of substantial compliance with the requirement of Section 50 of the Narcotic Drugs and Psychotropic

Substances Act is neither borne out from the language of Section 50(1) nor it is in consonance with the dictum laid down in Baldev Singh. Thus, it is no longer in dispute that strict compliance with the provisions of Section 50(1) of the Narcotic Drugs and Psychotropic Substances Act is necessary. We need to see whether evidence adduced in this case establishes that there was strict compliance of Section 50(1) of the Narcotic Drugs and Psychotropic Substances Act.

xxx

xxx

xxx

xxx

10. At the relevant time, PW-3 CI Koteswara Rao was working as Inspector of Police. It is this witness who had received information about the illegal sale of Ganja at Koneru Bazar. On receiving the information, he proceeded to Koneru Bazar along with PW-1, PW-2 and another police constable. He has corroborated PW-1 and PW-2 as regards the apprehension of the appellant, A1 and A2. He has stated that the appellant, A1 and A2 revealed their names and identity. According to him, A1 produced packets containing Ganja. Then he told him that if he wanted another gazetted officer, he will bring him. So far as A2 and the appellant are concerned, he has stated that they produced packets containing Ganja. Thereafter, he revealed to them that they have a right to have another gazetted officer in addition to him to which they replied that his presence was sufficient. PW- 3 has thus come out with a new story viz. the appellant, A1 and A2 took out the Ganja packets from their pockets and,

thereafter, he told the appellant, A1 and A2 that they had a right to have another gazetted officer in addition to him. This story that the accused themselves took out the Ganja packets from their pockets runs contrary to the version of PW-1 and PW-2 and, therefore, it does not inspire confidence. If the accused voluntarily took out Ganja packets, there was no question of conducting search in the presence of a gazetted officer or a Magistrate. But, assuming that this right can be communicated to a suspect after the seizure and assuming the evidence of this witness to be true, it still does not indicate that the requirement of Section 50(1) of the Narcotic Drugs and Psychotropic Substances Act was fulfilled. There is no clear communication to the accused that they had a right to be searched in the presence of a gazetted officer or a Magistrate. As we have already noted, the concept of substantial compliance cannot be read into the provisions of Section 50(1) of the Narcotic Drugs and Psychotropic Substances Act. We, therefore, have no hesitation in concluding that in this case, there is a breach of Section 50(1) of the Narcotic Drugs and Psychotropic Substances Act. Since the conviction of the appellant is solely based on possession of Ganja recovered from him, it will have to be set aside.”

Still further, the learned counsel for the appellant submitted that the mandatory provisions of Section 42 of the NDPS Act have not been complied with in the instant case. From the perusal of the evidence, it is evident that no efforts were made by the police officials to reduce the information into writing and inform their higher

authorities instantaneously or even after a reasonable delay, which has to be explained with reasons in writing.

On the contrary, in the instant case, the Investigating Officer, i.e., PW8 ASI Chatter Singh had more than sufficient time at his disposal to comply with the provisions of Section 42 of the NDPS Act. Consequently, there is a patent illegality in the case of the prosecution and such illegality is incurable. There is not an iota of evidence in the statement of any of the prosecution witnesses or in any documentary form to show that the Investigating Officer ever tried to inform his higher authorities and comply with Section 42 of the NDPS Act. The twin purposes of the provisions of Section 42 of the Act which can be broadly be stated are that; (a) it is a mandatory provision which ought to be construed and complied with strictly; and (b) compliance of furnishing information to the superior officer should be forthwith or within a very short time thereafter and preferably post recovery.

Even the learned trial Court observed that as per the record of the file, secret information was not reduced into writing by the Investigating Officer for giving information to his superior officers. However, the learned trial Court wrongly observed that the violation of Section 42 of the NDPS Act is not sufficient to vitiate the trial and the compliance of Section 42 of the NDPS Act is not

mandatory. In fact, the said view is apparently wrong and unsustainable.

It has been held by the Hon'ble Supreme Court in the matter of Sukhdev Singh Vs. State of Haryana, 2013(2) R.C.R. (Criminal) 232 as follows:-

13. Now, the question that arises for consideration is as to at what stage and by what time the authorised officer should comply with the requirements of Section 42 of the Act and report the matter to his superior officer. For this purpose, we must refer to Section 42 of the Narcotic Drugs and Psychotropic Substances Act at his stage : "Section 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 persons 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 if such officer has reason to believe that a search warrant or authorisation 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."

14. Section 42 can be divided into two different parts. First is the power of entry, search seizure and arrest without warrant or authorisation as contemplated under sub-section (1) of the said section. Second is reporting of the information reduced to writing to a higher officer in consonance with sub-section (2) of that section. Sub-section (2) of Section 42 had been a matter of judicial interpretation as well as of legislative concern in the past. Sub-section (2) was amended by the Parliament vide Act 9 of 2001 with effect from 2nd October, 2001. After amendment of this subsection, the words 'forthwith' stood amended by the words 'within 72 hours'. In other words, whatever ambiguity or leverage was provided for under the unamended provision, was clarified and resultantly, absolute certainty was brought in by binding the officer concerned to send the intimation to the superior officers within 72 hours from the time of receipt of information. The amendment is suggestive of the legislative intent that information must reach the superior officer not only expeditiously or forthwith but definitely within the time contemplated under the amended sub-section (2) of Section 42. This, in our opinion, provides a greater certainty to the time in which the action should be taken as well as renders the safeguards provided to an accused more meaningful. In the present case, the information was received by the

*empowered officer on 4th February, 1994 when the unamended provision was in force. The law as it existed at the time of commission of the offence would be the law which will govern the rights and obligations of the parties under the Narcotic Drugs And Psychotropic Substances Act. In the case of **Basheer @ N.P. Basheer v. State of Kerala, [2004(1) RCR (Criminal) 1008 : (2004)3 SCC 609]** wherein this Court was concerned with the Amending Act 9 of 2001 of the Narcotic Drugs And Psychotropic Substances Act, the Court took the view that application of the Amending Act, where the trial had been concluded and appeal was pending on the date of its commencement and where the accused had been tried and convicted, would not apply. The contention that trials were not held in accordance with law was not sustainable for the reason that there could be direct and deleterious consequences of applying the amending provisions of the Act to trials which had concluded in which appeals were filed prior to the date of Amending Act coming into force. This would certainly defeat the first object of avoiding delay in such trials. Another Bench of this Court in the case of **Jawahar Singh @ Bhagat Ji. v. State of GNCT of Delhi, [2009(2) RCR (Criminal) 978 : 2009(3) Recent Apex Judgments (R.A.J.) 541 : (2009) 6 SCC 490]**, while dealing with the amendments of Section 21 of the Narcotic Drugs and Psychotropic Substances Act, the Court took the view that amendments made by Act 9 of 2001 could not be given retrospective effect as if it was so given, it would warrant a retrial which is not the object of the Act. The Court held as under :*

"9. It is now beyond any doubt or dispute that the quantum of punishment to be inflicted on an accused upon recording a judgment of conviction would be as per the law which was prevailing at the relevant time. As on the date of commission of the offence and/or the date of conviction, there was no distinction between a small quantity and a commercial quantity, question of infliction of a lesser sentence by reason of the provisions of the amending Act, in our considered opinion, would not arise.

10. It is also a well-settled principle of law that a substantive provision unless specifically provided for or otherwise intended by Parliament should be held to have a prospective operation. One of the facets of the rule of law is also that all statutes should be presumed to have a prospective operation only."

15. No law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed and cannot be given a retrospective effect unless legislative intent and expression is clear beyond ambiguity. The amendments to criminal law would not intend that there should be undue delay in disposal of criminal trials or there should be retrial just because the law has changed. Such an approach would be contrary to the doctrine of finality as well as avoidance of delay in conclusion of criminal trial.

16. XXX

XXX

XXX

17. XXX XXX XXX

18. XXX XXX XXX

19. *This question is no more res integra and stands fully answered by the Constitution Bench judgment of this Court in **Karnail Singh v. State of Haryana, [2009(5) RCR (Criminal) 515 : 2009(4) Recent Apex Judgments (R.A.J.) 638 : (2009)8 SCC 539]**. The Constitution Bench had the occasion to consider the conflict between the two judgments i.e. in the case of **Abdul Rashid Ibrahim Mansuri v. State of Gujarat, [2000(1) RCR (Criminal) 611 : (2000)2 SCC 513]** and Sajan Abraham (*supra*) and 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 register concerned 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 with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with 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 of 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."

Apart from that, it is apparent that from the perusal of the evidence that the place of recovery was a thoroughfare. Even PW8 ASI Chatter Singh admitted that place of occurrence was a thoroughfare and many people were present at the tempo stand, however, nobody was ready to join the recovery and the arrest. However, he further admitted that for non-joining independent witnesses, he had not mentioned in the zimini. Apart from that, ASI Raj Pal also admitted the the independent witnesses were asked to join the investigation, but they expressed their inability. However, he could not tell the name of any person who refused to join and no action was taken against anyone of them. Thus, it is apparent that no efforts at all were made to join the independent witnesses during the search and seizure procedure.

All these deficiencies, in my considered view, create serious doubt and are fatal to the prosecution case, for which reason

the appellant deserves to be acquitted of the above said offence by giving him benefit of doubt.

Accordingly, the impugned judgment of conviction dated 06.11.2003 and order of sentence dated 07.11.2003 passed by the Court of learned Special Judge, Sonapat, are set aside and the appellant is ordered to be acquitted of the charge.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

I record my appreciation for Mr. Vipin Pal Yadav, Amicus Curiae, who had rendered able assistance to this Court.

16.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

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