

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

**CRA-S-1952-2019(O&M)
Reserved on: 07.05 .2022
Pronounced on: 27.05.2022**

RAVI SHANKAR

...Appellant

Versus

STATE OF UNION TERRITORY OF CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. V.M. Handa, Advocate
for the appellant.

Mr. P.S. Paul, Addl. P.P. U.T. Chandigarh.

VINOD S. BHARDWAJ. J.

The present appeal has been preferred against the judgment of conviction dated 19.03.2019 passed by the Judge, Special Court, Chandigarh convicting the appellant for commission of offence under Section 22 of the Narcotic Drugs and Psychotropic Substances, Act 1985 (hereinafter referred to as the “NDPS Act”).

2. Briefly, the facts of the case as per the prosecution version are as under:

2.1 That on 25.10.2017, SI Gurmeet Singh along with HC Balwant Singh, C. Vikas Ali, and C. Vedpal was patrolling in the area of Police Station in official vehicle bearing registration No. CH-01-GA-6445 being driven by HC Sukhwinder Singh.

They parked the said vehicle in the parking of Krishna Market, Sector 41, Chandigarh and started patrolling by foot and while doing so they were moving towards Village Butrela. At about 6.15 PM, when they reached at T-Point, one clean-shaven person, carrying a red colour carry bag in his right hand, was seen coming from the side of Village Butlerla. On seeing the police party, he moved back with fast steps. SI Gurmeet Singh apprehended said person with the help of co-officials. Upon checking the said carry bag was found containing injections of intoxicants. On inquiry said person disclosed his name as Ravi Shankar son of Om Parkash, resident of House No.1551/2, Sector 41-B, Chandigarh, aged 35 years. Said injections were of Buprenorphine 12 in numbers 2 ML each and Pheniramine Maleate 12 in numbers 10 ML each i.e. total 24 injections. On demand, said person could not produce any license or permit to carry the said injections. SI Gurmeet Singh tried to join the independent witness from on-going public, but they left the place by giving their different excuses. Thereafter, SI Gurmeet Singh put all the injections i.e. 12 injections of Buprenorphine 2 ML each and 12 injections of Pheniramine Maleate 10 ML each into the said carry bag, from which same were recovered. Thereafter, he converted the same into white cloth sealed parcel by affixing two seals of "GS". Sample seal was prepared. Seal after use was handed over to HC Balwant Singh. After that, test memo form was prepared. SI Gurmeet Singh took into possession that sealed parcel as well as sample seal by preparing a separate memo. SI Gurmeet Singh sent ruqa through C. Vedpal to Police Station 39, Chandigarh for registration of FIR. A message was sent for sending second Investigating Officer at the spot. SI Mehar Singh, as second Investigating Officer, reached at the spot and conducted the proceedings by arresting the accused and also the personal search of the accused. On reaching of the second Investigating Officer, the first Investigating Officer SI Gurmeet Singh handed over the accused, recovered injections, which were sealed with

seal "GS" alongwith test memo form documents, recovery memo, to SI Mehar Singh who verified the factum of recovery. The handing over memo was also prepared. He prepared the rough site plan of the place of occurrence at the instance of SI Gurmeet Singh.

2.2 Upon completion of the necessary formalities at the spot the entire police party alongwith the accused and case property was taken to the Station House Officer, Police Station 39, Chandigarh who verified the factum of recovery from the police party as well as the accused and also inspected the case property and related documents. He put his seal "RS" at one place on the parcel and also affixed his seal on the sample seal. He deposited the case property in the Malkhanna. On 26.10.2017, the accused and the case property was produced before Ms. Rekha Chaudhary, Judicial Magistrate Ist Class, Chandigarh. The court opened the parcel and checked the contents of the parcel and thereafter court again re-sealed the parcel with the seal of "RC" at one place on the parcel. The Court also prepared the sample seal. The sample was sent to the office of CFSL for chemical examination on 27.10.2017 through C. Sunil. After completion of the investigation, receipt of report of the CFSL, the challan was filed.

2.3 Upon presentation of the challan/report under section 173 of Criminal Procedure Code along with documents, copies thereof was supplied to the accused free of costs as envisaged under Section 208 of Criminal Procedure Code.

2.4 Upon considering the record, it was found that the offence under Section 22 of the Act was prima facie made out against the accused for being found in possession of 12 injections of Buprenorphine 2 ML each and 12 injections of Pheniramine Maleate 10 ML each and he was charge-sheeted vide order dated 26.03.2018. The contents of the charge were

read over and explained to the accused, to which he pleaded not guilty and claimed trial.

2.5 Prosecution, in order to prove its case has examined as many as seven witnesses, which are briefed as under :

PW1 C. Sumit has proved the handing over of the seal parcel along with documents and sample seal, bearing seal impression “RC”, by Malkhana Munshi vide RC No.114/17 for depositing with CFSL. He has also proved that he handed over the receipt to MMHC HC Harbans Singh on the same day and he has not tampered with the sealed parcel till the same remained in his possession nor allowed anybody else to do so.

PW-2 HC Balwant Singh has deposed that in the year 2017, he was posted at Crime Branch, Sector 11, Chandigarh on general duty and joined investigation with SI Gurmeet Singh. SI Gurmeet Singh, Constable Vikas Ali and Constable Vedpal were on patrolling duty in official vehicle bearing registration No. CH01-GA-6465, driven by HC Sukhjinder Singh. When they reached near Krishna Market T-Point, Village Buterla, Sector 41, Chandigarh, they saw one boy who was stopped on suspicion by the Investigating Officer with the help of co-officials. Upon checking of his carry bag, 24 injections of Pheniramine of 10 ML each and 24 injections of Buprenorphine of 2 ML each were recovered, for which he could not produce any permit or licence on demand. Said person disclosed his name as Ravi Shankar. The case property was taken into police possession by the Investigating Officer in his presence and he prepared the sealed parcel thereof in white cloth and affixed the seal of “GS” at two places. He also prepared the sample seal. He further deposed that Investigating Officer tried to join the independent witness, but no person was ready for the same. The seal after use was handed over to him by the Investigating Officer. Constable Vedpal was deputed with ruqa by the Investigating Officer for registration of FIR. He further deposed that personal search/arrest memo of the accused was also

prepared by Investigating Officer of the case in his presence. He informed the Crime Branch from the spot of occurrence for sending the second Investigating Officer. Accordingly, SI Mehar Singh reached the spot. The accused along with substance was handed over by the first Investigating Officer. The seizure memo of injections as mentioned above is Ex.PW2/A and arrest memo/personal search memo is Ex.PW2/B and Ex.PW2/C respectively. He also proved the test memo prepared by Investigating Officer as Ex.PW2/D. He along with second Investigating Officer Mehar Singh, accused and case property visited Police Station, Sector 39, Chandigarh, where Additional SHO Sukhjinder Singh verified the inventory as well as the accused namely Ravi Shankar. SHO applied his seal of "SS" at one place of the parcel and deposited the case property with MMHC HC Harbans Singh in the malkhana.

PW-3 MMHC Harbans Singh has deposed that in the year 2017, he was posted as MMHC PS Sector 39. On 25.10.2017 vide entry No. 1160, Additional SHO Sukhjinder Singh deposited case property i.e. one sealed parcel sealed containing 24 injections i.e., 12 injections of Pheniramine Maleate of 10 ML each and 12 injections of Buprenorphine of 2 ML each. On 26.10.2017, vide entry No.1160, the sealed parcel along with sample seal, for certification of inventory was produced before Ms. Rekha Chaudhary, Judicial Magistrate Ist Class, Chandigarh, by him with SI Mehar Singh, which was duly attested by court. The learned Magistrate after opening the sealed parcel containing 24 injections i.e., 12 injections of Pheniramine Maleate of 10 ML each and 12 injections of Buprenorphine of 2 ML each respectively and after verification converted them into a sealed parcel which was duly sealed with the seal of "RC" at one place. The sample seal was also prepared. He further deposed that on 27.10.2017, he handed over one sealed parcel of injections along with sample and documents, vide RC No. 114/17 to Constable Sumit for

depositing with CFSL, who accordingly after depositing the same with CFSL, who accordingly after depositing the same with CFSL, handed over the receipt to him on the same day. He had brought register No.19 wherein entry with regard to aforesaid facts was made and the true photocopy of the said entry is Ex.PW3/A. He has brought the case property in the court including the parcels received from CFSL and the same is Ex. MO1. He has not tampered with case property till the same remained in his possession nor allowed anybody else to do so.

PW-4 SI Sukhjinder Singh has deposed that on 25.10.2017, he was posted as Additional SHO PS, Sector 39, Chandigarh. On that day, SI Mehar Singh, second Investigating Officer of the case along with police party produced accused Ravi Shankar and case property before him. He verified the facts and circumstances from accused and after verification put his seal "SS" on the parcel of contraband and sample seal at one place. MMHC Harbans Singh of Police Station, Sector 39, Chandigarh was called by him and handed over and deposited the case property with him in the malkhana, vide entry No.1160. He has also identified the case property in the court, produced by the MMHC.

PW-5 Ms. Meenu Junior Scientific Officer (Explosive) CFSL has deposed that in the present case, the case property was received in the office of CFSL on 27.10.2017 through constable Sumit along with documents. One sealed parcel along with specimen seal of "RC" and other related documents were in the said docket. The condition of seals were intact and tallied with the specimen seals as per forwarding authority letter. The description and details of the seals and exhibits contained therein identity:-

One sealed cloth parcel sealed with one seal of "RC" with case details and signed by learned JMIC, Chandigarh. On opening the parcel, it was found to contain a plastic container, which further contained cloth polythene containing exhibits

Mark 1/1 to Mark 1/24. The details of Ex. 1/1 to 1/24 has been mentioned in her report Ex.PW5/A.

The purpose of reference was for chemical analysis. The examination was done between the period 02.01.2018 till 29.01.2018. Various laboratory tests, such as chemical test, thin layer chromatographic analysis and GC-MS analysis were carried out with exhibits-1/1 to 1/24. The results obtained have been analyzed given below.

- i) Buprenorphine has been detected in Ex. 1/1 to 1/12.
- ii) Pheniramine has been detected in 1/13 to 1/24.

After the examination the parcels containing the above said exhibits have been sealed with the seal impression “**CFSL EXP CHD**”. The impression of the same has been mentioned in her report Ex. PW5/A. She identified her signatures on the report given by her.

PW6 SI Mehar Singh has deposed that on 25.10.2017, he was posted at Crime Branch, Sector 11, Chandigarh. On that day, upon receiving the message from MHC, Crime Branch, Sector 11, Chandigarh, he went to the spot i.e. Buterla T-Point, Sector 41, Chandigarh, as second Investigating Officer, where he met with SI Gurmeet Singh and his police party. SI Gurmeet Singh briefed and handed over him the accused, case property and documents to him, vide memo Ex.PW6/A. He prepared the rough site plan at the instance of first Investigating Officer, which is Ex.PW6/B. Thereafter, he arrested the accused, vide memo already exhibited as Ex.PW2/B. He also prepared the personal search memo of accused already exhibited as Ex.PW2/C. In the meantime, C. Vedpal came back at the spot along with copy of FIR and original tehrir and handed over the same to him. He proved the copy of FIR as Ex.PW6/C. He further deposed that after completing the proceedings at the spot, they went to the Police Station, Sector 39, Chandigarh, where accused along with case property was produced before

Additional SHO SI Sukhjinder Singh. He verified the factum of recovery and put the seal of “SS” on the parcel. Thereafter, SI Sukhjinder called the MMHC in his office and handed over the case property to him. On 26.10.2017, the aforesaid sealed parcel duly sealed with the seal of “GS” at two places and “SS” at one place was produced by the MMHC in the court of Ms. Rekha Chaudhary, Judicial Magistrate Ist Class, Chandigarh in his presence. He called the police photographer in the court to click the photographs in the court. The seals were opened in the presence of Ms. Rekha Chaudhary, JMIC, Chandigarh. The seals were opened in the said Court in the presence of Ms. Rekha Chaudhary, Judicial Magistrate Ist Class, Chandigarh and was resealed by the court with the seal of “RC” at one place. The case property was handed over to MMHC again. He further deposed that on 27.10.2017, he gave the direction to C. Sumit to collect the sample from MMHC, Police Station , 39, Chandigarh and deposit the same for chemical examination. After depositing the same, receipt of the same was handed over to MMHC. During the course of investigation, he prepared the scaled site plan from HC Yashpal, which is Ex.PW6/D. He also identified the accused present in the court and the case property already exhibited as Ex.MO1.

PW-7 SI Gurmeet Singh is the first Investigating Officer and complainant of the case and during his examination-in-chief, he has deposed as per the investigation initially carried out by him. Besides oral testimony, he also proved on record the documents i.e. ruqa Ex.P1, recovery memo Ex.PW2/A, personal search memo of accused as Ex.PW2/C, Test Memo form Ex.PW2/D, vide vide which test memo form, recovery memo and parcels were taken into police possession as Ex.PW6/A, and copy of FIR as Ex.PW6/C.

2.6 The prosecution also tendered into evidence the documents i.e. the order of inventory as Ex.P2 and the photographs of the inventory proceedings as Ex.P3 and P4. The

evidence of the prosecution was thereafter closed. The statement of the appellant was recorded under Section 313 Cr.P.C. and the entire incriminating evidence appearing against him was put to his notice which he denied and claimed false implication. Even though, the appellant alleged false implication, however, no evidence was led by the appellant in his defense.

2.7 That after consideration of the evidence adduced by the prosecution, the Judge, Special Court came to a conclusion that prosecution has successfully proved its case against the appellant-accused beyond all reasonable doubt and accordingly held him guilty for commission of the offence under Section 22 of the NDPS Act. He was thereafter sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/-, in default of payment of fine, he was sentenced to further undergo imprisonment for a period of 02 years. Aggrieved thereof the present appeal has been preferred.

3. Learned counsel appearing on behalf of the appellant has raised the following arguments:-

- i) The Sub Inspector who had apprehended the appellant-accused and carried out the search had not complied with the mandate of Section 50 of the NDPS Act and no offer was made to the appellant to be searched before a Gazetted Officer or a Magistrate.
- ii) That no independent witness had been joined by the prosecution and as such, the recovery in question is shrouded with suspicious circumstances.
- iii) That the material discrepancies in the prosecution evidence have not been taken into consideration.

- iv) The provision of Rule 66 of the NDPS Rules, 1985 (hereinafter referred to as “NDPS Rules”) has been ignored and that the quantity recovered from the possession of the appellant was within permissible limit as per the said rule.
- v) The recovery in question cannot be said to be from the conscious possession of the appellant.

4. To the contrary, learned counsel appearing on behalf of the respondent-U.T. Administration has contended that it was a case of chance recovery and thus, there was no occasion or reason to make an offer in terms of Section 50 of the NDPS Act. It is argued that the appellant-accused was carrying the contraband in a polythene bag held in his hand and as the recovery had been effected from the said polythene carry bag, it was not a search from the person of the appellant-accused and as such, the provision of Section 50 of the NDPS Act would not be attracted . He further submits that the contraband in question was of commercial quantity and that the appellant-accused could not give any valid explanation or reason for being in possession of the contraband in commercial quantity. It is also argued that the appellant could not place on record any medical prescription of any doctor to attract the exemption of Rule 66 for being in possession of such huge quantity and to suggest that the contraband was for personal use. Moreover, it is submitted that law is well settled that the proceedings initiated under the NDPS Act cannot be held to be bad or vitiated merely because independent witness has not been joined or that only the official witnesses have deposed before a Court. He further submits that the prosecution has duly established the recovery from the conscious possession of the appellant-accused and the recovered quantity was commercial. He

also submits that there is no evidence of any tampering of the recovered contraband and there is no evidence of any false implication or malicious intent or motive. It is thus argued that the judgment of conviction is based upon sound reasoning and proper appreciation and due consideration of the evidence and that there is no material discrepancy in the testimony of the witnesses.

5. I have heard learned counsel for the respective parties and have gone through the entire record with their able assistance.

ANALYSIS OF THE ARGUMENTS:-

ARGUMENT NO.1

6. Learned counsel appearing on behalf of the appellant has argued that the appellant was apprehended by the Sub Inspector Gurmeet Singh and his search and seizure was carried out by the said Police Officer without making any offer under Section 50 of the NDPS Act. He has placed reliance on the judgment of Hon'ble Supreme Court in the matter of "***Arif Khan @ Agha Kahn versus State of Uttrakhand reported as 2018 AIR (SC) 2123***" and has argued that the said provision is mandatory and has to be strictly complied with. It is imperative on the part of the Police Officer to apprise the person intended to be searched of his right to be searched under Section 50 only before a Gazetted Officer or a Magistrate. It is further contended that failure on the part of the Investigating Agency to comply with the mandatory provision would render the recovery suspect and unworthy of any acceptance. Reference was made to the following paragraphs of the said judgment which are reproduced as under:

*“23. Their Lordships have held in Vijaysinh Chandubha Jadeja (supra) that the requirements of Section 50 of the NDPS Act are mandatory and, therefore, the provisions of Section 50 must be strictly complied with. It is held that it is imperative on the part of the Police Officer to apprise the person intended to be searched of his right under Section 50 to be searched only before a Gazetted officer or a Magistrate. It is held that it is equally mandatory on the part of the authorized officer to make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this requires a strict compliance. It is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate. (See also **Ashok Kumar Sharma vs. State of Rajasthan, 2013 (2) SCC 67** and **Narcotics Control Bureau vs. Sukh Dev Raj Sodhi, 2011 (6) SCC 392**)*

Xx xx xx xx xx xx xx xx

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

7. Before proceeding further in the matter, the relevant provision of Section 50 of the NDPS Act is extracted herein below:-

“Section 50 of The Narcotic Drugs and Psychotropic Substances Act, 1985

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.

(4) No female shall be searched by anyone excepting a female. When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

8. There is no dispute with respect to the reiteration of law laid down by the Hon'ble Supreme Court in the said judgment, however, the aforesaid judgment is not applicable to the facts of the instant case. It is undisputed that there was no prior information or secret information with the Investigating Officer and the appellant was nabbed on the basis of suspicious conduct. It was not claimed to be any suspicion of the appellant being in possession of the Narcotic Drugs or Psychotropic Substances. Hence, there

was no necessity for the Investigating Officer to make an offer in terms of Section 50 of the NDPS Act.

9. Learned counsel appearing on behalf of the appellant has not disputed the fact that it was a case of chance recovery. Hence, the Investigating Officer cannot be presumed to have been aware of the contents being carried in the plastic carry bag held by the appellant-accused and there could be any material being carried in the carry bag, the contraband being amongst one of them. The Investigating Agency had no occasion to entertain any suspicion and there would be no reason for making an offer after the recovery had already been effected.

10. Additionally, it is also established from the record that contraband being carried was in a polythene bag held by the appellant. The judgment relied upon by the appellant in the matter of Arif Khan @ Agha Khan versus State of Uttarakhand (supra) itself holds that the mandate of Section 50 is applicable only on a personal search. As the contraband in question has not been recovered from personal search of the appellant-accused, hence, Section 50 of the NDPS Act would not be applicable. The aforementioned conclusion is also supported by the judgment of the Hon'ble Supreme Court rendered in the matter of **“Jeet Ram versus Narcotic Control Bureau”** bearing Criminal Appeal No. 688 or 2013 decided on **15.09.2020**. The relevant extract of the said judgment in Paragraph 10 is reproduced hereinafter below:

“10. It is mainly contended by learned counsel for the appellant that the High Court / appellate Court was not justified in interfering with the judgment of acquittal passed by the trial court merely because another view is possible. As

*noted earlier, in support of his argument that merely because another view is possible, same is no ground to interfere with the judgment of acquittal by the appellate court, the learned counsel has relied on judgments of this Court in the case of **Bal Mukund; Francis Stanly; and Rangaiah**. To counter the said submission, the learned Additional Solicitor General Sri Aman Lekhi has submitted that it is always open to the appellate court to review the evidence on record upon which order of acquittal is founded and if it comes to conclusion that the order passed by the trial court is erroneous and unreasonable, it is always open for the appellate court to interfere with the order of acquittal. It is contended that the view taken by the trial court is not a possible view having regard to evidence on record. Such erroneous finding can be corrected by the appellate court. In support of his argument, the learned Additional Solicitor General has placed reliance on the judgments of this Court in the case of **Sanwat Singh; Damodarprasad Chandrikaprasad and Vinod Kumar**. Though the ratio laid down in the judgments relied on by the learned counsel for the appellant is that the appellate court would not interfere with the judgment of acquittal only because another view is possible but at the same time whether the findings recorded by the trial court in support of acquittal are valid or not is a matter which is to be considered with reference to facts of each case and evidence on record. On close scrutiny of the depositions of the witnesses examined on behalf of the prosecution as well as on behalf of the accused, we are of the view that the findings recorded by the trial court are contrary to evidence on record and view taken by the trial court was not possible at all, as such the High Court rightly interfered with the same and recorded its own findings to convict the appellant. The trial court acquitted the appellant mainly on the ground that prosecution case was not supported by independent witnesses; conscious possession was not proved; non-compliance of Section 50 of the NDPS Act; proper procedure was not followed in sending the*

*samples for examination and the case of the prosecution was unnatural and improbable. As rightly held by the High Court, this Court in the case of **State of H.P. v. Pawan Kumar** has held that Section 50 of the NDPS Act is applicable only in the case of personal search, as such, there is no basis for the findings recorded by the trial court that there was non-compliance of provision under Section 50 of the NDPS Act. Even with regard to the finding of the trial court that the case of the prosecution was not supported by independent witnesses, it is clear from the evidence on record that the incident had happened at about 10:30 p.m. in a dhaba which is away from the village site and all other persons who are found in the dhaba were the servants of the accused. It is also clear from the evidence on record that Suresh Kumar and Attar Singh examined on behalf of the appellant are closely related to the accused, as such, they could not be said to be independent witnesses. Pappu was the only other person who is none other than the servant of the dhaba and we cannot expect such a person to be a witness against his own master. Dealing with the issue of conscious possession, it is to be noticed that dhaba is constructed on the land which belongs to Kaushalya Devi who is none other than the wife of the accused. Further in deposition PW-4 has stated that when the accused was questioned as to who was the owner of the dhaba, he claimed to be the owner. The case of the prosecution was found to be unnatural and improbable by the trial court only on the ground that 13 Kg. of charas was lying in open in a gunny bag. The trial court found that it is not believable that any person would keep such a huge quantity of charas in open condition. It is clear from the evidence of prosecution witnesses that the officials of NCB got information that trafficking of charas was going on in the area in question. Two police parties had left for Theog – one party headed by PW-4 R.P. Singh started earlier and second party headed by PW-1 Rakesh Goyal left a little later from Shimla. Thus the depositions of PW-4 R.P. Singh; PW-3 O.P. Bhat;*

PW-1 Rakesh Goyal and PW-2 Hayat Singh are consistent and trustworthy and cannot be said to be unnatural and improbable. Further it is also to be noted that the trial court has held that seal with which samples and remaining bulk of charas was sealed was handed over to PW-1 Rakesh Goyal who himself gave the sample to PW-2 for carrying to Central Laboratory at Delhi and since the seals remained with the Director, the chances of tampering could not be ruled out. In this regard, it is to be noticed, as rightly held by the High Court, that the trial court totally lost sight of the fact that on 19.06.2001 JMIC, Theog had also appended his signatures on the samples as well as bulk parcels and, therefore, there was no chance of tampering of the samples. Further, there was no such suggestion of tampering either put to PW-1 Rakesh Goyal or to PW-2 Hayat Singh.”

11. The said view had also been laid down by the Hon’ble Supreme Court in the matter of “State of Punjab versus Baljinder Singh and another” reported as 2019 (10) SCC 473 as well as in the matter of “Varinder Kumar versus State of Himachal Pradesh” reported as 2019 R.C.R (Criminal) 1033. The said position in law has been consistent and is being reiterated even in the latest judgments of the Hon’ble Supreme Court. Hence, as the search in the present case was not carried out on the person of the appellant, there was no occasion for the Investigating Officer to make an offer under Section 50 of the NDPS Act. Hence, there is no force in the argument that the mandatory provision under the NDPS Act has not been complied with.

ARGUMENT NO.2

12. The second argument on behalf of the learned counsel for the appellant-accused is that even though the recovery in question is stated to

have taken place near a T-point towards village Butrela, however, no independent witness was joined. He further contends that no valid explanation has been given as to why the prosecution did not choose to associate independent witnesses and instead preferred to associate only the Police or official witnesses. He submits that the Investigating Officer was an interested witness and as such, his testimony warranted corroboration by an independent witness.

13. It is apparent from perusal of the record that the Investigating Officer made an attempt to join independent witnesses, however, they left the place by making excuses. The said fact is duly recorded in the FIR itself. The same was also reiterated by the Head Constable Balwant Singh while appearing before the trial Court. Further more, the Investigating Officer himself appeared as PW-7 and had reiterated the same. The said witness was subjected to cross-examination by the counsel for the appellant-accused as well. It is thus evident that the prosecution made reasonable efforts to associate independent witnesses. The non-willingness of the independent witnesses to associate themselves with the prosecution does not render the recovery as 'bad'. The need to associate independent witnesses is not a mandatory requirement of law, however, the same is only an additional prudence to be exercised. It is well settled in law that a prosecution case can be duly established solely on the testimony of official witnesses and that absence of independent witnesses would not by itself render the prosecution case bad and liable to be rejected. The testimony of the police witnesses cannot be disbelieved or discredited without any cogent material on record by the defence which establishes malice or false implication by the Agency thus warranting corroboration of the testimony of the official witnesses

through some independent person. The same is however not a cardinal rule and it cannot be held that the prosecution case is liable to fail solely for want of independent corroboration. A constitutional Bench of the Hon'ble Supreme Court has held in the matter of **"Mukesh Singh versus State (Narcotic Branch of Delhi)"** reported as **(2020) 10 SCC 120** decided on 31.08.2020 that an investigation would not suffer vice of unfairness or bias if the informant itself is also the investigator. The ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment is extracted as under:-

"10. Now so far as the submission on behalf of the accused that so far as the NDPS Act is concerned, it carries a reverse burden of proof under Sections 35 and 54 and therefore if the informant who himself has seized the offending material from the accused and he himself thereafter investigates the case, there shall be all possibilities of apprehension in the mind of the accused that there shall not be fair investigation and that the concerned officer shall try to prove his own version/seizure and therefore there shall be denial of the "fair investigation" enshrined under Article 21 of the Constitution of India is concerned, it is required to be noted that whether the investigation conducted by the concerned informant was fair investigation or not is always to be decided at the time of trial. The concerned informant/investigator will be cited as a witness and he is always subject to cross-examination. There may be cases in which even the case of the prosecution is not solely based upon the deposition of the informant/informant-cum-investigator but there may be some independent witnesses and/or even the other police witnesses. As held by this Court in catena of decisions, the testimony of police personnel will be treated in the same manner as testimony of any other witness and there is no principal of law that without corroboration by independent witnesses his testimony cannot be relied upon. [See Karamjit Singh v. State (Delhi Administration) (2003) 5 SCC

291]. As observed and held by this Court in the case of Devender Pal Singh v. State (NCT of Delhi) (2002) 5 SCC 234, the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.

10.1 At this stage, reference may be made to illustration (e) to Section 114 of the Indian Evidence Act. As per the said provision, in law if an official act has been proved to have been done, it shall be presumed to be regularly done. Credit has to be given to public officers in the absence of any proof to the contrary of their not acting with honesty or within limits of their authority. Therefore, merely because the complainant conducted the investigation that would not be sufficient to cast doubt on the entire prosecution version and to hold that the same makes the prosecution version vulnerable. The matter has to be left to be decided on a case to case basis without any universal generalisation.”

14. Keeping in view the evidence brought on record and the settled legal position, statements of the prosecution witnesses namely SI Gurmeet Singh PW-7 (First Investigating Officer), Head Constable Balwant Singh (PW-2) and testimony of PW-6 SI Meher Singh (Second Investigating Officer) cannot be disbelieved or impeached of credit. There is nothing on record to suggest that they had any personal bias or grudge against the appellant. There is no reason to doubt their credibility. The official witnesses cannot be doubted merely because they happen to be witnesses to a scene of crime or to the proceedings that had taken place thereafter. Even the additional SHO SI Sukhjinder Singh while appearing before the Judge, Special Court as PW-5 has deposed that he had affixed his seal on the parcels and the sample after verifying the facts from the accused as well as

the witnesses and after finding the same to be in accordance with the version so recorded in the FIR. The said submission of the appellant-accused is thus devoid of any merit as the appellant has failed to point out any suspicious circumstances that would render the deposition of the prosecution witnesses unworthy of belief.

ARGUMENT NO.3

15. Learned counsel appearing on behalf of the appellant has next argued that there were numerous material discrepancies in the prosecution evidence and that the said discrepancies that were material and crucial to the determination of the guilt of the appellant-accused have been conveniently ignored.

16. Learned counsel, however, could not make reference to any specific material contradiction that would be fundamental to the case of prosecution or is likely to render the prosecution version suspect. It has not been controverted by the learned counsel that there is no evidence on record on the basis whereof it may be assumed that the due process and procedure laid down in law was not followed, or that the sample was not drawn in accordance with law, or that the sample was not kept in safe and intact position. He has further admitted on a pointed query that as per the report of the FSL, the sample was received in an intact condition that the seal affixed thereon were not tampered. There can thus be no assumption that any prejudice has been caused to the appellant-accused on account of any perceived notion of discrepancies and contradictions. A reference however was made to an argument that the original register No.19 was not produced in the Court and that a mere photocopy was produced as Ex.PW3/A.

However, the learned State counsel has failed to point out any prejudice based upon non-production of register No.19. Despite a suggestion having been made, no attempt was made to summon the register by the defence or to establish any prejudice. A mere allegation of material discrepancy cannot be per se accepted unless any such discrepancy is pointed out. Additionally, such contradiction/discrepancy ought to be fundamental to the case. Not every minor discrepancy renders the prosecution case bad or liable to be set aside.

Mere allegation without any corroboration cannot be accepted to discard the case of the prosecution. Hence, the argument that is uncorroborated and unsubstantiated is thus liable to be rejected as lacking in merit.

ARGUMENT NO.4

17. Learned counsel has next argued that recovered quantity from the appellant-accused is only 12 injections of Buprenorphine, 2 ml each and 12 injections of Pheniramine Maleate, 10 ml each and that Rule 66 of the NDPS Rules permits a person to possess 100 dosage unit at a time.

18. For consideration of the said argument, it would be appropriate to refer to the relevant provision of Rule 66 of the NDPS Rules, 1985 and the same is extracted hereinafter below :-

66. Possession, etc., of psychotropic substances:-

(1) No person shall possess any psychotropic substance for any of the purposes covered by the 1945 Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under these Rules.

(2) Notwithstanding anything contained in sub-rule (1), any research institution or a hospital or dispensary maintained or supported by Government or local body or by charity or voluntary subscription, which is not authorised to possess any psychotropic substance under the 1945 Rules, or any person who is not so authorised under the 1945 Rules, may possess a reasonable quantity of such substance as may be necessary for their genuine scientific requirements or genuine medical requirements, or both for such period as is deemed necessary by the said research institution or, as the case may be, the said hospital or dispensary or person:

Provided that where such psychotropic substance is in possession of an individual for his personal medical use the quantity thereof shall not exceed one hundred dosage units at a time.

(3) The research institution, hospital and dispensary referred to in sub-rule (2) shall maintain proper accounts and records in relation to the purchase and consumption of the psychotropic substance in their possession.

19. A perusal of the aforesaid Rule shows that when a person is in possession of Psychotropic substance for his personal medical use and the quantity thereof does not exceed 100 dosage units at a time, he is entitled to plead a defence under the said Rule 66 of the NDPS Rules.

20. It is evident from a perusal of the said Rule that the quantity recovered should be for individual personal medical use. It was thus incumbent upon the accused to bring on record such evidence that would show that the seized contraband was required for the personal medical use of the appellant or for institutional research use. Perusal of the evidence shows that no such suggestion has been put to the prosecution witnesses during their cross-examination and that no such plea has been raised in defense while recording the statement under Section 313 Cr.P.C. Moreover, no

evidence has been led in defense to prove that the appellant-accused was under a medical treatment or had been prescribed usage of the said Psychotropic substance. In the absence of any such evidence, the plea raised by the appellant-accused is only an afterthought and does not carry much weight. The same is thus declined.

ARGUMENT NO.5

21. Learned counsel has also raised an argument that there can be no presumption of conscious possession against the appellant. The recovery of the contraband has been effected from the polythene bag carried by the appellant and it cannot be presumed that the appellant was aware of the contents of the polythene bag. Hence, the recovery cannot be said to be effected from the conscious possession of the appellant-accused.

22. The aforesaid contention of the appellant is being noticed only to be rejected. In this regard reference is made to the Section 54 of the NDPS Act, 1985 which is reproduced here-in-below:-

“Section 54 of The Narcotic Drugs and Psychotropic Substances Act, 1985

54. Presumption from possession of illicit articles. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) *any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or*

(d) *any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”*

23. It is apparent from a perusal of the bare provision itself that presumption of illicit articles is deemed conscious unless proved otherwise.

Thus, the burden lies upon the accused to be discharged by him and the same is not on the prosecution. The moment a recovery is effected from a person, he is deemed to be in conscious possession of the same. It has been held by the Hon'ble Supreme Court in the matter of ***Madan Lal versus State of Himachal Pradesh reported as 2003 SCC (Criminal) 1664*** that “the word ‘conscious’ means awareness about a particular fact. It is a state of mind which is desirable & intended”.

24. Undisputedly, the recovery of the contraband was effected from the possession of the appellant-accused and from the polythene bag held by him. The presumption under Section 54 of the NDPS Act is attracted and the burden lies upon the accused to rebut the same. There is no reference to any evidence or suggestion put to the prosecution witnesses or to any evidence led by the defense that would establish that the appellant-accused was not aware of the contents of the polythene bag or that the polythene bag in question did not belong to him or that he was carrying the said polythene bag at the request or at the behest of a third party without knowing the

contents thereof. No such plea has also been taken by the appellant-accused in his statement under Section 313 Cr.P.C. Even though, the presumption under Section 54 of the NDPS Act is a rebuttal presumption, however, it is essential that reasonable evidence is brought on record by the defense on the basis whereof such a presumption is satisfactorily rebutted. It is not essential for an accused to prove beyond doubt that he was not conscious of the contents of the polythene bag held by him. However, it is imperative that he must lead some probable evidence that would create a reasonable belief to the satisfaction of the judicial conscience that the accused may not be aware of the contents of the bag/parcel from which the contraband is recovered. The said presumption cannot be held to be satisfactorily discharged merely by making an oral submission. The contention is thus without any merit and is hence rejected.

ARGUMENT NO.5

25. It was lastly argued by the learned counsel that the appellant-accused is a poor person and is unemployed. His father had already died and his mother was more than 55 years of age as on the date of conviction and that he had no previous conviction or involvement in any other criminal case and that a lenient view may be taken in this regard. The said submission of the counsel for the petitioner cannot be accepted. Economic condition of an accused or a person convicted of crime cannot be an immunity against criminal conduct. Drug abuses have been recognized as the single most powerful social offender. Its impact on people addicted to it is catastrophic. The object of the Act to make the stringent provision for control and regulation of operation relating to those drugs and substances. The purport and object of the Act needs to be given full effect by applying the principles

of purposive construction. The Court must be strong against any construction which tends to reduce entity of the statute. The Hon'ble Supreme Court has held in the matter of "***Shiv Shakti Co-operative Housing Society Nagpur versus Swaraj Developers and others***" reported as **(2003) 6 SCC 659** as under:-

"It is a well settled principle in law that Court cannot read anything into a statutory provisions which is plain and unambiguous. A statute is an edict of the legislative. The language employed in a statute is the determinant factor of legislative intent. The object of interpreting a statute is to ascertain the intention of the legislature"

26. Besides, the appellant was found in possession of commercial quantity of the contraband and that the statute prescribes a minimum sentence of 10 years for being in possession of commercial quantity and minimum rupees of one lakh. Since the sentence imposed is already minimum as prescribed in the suit, no further relief or concession can be extended to the appellant.

The present appeal is thus without any merit and is hence dismissed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 27, 2022
Vishal sharma

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