

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 210 of 2020

Dipti Das and anr.

Versus

The State of West Bengal

For the appellants : Mr. Sourav Chatterjee, Adv.

: Mr. Soumya Nag, Adv.

For the State : Mr. Sanjoy Bardhan, Adv.

: Mrs. Amita Gaur, Adv.

Hearing

concluded on : 30th January, 2023

Judgment on : 16th February, 2023

Md. Shabbar Rashidi, J.:

1. By filing the instant appeal, the appellant has sought to assail the judgment of conviction dated February 29, 2020 and the order of sentence dated March 04, 2020 passed by learned 4th Additional Sessions Judge, Alipur in Sessions Trial No. 6(03) of 2016 arising out of Sessions Case No. 11(9) of 2015 convicting the appellant under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. On April 10, 2015, the de facto complainant lodged a complaint with the Officer-in-charge, Behala P.S. to the effect that on April 10, 2015 at about 08.00hrs, he received source information that one male and a female person would come to sell Narcotic Drugs in the Kailash Pandit Lane. Accordingly, being duly permitted by the Assistant Commissioner, Narcotic Drug Cell, Detective Department, he prepared to conduct raid. On April 10, 2015 at about 09.30hrs, the de facto complainant along with the raiding team and taking the weighing scale, testing kit, packing materials along with the source,

proceeded to the spot. At about 10.30 hrs, they reached near a shop styled as 'Super Mondal Tailors' at Kailash Pandit Lane, Kolkata-53. The source led the team to the spot and they started maintaining watch, hiding themselves. At about 11 a.m., the source pointed to one male and one female person coming along Kailash Pandit Lane, both carrying jute shopper bags in their hands. The aforesaid persons were apprehended with the help of the raiding team and lady police, in front of the said shop of 'Super Mondal Tailors'. The raiding party disclosed their identity and the reason for their detention. Some local people assembled in the meantime, whom, the de facto complainant requested to stand witnesses to search and seizure. Two of the persons amongst the assembled persons volunteered to stand witness. The detained persons disclosed their identities as Dipti Das and Bapan Das. The de facto complainant served written options to both the detained persons informing their legal right to be searched either in presence of a Magistrate or a Gazetted Officer, to which, both of them opted to be searched in

presence of the Gazetted Officer. The de facto complainant tried to find out a Gazetted Officer in the locality and having failed to find one, he informed his superior officer. At about 12.10 hrs, inspector Shivsankar Roy, additional officer-in-charge of Behala P.S. arrived at the place of occurrence in uniform and who introduced himself to both the detainees to be a Gazetted Officer.

- 3.** The detained persons searched the de facto complainant and the lady police prior to their search but nothing, except personal belongings could be found. Thereafter, the lady Police Officer Kuheli Sarkar searched the female detainee and found a jute shopper bag which was handed over to the de facto complainant. The said bag contained two black coloured polythene packets which were recovered from the jute bag. One of the polythene packets contained thirty-nine pieces of deep brown coloured solid lumps of 'charas' having the characteristic smell, weighing about 1 kg, 300 gm. The second polythene packet contained cash money amounting to Rupees One

Lakh and Eighty Thousand only as Sale proceeds of the contraband.

4. After search of the female detainee, the de facto complainant searched the male detainee and recovered one medium sized jute made shopper bag from his hand. The said bag contained two black coloured polythene packets. One of the polythene packets was found to contain forty-two pieces of deep brown coloured solid lumps of charas having characteristic smell weighing about 1kg, 200gm. The second polythene packet recovered from the male detainee contained a cash sale proceed of Rupees One Lakh. The de facto complainant also took small quantity of charas of each lumps from the two packets and with the help of testing kit, it tested positive for the presence of charas. The recovered articles were weighed with the help of the weighing machine. The detained person could not give any satisfactory answer for the possession of charas. The narcotic drugs and cash were seized from the possession of the two detainees under a seizure list and were sealed and labelled at the

spot in presence of the Gazetted Officer, witnesses and the accused persons who also signed on the seizure list and the labels attached to the seized articles. The accused persons were then arrested at the spot. They were arrested at about 14.30hrs upon due service of arrest memo and inspection memo upon them. The de facto complainant also examined the witnesses and the Gazetted Officer at this spot and recorded their statements under Section 161 Criminal Procedure Code. Thereafter, the raiding team returned to the Police Station with both the arrested accused persons and seized articles and thereafter a complaint was lodged by the de-facto complainant.

- 5.** On the basis of such written complaint, Behala P. S. Case No. 169 dated 10.04.2015 under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was started against the two appellants Dipti Das and Bapan Das. The Police investigated the case which culminated in a charge sheet. Charges under Sections 20(b) (ii) (c)/29 of the said Act were framed against both the accused persons on March

21, 2016. The appellants pleaded not guilty of the charges and claimed to be tried. Hence, both the accused persons were put on trial.

6. In order to prove the charges, the prosecution examined seven witnesses in all. In addition, the prosecution also relied upon the documents and oral evidences.

7. The director of State Drugs Control and Research Laboratory was examined as PW1. He has stated that on 20.04.2015, his laboratory received two brown coloured envelopes marked with 'B' and 'E' from Behala Police Station in connection with the Case No. 169 of 2015. On receiving of such samples, the laboratory elected sample numbers to each of the packet which were found with intact, sealed and tallied with the specimen seal. He further stated that upon opening all the packets, they were found to contain deep brown coloured solid lumps, one weighing 01.302kgs and another 1.160kgs. The samples were tested under his supervision in the guidance and presence of the laboratory chemist and thereby found

positive for the presence of canabenoids and confirmed as charas. PW1 tendered the chemical examination report (Exbt. 1). He further stated that the remnants were again packed in an envelope which he identified in the Court (MAT Exbt. 1). PW1 also tendered the memo from which the report was sent from his office. He also identified the sample packets bearing his signature and that of the chemical examiner with official seal (MAT Exbt. 2 and 3 respectively).

- 8.** The de facto complainant deposed as PW2. He has reiterated his statements in the written complaint. He has further stated that on 10.04.2015, he was posted as Sub-inspector of Police at Narcotic Cell, Detective Department, Lalbazar. On the said dated at about 08.00hrs, he received a source information to the effect that one male and one female would come to supply narcotic drugs in the vicinity of Kailash Pandit Lane. He reduced the information into writing and informed that he took permission from the Officer-in-charge, Narcotic Drug Cell as well as from the Assistant Commissioner. PW2 proved the written

permission (Exbt. 2). He formed the raiding team and left for the spot at about 09.30hrs along with the necessary testing kits, weighing machine, packing materials, brass seal etc. They reached the reported place at about 10.30hrs and started maintaining watch hiding themselves. At about 11 a.m., the source pointed to the two miscreants, one male and one female. They were investigated with the help of the lady police in front of the shop 'Super Mondal Tailors' situated at 27-Kailash Pandit Lane. They were carrying brown coloured jute packets. In the mean time, some curious persons assembled there. PW2 disclosed his identity and the reason for detention and therefore requested them to stand witness to the search and seizure. Two persons Raju Das @ Ashok Das and Goutam Das volunteered. The detained persons disclosed their identity in presence of all- Dipti Das and Bapon Das. They were identified by PW2 in Court. The two detained persons were intimated their right to be searched in presence of a Magistrate or a Gazetted Officer to which they opted to be searched in presence of Gazetted Officer

at this spot. PW2 proved the option served upon the detainees bearing his signature and that of the lady Police Officer, the witnesses and the detained persons (Exbt.3). PW2 also stated that he searched for Gazetted Officer in the locality and on failure, he informed his superior to send Gazetted Officer at this spot. At about 12.00hrs, Inspector Shib Sankar Roy, Additional Officer-in-charge of Behala Police Station arrived at the place of occurrence in uniform. He was introduced to the detainees and the witness as a Gazetted Officer. The detained persons reiterated their option to be searched at the spot in presence of Gazetted Officer. Thereafter, the detained persons searched the lady Police Officer PW2 but nothing except personal belonging was found. Such search of the police persons was made in pursuant to the written option given to the detained persons. PW2 proved signature on the said option (Exbt. 4). PW2 has also stated that thereafter the search option of the detained persons was conducted by him and the lady Police Officer. One jute bag containing thirty-nine pieces of blackish brown coloured

lumps commonly known as charas and rupees one lakh and eighty thousand cash was recovered from the black polythene packets kept in jute bag carried by the female accused. Similarly, two polythene packets were recovered from the jute bag carried by the male accused, one containing forty two pieces of blackish coloured solid lumps and cash on Rs. 1000/-. PW2 tested the lumps with the help of tested kits and found the same positive for charas. The charas weighing at 1.300kg was recovered from the female accused and thereafter 1.200 kg from the male accused. The entire narcotic substances and cash money was seized under a seizure list which was signed by the Gazetted Officer, independent witnesses and the accused persons. PW2 proved his signature on the seizure list (Exbt. 5/1 and 5/2). The seized articles were sealed and labelled. PW2 proved his signature on the labels containing the jute bags, the polythene packets, the packet containing cash of Rs. 1,80,000/-, labels and other articles. PW2 then arrested the accused persons by issuing memo of arrest and inspection memos (Exbt. 6,7,8

and 9). He further stated that he examined the witnesses at this spot and recorded their statements under Section 161 of the Code of Criminal Procedure. He also conducted the raid at the residence of the female accused which was situated nearby. But nothing could be recovered, for which a nil seizure list was prepared by him (Exbt. 10). Thereafter, PW2 went to Behala Police Station and lodged a complaint with the Officer-in-charge. PW2 was cross-examined at length on behalf of the appellants. Nothing favourable could be extracted from such cross-examination. In his examination on recall, PW2 proved the intimation given by him to the Assistant Commissioner, Narcotic Drug Cell and Officer-in-charge, Narcotic Drug Cell (Exbt. 13).

- 9.** The lady Police Officer who was a member of raiding party has deposed as PW3. She identified the accused persons in Court. She has supported and reiterated the statements of PW2. She has stated that she accompanied the de facto complainant to Behala near 'Super Mondal Tailors' on 10.04.2015. She has also reiterated that

reaching there, two persons one male and a female were identified by the source and they were apprehended on suspicion of possessing narcotic drugs, who disclosed their identities as Bapan Das and Dipti Das. She has also stated that the de facto complainant (PW2) informed the detained persons that they will be searched and they had legal right to search in presence of a Magistrate or a Gazetted Officer at this spot. PW3 proved his signature on the options in writing (Exbt. 3/1 and 4/1). The detainees also signed the same. She has further stated that she searched the female accused in presence of the Gazetted Officer and on such search two polythene packets were recovered from the jute bag carried by such accused. The said polythene packets contained thirty-nine pieces of hard substances having characteristic smell of charas and the second packet contained a cash amount of Rs. 1,80,000/-. She has further stated that the male detainee was searched by the de facto complainant. On such search, two polythene packets were recovered from jute bag. One packet containing forty-two pieces of hard

substances having characteristic smell of charas and the second contained One Lakh Rupees cash. The seized narcotic drugs were tested with the help of testing kit each testing positive for charas. PW3 also proved her signature on the seizure list there from which the articles recovered from the possession of the two detainees were seized (Exbt. 5/3). The seized articles were packed, labelled and sealed at this spot in her presence as well as in presence of the Gazetted Officer witnesses and the accused contained in these packets which were marked 'A', 'B', 'C', 'D', 'E' and 'F'. She proved her signature on the labels attached to such articles (MAT Exbt.IV/I, V/I, VII/I, IX/I, X/I and XII/I). She also proved signature on the arrested memo and a nil seizure list prepared after conducting raid at the house of female accused (Exbt. 6/1 and 10/1 respectively). This witness was also cross-examined at length.

- 10.** The Recording Officer has deposed as PW4. He has also corroborated the statements of PW2 and PW3 in every detail. He further stated that carried the written complaint

handed over by SI Asadul Rahaman, which he received by making an endorsement in this regard (Exbt. 12/1). PW4 also took over charge of seized articles in six packets duly packed, sealed and labelled and also that of the two accused persons Dipti Das and Bapon Das. The accused persons were identified by the witness. PW4 has started Behala P.S. Case No. 169 dated 10.04.2015 on the basis of such written complaint and lodged a GDE in this regard. He proved the formal FIR (Exbt. 14) and the carbon copy of the GDE(Exbt. 15). PW4 also tendered the Malkhana Register (Exbt. 16) and the Lockup Register (Exbt.17 series). As per the message, the Deputy Commissioner of Police, Detective Department, the investigation of the case was handed over to the SI Amit Chatterjee by lodging a GDE in this regard (Exbt. 18 and 19). The case docket along with the seized articles was also handed over accordingly. PW4 proved his signature on the packets of the seized articles (MAT Exbt. IV/II, V/II,VII/II,IX/II,X/II and XII/II). This witness was also cross-examined on behalf of the accused persons.

11. The Divisional Officer-in-charge of Behala P.S. deposed as PW5. He has stated that on 10.04.2015 at 11.40hrs being instructed by his superior. He went to 27 Kailash Pandit Lane to act as a Gazetted Officer after making relevant entries in the GDE books (Exbt. 20). At about 12.10hrs, he reached there and found that SI Asadul Rahaman had detained one male person and a lady. PW5 inclined for the compliance of the provision under Section 42 of the Narcotic Drug and Psychotropic Substances Act, 1985 and being satisfied PW5 gave option to the detainees to be searched in presence of a Gazetted Officer. He introduced himself to the accused persons as a Gazetted Officer. Both the detained persons opted to be searched in presence of a Gazetted Officer. He also offered the accused persons to search the raiding party. PW5 proved his signature on the second option. PW5 also stated that thereafter he directed the lady Police Officer to search the female accused. A jute bag was recovered from the female accused which was handed over to the SI Mr. Rahaman, where from two packets one containing thirty-

nine pieces of black deep brown coloured suspicious substances and the other containing huge cash. After that the male person was searched by Mr. Rahaman and a jute bag was recovered, containing two polythene packets, one of the polythene packets contained forty-two pieces of deep brown coloured suspicious substances and the second polythene packet contained huge cash. The suspicious circumstances was tested with the testing kit and found positive for charas. The articles recovered from the possession of the detained persons were seized under a seizure list, the packets were marked 'A', to 'F'. PW5 proved his signature on the labels attached to such packets. He was examined by the S.I. Asadur Rahaman.

- 12.** One of the public witnesses to the seizure list was examined as PW6. He has stated that he went to Tollygunje on 10.04.2015 for his works. He found a gathering in front of 'Super Mondal Tailors' at about 10.30/11 a.m. One Rahaman Babu came out from the gathering and told the gathering that a search was required to taken of one Dipti Das and requested someone

from the gathering to be witness to search. He also stated that Kuheli Sarkar searched Dipti Das where Rahaman Babu searched the other detainee. The rest of the statements given by PW6 is reiterated of the statements of other witnesses with regard to the approval of the Gazetted Officer Shivsankar Roy, option of search provided to the detained persons, recovery of narcotic articles (charas) and cash money etc. PW6 identified the accused persons in the Court. He identified one of the accused in Court. He identified his signature on the documents and labels attached to the seized articles.

- 13.** The Investigating Officer deposed as PW7. He stated that being endorsed with the investigation, he visited Behala Police Station, received the Case Diary and charge of the accused persons and the seized Alamants in packed, sealed and labelled condition endorsing the receipt thereof in the Malkhana register as well as in the lockup register. He kept the seized Alamants in Detective Department, Malkhana. He further stated that in course of investigation, he sent the packets containing the drugs to

SDCRL, Kolkata. He recorded the statements of Recording Officer and on completion of investigation, he submitted charge sheet against the persons.

14. On completion of the evidence on behalf of the prosecution, the appellants were examined under section 313 of the Code of Criminal Procedure. The circumstances against the appellants is evident from the materials on record were explained to the appellant to which the appellants pleaded their innocence stating that they have been falsely implicated in this case. The appellants however declined to adduce any defence witness.

15. In consideration of the evidence on record together with the examination of the accused under Section 313 of the Code of Criminal Procedure, by the impugned judgment, the appellants were found guilty and convicted for the offences punishable under Sections 20(b)(ii)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. By the impugned order of sentence, the two appellants were sentenced to suffer rigorous imprisonment for ten years and a fine of Rupees One Lakh each and in

default of payment of the fine, they were to suffer simple imprisonment of further period of one year for the offences punishable under Sections 20(b)(ii)(c)/29 of the said Act.

16. While advancing argument, the appellants have sought to assail the impugned judgment and order. It has been contended on behalf of the appellant that the first information report is a statement recorded under Section 161 of the Code of Criminal Procedure is hit by Section 162 of the said Code and as such, it cannot be the basis of the instant case. It has also been submitted that the Seizing Officer who submitted their written complaint went on to record the statements under Section 161 of the Code of Criminal Procedure meaning thereby that the investigation of the case has already begun. However, PW2 i.e. the de facto complainant was not endorsed with the investigation of the case at any point of time. On such proposition, the learned advocate for the appellants has relied upon the decision reported in **(2009) 7 SCC 404**.

17. It was further contended on behalf of the appellants that on the basis of an information received on 10.04.2015

at about 08.00hrs, a raiding party was formed with the permission in writing of the superior Officer-in-charge, Narcotic Cell and Assistant Commissioner of Police were not examined by the prosecution in order to substantiate that they granted permission for conducting the search and seizure applying their conscious mind, rather, they acted as a mere post office. The alleged search and seizure has also been challenged by the appellants on the ground that the raiding team consisted of nine members. However, besides PW2 and PW3, the remaining members of the raiding party were not examined by the prosecution. It was further contended that the name of the two independent witnesses who volunteered to be a witness to search and seizure conducted upon the appellants were not mentioned in the written complaint. Moreover, the prosecution did not examine one of such independent witnesses, which, according to the learned advocate for the appellants, renders the entire prosecution case doubtful.

18. Learned advocate for the appellants also contended that the provision of section 30 of the Narcotic Drugs and Psychotropic Substances Act, 1985 were not complied at the time of conducting the search and seizure. It is submitted that joint option under Section 50 of the said Act was served upon the appellants which is not tenable in the eyes of law. In this regard, learned advocate for the appellants relied upon **(2014) 5 SCC 345 in the case of State of Rajasthan versus Parmanand.**

19. Accordingly, it has been submitted on behalf of the appellants that the prosecution has failed to prove the case beyond the shadow of all reasonable doubts, as such the impugned judgment and order is liable to be set aside.

20. On the other hand, learned advocate for the State submitted that search and seizure in the instant case was made from a public place i.e. near a shop under name and style 'Super Mondal Tailors' situated at Kailash Pandit Lane, as such, the provision of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is not attracted. Rather, the case falls within the purview of

Section 43 of the said Act. It has also been submitted by learned advocate for the state that Section 50 of the said Act, 1985 has duly been complied. The appellants were served with the option to be searched in presence of Magistrate or a Gazetted Officer. The appellants were also served with notice giving them an option to search the person of the police personnel, as such the provision under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been duly complied with in letter and spirit.

- 21.** It was also contended that the allegation on behalf of the appellant to the effect that the case was investigated by the same person who made search and seizure shall not vitiate the trial or it cannot be said that the investigation was a biased one. In this regard, learned advocate for the state has relied upon **(2020) 10 SCC 120(Mukesh Singh versus State Narcotic Branch of Delhi)**. Learned advocate for the state has also relied upon **(2018) 9 SCC 708(Sk Raj @ Abdul Haque @ Jagga versus State of West Bengal)**, **(2004) 13 SCC 99 (State**

by CBI versus Dilbagh), (2020) 5 SCC 260 (Than Kunwar versus State of Hariyana), (2020) 2 SCC 563 (Surindar Kumar versus State of Punjab), 2020 SCC Online SC 738 (Gurmail Chand versus Sate of Punjab), (2020) 10 SCC 740 (Rajesh Dhiman versus State of Himachal Pradesh), (2016) 13 SCC 119 (Jagat Singh versus State of Uttarakhand) and (2004) 5 SCC 230 (S. Jeevananatham versus State). The learned advocate for the State also relied upon the case decided by this Court in Criminal Appeal No. 154 of 2018.

22. It has been submitted that prosecution has been able to prove the case beyond all reasonable doubts and the impugned judgment and order is based on cogent and convincing evidence and deserves to be affirmed.

23. According to the case made out by the prosecution, the de-facto complainant upon receipt of source information regarding carriage of narcotic contraband, reduced the information into writing and after informing the same to his superior and duly permitted in this behalf in writing (Ext. 2), proceeded to conduct raid at the

reported place at Kailash Pandit Lane. Reaching the place, they maintained watch and after the source identified the appellants, the appellants were intercepted. They were carrying jute bags in their hands.

24. The de-facto complainant, informed the appellants of them being suspected of carrying narcotic contraband. Thereafter, the appellants were informed of their right to be searched in presence of a Magistrate or a Gazetted Officer (Ext. 3). The appellant opted to be searched in presence of Gazetted Officer. The de-facto complainant made a search for a Gazetted Officer in the locale and failing to find one, intimated the same to his superior officer. After that one Gazetted Officer (PW5) arrived at the spot. The appellants were further informed of their right to search the person of the police personnel before their search (Ext. 4). They actually searched the police personnel.

25. After maintaining the aforesaid formalities, a search was conducted upon the appellants and on such search, huge quantity of narcotics in the nature of 'Charas' as well

cash money, said to be sale proceeds of the narcotic contraband were recovered from the appellants. No satisfactory explanation or document could be produced by the appellants for the possession of such contraband articles for which, they were arrested.

- 26.** So far as the recovery of contraband from the possession of the appellant is concerned, all the prosecution witnesses as well as the independent witness PW6 have testified the apprehension of the appellants at Kailash Pandit Lane in front of one shoproom 'Super Mondal Tailors'. There appears no deviation or contradiction in the narration of the prosecution witnesses as regards the search and seizure of narcotic drugs from the possession of the appellants. There are no contradictions in the date, time and place of such operation. The witnesses have corroborated the statements of each other with regard to each and every minute details of the search operation as well as seizure of contraband from the possession of the appellants.

27. It is also established from the evidence on record that before the search, the appellants were made aware of their legal right to be searched in presence of a Magistrate or a Gazetted Officer and in fact, the evidence exhibits that the appellants exercised such right. Not only that, the Gazetted Officer PW 5, upon his arrival, reiterated the option before the appellants whereupon, the appellants again opted to be searched in his presence i.e. a Gazetted Officer. Thereafter, the search was conducted.

28. The witnesses including the independent witness (PW6) have also identified the seized articles as well as their signatures on the label attached to such articles in court.

29. On the basis of such evidence on record, there appears nothing to doubt that certain articles said to be narcotic contraband in the nature of lumps of charas was recovered from the possession of the appellants which they were carrying in the jute made bags in their hands. The cross examination of the prosecution witnesses, at

length, has failed to imprint any dent on credibility of search and seizure.

30. The seized articles were first stored at Malkhana of the police station under proper entries made in this regard which has been proved in accordance with law. It were later handed over to the second investigation officer (PW7) who received the same under proper receipts which has also been duly proved. Later on, the seized articles were sent for its chemical examination.

31. PW1, the Director of State Drugs Control and Research Laboratory has testified that the seized articles were received by his office under proper memo and was found with intact seals which tallied with the specimen seal went under the memo. The testimony of PW1 seems to be sufficient to rule out any outside intervention to the seized articles sent for chemical examination. He has further confirmed with reference to his report (Ext. 1) that on chemical examination, the articles seized from the possession of the appellants were found to be 'Charas,' a

narcotic drug, within the purview of Narcotic Drugs and Psychotropic Substance Act, 1985.

32. Therefore, the evidence on record sufficiently proves that the appellants were found in possession of huge quantity of narcotic drugs without any legal authority for such possession.

33. The appellants have pointed out that the seizing officer, PW2 while conducting search and seizure, went on to record the statements of witnesses under section 161 of the Code of Criminal Procedure and thereafter, lodged the written complaint which is the basis of First Information Report. For that reason, according to the appellants, the written complaint is hit by Section 162 of the Code. Consequently, the prosecution of the appellants is bad in law. In the case of Ganesh Gogoi (**Supra**), the Hon'ble Supreme Court laid down that once investigation of the case had started, and First Information Report is recorded during the continuance of investigation, it is hit by the provisions of Section 162 of the Code of Criminal Procedure. However, learned advocate for the state has, in

this regard, relied upon the decision of Mukesh Singh (**supra**) wherein the Hon'ble Court has been pleased to lay down that there is no bar to a Police Officer receiving information for commission of cognizable offences recording the same and then investigating it. It was noted in the said judgment that Section 154,156 and 157 permits the Officer-in-charge of a Police Station to reduce the information of a commission of a cognizable offence in writing and thereafter to investigate the same.

- 34.** Learned advocate for the state also relied upon paragraphs 64,65 and 66 of the judgment in **Criminal Appeal No. 154 of 2018** passed by this Court wherein it was noted that,

“66. The acts on the part of PW31 in arriving at the place of occurrence upon receipt of an information of the commission of a cognizable offence, without any First Information Report formally registered and even without being

entrusted with the investigation by the superior officer, can at best, be construed as an irregularity which does not render the First Information Report lodged subsequently, inadmissible in evidence. In any case, the First Information Report lodged by PW1 does not come within the purview of section 161 of the Criminal Procedure Code to render it inadmissible in terms of the provisions of section 162 of the said Code. Moreover, the statements of PW1, PW25 and PW31 recorded at the trial, sufficiently discloses the commission of a cognizable offence. Accordingly, we do not find much force in the argument on behalf of the appellant that the First Information Report lodged in the case has no probative value.”

35. In the instant case, however, the officer conducted search and seizure. PW2 has stated that he,

after conducting search and seizure upon the appellant, recorded the statements of the Gazetted Officer as well as witnesses under Section 161 Cr. PC as if he had assumed charge of investigation of the case. As the case made out by the prosecution reveals, PW2 received the source information regarding carriage of narcotic contraband and upon reducing the same into writing and being duly permitted by his superior officers proceeded to work out the information. He has never claimed to be the Investigating Officer of this case. On the contrary, evidence on record goes to show that the investigation of the case was first endorsed to PW4. Later on, the investigation was transferred to Narcotic Cell and it was taken over by PW7. At no point of time, PW2 was ever interested with the investigation of the case. The recording of his statement under Section 161 Cr. PC by PW1 can at best be treated as an irregularity on his part. It is PW2 who after conducting search and seizure lodged a written complaint with the Police Station, on the basis of which the case was started. At no stretch of imagination, the

written complaint so filed by PW2 can be said to be hit by the provision under Section 162 of the Code of Criminal Procedure. Therefore, we do not find force in the contention of the appellants that the first information report which is the basis of the instant case hit by Section 162 of the said Code.

36. The appellants have also challenged the permission for conducting raid given to PW2 by his superiors on account of non-examination of the aforesaid superior officers. The letter of permission so issued in favour of PW2 was duly proved and admitted in evidence as Exhibit 2. There is no provision in the Narcotic Drugs and Psychotropic Substances Act that examination of the officer who issued the permission in raiding for conducting search and seizure is inevitably required to be examined.

37. Similarly, the impugned judgment and order has been challenged by the appellants on the ground of non-disclosure of names of the independent witnesses in the written complaint and for non-examination of one of the said witnesses. It is a well settled proposition of law that

first information report is not an encyclopedia of facts which should contain each and every detail of the proceedings. It is merely information disclosing the commission of a cognizable offence. It is a fact that one of the independent witnesses has not been examined on behalf of the prosecution. However, no specific prejudice has been pointed out on behalf of the appellant for non-examination of such witnesses. One of the independent witnesses has deposed as PW6.

38. It has also been contended on behalf of the appellants that in course of search and seizure, Section 50 of the NDPS Act has not been complied, in seizure, a joint notice under Section 50 was served upon both the appellants. In the case of State of Rajasthan versus **Parmannand (supra)**, it was noted by the Hon'ble Supreme Court that,

“as stated by the “Constitution Bench in Baldev Singh, it is not necessary to inform the accused persons in writing of his right

under Section 50(1) of the NDPS Act. His right can be orally communicated to him.”

39. It was further noted that, “

“but in this case, there was no individual communication of right. A common notice was given on which only the respondent 2 Surojmal is stated to have signed for himself and for the respondent 1 Paramanand. Respondent No. 1 Paramanand did not sign”.

“17. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be

meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before the nearest gazette officer or before the nearest Magistrate. Similar view taken by the Punjab and Haryana High Court in

Paramjit Singh and the Bombay High Court in Dharmaveer lekhran Sharma meets with our approval.

18. It bears repetition to state that on the written communication of the right available under Section 50(1) of the NDPS Act, respondent 2 Surajmal has signed for himself and for Respondent 1 Paramanand. Respondent 1 Paramanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized Respondent 2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of Respondent 1 Paramanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.”

40. In the instant case, however, a joint notice, regarding existence of the legal right of the appellants were served upon both Dipti Das and Bapan Das. The language used in the said option (Exbt. 3) is quite explicit stating, interalia, that it is “your legal right that, you can opt to get searched either in presence of the learned Magistrate or of a Gazetted Officer”, unlike the facts noted in the case of **Paramanand (supra)**, the notice Exhibit 3, though joint, individually served upon both the appellants and both the appellants exercised their right by putting their signature on Exhibit 3. In that view of the facts, the ratio laid down in the case of **Paramanand (supra)** is not at all applicable in this case as the facts and circumstances of both the cases rendered together different.

41. The case of **Sk Raju (supra)** deals with the compliance of the provisions under Section 50 of the NDPS Act where the person of the detainee is subjected to search. In the instant case, although, the people of the appellants were not searched, nevertheless, a notice under

Section 50 of the NDPS Act was duly served upon the appellants informing their right provided in the NDPS Act.

42. In the case of **Jagat Singh (supra)**, the Hon'ble Supreme Court noted the compliance of Section 50 of the NDPS Act in letter and spirit as the prosecution in the said case of examination, the Gazetted Officer in whose presence, searched and seizure was conducted.

43. In the instant case also, the Gazetted Officer in whose presence search and seizure was made, was examined on behalf of the prosecution as PW5. He has testified not only with his search, his seizure was made in his presence. He has given further to prove that after reaching the place of search and seizure, he enquired from the seizing officer of the compliance of the provisions under the NDPS Act. Not only that, in spite of the notice under Section 50 of the NDPS Act having been served upon the appellants by the seizing officer, he introduced himself to be a Gazetted Officer asking the appellants if they wanted to be searched in his presence. Such testimony on behalf of the PW5 clearly proves the

compliance of the provisions under Section 50 of the NDPS Act. The case of **Dilbagh (supra)**, one deals with the compliance of the Section 50 of the NDPS Act, it was noted in the decision that the compliance of the provisions under Section 50 of the NDPS Act need not necessarily be in writing. Oral communication conveying the exhibits of the legal right of the accused persons to be searched in presence of the learned Magistrate or of a Gazetted Officer was held to be sufficient compliance of Section 50 of the said Act, which has of course been done in the present case.

44. In the case of **Than Kunwar (supra)**, deals with the non-protection of the seized contraband articles in the Court at the trial. In the instant case, no such contention has been raised by the learned advocate for the appellants. Moreover, the evidence on record, it transpires that almost each and every witness examined on behalf of the prosecution has identified and proved the seized articles produced in the Court and their signatures on the label attached to such articles.

45. In dealing with the non-examination of one of the independent witnesses has contended on behalf of the appellant, learned advocate for the state relied on the case of **Surindar Kumar (supra)** wherein it was observed by the Hon'ble Court as relying upon the case of **Jarnail Singh versus State of Punjab** that,

“in the aforesaid judgment, this Court has held that merely case prosecution did not examine any independent witness, has not necessarily led to a complaint with the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.”

46. In the case at hand also, most of the prosecution witnesses are Police Personnel and member of the raiding party. However, they have given a consistent narration of the search and seizure conducted upon the appellant and duly corroborated by the documentary and material evidence. Not only that one of the independent witnesses has also deposed in this case and started case of the prosecution in consonance with the other official

witnesses. Nothing whatsoever has been brought forth on behalf of the defence to establish that the testimonies of the official witnesses are incorrect and not credible upon the appellant has been falsely implicated. In the instant case of **Gurmail Chand (supra)**, one of the independent witnesses to the seized was examined as a defence witness whereupon the Hon'ble Supreme Court was pleased to hold that appearance of a seizure witness as a defence witness does not lead to the conclusion that the entire prosecution still has to be disbelieved. The Hon'ble Court upheld the acceptance of search and seizure as good in the eyes of law. We have already concluded herein before that there is no bar in the investigation of a case by an officer who receives the information. In the case of **Rajesh Dhiman (supra)**, it was laid down by the Hon'ble Supreme Court that,

“10. Suffice to say that the law on this point is no longer res integra and the controversy, if any, has been set at rest by the Constitutional Bench of this Court in Mukesh Singh (supra). The earlier position of law which allowed the solitary

ground of the complainant also being the investigating officer, to become a spring board for an accused to be catapulted to acquittal, has been reversed. Instead, it is now necessary to demonstrate that there has either been actual bias or there is real likelihood of bias, with no sweeping presumption being permissible. It would be worthwhile to extract the following conclusions drawn in the afore-cited judgment:

“102 From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

I. That the observations of this Court in the cases of Bhgwan Singh v. State of Rajasthan, (1976) 1 SCC 15; Megha Singh v. State of Haryana, (1996) 11 SCC 709; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam, (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each

and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

39. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of *Mohan Lal v. State of Punjab*, (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

47. Therefore, on the basis of discussion made herein before we are of the opinion that the impugned judgment of conviction and order of sentence are well founded on the basis of convincing evidence on record and does not want any interference. The impugned judgment of conviction dated 29.02.2020 and order of sentence dated 04.03.2020 passed in 4th Court, Alipur are here affirmed.

48. Accordingly, the appeal being CRA No. 210 of 2020 is hereby dismissed.

49. Trial Court records along with a copy of this judgment; be sent down at once to the learned trial court for necessary action.

50. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

51. I agree.

[DEBANGSU BASAK, J.]