

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

221

CRA S-2118-SB of 2014 (O&M)

Date of Decision: 11.12.2023

Ramesh Kumar Mishra

...Petitioner

Versus

State of Punjab

... Respondent

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

Present : Mr. Amaninder Preet, Advocate
for the appellant.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The appellant has preferred the present appeal against the impugned judgment of conviction and order of sentence dated 27.03.2014 passed by the Judge, Special Court (Fast Track Court), Bathinda, whereby, the appellant was convicted for the offence under Section 22 of the of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/- alongwith default stipulation.

2. As per the case of the prosecution, a secret information was received by SI Mohinderjit Singh on 18.04.2010, when he alongwith the police party was present near Geeta Bhawan, Mandi Rampura in connection with checking of suspects. As per the secret information received by him, Ramesh Kumar, the appellant was

coming on his Indica car from Tapa Mandi and was going to Mandi Rampura and was having huge quantity of intoxicants in his possession and if a raid was conducted, he could be apprehended alongwith the intoxicants. On getting the information, he sent a *Rukka* through PHG Ranjit Singh and a FIR was registered by ASI Gurmail Singh on the basis of the *Rukka* sent by him. Ultimately, the police party reached near the bridge of minor canal of Mandi Rampura and Surinder Kumar an independent person was associated by the police party and the Investigating Officer apprised him about the facts of the case. A *Naka* was set up by the police and a car bearing registration No. HR-29-M-4298 was noticed by the police party. The police signaled the car to stop and apprehended the occupant of the car, who disclosed his name as Ramesh Kumar son of Bhawani Parsad, appellant. On the seat adjoining to the driver seat, one plastic bag was lying in which vials of Rexcof were there. The accused informed of his statutory right to get the search of his person and his car conducted in the presence of a Gazetted Officer or a Magistrate. However, the accused reposed faith in the Investigating Officer and a consent memo was prepared in this regard, which was attested by Surinder Kumar and HC Chiman Lal. 200 vials of Rexcof were recovered from the plastic bag, which was found on the co-passenger seat and one vial of Rexcof was taken as a sample and the parcel was prepared. Separate parcels of remaining vials were prepared and sealed with the seal impression 'MS' and sample seal chit was

prepared separately and after the use, the seal was handed over to HC Chiman Lal. The case property was taken into possession vide separate memo and the personal search of the accused was conducted and he was arrested. The site plan of recovery was also prepared and on return to police station, the accused alongwith case property was produced before the ASI Gurmail Singh, who was officiating as an SHO on the said day. He verified the said facts from the accused and had put his seal impression 'GS' on all the parcels of the case property and the sample seal chit and took the same into possession vide a separate memo. On the next day, the SHO produced the accused alongwith the entire case property and sample chit before the Illaqa Magistrate. As per the orders of the Magistrate, the bulk parcel of the case property was deposited in the NDPS Godown. The sample parcels were sent to the FSL and on receipt of the report of the FSL and on completion of the investigation, final report under Section 173 Cr.P.C. was presented against the accused in the Court. After the perusal of the report under Section 173 Cr.P.C., a *prima-facie* offence under Section 22 of the NDPS Act was found to have been committed by the accused and the charge was framed against him. However, the appellant/accused pleaded innocence and claimed trial.

3. In support of the charge, the prosecution examined ASI Gurmail Singh as PW1, who was officiating as SHO on 18.04.2010. As per him, ASI Mohinderjit Singh produced before him one plastic bag containing 199 vials of Rexcof each containing 100 ML, one

parcel containing one vial of Rexcof 100 ML and both the parcels were sealed with the seal impression 'MS'. He compared the sample seal with the sample seal, on both the parcels, which were found to be intact. He had also put his seal impression 'GS' on both the sample parcels and bulk parcels and prepared the sample seal Ex.P1. He had kept the case property in his possession for safe custody. However, in cross-examination, he stated that he had sent his special report to the higher officers, which was exhibited as Ex.PW1/D. On 05.05.2010, he handed over the sample parcel to HC Chiman Lal alongwith the sample seal and as per his directions, he deposited the sample parcel in the Office of FSL, Chandigarh on 06.05.2010. He further admitted in the cross-examination that all the vials were not sent for analysis to FSL and only one vial was sent. Form No. 29 was not filled by him rather it was filed by the IO. Form No. 29 was produced before him with the case property by the IO on 18.04.2010. He further admitted that in Ex.PW/A, it is not mentioned regarding Form No. 29. He further admitted that in Ex.DC, it has not been mentioned regarding preparing of the special report. The prosecution further examined PW2 ASI Chiman Lal, who was part of the raiding team. He supported the case of the prosecution as mentioned in the FIR. On 06.05.2010, he went to FSL Chandigarh and deposited the sample parcel in the FSL Chandigarh. He admitted that no independent witnesses were joined by them from the locality and no photographs were taken at the spot. Form No. 29 was filled by the Investigating

Officer at the spot. He admitted that Form No. 29 was filled through computer. He admitted that there was no computer with the police party. Even, no laptop, printer and key board were there with the police party. He further admitted that on Form No. 29, date 05.05.2010 was mentioned and signed by SHO Rampura. All the vials were not sent to FSL Chandigarh for analysis. Even, the place of recovery was situated in thickly populated area. Even no drug inspector was joined with the police party. He further admitted that the secret information was received by the Investigating Officer. However, no written information was sent to the Senior Police Officers regarding secret information. Before the arrest of the accused, PW Surinder Kumar was joined by the Investigating Officer. He further admitted that seal after use was not handed over to independent witness. No special report was prepared in his presence. Still further, the prosecution examined PW3 SI Mohinderjit Singh, who was the complainant in the present case and was Incharge of the raiding party. He supported the case of the prosecution in totality. However, in his cross-examination, he admitted that no written special report on the basis of the secret information was sent to the higher police officers and stated that only *Rukka* was sent to the police station. Even, Form No. 29 was partially filled at the spot and the same was produced before the ASI Gurmail Singh alongwith the case property. However, it was not mentioned in Ex.PW1/A. He admitted that no seal after use was handed over to independent

witness. No MC or respectable person was called by him from the neighbourhood. Even no special report was prepared at the spot under Section 57 of the NDPS Act. He further admitted that all the vials were not sent for analysis and only one vial was taken as sample. He further admitted that no batch number of any vial was mentioned in the memo. Even, no printer or laptop was with the police party, on that day. The prosecution further examined PW4 Avtar Singh, Clerk, SDM Office, Sardulgarh, who had brought the registration of the vehicle of Ramesh Kumar.

4. After the examination of the witnesses of the prosecution, the Special Court recorded the statement of the appellant under Section 313 Cr.P.C. and the entire incriminating evidence was put him. He stated that nothing was recovered from him and had been falsely involved. He was partner of M/s Om Medical Agency near Peerkhana, Old Sabji Mandi Road, Rampura Phul, District Bathinda and had a valid licence of chemist, which was effective on the date of the alleged raid.

5. In his defence, the appellant examined DW1 Mrs. Kuldeep Kaur, Jr. Asstt., Office of Civil Surgeon, Bathinda and DW2 HC Kewal Singh.

6. Learned counsel for the appellant vehemently argued that in the present case, there is apparently non-compliance of mandatory provisions of Section 42 of the NDPS Act and the appellant is liable to be acquitted only on this ground alone. Learned counsel further

submitted that in the present case, Form No. 29 was not prepared at the spot and was subsequently prepared after several days by the police. Still further, initially Surinder Kumar was associated as an independent witness with the police party before the alleged recovery of the contraband from the appellant. However, while the evidence was led before the trial Court, the said independent witness was not examined by the prosecution. Still further, the recovery was effected from the present appellant on 18.04.2010, whereas, from the testimonies of PW1 ASI Gurmail Singh and PW2 Chiman Lal, it is apparent that the sample parcels were deposited with the FSL Chandigarh on 06.05.2010 after long and unexplained delay. Learned counsel further contended that in the present case, it has been alleged by the prosecution that about 200 vials of Rexcof were recovered from the present appellant, however, the sample was drawn from only one vial and the appellant is liable to be acquitted by this Court.

7. On the other hand, learned State counsel submitted that in the present case, the present appellant was found carrying 200 vials of Rexcof without any permit or licence and the prosecution had led sufficient evidence against the present appellant. Apart from that, Form No. 29 was partially filled at the spot and the non preparation of Form No. 29 at the spot is not a mandatory requirement of law. Learned State counsel further submitted that in the present case, the *Rukka* was sent from the spot by the police and there was sufficient compliance of Section 42 of the NDPS Act. Apart from that, the delay

in sending the sample to the FSL is no ground to reject the case of the prosecution as the appellant has failed to show any prejudice caused to him, in this regard. In the present case, after the sample was drawn by the Magistrate, the sample was kept in the safe custody and the prosecution had led sufficient evidence in this regard. After taking out the sample, it was sent to the FSL without any delay. Thus, the appellant cannot derive any benefit out of the same.

8. I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record in the present case.

9. At the outset, learned counsel for the appellant has raised the contention that the mandatory provisions of Section 42 of the NDPS Act had not been complied with and the said provisions are extracted hereinbelow:-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.-(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from

persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

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

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

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and

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

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained

without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

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

10. In the present case also, PW2 ASI Chiman Lal was part of the police party, which had apprehended the appellant at the spot. In his cross-examination, he admitted that the secret information was received by the Investigating Officer. However, no written information was sent to the senior police officers regarding the secret information. PW3 SI Mohinderjit Singh was head of the police party, which had received a secret information to the effect that the appellant was carrying the contraband. He also admitted that he had received a secret information at about 4.45 p.m. on 18.04.2010. However, no special report on the basis of the secret information was sent to the higher police officers. He voluntarily stated that *Rukka* was sent to the police station. Thus, it is apparent that the mandatory provisions of Section 42(2) of the NDPS Act were not complied at the time of the search and seizure within the period prescribed by the statute.

11. Apart from that, even from the perusal of his entire testimony, it is not discernible that he had complied with the

mandatory provisions of Section 42(2) of the NDPS Act at the time of search and seizure or within the period prescribed by the statute. It has been held by the Hon'ble Supreme Court in plethora of judgments that the contents with the requirement of Section 42 (1) and Section 42(2) of the NDPS Act in regard to writing down the information received and sending a copy thereof to the superior officers should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situation the recording of information in writing and sending a copy thereof to official superior may get postponed by a reasonable period, i.e. after the search, entry and seizure. While total non-compliance of Section 42 is impermissible in law, delayed compliance with satisfactory explanation about the delay is acceptable compliance of Section 42 of the NDPS Act. In the instant case, there is complete non-compliance of the mandatory provisions of Section 42 of the NDPS Act. The first informant in the instant case had sufficient time to take action and to send a copy of the information, to the officer superior and in spite of the same, he did not adhere to the mandatory provisions of law.

12. It has been held by the Hon'ble Supreme Court in the matter of **State of Rajasthan Vs. Jag Raj Singh @ Hansa** 2016(3) R.C.R.(Criminal) 539 and AIR 2016 SC 3041 as follows:-

19. Thus the present is not a case where Section 43 can be said to have been attracted, hence, noncompliance of Section 42(1) proviso and Section 42(2) had seriously

prejudiced the accused. This Court had occasion in large number of cases to consider the consequence of non-compliance of provisions of Section 42(1) and 42(2), whether the entire trial stand vitiated due to above non compliance or conviction can be set aside. In this context reference is made to the judgment of this Court in State of Punjab v. Balbir Singh 1994(1) RCR (Criminal) 736 : (1994) 3 SCC 299. In the above batch of cases, the High Court has acquitted accused on the ground that search was conducted without conforming to the provisions of the NDPS Act. Sections 41,42 43 and other relevant provisions came for consideration before this Court, referring to the provisions of Chapter IV following was stated in paragraph 8:

"8. But if on a prior information leading to a reasonable belief that an offence under Chapter IV of the Act has been committed, then in such a case, the Magistrate or the officer empowered have to proceed and act under the provisions of Sections 41 and 42. Under Section 42, the empowered officer even without a warrant issued as provided under Section 41 will have the power to enter, search, seize and arrest between sunrise and sunset if he has reason to believe from personal knowledge or information given by any other person and taken down in writing that an offence under Chapter IV has been committed or any document or other article which may furnish the evidence of the commission of such offence is kept or concealed in any building or in any place. Under the proviso if such officer has reason to believe that search warrant or authorisation cannot be obtained without affording opportunity for the concealment of the

evidence or facility for the escape of the offender, he can carry out the arrest or search between sunset and sunrise also after recording the grounds of his belief. Subsection (2) of 8 1990 Cri LJ 414 (Del) Section 42 further lays down that when such officer takes down any information in writing or records grounds for this belief under the proviso, he shall forthwith send a copy thereof to his immediate official superior."

20. After referring large number of cases, this Court recorded conclusion in paragraph 25 which is to the following effect:

"25. The question considered above arise frequently before the trial courts. Therefore we find it necessary to set out our conclusions which are as follows :

(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal. Likewise only empowered officers or duly authorised officers as enumerated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out

such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial. (3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total noncompliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the provisions 'of Sections 100 and 165 Cr.P.C. including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of CrPC namely Sections 100 and 165 Cr.P.C. and if there is no strict compliance with the provisions of CrPC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case."

13. It has also been held by the Hon'ble Supreme Court in the matter of **Boota Singh Vs. State of Haryana 2021 (2) RCR Criminal 892 and 2021 AIR (SC) 1913** as follows:-

10. In Karnail Singh, the Constitution Bench of this Court concluded:-

"35. In conclusion, what is to be noticed is that Abdul Rashid [(2000) 2 SCC 513 : 2000 SCC (Cri) 496] did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham [(2001) 6 SCC 692 : 2001 SCC (Cri) 1217] hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special

circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

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

(Emphasis added)

11. In Jagraj Singh alias Hansa, the facts were more or less identical. In that case, the vehicle (as observed in para 5.3 of the decision) was not a public transport vehicle. After considering the relevant provisions and some of the decisions of this Court including the decision in Karnail Singh, it was observed:-

"14. What Section 42(2) requires is that where an officer takes down an information in writing under sub-section (1) he shall send a copy thereof to his immediate officer senior. The communication Ext. P-15 which was sent to the Circle Officer, Nohar was not as per the information recorded in Ext. P-14 and Ext. P-21. Thus, no error was committed by the High Court in coming to the conclusion that there was breach of Section 42(2).

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16. In this context, it is relevant to note that before the Special Judge also the breach of Sections 42(1) and 42(2) was contended on behalf of the defence. In para 12 of the judgment the Special Judge noted the above arguments of defence. However, the arguments based on non-compliance with Section 42(2) were brushed aside by observing that discrepancy in Ext. P-14 and Ext. P-15 is totally due to clerical mistake and there was compliance with Section 42(2). The Special Judge coming to compliance with the proviso to Section 42(1) held that the vehicle searched was being used to transport passengers as has been clearly stated by its owner Vira Ram, hence, as per the Explanation to Section 43 of the Act, the vehicle was a public transport vehicle and there was no need of any warrant or authority to search such a vehicle. The High Court has

reversed the above findings of the Special Judge. We thus, proceed to examine as to whether Section 43 was attracted in the present case which obviated the requirement of Section 42(1) proviso.

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29. After referring to the earlier judgments, the Constitution Bench came to the conclusion that non-compliance with requirement of Sections 42 and 50 is impermissible whereas delayed compliance with satisfactory explanation will be acceptable compliance with Section 42. The Constitution Bench noted the effect of the aforesaid two decisions in para 5. The present is not a case where insofar as compliance with Section 42(1) proviso even an argument based on substantial compliance is raised there is total non-compliance with Section 42(1) proviso. As observed above, Section 43 being not attracted, search was to be conducted after complying with the provisions of Section 42. We thus, conclude that the High Court has rightly held that non-compliance with Section 42(1) and Section 42(2) were proved on the record and the High Court has not committed any error in setting aside the conviction order."

(Emphasis added)

14. From the above referred observations, it is apparent that there has been total non-compliance of requirement of Section 42 of the NDPS Act, which is impermissible in law.

15. Apart from that, I find sufficient force in the arguments raised by the learned counsel for the appellant that Form No. 29 was

not filled at the spot. The prosecution examined PW3 SI Mohinderjit Singh, who stated that Form No. 29 was partially filled at the spot. However, it is apparent from the Form No. 29, it was in a printed form. The prosecution examined PW2 ASI Chiman Lal, who was part of the raiding team and he admitted that Form No. 29 was filled through computer. He further admitted that there was no computer with the police party nor any laptop, printer or key board were there with the police party. He further admitted that on Form No. 29, the date of 05.05.2010 was mentioned whereas the alleged recovery of contraband had taken place from the appellant on 18.04.2010. Thus, it is apparent that Form No. 29 was not prepared at the spot. Still further, admittedly, in the present case, Suridner Kumar was associated by the police party before the alleged recovery. However, the prosecution did not examine Surinder Kumar in the present case to lend corroboration to the prosecution case and the testimonies of the official witnesses remained uncorroborated. Even, the sample was taken on 18.04.2010 and surprisingly sample was taken out of one vial of Rexcof, whereas 200 vials of Rexcof were recovered. Still further, there was delay in sending the samples to the FSL and it was sent to the FSL on 06.05.2010 after a long delay, which has not been explained by the prosecution.

16. In view of the above discussion, this Court has no hesitation to hold that there was complete non compliance of the mandatory provisions of Section 42 of the NDPS Act. Apart from

that, the prosecution has also not been able to prove the case beyond the shadow of reasonable doubt, in view of the findings recorded above. Consequently, the present appeal is accepted and the impugned judgment of conviction and order of sentence dated 27.03.2014 passed by the Special Court (Fast Track Court) Bathinda, are set aside and the appellant is ordered to be acquitted of the charge.

17. All pending applications, if any, are disposed of, accordingly.
18. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.
19. Records of the Court below be sent back.

11.12.2023

amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No