

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.351 of 2004**

1. Jugal Kishore @ J.K. Sharma S/o Late Mahavir Mistri R/o vill - Kanhaiyaganj, P.S.- Akangar Sarai, Distt.- Nalanda, at present R/o vill - Chhoti Pahari, Mansoor Nagar, Sohsarai, Distt.- Nalanda (Case against the appellant was abated vide Honourable Court order dated 20-02-2025)
2. Bali @ Bal Ram Narayan Sharma S/o J.K. Sharma R/o vill - Kanhaiyaganj, P.S.- Akangar Sarai, Distt.- Nalanda, at present R/o vill - Chhoti Pahari, Mansoor Nagar, Sohsarai, Distt.- Nalanda
3. Dhananjai Sharma S/o Bharat Sharma R/o vill - Kanhaiyaganj, P.S.- Akangar Sarai, Distt.- Nalanda, at present R/o vill - Chhoti Pahari, Mansoor Nagar, Sohsarai, Distt.- Nalanda (Case against the appellant was abated vide Honourable Court order dated 20-02-2025)
4. Dinesh Mistri S/o Ishwar Mistri R/o vill - Kanhaiyaganj, P.S.- Akangar Sarai, Distt.- Nalanda, at present R/o vill - Chhoti Pahari, Mansoor Nagar, Sohsarai, Distt.- Nalanda (Case against the appellant was abated vide Honourable Court order dated 20-02-2025)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mrs.Shweta Anand, Advocate

For the Respondent/s : Mr.Syed Ashfaque Ahmad, APP

**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY**

**ORAL JUDGMENT**

**Date : 24-04-2025**

1. The appeal is arising out of the judgment and order of conviction dated 30.04.2004 on the file of Additional District & Sessions Judge, Fast Track Court No. I, Nalanda, at Biharsharif, in Sessions Trial No. 168 of 1993/96 of 2000, arising out of Sohsarai P.S. Case No. 251 of 1991, GR Case No. 2128 of



1991 by which the Appellant No. 1 Jugal Kishore @ J.K. Sharma was convicted and sentenced to undergo rigorous imprisonment for a period of three years for the offence punishable under Section 25(1) (A) and to undergo rigorous imprisonment for one year for the offence punishable under Section 25(1-B)(i) and rigorous imprisonment for a period of five years for the offence punishable under Section 26(2) of the Arms Act. Further, the Appellant No. 2/Bali @ Balram Narayan Sharma and Appellant No. 4/Dinesh Mistri were sentenced to undergo rigorous imprisonment for a period of three years for the offence punishable under Section 25(1-A) and to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 25(1-B)(i) and to undergo rigorous imprisonment for a period of five years for the offence punishable under Section 26(2) r/w Section 35 of the Arms Act.

2. The record reveals that all the appellants were released on bail, by this Court vide order dated 03.06.2004. During pendency of the criminal appeal, this Court called for a report from the



Superintendent of Police, Nalanda to verify the status of the appellants. Pursuant to it, this Court received the report of the Superintendent of Police, Nalanda which disclose that Appellant No. 1/Jugal Kishore, Appellant No. 3/Dhananjay Sharma and Appellant No. 4/Dinesh Mistri died long back. However, Appellant No. 2/Bali @ Balram Narayan alone is alive. This Court has abated the criminal appeal against Appellant No. 1, Appellant No. 3 and Appellant No. 4 vide order dated 20.02.2025.

3. The case of the prosecution, as per the self-statement of the Sub-Inspector (SHO) of Murarpur Police Station dated 21.07.1991 at 12:30 noon, which was prepared at the house of Appellant No. 1/J.K. Sharma of Chhoti Pahari, Mansoor Nagar, Sohsarai P.S., is that at about 10:00 AM, the Deputy Superintendent of Police, Biharsharif, Shri Md. M. Rahman, informed him that an illegal gun factory was being operated at the house of Appellant Nos. 1 and 3, located at Chhoti Pahari, Mansoor Nagar. Under the leadership of the Deputy Superintendent of Police, Biharsharif, Sub-Inspector Shri Sant Kumar



Singh (informant), Deputy Superintendent of Police Shri Md. M. Rahman, and other police officials, namely S.I./Alakh Kumar Pandey (PW-5), ASI/Aftab Alam (not examined), Head Constable/Akil Ahmad (PW-2), Constable No. 378/Dwarika Pandey (Driver of the Deputy Superintendent of Police; not examined), Constable No. 407/Bharat Prasad (Bodyguard of the Deputy Superintendent of Police; not examined), Constable No. 127/Ramdhari Singh (not examined), Constable No. 837/Kamakhya Narayan Singh (Driver; not examined), Home Guard/Constable No. 4014-Brajnandan Prasad (not examined), Constable No. 3414/Rambalak Prasad (not examined), Constable No. 3975/Abhay Kumar (not examined), Constable No. 3647/Chamru Paswan (PW-3), Constable No. 3624/Vijay Kumar (PW-4), and Constable No. 1037/Dayashankar Prasad (not examined), (the police party) departed at about 10.30 a.m. from Murarpur Police Station towards Chhoti Pahari, Mansoor Nagar. The self-statement of PW-1 (informant) further disclose that upon reaching Chhoti Pahari, Mansoor Nagar, at



about 11:00 AM, the police party surrounded the house of Jugal Kishore Sharma (Appellant No. 1) and Dhananjay Prasad Sharma (Appellant No. 3). The informant attempted to locate independent witnesses to conduct the search, in accordance with law. However, as independent witnesses could not be found, on the orders of the Deputy Superintendent of Police, the search was conducted in the presence of PW-4, a Constable and resident of Rasulpur under Noorsarai P.S., and PW-3, a Constable and resident of Nalanda P.S., who acted as search witnesses. During the search of the house of Appellant No. 1, large quantity of iron equipment used for running an illegal gun factory was recovered, along with a country-made pistol, five live cartridges of .315 bore (caliber) and a partially made pistol.

The following articles were seized from the house of Appellant No. 1:—

- (1) One Iron base
- (2) 10 pieces of line



(3) 10 pieces of iron shumba (hook and tools)

(4) Iron chisel-06

(5) Saw Machine to cut the iron

(6) Hammer-02

(7) Iron made taps file-01

(8) Screw driver-01

(9) Pliers 29 X iron

(10) One half country made pistol

(11) One country made pistol whose barrel length are about 10 finger, length of the body about five finger length and butt about 06 finger length

(12) Five live cartridges of 0.315 caliber.

(13) One knife

(14) One leather

(15) One iron chain

(16) Two iron bars

(17) One small article made of iron were seized.

Further they also seized the following articles from the house of appellant No. 3:-

(1) On saw to cut iron



(2) Iron made Berma (a type of equipment)  
fixed with wooden handle

(3) Frame of pistols body, iron made ganti (a  
sharp pointed edged equipment)

(4) Basuli (a type of equipment)-01

(5) Two iron made rasp file

(6) Plyers (made of iron)-2

(7) Iron base-01

(8) Iron hammer-01

(9) Small iron chiesel-01

(10) Small iron made hammer-02

(11) Iron hammer -01

(12) Iron screws-03

(13) Parts to make country made pistol

(14) Empty round of 0.315 bore

(15) One iron spade

4. The self-statement further disclose that they inquired with all the four appellants, but they failed to give a satisfactory reply or produce any valid documents. As the illegal production and recovery of the country-made pistol, from the house constituted a cognizable offence, the articles were



recovered, after preparing the seizure list as per law, in the presence of Chamru Paswan (PW-3) and PW-4. A copy of the seizure list was provided to all the appellants, who affixed their signatures and thumb impressions on it. The self-statement further disclose that, as it is a cognizable offence under the Arms Act, three of the appellants were arrested in the presence of PWs 2 to 4. Since the jurisdiction falls under Sohsarai Police Station, the self-statement of PW-1, along with the arrested accused, seized articles, and the seizure list, were forwarded and referred to the Station House Officer, Sohsarai.

5. The FIR reveals that the accused were arrested by the Station House Officer of Biharsharif Police Station. Admittedly, the question of jurisdiction arises as to whether the alleged seizure, falls under the jurisdiction of Sohsarai Police Station? The raid was conducted under the guidance of the Deputy Superintendent of Police, Biharsharif, along with police officials of Murarpur Police Station, and the FIR was registered by



Biharsharif Police Station. However, the charge-sheet discloses that the investigation was conducted by Sohsarai Police Station.

6. On completion of the investigation, the Investigating Officer, Sohsarai has laid chargesheet against all the accused for the aforesaid offences. The trial Court has framed charges on 08.10.1993 against Dhananjay Sharma for the offence punishable under Section 26(2) of the Arms Act, read over and explained to him in Hindi for which the appellant No. 3/Dhananjay Sharma pleaded not guilty and claimed to be tried. On the same date all the appellants including Jugal Kishore @ J.K. Sharma were charged for the offence punishable under Sections 25(1)(A), 25(1-B)(i) and 26(2) of the Arms Act, read over and explained to them in Hindi for which they pleaded not guilty.

7. It is pertinent to mention that charges under Sections 25(1-A), 25(1)(B)(i) and 26(2) were not framed against the appellant No. 2/Bali @ Balram Sharma.



8. Further, all the appellants were examined under Section 313 of Cr.P.C for the incriminating evidence found against them. All the accused pleaded innocent and denied the incriminating evidence of prosecution.

9. During the course of trial, PWs-1 to 5 were examined and Exhibits 1, 1/1, 1/2, 1/4, Exhibits-2, 2/1, 2/2, Exhibits-3 to 4 were marked. The details of the prosecution witnesses as well as the exhibits are given below in the chart.

| Prosecution witness | Name                    |
|---------------------|-------------------------|
| PW-1                | Sant Kumar Singh        |
| PW-2                | Md. Akil Ahmad/Hawaldar |
| PW-3                | Chamru Paswan           |
| PW-4                | Vijay Kumar Singh       |
| PW-5                | Alakh Kumar Pandey      |

| Sl. No. | Exhibit     | Exhibit Detail                                                             |
|---------|-------------|----------------------------------------------------------------------------|
| 1.      | Exhibit-1   | Seizure list of J.K. Sharma                                                |
| 2.      | Exhibit-1/1 | Signature of the witness Vijay Kumar and Chamru Paswan on the seizure list |
| 3.      | Exhibit-1/2 | Signature of Balram Narayan Sharma on the seizure list                     |
| 4.      | Exhibit-2   | Seizure list of Dhananjay Sharma                                           |



|    |             |                                            |
|----|-------------|--------------------------------------------|
| 5. | Exhibit-3   | Self statement                             |
| 6. | Exhibit-4   | Formal FIR                                 |
| 7. | Exhibit-2/1 | Signature of Chamru Paswan on seizure list |
| 8. | Exhibit-2/2 | Signature of Vijay Singh on seizure list   |
| 9. | Exhibit-1/4 | Signature of Vijay Singh on seizure list   |

10. On behalf of defence, DW-1 was examined and through him Exhibits-A, A/1, B, C were marked. Further, the Court has examined another witness as court witness, who is an advocate clerk and Exhibit-I, I/1 were marked. The details of these exhibits are also given in the following chart:-

| Exhibits    | Details                                                  |
|-------------|----------------------------------------------------------|
| Exhibit-A   | License No. 031400261 dated 10.12.1977                   |
| Exhibit-A/1 | License No. 032404072 dated 16.05.1996                   |
| Exhibit-B   | Deposition of P-1 of Case No. 52/88                      |
| Exhibit-C   | Certified copy of judgment of GR Case No. 508/94         |
| Exhibit-I   | Application of SI Baijnath Rai for inspection of weapons |
| Exhibit-I/1 | Weapons inspection report                                |

11. On considering the entire oral and documentary evidence on record, the trial Court



convicted and sentenced all the appellants as aforesaid.

12. The points for determination in this appeal are:-

(i) Whether the trial Court has rightly convicted the accused for the charges levelled against the appellants?

(ii) Whether the prosecution was able to prove the guilt of the appellants for the offence punishable under Arms Act beyond reasonable doubt?

13. The Learned counsel for the appellant contended that in view of the abatement of criminal appeal against the appellant except Appellant no. 2, she restricts the arguments only with respect to Appellant No. 2/Balli @ Balram Sharma. It is contended by her that the seizure was made at the house of Appellant No. 1/Jugal Kishore, and Appellant No. 3. However, Appellant No. 2 was falsely implicated in this case, as he is the son of Appellant No. 1. She further contended that no specific role of Appellant No. 2 was attributed in the



case, and in spite of no charges Appellant No. 2 was convicted and sentenced for the offences punishable under Sections 25(1)(A), 25(1-B)(i), and 26(2) of the Arms Act, which is bad in law. She further urged that in the present case, investigation commenced prior to the lodging of the FIR, and that the documents were marked through a court witness, i.e., an advocate's clerk, for reasons best known to the prosecution, which ought not to have been done. She further contended that the trial court, without considering, whether the prosecution had established the guilt of the accused or not? came to a conclusion that "admitted facts need not be proved" under Section 56 of the Indian Evidence Act, which is also erroneous on the part of the trial Court. She further submitted that the self-serving statement does not disclose, the presence of the Deputy Superintendent of Police, Biharsharif, under whose instruction and guidance the present raid was conducted, and further the prosecution failed to examine the Investigating Officer which is also fatal to the case of the prosecution. She also



contended that the non-production of the seized articles is also fatal to the case of the prosecution.

14. She relied upon a catena of judgments of the Hon'ble Apex Court as well as various High Courts to support her contentions, which will be discussed at the relevant point of time. It is urged by the counsel for the appellant that all the witnesses were police personnel and that the search was not conducted in accordance with law, as per Section 100 or Section 165 of the Cr.P.C and prayed to set aside the judgment of trial Court and to acquit Appellant No. 2.

15. On the other hand, the Learned Additional Public Prosecutor contended that in certain cases, search and seizure can be conducted, prior to the registration of the FIR, and there is no error or irregularity on the part of the police officials and therefore, he prayed to uphold the judgment and dismiss the appeal. It is not necessary to re-appreciate the entire oral evidence, and re-appreciation would be done only to the extent necessary in this appeal.



16. Heard the Learned counsel for the appellant and the Learned Additional Public Prosecutor for the State.

17. The evidence of PW-1/Sant Kumar Singh, disclose that on 21.07.1991, he was the Station House Officer of Murarpur Police Station and at about 10:00 AM they received secret information that an illegal arms factory was being run at the houses of Appellant Nos. 1 and 3. At that particular point of time the Deputy Superintendent of Police was also present, at the said police station. As per the orders of the Deputy Superintendent of Police he, along with other police officials mentioned in the self-statement, proceeded to the houses of Appellant Nos. 1 and 3, which are adjacent to each other. They searched for independent witnesses but could not find anyone; therefore, the search was conducted as per the rules, in the presence of PW-3 and PW-4. During the course of the search, they found 17 articles, including items used for manufacturing guns and pistols, as well as pellets, at the house of Jugal Kishore. A search list was



prepared, i.e. Exhibit-1. The signature of PW-1 on the search list is Exhibit-1/1. The signatures of Appellant Nos. 1 and 2 on Exhibit-1 are Marked as Exhibit-1/2. His evidence further disclose that the accused persons, except Appellant No. 1 (who fled), were arrested. His testimony also states that a raid was conducted at the house of Appellant No. 3 and articles were seized vide seizure list/Exhibit-2. The signature of Appellant No. 3 was also obtained on the seizure list. The signatures on the seizure list include: Exhibit-2/1, Exhibit-1/1 (signatures of the witnesses PW-3 and PW-4); Exhibit-1/2 is the signature of Appellant No. 2; Exhibit-1/3 is the signature of PW-3; Exhibit-1/4 is the signature of PW-4; Exhibit-2/2 is the signature of PW on the seizure list; Exhibit-2/1 is the signature on the self-statement of PW-1; Exhibit-3 is the self-statement; and the formal FIR is marked as Exhibit-4.

18. In the cross-examination, PW-1 admitted that they had not recorded facts about the secret information in the general diary and the Deputy Superintendent of Police had not given any



written instruction for conducting the raid. The place of occurrence where the seizure was made falls under the jurisdiction of Sohsarai PS. PW-1 admitted that they had not given any information of raid to Sohsarai P.S. and did not know whether the Deputy Superintendent of Police had given any such information to Sohsarai P.S. It is stated by PW-1 that considering the fact that no persons have come forward to act as witness, police constables acted as witnesses to the seizure list. Further there was no time to secure witnesses from the locality. The informant also admitted that he did not prepare any search list; it was prepared by the constables. He also admitted that the seized articles were not produced before the Court. Further, the Deputy Superintendent of Police was present during the course of the raid, but his name was not mentioned in the list of witnesses or in the fardbeyan.

19. The evidence of PW-2/Havildar Md. Akil Ahmad, disclose that on 21.07.1991, he was posted as a bodyguard, at the headquarters of the Deputy Superintendent of Police and went to Murarpur



Police Station along with the Deputy Superintendent of Police. Further, the Deputy Superintendent of Police had received secret information about the manufacturing of illegal arms. On that basis, the Deputy Superintendent of Police, along with the informant and other police officials, proceeded to the houses of Appellant Nos. 1 and 3 and conducted the raid. His evidence further disclose that he was also a member of the raiding party and, upon entering the house, he found 17 pieces of equipment used for manufacturing pistols, which were recovered. The seizure list was drafted on the spot and signed by the witnesses. Thereafter, they also raided the house adjacent to that of Appellant No. 3, in which they found a semi-manufactured country-made pistol and other articles. After completing the raid, three of the appellants, i.e., Appellant Nos. 2 to 4, were arrested, but the 1st appellant fled away. In cross-examination, he specifically admitted that he had been working with the Deputy Superintendent of Police since 1990 as a bodyguard, but he did not produce any proof to



prove it. He cannot state from whom they received the secret information and could not recall whether he had gone to the house or office of the Deputy Superintendent of Police on the said date. He further testified that he reached the place of occurrence at 10:30 AM on the said day. Initially, the house of Appellant No. 1 was raided. He did not enter the house of the appellant No. 1 remained outside, while the officials entered. Initially, the neighbours have not come out of their houses, but after the raid, they came out. He also testified that he could not recall the boundaries of the place of occurrence and that the seized articles were brought out of the house. He could not say at what time the seizure list was prepared. He further testified that he did not enter the house of Appellant No. 3 and cannot say, what articles were seized from the said house.

20. The evidence of PW-3/Chamru Paswan, disclose that on 21.07.1991, he accompanied the raiding party to the houses of Appellant Nos. 1 and 3 and total 15 articles were recovered from the



house of Appellant No. 3, and 17 articles were recovered from the house of Appellant No. 1. Those articles related to the manufacturing of firearms. He further testified that the seizure list was prepared by the Sub-Inspector, in his presence, and upon reading the contents, he understood and signed the seizure list. His signatures on the seizure list were got marked as Exhibits-2/1 and 1/1. In cross-examination, he also testified that he did not enter the houses of the appellants and stayed outside the house.

21.The evidence of PW-4 is also on the same lines as that of PW-3. He was arrayed as witness, along with Vijay Kumar, to the seizure list at the houses of Appellant Nos. 1 and 3. However, his evidence contradicts with that of PW-3, Chamru Paswan, regarding the number of articles seized from the houses.

22. It is pertinent to mention that PW-3/Chamru Paswan, stated that 15 articles were recovered from the house of Dhananjay Sharma/Appellant No. 3, and 17 articles were



recovered from the house of Appellant No. 1. However, the evidence of PW-4 disclose that 15 and 1 articles were recovered from the houses of Appellant Nos. 3 and 1 respectively. The signatures of PW-4 on the seizure list are marked as Exhibits-2/2 and 1/4. In cross-examination, PW-4 specifically stated that he did not enter the houses of Appellant Nos. 3 and 1 and saw the seized articles only when they were brought outside the houses. On appreciaton of the evidence of PWs-3 and 4, it can be construed that they were not present at the time of actual seizure and the articles alleged to have been seized from the houses of Appellant Nos. 1 and 3 were shown to them, only after the completion of the seizure proceedings.

23. The evidence of PW-5/Alakh Kumar Pandey, disclose that he accompanied the raiding party along with the SHO of Murarpur PS, and that the raid was conducted in the presence of two independent witnesses. It is not the case of the prosecution that the raid was conducted in the presence of independent witnesses, therefore, the



evidence of PW-5 is no way helpful to the prosecution.

24. PW-1/the informant, in his self-statement, i.e., Exhibit-3, clearly stated that he could not procure independent witnesses but proceeded with the search proceedings as per the instruction of the Deputy Superintendent of Police, by showing PWs-3 and 4 as witnesses to the search and seizure. This fact was corroborated from the evidence of PWs-3 and 4 as well.

25. As stated supra, PW-5 alone testified that the seizure was made in the presence of two independent witnesses. On perusal of Exhibits-1 and 2, the first and second seizure lists, it is also evident that there were no independent witnesses to the seizure.

26. In cross-examination, PW-5 testified that he cannot recollect how many members were in the raiding party and cannot describe the boundaries of the houses where the raid was conducted. He also testified that he cannot state the details of the articles which were seized.



27. The evidence of DW-1, Dr. Uttam Kumar Sinha, disclose that he personally knew the appellants. He stated that Appellant No. 2 is the son of Appellant No. 1, Appellant No. 4 is the son-in-law, and Appellant No. 3 is the neighbour of Appellant No. 1. The appellants are the carpenters by profession and were engaged in carpentry work since 1974. The evidence further disclose that Appellant No. 1 held licence No. 3300261 dated 10.12.1977 for "Vishwakarma Kashtha Kala" (weapon related work), issued by the General Manager of Udyog Vibhag (Industries Department), Shri Ram Chandra Prasad, which is Exhibit-A. The appellants remained engaged in their business. About five years ago, they also started manufacturing iron guns, for which a license was issued vide license No. 032404072 dated 16.05.1996 by the Udyog Vibhag (Industries Department) in the name of Appellant No. 1 under the name "Vishwakarma Udyog Kendra," Mansoor Nagar. The said license was marked as Exhibit-A/1. The licence bears the signature and stamp of the



General Manager of Udyog Vibhag, Shri Prakash Toppo. DW-1 further testified that the equipment seized such as Sarsi, Chheni, Hammer Nihai, File (Reti), electrical welding equipments are commonly used in carpentry and iron smith work. He further testified that Appellant No. 1/Jugal Kishore, purchased furniture in the year 1988 and about one and a half months ago, there was a quarrel between Appellant No. 1 and one Sitaram Kant. The said Sitaram, along with six armed police personnel, seized all the equipment, for which Appellant No. 1 filed a complaint case. Due to the police raid on the appellants' premises, their business was almost closed. Further, due to pressure by the police, the appellants filed a Sanha against the police. He further testified that Jugal Kishore/Appellant No. 1, had been working as an advocate clerk since 1977. In cross-examination, DW-1 testified that he holds licence as an Ayurvedic doctor and was residing in his house in Mansoor Nagar, Chhoti Pahari. He also testified that he was present at the time of search and seizure. He denied the suggestion that the



seized articles were prepared. Prior to search and seizure with the signature of PWs-3 and 4 and the copies of the seizure list were handed over to the appellants. The Court witness is an advocate clerk through whom Exhibit-I and Exhibit-I/1 were got marked. Exhibit-I is the application of SI Baijnath Rai for explanation of weapon, and Exhibit-I/1 is the weapon Inspection Report. In cross-examination, CW-1 admitted that he never worked with Baijnath Rai or Binod Kumar, and cannot identify their signatures or handwriting.

28. On perusal of the entire oral evidence, it is evident that all the witnesses for prosecution are police officials. The raid was conducted at the instance of the Deputy Superintendent of Police, Md. M. Rahman of Biharsharif. The raid was carried out within the jurisdiction of Sohsarai PS by police officials of Murarpur PS. The evidence of PW-1 disclose that the seizure-list and the arrested accused were forwarded to Sohsarai PS. The FIR clearly disclose that it was registered at Biharsharif PS and not at Sohsarai PS. Therefore, the police



personnel who conducted the raid have no territorial jurisdiction, as it comes under the jurisdiction of Sohsarai PS. It is relevant to mention that the Deputy Superintendent of Police, on whose instruction the raid was conducted, was not examined before the court to explain the source of information, about the illegal gun factories. It is the specific evidence of PW-1 and PW-2 that the Deputy Superintendent of Police was present throughout the raid and that, at his instance, Exhibit-3 (the self statement of PW-1) was drafted. However, Exhibit-3 does not bear the signature of the Deputy Superintendent of Police, Md. Rahman, to prove his presence at the time and place of occurrence. Therefore, this Court is of the considered view that the Deputy Superintendent of Police did not accompany the raiding party at the time of the raid conducted on 21.07.1991 at about 11:00 AM at the house of appellant Nos. 1 and 3. The police cannot conduct a raid if they lack territorial jurisdiction. However, in the present case, the informant/PW-1 conducted the raid at the instance of the Deputy



Superintendent of Police, which is fatal to the case of the prosecution.

29. The Learned counsel for the appellant has relied upon the judgment of the Karnataka High Court in the case of **Christy Fried Gram Industry & Ors. vs. State of Karnataka & Ors.** reported in 2015 SCC OnLine Kar 6816 which is writ petition along with other criminal writ petitions wherein his Lordship have held as follows:-

**33.** *The learned counsel for the petitioners placed reliance on the decision in L Shankar Murthy v. State by Lokayuktha Police, reported in 2012 (5) Kar.L.J. 545 where this Court has dealt with the effect of investigation prior to registration therein. Para-33 reads as follows:-*

*33. The scheme of Cr.P.C. also makes it clear that, Section 157 of Cr.P.C. gives power to the police officer to take up investigation only after sending a report to the Magistrate, and power to take cognizance of such offence where the officer concerned, from the information received or otherwise, has reason to suspect the commission of*



*an offence which he is empowered to investigate under Section 156 of Cr PC, he shall follow the requirements of Section 157 before embarking upon the investigation. It is, therefore, clear from the aforesaid provisions of CrPC that the police officer concerned cannot proceed with the investigation without first registering the case upon the information received by him.*

*35. In the light of the aforesaid position in the law laid down by the Apex Court in particular in the aforementioned cases, the entire proceeding leading to conducting the seizure panchanama even without registering the cases as required under Section 154 of the Cr.P.C. is illegal, contrary to law and is in violation of the mandatory provisions of the Cr.P.C. and the act on the part of the Police Officer concerned is nothing but an act which could be termed as abuse of the process of law.*

*45.....as of now, the settled position in law is registering the case upon the information*



*received is sine qua non before proceeding to take up the investigation.*

*46. Thus, the entire procedure followed by the concerned Police Officer is an abuse of the process of law and, therefore, I have no hesitation in agreeing with the contentions put forward by the learned Counsel for the petitioners that these cases are fit enough to be brought within the rarest of rare cases and in order to prevent abuse of the process of law and to meet the ends of justice, exercise of inherent power conferred under Section 482 of the Cr.P.C, therefore, becomes imperative and inevitable".*

30. In this regard, the Hon'ble Apex Court in **Shashikant vs. Central Bureau of Investigation & Ors.** reported in **2007 (1) SCC 630**, wherein their Lordships have held as follows:

*"24. Thus, registration of a case is a sine qua non for starting investigation (see Mohindro v. State of Punjab)"*



31. In the case of **Mohindro vs. Sate of Punjab & Ors.** reported in **2001 (9) SCC 581**, their Lordships have held as follows:-

*There cannot be any enquiry without registering a criminal case.*

32. The Learned counsel for the appellant has also relied upon the case of **State of Punjab vs. Balbir Singh** reported in **1994 (3) SCC 299** wherein their Lordships have held as follows:-

*6. At this juncture we may also dispose of one of the contentions that failure to comply with the provisions of CrPC in respect of search and setzure even up to that stage would also vitiate the trial. This aspect has been considered in a number of cases and it has been held that the violation of the provisions particularly that of Sections 100, 102, 103 or 165 CrPC strictly per se does not vitiate the prosecution case. If there is such violation, what the courts have to see is whether any prejudice was caused to the accused and in appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation*



*and from that point of view evaluate the evidence on record. Under Section 100 CrPC the officer d conducting search under a warrant should call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search. Section 165 CrPC lays down that whenever an officer-in-charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer after recording in writing the grounds of his belief and specifying in such writing, may proceed to search or to cause search to be made. Section 165(4) lays down that the provisions of this*



*Code as to search warrants and the general provisions as to searches contained in Section 100 shall, so far as may be, apply to a search made under Section 165 also. The scope of these two sections have been examined in a number of cases. In State of Punjab v. Wassan Singh' this Court has clearly held that irregularity in a search cannot vitiate the seizure of the articles. In Sunder Singh v. State of U.P. it is held that irregularity cannot vitiate the trial unless the accused has been prejudiced by the defect and it is also held that if reliable local witnesses are not available the search would not be vitiated. In State of Maharashtra v. P.K. Pathak it is held that absence of any independent witness from the locality to witness the search does not affect the trial and the conviction of the accused under the Customs Act. In Radha Kishan v. State of U.P. it is held that irregularity in a search would, however, cast a duty upon the court to scrutinise the evidence regarding the search very carefully. In Matajog Dobey v. H.C. Bhari it is held that when the salutary provisions have not been complied with, it*



*may, however, affect the weight of the evidence in support of the search or may furnish a reason for disbelieving the evidence produced by the prosecution unless the prosecution properly explains such circumstance which made it impossible for it to comply with these provisions. In State of Maharashtra v. Natwarlal Damodardas Soni after referring to the above-mentioned decisions, this Court observed as under: (SCC p. 673, para 9)*

*"Taking the first contention first, it may be observed that the police had powers under the Code of Criminal Procedure to search and seize this gold if they had reason to believe that a cognizable offence had been committed in respect thereof. Assuming arguendo, that the search was illegal, then also, it will not affect the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs."*

**7.** *It therefore emerges that non-compliance of these provisions i.e. Sections 100 and 165 CrPC would amount to an irregularity and the effect of the same*



*on the main case depends upon the facts and circumstances of each case. Of course, in such a situation, the court has to consider whether any prejudice has been caused to the accused and also examine the evidence in respect of search in the light of the fact that these provisions have not been complied with and further consider whether the weight of evidence is in any manner affected because of the non-compliance. It is well settled that the testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official but as a rule of caution and depending upon the circumstances of the case, the courts look for independent corroboration. This again depends on question whether the official has deliberately failed to comply with these provisions or failure was due to lack of time and opportunity to associate some independent witnesses with the search and strictly comply with these provisions. In Deepak Ghanshyam Naik v. State of Maharashtra a case arising under the NDPS Act, a Division Bench of the Bombay High Court considered the effect of non-*



*compliance of Section 100(4) namely that two or more independent respectable inhabitants of the locality were not called to be present during the search and that on the other hand two Panchas of different locality were called to be present. The Division Bench considered the explanation that Parnaka was at a distance of half a kilometre from the place of occurrence and they called the Panch witnesses from that place and that they could not call somebody present on the road where the incident took place and held that there was no material to hold that Panch witnesses from Parnaka were in any way motivated to falsely implicate the accused. In Sunil Kumar v. State again a case arising under the NDPS Act, the Delhi High Court while considering the scope of Section 42 of the NDPS Act and Section 100(4) of CrPC observed that failure to associate independent persons in the search in a given situation would not affect the prosecution case in toto and the same cannot be thrown out or doubted on that ground alone. In this case it has also been observed that provisions of Sections 41 or 42*



*would not be attracted at this stage when the police had secret information that some persons would be reaching in a public place while in transit and the information was not about the specific presence of a contraband but was only about the likelihood of such articles being brought. It thus emerges that when the police, while acting under the provisions of CrPC as empowered therein and while exercising surveillance or investigating into other offences, had to carry out the arrests or searches they would be acting under the provisions of CrPC. At this stage if there is any non-compliance of the provisions of Section 100 or Section 165 CrPC that by itself cannot be a ground to reject the prosecution case outright. The effect of such non-compliance will have a bearing on the appreciation of evidence of the official witness and other material depending upon the facts and circumstances of each case. In carrying out such searches if they come across any substance covered by the NDPS Act the question of complying with the provisions of the said Act including Section 50 at that stage would not arise. When the*



*contraband seized during such arrests or searches attracts the provisions of NDPS Act then from that stage the remaining relevant provisions of NDPS Act would be attracted and the further steps have to be taken in accordance with the provisions of the said Act.*

33. It is a settled proposition of law that any investigation conducted prior to the registration of FIR is not permissible.

34. In support of this, the Learned counsel for the appellant has relied on a judgment of Hon'ble Apex Court in the case of **Pradeep Nirankarnath Sharma vs. State of Gujarat & Ors.** passed in **SLP(Cri) No. 3154 of 2024** in paragraphs 4, 5, 10 and 11, wherein their Lordships have held as follows:-

**4.** *Aggrieved by the registration of multiple FIRS, the appellant approached the High Court of Gujarat by way of a writ petition under Articles 14, 20, 21, 22, and 226 of the Constitution of India. The primary relief sought in the writ petition was for the issuance of a writ of mandamus or any other*



*appropriate writ, order, or direction, directing the respondent authorities to conduct a preliminary inquiry before registering any further FIRs against him. The appellant contended that his Fundamental Rights, particularly his right to liberty under Article 21, were being violated due to successive and arbitrary registration of criminal cases without conducting a preliminary inquiry. He further contended that these FIRs were lodged with an ulterior motive to harass him and prevent him from effectively defending himself in the pending cases. In support of his submissions, the appellant placed reliance on the judgment of this Hon'ble Court in **Lalita Kumari v. Government of Uttar Pradesh & Ors.**, to argue that the registration of an FIR should be preceded by a preliminary inquiry in cases involving allegations of abuse of official position.*

**5.** *The State of Gujarat, opposing the petition, argued before the High Court that the relief sought by the appellant was legally untenable. It was contended that under the settled position of law, once information regarding the commission of a*



*cognizable offence is received, the police authorities are duty-bound to register an FIR under Section 154 of the Code of Criminal Procedure, 1973. The State further argued that granting the appellant's request for a mandatory preliminary inquiry would amount to granting him a blanket protection against investigation, which is impermissible under law. The State also submitted that the appellant's reliance on **Lalita Kumari (supra)** was misplaced, as the judgment itself clarified that preliminary inquiry is required only in limited categories of cases, such as family disputes, commercial matters, and medical negligence cases, and not where clear allegations of cognizable offences exist.*

**10.** *Per contra, the learned Solicitor General, appearing on behalf of the respondent-State, vehemently opposed the appeal, arguing that the petition itself is legally untenable and misconceived. It was submitted that the appellant has sought a blanket order directing the authorities to conduct a preliminary inquiry before the registration of an FIR, which is impermissible under*



*the settled principles of law. It was further contended that under Section 154 of the CrPC, the registration of an FIR is mandatory if the information received discloses the commission of a cognizable offence, and the police have no discretion to conduct a preliminary inquiry except in limited circumstances as laid down in **Lalita Kumari (supra)**. The State also asserted that there is no statutory provision requiring the accused to be given an opportunity to explain his position before the registration of an FIR, as such a practice would amount to granting an undue advantage to persons accused of serious offences and would hinder the investigation process. Additionally, it was argued that the appellant's plea, if granted, would set a dangerous precedent wherein public servants accused of corruption or misconduct could claim immunity by demanding a pre-FIR hearing. The respondent further contended that adequate legal safeguards are available to the appellant under the existing legal framework, including the right to seek anticipatory bail and the right to challenge malicious prosecution before the*



*appropriate Accordingly, it was urged that the appeal be dismissed.*

**11.** *We have carefully considered the submissions of the appellant and perused the records. The legal position regarding the registration of FIRs in cases of cognizable offences is well settled. This Court, in **Lalita Kumari (supra)**, has categorically held that the registration of an FIR is mandatory under Section 154 CrPC if the information discloses the commission of a cognizable offence. The relevant paragraphs from the judgment of this Court in **Lalita Kumari (supra)** are reproduced below:*

*"114. It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that*



*mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.*

#### *Exceptions*

*115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.*

#### *Conclusion/Directions*

*120. In view of the aforesaid discussion, we hold:*

***120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.***



*120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only ascertain whether cognizable offence is disclosed or not.*

*120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further."*

*[Emphasis supplied]*

35. The Learned counsel further relied on the judgment of the Hon'ble Supreme Court in the case of **Rhea Chakraborty v. State of Bihar** reported in **AIR 2020 SC 3826** wherein in para 18 and 20 their Lordship have held as follows:-

**18.** *The proceeding under Section 174 CrPC is limited to the inquiry carried out by the police to find out the apparent cause of unnatural death.*



*These are not in the nature of investigation, undertaken after filing of FIR under Section 154 CrPC. In the instant case, in Mumbai, no FIR has been registered as yet. The Mumbai Police has neither considered the matter under Section 175(2) CrPC, suspecting commission of a cognizable offence nor proceeded for registration of FIR under Section 154 or referred the matter under Section 157 CrPC, to the nearest magistrate having jurisdiction.*

**20.** *In the present case, the Mumbai Police has attempted to stretch the purview of Section 174 without drawing up any FIR and therefore, as it appears, no investigation pursuant to commission of a cognizable offence is being carried out by the Mumbai police. They are yet to register a FIR. Nor they have made a suitable determination, in terms of Section 175(2) CrPC. Therefore, it is pre-emptive and premature to hold that a parallel investigation is being carried out by the Mumbai Police. In case of a future possibility of cognizance being taken by two courts in different jurisdictions, the issue could*



*be resolved under Section 186 CrPC and other applicable laws. No opinion is therefore expressed on a future contingency and the issue is left open to be decided, if needed, in accordance with law.*

**21.***Following the above, it is declared that the inquiry conducted under Section 174 CrPC by the Mumbai police is limited for a definite purpose but is not an investigation of a crime under Section 157 of the CrPC.*

36. The Learned counsel for the appellant relied on a judgment passed in **Criminal Writ Petition No. 25 of 2019** in **Dnyaneshwar vs. The State of Maharashtra & Ors.** with respect to the procedure laid down under Section 165 Cr.P.C in paragraphs 15 and 18, their Lordships have held as follows:-

**15.** *In the case reported as **State v. Rehman (AIR 1960 SC 210)** it is laid down by the Apex Court that as search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. The provision of section 165 of the Cr.P.C. is enacted to*



*enable police to take search when there is urgency and when it is not permissible to follow lengthy process, securing search warrant from Magistrate, In the case of Rehman (cited supra) the Apex Court has laid down that as the provision of section 165(1) of the Cr.P.C is mandatory in nature, it should be strictly followed. Thus, before entering a house, investigating officer has to specify in writing the things for which search is to be made and also the ground of his belief that such things would be found in the house which is to be searched. In view of the wording of the provision it can be said that the provision is not restricted to search of what is stolen or believed to be stolen and it permits the police officer to make search for anything necessary for the purposes of investigation into any offence. Thus, on one hand the provision enables police to take search of the house for investigation of any crime, on the other, it becomes mandatory for police to record reasons as the first step before entering the house.*



**18.** *Learned counsel for the petitioner submitted that taking house search illegally itself amounts to infringement of privacy and such act is in breach of the fundamental rights given under Article 21 of the Constitution of India. In view of the aforesaid provision. and as police officers entered the house that too in night time when he was sleeping with his family which included two ladies and the issues, this Court holds that it was intrusion into privacy. If such act is done illegally without following the procedure which is contemplated in Article 21 of the Constitution of India, the consequences follow. In such a case, there cannot be defence that it was a mistake on the part of the police officers. On this point, learned counsel for the petitioner has placed reliance on the case reported as **AIR 2017 SC 4161 (Justice K.S. Puttaswamy v. Union of India)**. Facts and circumstances of each and every case are always different. It needs to be ascertained in every case as to whether the action of the officers was in breach of the fundamental rights given by provision*



*like Article 21 of the Constitution of India. If the Court comes to conclusion that the action was not in accordance with law, it was illegal the court is bound to give compensation.*

37. Further, the Learned counsel had placed reliance on the judgment passed in the case of **Harendra Rai vs. The State of Bihar** passed in Criminal Appeal No. 1726 of 2015 dated 18.08.2023 in paragraph 62, 63, 64 and 65, wherein their Lordships have held as follows:-

**62.** *According to the general procedure, facts need to be proved by adducing evidence in the Court of law, and the evidence must be produced in accordance with the procedure mentioned in the Indian Evidence Act, 1872. The doctrine of judicial notice, as provided under Section 56, is an exception to this rule.*

**63.** *Section 56 of the Evidence Act says that "No fact of which the Court will take judicial notice need to be proved." Section 57 of the Evidence Act goes one step further by providing that the Court has no other option but to take*



*judicial notice of the facts mentioned in the list given in the Section as it uses the word "shall" and not "may". Section 58 of the Evidence Act says that if the parties or their agents have agreed to admit a fact during the court proceeding or in writing before the hearing, then such fact need not be proved unless the Court believes that it needs to be proved. The aforementioned three Sections i.e. 56 to 58 of the Evidence Act are reproduced hereunder;*

*"56. Fact judicially noticeable need not be proved.--No fact of which the Court will take judicial notice need be proved.*

*57. Facts of which Court must take judicial notice.--The Court shall take judicial notice of the following facts:--[(1) All laws in force in the territory of India;] (2) All public Acts passed or hereafter to be passed by Parliament 1 [of the United Kingdom], and all local and personal Acts directed by Parliament 1 [of the United Kingdom] to be judicially noticed;*



*(3) Articles of War for [the Indian] Army [Navy or Air Force] (4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States;] (5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;*

*(6) All seals of which English Courts take judicial notice, the seals of all the [Courts in [India] and of all Courts out of [India] established by the authority of [the Central Government or the Crown Representative]; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by [the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in [India];*

*(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of*



*their appointment to such office is notified in [any Official Gazette];*

*(8) The existence, title and national flag of every State or Sovereign recognised by 10[the Government of India];*

*(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;*

*(10) The territories under the dominion of 10[the Government of India];*

*(11) The commencement, continuance and termination of hostilities between [the Government of India] and any other State or body of persons;*

*(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorised by law to appear or act before it;*

*(13) The rule of the road [on land or at sea]. In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its*



*aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.*

*58. Facts admitted need not be proved.--No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."*

**64.** *We are concerned with Section 56 of the Evidence Act, which deals with the authority of a Court to accept certain facts, which are either of common knowledge or from sources which guarantee the accuracy or are a matter of authoritative official record or court record, without*



*the need to establish such fact. The judicial notice of any fact is taken when the facts cannot reasonably be doubted.*

**65.** *This Court, in its various pronouncements, has taken support of Section 56 of the Evidence Act to do substantial justice in respective matters. Some of them are being reproduced hereinafter to get a better picture of how judicial notice is taken:*

*a) In the case of State of Kerala v. Unniz, in paragraph 27 it has been held as follows:*

*"27. Judicial notice can be taken of the fact that each village would not have a chemical laboratory where the process of analysis of ethyl alcohol can be carried out." For example, if a sample is taken in a village, by the time sample is sent for and is analysed, the volume of ethyl alcohol may increase. Although we are informed that some chemical is mixed when a sample is taken, no material has been placed in that behalf. (Emphasis added)*

*b) In the case of Prabhakara v. Basavaraj K.4, it was observed in paragraph no. 21 as follows:*



*"21. A relief can only be on the basis of the pleadings alone.*

*Evidence is also to be based on such pleadings. The only exception would be when the parties know each other's case very well 3 (2007) 2 SCC 365 4 (2022) 1 SCC 115 and such a pleading is implicit in an issue.*

*Additionally, a Court can take judicial note of a fact when it is so apparent on the face of the record.*

*(Emphasis added)*

*c) In the case of Ved Mitter Gill v. UT, Chandigarh, in paragraph 26, it was held as follows:*

*"26.....The links of the escaped undertrial prisoners with the Babbar Khalsa International, a known and dreaded terrorist organisation was also clearly expressed in the impugned order, as one of the reasons, for it being impracticable, to hold an inquiry against the appellant/petitioners. It is a matter of common knowledge, and it would be proper to take judicial notice of the fact, that a large number of terrorists came to be acquitted during the period in question, on account of the fact that witnesses did not appear to depose against them on account of*



*fear, or alternatively, the witnesses who appeared before the courts concerned for recording their deposition, turned hostile, for the same reason."*

*(Emphasis added)*

*d) In the case of Joseph M Puthussery vs T.S. Jhon and others, this Court was dealing with an appeal filed under Section 5 (2015) 8 SCC 86 6 (2011) 1 SCC 503 116 A of the Representation of People Act, 1951, against the order of a single bench of the High Court declaring the election of the appellant as Member of Kerala Legislative Assembly from No. 106, Kallooppara Constituency as void on the ground that he was guilty of the corrupt practice within the meaning of sub-Section 4 of Section 123 of the Act. While evaluating the findings recorded by the High Court, this Court considered the scope of Section 56 of the Evidence Act in paragraph 65 and observed as follows:*

*"65. The High Court has summarily described "Crime" Magazine to be a yellow journal. Whether "Crime" magazine is a yellow journal is a matter of opinion and not of fact. It is impossible to conclude*



*that an opinion of this sort is a judicially noticeable fact for the purposes of Section 56 or Section 57 of the Evidence Act, 1872. There is nothing in the impugned judgment which indicates that any evidence was led, much less considered as to whether "Crime" magazine is a yellow journal and hence magazine could not have been relied upon by the appellant in forming a belief that the contents of the magazine were not untrue." (Emphasis added)*

38. A police officer generally cannot conduct a raid if they lack territorial jurisdiction. However, there are exceptions. A police officer without territorial jurisdiction can still conduct a raid, if they have been specially authorized by a competent authority such as a senior officer to investigate a case within the relevant jurisdiction, or if they are acting under a warrant or court order that extends their jurisdiction. Additionally, if a police officer is pursuing a suspect accused of a cognizable offence they may pursue and arrest that suspect even across jurisdictional lines. In the present case neither the Deputy Superintendent of Police was examined



before the Court to establish that he issued authorization to PW-1/Sanat Kumar to conduct raid whether territorial jurisdiction of Sohsarai PS nor the Deputy Superintendent of Police was examined before the Court to corroborate that the raid was conducted at his instructions at the house of the appellants. Furthermore, it is not the case of the prosecution that PW-1 possessed warrant or court order to conduct raid in the jurisdiction of Sohsarai PS. PW-1 never suspected the appellants, prior to the raid that they have committed a cognizable offence. An investigation cannot be initiated without verifying First Information Report for a cognizable offences. The criminal law is set into motion only after registering of an FIR under Section 154 of Cr.P.C. An FIR is a legal document that initiates an investigation. The police are legally obligated to register an FIR upon receiving an information about a cognizable offence, and cannot conduct any preliminary enquiry before doing so. An FIR must be a prerequisite for an investigation which enables a police officer to commence such investigation. There



are certain cognizable offences for which the police may arrest and search the premises without a warrant under Section 47 of the Cr.P.C and later must inform the Court, the reasons for the search and the urgency necessitated for the search. In the present case, preliminary enquiry was also not conducted prior to the registration of the FIR. However, the search and seizure were conducted prior to registering of the FIR and that too without any independent witnesses. It once again reiterated that all the prosecution witnesses (PW-1 to PW-5) are police officials.

39. Section 56 of the Indian Evidence Act, 1872, states that facts which are judicially noticeable need not to be proven in court. This means that certain facts, like well-known scientific facts or events of public history, can be accepted by the court without formal proof. The purpose of this Section is to save the court's time and resources by avoiding the need to prove the facts that are already known or easily verifiable. However, the court is not obligated to take judicial note of every fact, it may



do so at its discretion particularly, of facts that are widely known or easily acceptable by the authoritative sources.

40. The Trial Court has erroneously observed in the judgment that “admitted facts need not be proved” contending that the raid was conducted in the presence of two independent witnesses, which was treated as admitted facts. It is the duty of the prosecution to prove these facts, and the question of conducting the raid cannot be treated as an admitted fact. Furthermore, the Trial Court has erroneously examined a Court Witness—an advocate’s clerk—and marked Exhibits I and I/I, which are said to be the application of the Sub-Inspector, Baijnath Rai, referred to the Sergeant Major. Exhibit I/I is the weapons inspection report. If the Trial Court found that Exhibits I and I/I falls under the category of documents referred to in Section 293 of the Cr.P.C., it ought to have marked the documents under Section 294 of the Cr.P.C. For the purpose of discussion, the relevant provisions of



Sections 293 and 294 of the Cr.P.C. are incorporated as below:

**Section 293- Reports of certain Government scientific experts.**—(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. (2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report. (3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf. (4) This section applies to the following Government scientific experts, namely:



*(a) any Chemical Examiner or Assistant Chemical Examiner to Government;*

*(b) the Chief Controller of Explosives;*

*(c) the Director of the Finger Print Bureau*

*(d) the Director, Haffkeine Institute, Bombay.*

*(e) the Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory*

*(f) the Serologist to the Government;*

*(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose.*

**"Section 294- No formal proof of certain documents-(1)** *Where any document is filed before any Court by the prosecution of the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*



*(2)The list of documents shall be in such form as may be prescribed by the State Government.*

*(3)Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion. require such signature to be proved."*

41. The Hon'ble Apex Court in **Shyam Narayn Ram vs. State of UP & Anr.** dated 21.10.2024 passed in **SLP (Crl.) Nos. 16282-16284 of 2023**, their Lordships have held as follows:-

**14. Section 294** of the CrPC reads as follows:

*"Section 294 documents No formal proof of certain document*

*1. Where any document is filed before any Court by the prosecution of the accused, the particulars of every such document shall be*



*included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*

*2. The list of documents shall be in such form as may be prescribed by the State Government.*

*3. Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion. require such signature to be proved."*

*15. A bare reading of the aforesaid provision, in particular, sub-section (3) provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. That is to say that if the*



*authors of such documents does not enter the witness box to prove their signatures, the said documents could still be read in evidence. Further, under the proviso the Court has the jurisdiction in its discretion to require such signature to be proved. In the present case, the documents filed by the investigating agency were all public documents duly signed by public servants in their capacities respective either as Investigating Officer or the doctor conducting the autopsy or other police officials preparing the memo of recoveries etc. As such the Trial Court had rightly relied upon the same and exhibited them in view of the specific repeated stand taken by the defence in admitting the genuineness of the said documents. In so far as the police papers which had been signed by private persons like the informant, the same had been duly proved.*

42. In the present case, the said documents were found to have been served to the appellants under Section 207 of Cr.P.C. However, the trial Court



marked these documents through an advocate clerk who had no knowledge about the contents of it.

43. At this juncture, it is relevant to rely on the judgment of this Hon'ble Bench of this Court passed in **Noor Hassan Ansari vs. The State of Bihar** reported in **Cr. APP (SJ) No. 68 of 2004** which reads as follows:-

*15. It is pertinent to mention that followings are criteria for marking a document:-*

*In order to have a documents marked by the Court as an Exhibit, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:-*

*"It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that :*

*(a) The "contents" of the document are proved (i.e. the document exists).*

*(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).*

*(c) In some cases, the witness who seeks to tender the document in evidence has*



*personal knowledge of the document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);*

*(d) The document is not inherently or ab initio inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration) and*

*(e) The document has been appropriately stamped, if so required by law.*

*16. (i). In order to prove contents of a document,*

*the witness through whom the document is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence.*

*(ii). As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if there is any. 19 The mere production of a document is not sufficient for the document to be marked as an exhibit.*

*(iii). Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on*



*the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document.*

*(iv). Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents.”*

*17. Furthermore, Rule 58 of the Criminal Rules Of Practice and Circular Orders, 1990 envisages about marking of exhibits which reads as follows:-*

***“58 Marking of exhibits:-***

*(1) Exhibits admitted in evidence shall be marked as follows:-*

*(i) if filed by the prosecution with the capital letter ‘P’ followed by a numeral, P1, P2,P3 and the like;*



*(ii) if filed by defence with the capital letter 'D' followed by a numeral, D1, D2, D3 and the like;*

*(iii) in case of Court exhibits with the capital letter 'C' followed by a numeral C1, C2, C3 and the like;*

*(2) All the exhibits filed by the several accused shall be marked consecutively. All material objects shall be marked in Arabic numbers in continuous series as M.O. 1, M.O.2 and M.O.3 and the like, whether exhibited by the prosecution or the defence or the Court."*

*18. This Court is unable to understand as to why the trial Court has not followed the procedure, while marking the Exhibits as per Rule 58 of Criminal Rules of Practice. Admittedly, the documents was said to be marked in 'X' series through P.W.-4.*

*19. At this juncture, it is relevant to rely on the judgments of Hon'ble Division Bench of this Court in the case of **Sukhi Yadav v. The State of Bihar** reported in **2014 SCC OnLine Pat 5721** wherein their Lordships have held as follows:-*

*"9. We fail to appreciate as to which law permits such a thing and how a Judge of standing of Additional Sessions Judge could do such a thing. First thing we must notice*



*that P.W.9 is an Assistant to an Advocate Clerk, who has nothing to do with the case, yet the Court permits him to step in as a prosecution witness. Moreover we have coined such witness as "Sankat Mochan witness". What more scandalized us is the trial court, which permits a person, who was nobody, to pick up the entire case diary from paragraphs 1 to 121 and prove it and make it a part of evidence. The court then proceeds further to mark it as Ext. 3 and then the court sits down to read entire case-diary in order to appreciate evidence. Nothing can be more scandalous. No such step is permissible in law. The trial court forgot the true import of section 172(2) of the Code of Criminal Procedure (for short 'Cr.P.C.'), which clearly states that any criminal Court may use such diaries, not as evidence in the case, but to aid it in such enquiry or trial. What the trial court has done is using it as evidence, making it as evidence and appreciating it as evidence, which is wholly impermissible in law. The diary can never be proved in a Court, for it cannot be used as evidence. No part of diary can be proved because if any one is proving it for the purposes of making it an evidence, such act is prohibited by law. The*



*law contemplates a reference to the diary only for the purposes of refreshing memory or contradicting the statements of witnesses in the Court with the statements made during the course of investigation. Only when it is used for refreshing memory, the procedure as envisaged under section 145 of the Evidence Act is to apply but that does not mean that diary can become evidence. Law prohibits such thing. We have found in cases after cases that in the State of Bihar, the Sessions Courts do not know or understand this distinction in law and in cases after cases the statements of witnesses recorded under section 161 of the Cr.P.C. are proved as evidences or other materials in the case- diary are proved as evidence and marked as exhibits. This is a practice that should end, the sooner the better. The other thing is that as to who is permitted to prove a document. It appears that in this State every Tom, Dick and Harry, the expression we have formed now "Sankat Mochan Witness", could come and prove any official document. In this case, an Assistant to Clerk of an Advocate, who has nothing to do in the case, has been permitted by the trial court to prove the entire case-diary and mark it as exhibit.*



*This practice is deprecated and it must come to an end. A person, who is author of a document or in absence of author, whose absence has to be explained, a person familiar with the handwriting of the author can only prove the document. The procedure adopted by the trial court is unknown to law. No sooner this practice ends than better it would be."*

20. The above citation squarely applies to the facts of the present case. Their Lordships have held that a person who is author of the document, or in absence of the author, (whose absence has to be explained), a person familiar with the handwriting of author can prove the documents. Their Lordships have further held that the procedures adopted by the trial Court are unknown to law, and such practices have to be ended.

44. In the present case, CW-1 had no knowledge about the documents which was said to be issued by the Inspector, Report centre of Nalanda. However, despite of it, the documents were marked as Exhibits. The trial Court ought to have followed the procedure under Section 294 of Cr.P.C for marking the documents by obtaining



consent of the appellants. Hence, this Court constrained to observe that the trial Court has not followed procedure of law as contemplated under Section 294 of Cr.P.C.

45. As stated (supra) trial Court has not framed charge under Section 25(1)(A), 25(1)(B)(i) or under Section 26(2) of the Arms Act. Charge for the offence punishable under Section 35 of the Arms Act only is framed against appellant no. 2. However, the appellant Balli @ Balram Sharma was convicted and sentenced for the offence punishable under Section 25(1)(A), 25(1-B)(i) and 26(2) r/w section 35 of the Arms Act. It is the specific contention of the Learned counsel for the appellant that in the absence of a charge for these specific offences there can be no conviction.

46. On perusal of the said sections it can be understood that offences are distinct from that of the Section 35 of the Arms Act.

47. The Learned counsel relied on a judgment of Delhi High Court in **Surender @ Sonu vs. State of NCT of Delhi dated 17.09.2018**



reported in **2018 SCC OnLine Del 11271** wherein their Lordships have held as follows:-

**23.** *Contention of learned counsel for Surender Sonu that even if the prosecution case is accepted, the offence at best allegedly committed is punishable under section 307/34 IPC deserves to be rejected. Surender @ Sonu and Nisar Pahari both were armed with weapon of offence which they used to loot the money and jewellery of the complainant and they not only put the complainant and her children in fear of hurt they even caused grievous/dangerous hurt to loot the property. Hence, offences punishable under Sections 397/394 IPC are clearly made out.*

**24.** *Hon'ble Supreme Court in the decision reported as (1975) 1 SCC 797 AIR 1975 SC 905 Phool Kumar v. Delhi Admn., held that mere showing of the deadly weapon would attract offence under Section 397 IPC. It was held:*

*"4. The last submission on behalf of the appellant was that sentencing him to undergo rigorous imprisonment for seven years under*



*Section 397 of the Penal Code was illegal and he ought to have been convicted under Section 392 simpliciter which would have enabled the Court on the facts of this case to pass a lesser sentence of imprisonment. Reliance was placed upon the majority opinion of the Full Bench of the High Court of Punjab & Haryana in the case of State v. Chand Singh (ILR (1970) 2 P&H 108]. The argument was attractive at the first sight but did not stand our careful scrutiny.*

*5. Section 392 of the Penal Code provides: "Whoever commits robbery shall be punished with rigorous Imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.*

*The sentence of imprisonment to be awarded under Section 392 cannot be less than seven years if at the time of committing robbery the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause*



*death or grievous hurt to any person: vide Section 397. A difficulty arose in several High Courts as to the meaning of the word "uses" in Section 397. The term "offender" in that section, as rightly held by several High Courts, is confined to the offender who uses any deadly weapon. The use of a deadly weapon by one offender at the time of committing robbery cannot attract Section 397 for the imposition of the minimum punishment on another offender who had not used any deadly weapon. In that view of the matter use of the gun by one of the culprits whether he was accused Ram Kumar or somebody else, (surely one was there who had fired three shots) could not be and has not been the basis of sentencing the appellant with the aid of Section 397. So far as he is concerned he is said to be armed with a knife which is also a deadly weapon. To be more precise from the evidence of PW 16 "Phool Kumar had a knife in his hand". He was therefore carrying a deadly weapon open to the view of the victims sufficient to frighten or terrorize them. Any other overt act, such as,*



*brandishing of the knife or causing of grievous hurt with it was not necessary to bring the offender within the ambit of Section 397 of the Penal Code."*

48. The above citations clarifies the principle that when the charges are framed for a major offence a conviction can still be awarded for an offence having lesser sentence.

49. In support of this proposition reliance was placed on **Phoolan and three others vs. State of UP** in **Criminal Appeal No. 766 of 2000** wherein para 30 and 32 their Lordships have held as follows:-

*30. Lastly, learned counsel for the accused-appellants submitted that all the appellants were charged with section 307 IPC, however, they were convicted under section 307 read with section 34 IPC without amending any charge, therefore, the judgment is liable to be set-aside on this sole ground.*

*32. Trial court has power to find the accused guilty for lesser offence even if charge is made for major offence, but when the charge was*



*framed for lesser offence the court cannot convict the accused for major offence without alteration of charge. Hence when the prosecution has proved prosecution version regarding major offence under section 307 IPC and it is proved by the evidence that all the appellants acted with common intention then trial court rightly convicted appellants under section 307 IPC read with section 34 IPC. Hence there is no illegality in the judgment of trial court, if the accused-appellants are convicted under section 307 read with section 34 IPC. Therefore, the appeal is liable to be dismissed on this ground also.*

50. The Learned counsel for the appellant also relied on the case of **Nachhattar Singh And Ors. V. The State of Punjab** reported in **AIR 1976 SC 951** wherein their Lordships have held as follows:-

**17.** *The four eye-witnesses examined in the case were highly interested. But merely because of that, their evidence could not be rejected. As pointed out by the High Court, they were the most natural witnesses who could be present at the time*



*of the occurrence. It could be so if the occurrence took place in the, manner alleged. But surely the High Court committed a grave error in not scanning their evidence in the background of the serious infirmities. It did try to separate the grain from the chaff and thought that it succeeded in separating them. But in our opinion it did so wrongly. The various infirmities and defects in the prosecution case, as referred to above, had broken the grain of the story and mixed it with chaff to such an extent that it was difficult, almost impossible, to separate them and find the guilt of the appellants to have been proved beyond reasonable doubt. We entertain a grave suspicion against the appellants that they may have committed the crime. The learned Judges of the High Court, it appears to us, allowed their suspicion to take the place of proof when they thought that the appellants must have committed the crime. We are unable to agree with the High Court that the distance to be bridged between "may" and "must" has been bridged and covered in this case by the prosecution. On the*



*other hand, they have left the gulf unbridged leaving many things in the womb of mystery and we do not find it possible to salvage the prosecution case out of the gulf. It is a matter of great regret and concern to every body, including ourselves, that for the diabolical murder of three persons, nobody would be punished. But the inclination to punish the appellants or any of them has got to be checked if the court cannot be sure of their guilt. The responsibility for the failure of the conviction must squarely rest on the prosecution witnesses or those who were in charge of the prosecution.*

51. The above judgments squarely apply to the present facts and circumstances. In the present case all the witnesses examined by the prosecution are police officials. The evidence of DW-1 clearly disclose that he was present at the time of raid. However, the prosecution failed to secure the presence of local inhabitants, as contemplated under Section 100 or Section 165 of Cr.P.C. Furthermore, the two witnesses i.e. PW-3 and 4 in



their cross-examination have specifically admitted that they did not enter the house of the appellant No. 1 and 3 at the time of search or seizure. They stood outside the house and only saw the article brought out of the house and made their signature on the seizure list. Therefore, the evidence of PW-3 and 4 do not support about actual search and seizure and about the contents of the seizure list. Hence this Court is of the considerable view that the prosecution has miserably failed to prove the seizure list, in accordance with law.

52. In this context, it is necessary to rely on the judgment of **Sikandar Sah vs. The State of Bihar** reported in **2010 SCC OnLine Pat 58**, wherein it was held as follows:-

*All the six witnesses are police officials and are stating about their presence on the point of recovery. Lacuna or contradiction may have been taken to assail the judgment of conviction and order of sentence but mainly stress is made on behalf of the learned counsel for the appellant about non-exhibition of seizure list as the same was*



*no proved, non-availability of any Forensic report and non-examination of independent seizure list witnesses though investigating officer, informant and Paras Sharma who cut the body of jeep to recover the seized Ganja are also not examined. So, without scrutinizing or testing veracity of witnesses legal points are being taken to consider.*

*It is admitted case that seizure list not proved, nor there is any Forensic report for being seized material Ganja and non-production of public/independent seizure list witnesses, even named in the charge sheet, namely, Rakesh Kumar Singh and Ram Ayodhya Prasad. Save and except explaining the lacuna as laches on the part of the prosecution or the court nothing could be explained if in absence of the above lacunas conviction can be sustained.*

*In my view also once seizure list is not proved, recovery cannot be established that is connected with the third point that independent/public seizure list witnesses are not examined. Further there is no Forensic report on*



*record to show that seized article was Ganja, even sample was taken by the investigating officer. In absence of the above material conviction and sentence are not liable to remain sustained.*

53. It is also contended by the Learned counsel for the appellant that non-examination of the independent witnesses is fatal to the case of the prosecution and therefore she relied on the judgment of Division Bench of this Court in case of **Bali Choudhary & Ors. vs. State of Bihar** passed in four criminal appeals in which their Lordships have held as follows:-

**22.** *Considering the aforementioned discussions I feel that the prosecution has not come out with clean hands. The circumstances of admitted animosity, non disclosure of names of the accused persons for complete 12 hours to any one, non examination of available independent witness and admission of the prosecution witnesses that the accused at the time of leaving the place of occurrence raised slogan of I.P.F.Zindabad, supported by the evidence of defence witnesses*



*that the accused persons were strangers and members of extremists party who left the place of occurrence raising slogan I.P.F.Zindabad are sufficient to show that the prosecution has not been able to prove its case beyond all possible reasonable doubts, rather the prosecution has tried to conceal and suppress the available evidence. Benefit of these circumstances must go to the accused persons.*

54. She also relied on the judgment of the Hon'ble Apex Court in **Megha Singh v. State of Haryana** reported in **AIR 1995 SC 2339** in which their Lordships have held as:-

*3. The learned counsel of the appellant has submitted that admittedly at 12.00 noon on the village road the appellant was apprehended by the police and it was only natural that some villagers would remain present but the prosecution chose not to examine any independent witness to corroborate the prosecution case. The learned counsel in his fairness has submitted that although the evidence given by the police personnel cannot*



*be discarded as a matter of rule but the rule of prudence requires that the prosecution case should stand corroborated by an independent witness when such evidence can easily be available so as to lend evidence to the prosecution case. He has also submitted that both the witnesses of the prosecution were police personnel and they were examined shortly after the arrest of the accused. In such circumstance, there should not have been any discrepancy about the number of cartridges alleged to have been recovered from the person of the accused. It has been submitted by the learned counsel that such discrepancy only points out that the said police personnel were not actually present at the time of search and seizure but a false case was initiated against the appellant and precisely for the said reason the discrepancy arose.*

*4.After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of the PWs.2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire*



*confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW-3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under S. 161, Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.*

55. Further, the Learned counsel for the appellant also placed reliance on the judgment of the Apex Court in **Kamil vs. The State of Uttar Pradesh** reported in **AIR 2019 SC45**, in which their Lordships in para 11 and 14 have held as follows:-



*11. Absence of charge would vitiate the conviction only if it has caused prejudice to the accused and has in fact been occasioned thereby. In Willie (William) Slaney v. State of Madhya Pradesh AIR 1956 SC 116, the Constitution Bench explained the concept of prejudice caused to the accused and "failure of justice" and held as under:-*

*5. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided*



*there is 'substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based. (Underlining added)*

*14. After considering the meaning of the expression "failure of justice" and after referring to the Constitution Bench in Willie Slaney and Gurbachan Singh, this Court in Main Pal v. State of Haryana (2010) 10 SCC 130, held as under:*

*15. In Shamnsaheb M. Multtani v. State of Karnataka (2001) 2 SCC 577, this Court considered the meaning of the expression "failure of justice" occurring in Section 464 Cr.PC. This Court held thus:*

*".....*

*22. ... a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice.*



*23.... The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.*

56. The Learned counsel for the appellant also relied on the judgment of **Pabitar Singh vs. State of Bihar reported in 1972 AIR 1899** in which their Lordships have held as follows:-

*Section 35 provides:-*

*“Where any arms or ammunition in respect of which any offence under this Act has been or being committed are or is found-in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he, was aware of the existence of the arms or ammunition in the premises vehicle or other place shall, Unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone.”*

*In S. 25(1)(a) only the words “has in his possession” have been retained and the other words which appeared disjunctively in S. 19(1)(f) namely*



*“or under his control” have been omitted. Section 35 appears to have been newly inserted to clarify the true position where any arms or ammunition are or is found in any premises etc. in the joint occupation or under the joint control of several persons. Each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms and ammunition in the premises unless the contrary is proved will be liable for that offence.*

*The next and the crucial question that arises is whether the prosecution has established the essential ingredients of the offence in the light of the provisions of S. 35 of the Act. It has been urged that when the appellant was using the kitchen it was legitimate to expect that he would be aware of the existence of the gun which was concealed there. The gun was concealed in such a manner that it was not visible to the naked eye. Although there may be very grave suspicion that the appellant was aware of the existence of the gun the prosecution is bound to establish facts from which the court could have reason to believe that he was aware of the existence of the unlicensed fire-arm. We are not satisfied in the present case that any such facts have been established.*

*Lastly it cannot be over-emphasised that in cases of the present nature where not only the liberty of a citizen is involved but also his whole career on conviction a person in service is bound to*



*be dismissed great care and attention should be devoted by the courts to all questions of law and fact which unfortunately had not been done in the present case. That has led to miscarriage of justice.*

*The appellant, is entitled to the benefit of doubt and he is hereby acquitted.*

57. As per the proposition laid down by the Hon'ble Apex Court, the object of framing the charge is to enable the accused to have a clear idea of what he is being tried for, and the accused is entitled to know the certainty and accuracy of the charge made against him. Further, the Apex Court has also held that the effect of the framing of a charge must be so serious that it cannot be covered under Section 464 or 465 of the Cr.P.C., and that, in cases of failure of justice, the court must consider whether the objection could have been raised at an earlier stage.

58. In the present case, no charge was framed against appellant no. 2 for the offences punishable under Sections 25 or 26 of the Arms Act. However, he was convicted and sentenced for the said offences. The appellant only came to know about the conviction under these sections on the



date of the pronouncement of the judgment. The appellant had no opportunity to raise any objection. Section 216 of the Cr.P.C. provides ample power to the Court to alter the charge, prior to the pronouncement of the judgment. The Trial Court failed to adopt the procedure under Section 216 of the Cr.P.C., even on the date of pronouncement of the judgment. Therefore, it can be construed that prejudice has been caused to the appellant no. 2 and that there was a failure of justice in this case. Moreover, the appellant had no opportunity to explain his grievances, even at the time of examination under Section 313 Cr.P.C., as no charge was framed on that date. Furthermore, the charge under Section 35 of the Arms Act was framed against appellant no. 2 merely on the basis that he is the son of Jugal Kishore/appellant no. 1, and the Trial Court framed such charges presuming that he had joint occupation of the premises from where the looted articles were seized. The prosecution has miserably failed to prove that Appellant no. 2 was in joint occupation of the said premises along with his father.



The prosecution has also failed to prove that the said premises was in possession of Appellant No. 1 and Appellant No. 3. Therefore, it can be construed that convicting the Appellant No. 2 for the offence punishable under Section 35 of the Arms Act, and consequently, the convictions under Sections 25(1) (A), 25(1)(B)(i), and 26(2) is erroneous act on the part of the trial Court and they are liable to be set aside.

59. In result the appeal is allowed setting the judgment and order of conviction dated 30.04.2004 passed by Additional District & Sessions Judge, Fast Track Court No. 1, Nalanda at Biharsharif in Sessions Trial No. 168 of 1993/96 of 2000.

60. Further the bail bond of appellant no. 2 shall stand cancelled.

**(G. Anupama Chakravarthy, J)**

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