**CRA-S-1472-SB-2002**

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

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**CRA-S-1472-SB-2002**
**Reserved on: 16.08.2023.**
**Pronounced on: 06.11.2023.**

Joginder Singh .....Appellant

Versus

State of Haryana .....Respondent

**CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA**

Present: Ms. Tanu Priya Singh, Advocate and
Mr. Keshav Pratap Singh, Advocate,
for the appellant.

Mr. Manish Bansal, Sr. DAG, Haryana.

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**ANOOP CHITKARA J.**

| FIR No. | Dated | Police Station | Sections |
|---|---|---|---|
| 320 | 20.05.1997 | Rania, District Sirsa | 15 and 16 of NDPS Act |

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|---|---|
| **Case No.** | SC No.181 of 1998<br>Sessions Trial No.92 of 2000<br>Date of Decision: 07.09.2002 |
| **Names of accused/ convicts/ appellants** | 1. Joginder Singh,<br>2. Kanwar Singh,<br>3. Sukhdev Singh and<br>4. Balbir Ram |
| **Conviction under section** | 15 of the NDPS Act |
| **Sentence imposed** | R.I. for 10 years and fine of Rs. 1,00,000/- each |

1. All four accused, convicted and sentenced as mentioned above, had come up before this court by filing two separate appeals in 2002. Since the appeals were not heard within a reasonable time, their sentences were suspended. During the pendency of the appeal, appellants Balbir Ram and Kanwar Singh expired, and appeal CRA-S-1705-SB-2004 filed by them stand abated vide order dated 09.08.2023. Appellant Sukhdev Singh also expired during the pendency of the present appeal, and proceedings qua him stand abated vide order dated 14.07.2023. Thus, the present judgment confines the surviving appellant, namely Joginder Singh.

**CRA-S-1472-SB-2002**

2. On May 20, 1997, the police party headed by SHO PW-6 Raj Kumar along with other police officials, namely head Constable Than Singh, PW-7 Constable Mangal Singh, Constable Harbans Lal, Constable Randhir Singh, after patrolling in their jurisdiction, were present near bus stand of village Bharolianwali in an official vehicle driven by Constable Harminder Singh. At around 10 to 11:00 AM, a Jeep bearing registration number HR-24B-4057 came from the side of the village Jiwan Nagar. On noticing it, they signaled it to stop because the SHO PW-6 Raj Kumar wanted to search the Jeep. The SHO directed Jeep's driver to cooperate and saw some gunny bags lying in its boot trunk space. The investigator suspected that the bags might contain some narcotic substance. On this, he detained the occupants of the Jeep and proceeded further. On inquiry, the driver of the Jeep disclosed his name as Kanwar Singh; the person sitting in the front along with the driver disclosed his name as Balveer Ram; the persons who were sitting on the gunny bags in the luggage space disclosed their names as Joginder Singh and Sukhdev Singh. Since the SHO wanted to search, he gave them an option under section 50 of the Narcotics Drugs and Psychotropic Substances Act, 1985, [After now called the NDPS Act] and vide Exhibit PE, the investigator informed them about their right to be searched in the presence of a Gazetted officer or a Magistrate. On this, the accused desired to be searched in the presence of some Gazetted officer. After this, the SHO sent information and called the DySP, Ellanabad, and after some time, the DySP Inderdutt, PW-1, reached the spot. The bags were opened in the presence of DySP, and they contained poppy husk. After that, the SHO sent a police constable to bring weighing scales and weights, and on his arrival, the police officials weighed all six bags, each having 38.5 kilograms of poppy husk. The SHO separated two samples of 250 grams each from every bag and kept those in separate packets. The SHO, as well as DySP, put their seals on the bulk as well as samples. After that, the police registered the FIR, arrested all the accused, and deposited the case property with MHC, who sent six parcels for testing to the FSL, which found the contraband as a sample of poppy straw. The Officer-in-charge of the police station launched prosecution by filing a report under 173 CrPC.

3. Vide order dated April 29, 1998, the Additional Sessions Judge, Sirsa, framed charges against all the issues under section 15 of the NDPS Act. The accused pleaded 'Not Guilty' and claimed to be tried. After examination of the witnesses and recording of the statements of the accused under 313 CrPC, the Trial Court allowed the prosecution and held all the accused guilty, and convicted and sentenced them as captioned above. Feeling aggrieved, the accused had filed the present appeal in the year 2022, purportedly under section 374 of the Code of Criminal Procedure, 1973 [After now referred as CrPC], read with Section 36-B of the NDPS Act.

4. In Noor Aga v. State of Punjab, 2008(16) SCC 417, Supreme Court observed,

> [16]. The provisions of the Act and the punishment prescribed

> therein being indisputably stringent flowing from elements such as a heightened standard for bail, absence of any provision for remissions, specific provisions for grant of minimum sentence, enabling provisions granting power to the Court to impose fine of more than maximum punishment of Rs. 2,00,000/- as also the presumption of guilt emerging from possession of Narcotic Drugs and Psychotropic substances, the extent of burden to prove the foundational facts on the prosecution, i.e., 'proof beyond all reasonable doubt' would be more onerous. A heightened scrutiny test would be necessary to be invoked. It is so because whereas, on the one hand, the court must strive towards giving effect to the parliamentary object and intent in the light of the international conventions, but, on the other, it is also necessary to uphold the individual human rights and dignity as provided for under the UN Declaration of Human Rights by insisting upon scrupulous compliance of the provisions of the Act for the purpose of upholding the democratic values. It is necessary for giving effect to the concept of 'wider civilization'. The courts must always remind itself that it is a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. A higher degree of assurance, thus, would be necessary to convict an accused.

5. In State of Himachal Pradesh v. Trilok Chand, (2018) 2 SCC 352, Supreme Court holds,

> [13]. …It is imperative that the law the Court should follow for awarding conviction under the provisions of N.D.P.S. Act is "stringent the punishment stricter the proof." In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication….

6. Thus, not only does the evidence have to be appreciated by keeping the mandates mentioned above, but even the law has to be applied in the light of these binding precedents.

7. During trial PW-1, Inder Dutt, Dy. S.P. testified that he had received a message from S.I. Raj Kumar and had reached the spot where Raj Kumar told him that they were suspecting some narcotics in the said jeep, and it needed to be searched. Afterwards, he directed the investigating officer to search the jeep from which six bags of poppy husk were recovered. In the cross-examination, he was confronted about his signature on the spot, to which he testified that he had not signed any document on the spot. He further testified that before he reached the spot, the investigator had already arranged weights and scales. He clarified that he did not direct the investigator to join any independent witness. He admitted the suggestion that people were available at the place of recovery but explained that they were not willing to join the investigation when they were asked to do so. He further clarified that the paperwork was done on the spot. The investigator testified as PW-6 and reiterated the prosecution case. In cross-examination, he admitted that when the Deputy Superintendent of Police had reached the spot, his Reader, PSO,

and Driver were available with him. He further stated that he had tried to join some public witnesses, but they were unwilling to witness the search and seizure. However, neither the names of such persons were written down nor took any legal action against them, who had refused to become witnesses. The prosecution also examined another witness, police official HC Dhan Singh, who corroborated the statements made by PW-1 and PW-6 without any material contradictions. In cross-examination, he stated that DySP had not put his signatures on any of the papers and stated that after affixing the seals on the case property, the DySP had kept the seals with him.

8. In the statement under Section 313 Cr. P.C., all the accused denied the prosecution case, and all had a common stand that they were implicated because of party friction. It was stated that Sukhdev Singh and Joginder Singh were landowners, whereas Kanwar Singh and Balbir Singh were their workers. The surviving appellant-Joginder Singh, in his statement under Section 313 CrPC, also admitted that he and Sukhdev Singh were landowners, while two other accused were their workers, and they have also been falsely implicated because of the party friction. The accused did not lead in defence. Thus, the bald statement that they were implicated in party friction and friction was not proved by any of the accused. It is crucial to mention that one counsel represented all four accused, and neither of the accused took up the plea of clash of interest.

9. The prosecution's case was that in the morning hours of 20.05.1997, a police party headed by SI/SHO Raj Kumar (PW-6) was patrolling near the Bus Stand of village Bharolianwali. Then, they intercepted a vehicle driven by Kanwar Singh. On noticing gunny bags in the Jeep's trunk, Raj Kumar, Investigator (PW-6), suspected the bags to have some narcotic substances. The Investigator did not state that he had received any prior information about the Jeep transporting the contraband. There is no evidence that the Investigator concealed the prior information to show the seizure as a case of chance recovery to cover up the non-compliance with section 42 of the NDPS Act. When the Investigator stumbled upon the contraband, which primafacie falls in the list of prohibited substances under the NDPS Act, the procedures enshrined under the NDPS Act, as well as CrPC, have to be followed. The present case is based on chance recovery; however, the NDPS Act does not define chance recovery; therefore, the reasoning of the Supreme Court in State of Punjab v. Balbir Singh (1994) 3 SCC 299 shall follow.

10. On noticing the bags in the Jeep’s trunk, Investigator PW-6 got suspicious that the bags had contraband prohibited under the NDPS Act and wanted to verify these. He served the notice under Section 50 of the NDPS Act to the accused. On receipt of the notice (Ext. PE) under section 50 of the NDPS Act, the accused expressed their desire to be searched in the presence of a Gazetted officer. On this, a Gazetted Officer, i.e., Deputy Superintendent of Police Inderdutt (PW-1), was asked to reach on the spot. In the

presence of the Deputy Superintendent of Police, The Investigator, SHO Raj Kumar (PW-6), searched bags and detected poppy husks in all the bags. The police had recovered the poppy husk from the bags lying in the Jeep and not from the person of the accused; as such, the Investigator was under no obligation to follow the mandatory requirements of section 50 of the NDPS Act. A three-member bench of the Supreme Court, in State of H.P. v. Pawan Kumar, (2005) 4 SCC 350, holds,

> [18]. There is another aspect of the matter, which requires consideration. Criminal law should be absolutely certain and clear and there should be no ambiguity or confusion in its application. The same principle should apply in the case of search or seizure, which come in the domain of detection of crime. The position of such bags or articles is not static and the person carrying them often changes the manner in which they are carried. People waiting at a bus stand or railway platform sometimes keep their baggage on the ground and sometimes keep in their hand, shoulder or back. The change of position from ground to hand or shoulder will take a fraction of a second but on the argument advanced by learned Counsel for the accused that search of bag so carried would be search of a person, it will make a sharp difference in the applicability of Section 50 of the Act. After receiving information, an officer empowered under Section 42 of the Act, may proceed to search this kind of baggage of a person which may have been placed on the ground, but if at that very moment when he may be about to open it, the person lifts the bag or keeps it on his shoulder or some other place on his body, Section 50 may get attracted. The same baggage often keeps changing hands if more than one person are moving together in a group. Such transfer of baggage at the nick of time when it is about to be searched would again create practical problem. Who in such a case would be informed of the right that he is entitled in law to be searched before a Magistrate or a Gazetted Officer? This may lead to many practical difficulties. A statute should be so interpreted as to avoid unworkable or impracticable results….
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> [26]. The Constitution Bench decision in Pooran Mal vs. Director of Inspection, 1974 (1) SCC 345, was considered in State of Punjab v. Baldev Singh, 1999 (6) SCC 172, and having regard to the scheme of the Act and especially the provisions of Section 50 thereof, it was held that it was not possible to hold that the judgment in the said case can be said to have laid down that the "recovered illicit article" can be used as "proof of unlawful possession" of the contraband seized from the suspect as a result of illegal search and seizure. Otherwise, there would be no distinction between recovery of illicit drugs, etc. seized during a search conducted after following the provisions of Section 50 of the Act and a seizure made during a search conducted in breach of the provisions of Section 50. Having regard to the scheme and the language used, a very strict view of Section 50 of the Act, was taken and it was

> held that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50 may render the recovery of the contraband suspect and sentence of an accused bad and unsustainable in law. As a corollary, there is no warrant or justification for giving an extended meaning to the word "person" occurring in the same provision so as to include even some bag, article or container or some other baggage being carried by him.

11. On receipt of the notice (Ext. PE) under section 50 of the NDPS Act, the accused expressed their desire to be searched in the presence of a Gazetted officer. On this, a Gazetted Officer, i.e., Deputy Superintendent of Police, Inderdutt (PW-1), visited the spot. In the presence of the Deputy Superintendent of Police, Raj Kumar, Investigator (PW-6) searched bags and detected poppy husk. He also prepared a rough site plan (Ex. PG) depicting the spot of seizure at T-point. In examination-in-chief, PW-6 SHO Raj Kumar testified in the same terms, and it was corroborated by a Gazetted Officer, i.e., Deputy Superintendent of Police Inder Dutt (PW-1) and also by Head Constable Dhan Singh (PW-7). An analysis of this part of the evidence proves that the search was conducted at the spot, and the recovery was made from the Jeep, which was stopped at the spot at the time and place pointed out by the prosecution. The petitioner's presence in the boot of the Jeep is thus established.

12. After sending a message to send a Gazetted officer to the spot, the SHO also sent a police constable to bring weighing scales and weights. The DySP Inderdutt, PW-1, said in his cross-examination that the weights and the scale were already at the spot when he reached there. He clarified that weights were 20, 10, 5, 2, and 1 kg each. SHO PW-6 also stated in his cross-examination that he had sent Constable Randhir Singh to bring scale and weights, and those were 50 grams, 200 grams, 1 kg, 2 kg, 5 kg, 10 kg, and 20 kg. PW-7 Dhan Singh also told in his cross-examination in line with SHO PW-6 and further stated that Constable Randhir Singh had brought scale and weights from Village Bharolianwali in a private jeep. However, the prosecution neither examined Constable Randhir Kumar nor the driver of the private jeep or the shopkeeper from whom they had brought the weights and the scale.

13. According to the prosecution's version, the seal fixed on the samples and gunny bags was handed over to HC Dhan Singh (PW-7). However, Dhan Singh disclosed during his cross-examination that he had returned the seal to the Investigator about one week before the samples were analyzed. Since the seals affixed on the case property were not only of SHO but also of DySP, as such it would not have been possible even for SHO to tamper with the case property for which he also needed the seal of DySP and his involvement, and thus, this aspect does not weaken the prosecution's case.

14. There were six bags, each having 38.5 Kg of alleged poppy husk, and the Investigator had drawn two samples from each bag weighing 250 grams. The remaining

poppy straw, i.e., 38 Kg each, was sealed in the bags. Ex. P-1 to P-6. The Investigating Officer, PW-6 Raj Kumar, stated on oath that he had handed over the case property to MHC (Moharar Head Constable) on the day of its seizure. MHC Ajit Singh tendered his affidavit in the evidence and stated that the case property had remained in his custody from 20.05.1997 onwards, and even the samples were safe with him until he handed over the same to Harbans Lal, per the affidavit of Harbans Lal, Ex.PC, he had received six samples on 05.06.1997 from MHC Ajit Singh. The defence neither disputed this evidence through affidavits attested by Judicial Magistrate Ist Class and filed under Sections 294 to 297 CrPC nor called these witnesses for cross-examination. As per the FSL report, Ex.PD, Constable Harbans Lal, No.506, handed over the samples to it, further corroborating the evidence.

15. A perusal of the FSL Report (Ex. PD) reveals that after conducting the qualitative test on all the representative samples, which were marked by the Laboratory as Ex.P1 to Ex.P6, the Laboratory found Meconic Acid; Thebaine; Morphine, Papaverine, Codeine; Narcotine as present and the Laboratory opined that the samples were of poppy straw (choora-post) of Papaver Somniferum L. The poppy straw allegedly recovered from the convicts is an offence in the following terms:

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| Substance Name | Poppy straw |
| Quantity detained | 231 Kg |
| Quantity type | Commercial |
| *Drug Quantity in % to upper limit of Intermediate* | 462.00% |

| *Specified as small & Commercial in S.2(viia) & 2(xxiiia) NDPS Act, 1985* | |
|---|---|
| Notification No | S.O.1055(E) |
| dated | 10/19/2001 |
| Sr. No. | 110 |
| Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN) | Poppy straw |
| Other non-proprietary name | ****** |
| Chemical Name | ****** |
| Small Quantity | 1000 Gram (i.e. equivalent to 1 Kg) |
| Commercial Quantity | 50000 Gram (i.e., equivalent to 50 Kg) |

| Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985 | |
|---|---|
| Notification No | S.15 & S.2(xviii) NDPS Act, S.O.821(E) |
| dated | 11/14/1985 |
| Sr. No. | S.2(xviii) |

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|---|---|
| Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN) | ****** |
| Other non-proprietary name | ****** |
| Chemical Name | S.2(xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; S. 2(viiib)] "illicit traffic", in relation to narcotic drugs and psychotropic substances, means—<br>(i) cultivating any coca plant or gathering any portion of coca plant;<br>(ii) cultivating the opium poppy or any cannabis plant;<br>(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transhipment, of narcotic drugs or psychotropic substances; S.2 (xvii) "opium poppy" means—<br>(a) the plant of the species Papaver somniferum L; and<br>(b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;<br><br>S2. (xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom; |

16. The SHO had sent six samples, each from the twelve drawn for testing in the Laboratory. A perusal of the entire evidence, specifically statements of PW-1, PW-6, and PW-7, did not point out that the police party assigned specific numbers to all the samples to distinguish which samples were drawn from which bag. Thus, in all, there were twelve samples, which represented six bags. Since there were no specific marks indicating which samples belonged to which bags, it cannot be concluded that the six samples sent to the laboratory represented all six bags. As such, it has to be presumed that the samples represented only three of the bags. But even this concession will not give any benefit to the convicts for the reason that the weight of the poppy husk contained in each bag was 38.5 Kg, as such, the weight of three bags would come to 115.5 Kg. Any quantity greater than 50 Kg is commercial, so the minimum sentence that can be imposed under Section 15 of the NDPS Act is ten years, which was awarded to

the appellants.

17. Since the Investigator was SHO, section 55 of the NDPS Act did not apply. Thus, there is no question of any prejudice on its non-compliance.

18. Since DySP was present on the spot and was the officer immediately superior to the Investigator, who was SHO of the concerned police Station, non-compliance with section 57 did not cause any prejudice to the accused.

19. The burden is always upon the prosecution to prove its case, and it shifts to the accused under Sections 35 and 54 of the NDPS Act only when the prosecution has discharged its initial burden. In this case, the prosecution did discharge the initial burden, and it was for the accused to rebut the presumptions of sections 35 and 54 of the NDPS Act, which had come into play. In Abdul Rashid Ibrahim Mansuri v. State of Gujarat, a three-member bench of Supreme Court, 2000(2) SCC 513, holds,

> [21]. No doubt, when the appellant admitted that narcotic drug was recovered from the gunny bags stacked in the auto-rickshaw, the burden of proof is on him to prove that he had no knowledge about the fact that those gunny bags contained such a substance. The standard of such proof is delineated in sub- section (2) as "beyond a reasonable doubt". If the Court, on an appraisal of the entire evidence does not entertain doubt of a reasonable degree that he had real knowledge of the nature of the substance concealed in the gunny bags then the appellant is not entitled to acquittal. However, if the Court entertains strong doubt regarding the accused's awareness about the nature of the substance in the gunny bags, it would be miscarriage of criminal justice to convict him of the offence keeping such strong doubt dispelled. Even so, it is for the accused to dispel any doubt in that regard.
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> [22]. The burden of proof cast on the accused under Section 35 can be discharged through different modes. One is that, he can rely on the materials available in the prosecution evidence. Next is, in addition to that he can elicit answers from prosecution witnesses through cross-examination to dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence. In other words, if circumstances appearing in prosecution case or in the prosecution evidence are such as to give reasonable assurance to the Court that appellant could not have had the knowledge or the required intention, the burden cast on him under Section 35 of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence.

20. In Bahadur Singh v State of Madhya Pradesh, 2002 (1) SCC 606, Supreme Court holds,

> [8]. …The question of applicability of Section 35 of the Act will not arise in the present case when the recovery itself is doubtful.

21. The appellant's submission is that there are contradictions in the statements of PW-6 and PW-7, which makes the entire case doubtful. The appellant's stand is that as per PW-6, the recovery memo was also signed by PW-1 Inder Dutt, DySP, whereas, in the testimony of PW-1 DySP, he admitted the defense suggestion as correct that none of the documents contained his signatures. The recovery occurred on 20.05.1997, while the statement of the concerned DySP was recorded in the Court on 16.07.1998, i.e., after a gap of more than one year and around two months. Even otherwise, the DySP was not a spot witness because he was only called to supervise the search at that time, apprising the accused of their rights under Section 50 of the NDPS Act, which otherwise was not applicable. This discrepancy would have come because of a time-lapse and cannot be considered prejudicial to the accused.

22. The Counsel for the appellant has pointed out the following contradiction as per PW-6 Raj Kumar, PW-1 DySP Inder Dutt had reached the spot at 11.00 a.m. and had remained at the spot till 01.15 p.m., whereas, to the contrary, PW-1 Inder Dutt Dy.S.P. had stated that he had reached the spot at noon and had left around 2.00 p.m. In both the statements, the time that PW1 Dy.S.P. had spent on the spot was about two hours, and even if the time was wrongly mentioned at 11.00 or 12.00, this discrepancy is not that serious about creating a dent in the prosecution version because of the lapse of time of his examination in the Court. PW-7 Dhan Singh submitted that Dy.SP reached the spot at 10:30 a.m. and left at 1:00 p.m.

23. The appellants contended that the Jeep from which the alleged recovery was made neither belonged to them nor were they connected with the Jeep. In addition, the police falsely implicated the appellants without verifying and arresting the Jeep's owner. The recovery was from the Jeep, where the accused were found present. The accused did not engage different counsel and their joint stand in their statements recorded under section 313 CrPC, and they claim false implications because they belong to the opposite group and did not lead any defense evidence to substantiate their stand, which remains unproven. In the given situation, it was immaterial who owned the Jeep.

24. Counsel for the appellant has argued that despite the time of a search being broad day light and independent witnesses readily available, and when the Deputy Superintendent of Police could have come, then why any other non-police official was not called to join as an independent witness, including the driver of the Jeep carrying scale and weights, the shopkeeper from whom these were procured, any nearby government official, and despite the day time, no effort was made to associate them. She submits that no notice under Section 160 Cr.P.C. was issued to any person to join as a witness. On the contrary, the State's counsel argued that the police party had tried to associate the independent witness, but none agreed to become and even otherwise, the statement of the rest of the police officials is sufficient in evidence, and there are no

legal provisions of law that if independent witnesses are not associated then it shall either vitiate the trial or shall cause prejudice to the accused. The State's counsel further argued that no specific allegations of hostility had been leveled against any police officials, and once the Deputy Superintendent of Police was present, there was no occasion for implicating falsely or incorrectly.

25. In State of Punjab v. Baldev Singh, (1999) 6 SCC 172, Constitutional bench of Supreme Court, observed,

> [14]. The provisions of Sections 100 and 165 CrPC are not inconsistent with the provisions of the NDPS Act and are applicable for affecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure, comes across a person being in possession of the narcotic drug or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided there under. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act. In Balbir Singh[1] case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of CrPC in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 per se does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view.

26. It is indisputable that the investigator and his superior officer neither associated nor tried to join any independent witness or rendered any explanation. An analysis of judicial precedents would be necessary to determine the effect of such lapse, admissibility of testimonies of police officials, and prejudice caused to the accused.

27. In State of Bihar v. Basawan Singh, AIR 1958 SC 500, Constitutional Bench of Supreme Court holds,

> [10]. If the witnesses are not accomplices, what then is their position? In Shiv Bahadur Singh's case it was observed, with regard to Nagindas and Pannalal, that they were partisan witnesses who were out to entrap the appellant in that case, and it was further observed: "A perusal of the evidence ……leaves in the mind the impression that they were not witnesses whose evidence could be taken at its face value." We have taken the observations quoted above from a full report of the decision, as the scrutinize report does not contain the discussion with regard to evidence. It is thus clear that the decision did not lay down any universal or inflexible rule of rejection even with regard to the

[1] State of Punjab v. Balbir Singh (1994) 3 SCC 299.

> evidence of witnesses who may be called partisan or interested witnesses. It is plain and obvious that no such rule can be laid down; for the value of the testimony of a witness depend on diverse factors, such, as the character of the witness, to what extent and in what manner he is interested, how he has fared in cross-examination etc. There is no doubt that the testimony of partisan or interested witnesses must be scrutinized with care and there may be cases, as in Shiv Bahadur Singh's case (Shiv Bahadur Singh v. State of Vindhya Prasad, 1954 SCR 1098) where the Court will as a matter of prudence look for independent corroboration. It is wrong, however to deduce from that decision any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded, unless independent corroboration is available.

28. In Masalti v. The state of U.P., AIR 1965 SC 202, a four-member bench of Supreme Court, holds,

> [14]. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

29. In Tahir v. State (Delhi), (1996) 3 SCC 338, while dealing with a case under Terrorists and Disruptive Activities (Prevention) Act 1987, Supreme Court holds,

> [6]. …In our opinion no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of the evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can from basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence does not in any way affect the creditworthiness of the prosecution case.

30. In Kalpnath Rai v. State, (1997) 8 SCC 732, Supreme Court, while dealing with a case under Terrorist and Disruptive Activities (Prevention) Act, 1987, holds,

> [90]. There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that court must reject the prosecution version solely on the ground that no independent witness was examined…"

31. In Bahadur Singh v State of Madhya Pradesh, 2002 (1) SCC 606, Supreme Court holds,

> [3]. According to the prosecution there were two independent witnesses in whose presence the poppy straw was recovered and seized. The prosecution, however, examined only one of them, namely, Pawan Kumar Sharma, PW1. PW1 did not support the prosecution and was declared hostile. He though admitted his signatures as a punch witness to the documents but denied that in his presence 3.900 kgs. of poppy straw was recovered and seized from the driver, Bahadur Singh and cleaner, Amreek Singh. The conviction was, however, based on the sole testimony of Investigating Officer, Head Constable Gontiya, PW3.
> [5]. There are serious material discrepancies in the evidence in respect of recovery and seizure…
> [8]. Under the aforesaid circumstances the appellant cannot be convicted on the sole testimony of policy witnesses, PW3. The question of applicability of Section 35 of the Act will not arise in the present case when the recovery itself is doubtful. The appellant had disputed the recovery of contraband. There are serious discrepancies in its recovery, seizure and deposit in the Maalkhana. The prosecution has thus failed to prove its case beyond all reasonable doubts against the appellant who is accordingly entitled to benefit of doubt.

32. In Karamjit Singh v. State (Delhi Administration), 2003(5) SCC 291, Supreme Court holds,

> [8] …The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depends upon the facts and circumstances of each case and no principle of general application can be laid down...

33. In State of Punjab v. Partap Singh, 2004 Drugs cases (Narcotics) 104, Supreme Court, in its order, observed,

> [2]. … We also noticed the fact that the investigating agency has

> not associated any independent witnesses even though they were available in the nearby vicinity. On facts of this case this by itself is a good ground to reject the appeal. The appeal fails and the same is dismissed."

34. In Dharampal Singh v. State of Punjab, 2010(9) SCC 608, Supreme Court observed,

> [16]. …It has come in the evidence of the prosecution witnesses that an attempt was made to join person from public at the time of search but none was available. In the face of it mere absence of independent witness at the time of search and seizure will not render the case of the prosecution unreliable.

35. In Ajmer Singh v. State of Haryana, (2010) 3 SCC 746, Supreme Court holds,

> [16]. The learned Counsel for the appellant has submitted that the evidence of the official witness cannot be relied upon as their testimony, has not been corroborated by any independent witness. We are unable to agree with the said submission of the learned Counsel. It is clear from the testimony of the prosecution witnesses PW-3 Paramjit Singh Ahalwat, D.S.P., Pehowa, PW-4 Raja Ram, Head Constable and PW-5 Maya Ram, which is on record, that efforts were made by the investigating party to include independent witness at the time of recovery, but none was willing. It is true that a charge under the Act is serious and carries onerous consequences. The minimum sentence prescribed under the Act is imprisonment of 10 years and fine. In this situation, it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule. Therefore, in the peculiar circumstances of this case, we are satisfied that it would be travesty of justice, if the appellant is acquitted merely because no independent witness has been produced. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.

36. In Surjit Singh v. State of Punjab, 2011(15) SCC 187, keeping in view the fact of search and seizure in the presence of DySP, a Gazetted officer, the Supreme Court holds,

> [4]. …It is true that no independent witness had been involved and no attempt had been made in that direction. However, keeping in mind that the seizure had been effected at about 5:30 a.m. and was the outcome of a sudden meeting between the police party and the appellant, it was difficult to get an independent witness. In any case, we find that Sub Inspector Jaspal Singh, PW 3 SI Kirpal Singh, P.W. 7, DSP Bhulla Singh and several others had also been present at the time of the incident and all have supported the seizure that had taken place. Even

> assuming that SI Jaspal Singh bore some animosity the possibility of false implication has been dispelled by the presence of the other police officers particularly DSP Bhulla Singh.

37. In Munish Mubar v. State of Haryana, 2012(10) SCC 464, Supreme Court holds,

> [25]. In view of the aforesaid discussion, it is evident that in spite of the fact that in case there is no independent witness of recoveries and panch witnesses are only police personnel, it may not affect the merits of the case. In the instant case, the defence did not ask this issue in the cross-examination to Inspector Shamsher Singh (PW.21) as why the independent person was not made the panch witness. More so, it was the duty of the appellant to furnish some explanation in his statement under Section 313 Criminal Procedure Code, as under what circumstances his car had been parked at the Delhi Airport and it remained there for 3 hours on the date of occurrence. More so, the call records of his telephone make it evident that he was present in the vicinity of the place of occurrence and under what circumstances recovery of incriminating material had been made on his voluntary disclosure statement. Merely making a bald statement that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established.

38. In Sumit Tomar v. State of Punjab, (2013) 1 SCC 395, Supreme Court observed,

> [3]. …According to the prosecution, on 27.06.2004, at about 5.00 p.m., a special barricading was set up by the police party at Basantpur Bus Stand, Patiala. At that time, the police party signaled to stop a silver colour Indica Car bearing No. DL-7CC-0654 which was coming from the side of Rajpura. The driver of the said car (appellant herein), accompanied with one Vikas Kumar (since deceased), who was sitting next to him, instead of stopping the car tried to run away, but the police party immediately blocked the way and managed to stop the car. In view of the above discussion, we hold that though it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statement cannot be faulted with.

39. In Kashmiri Lal v. State of Haryana, 2013(6) SCC 595, Supreme Court holds,

> [9]. As far as first submission is concerned, it is evincible from the evidence on record that the police officials had requested the people present in the 'dhaba; to be witnesses, but they declined to cooperate and, in fact, did not make themselves available. That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinising the evidence the court finds the evidence of the police officer as unreliable and untrustworthy, the court may

> disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle of quality of the evidence weighs over the quantity of evidence. These aspects have been highlighted in State of U.P. v. Anil Singh, 1990(3) RCR (Criminal) 585 : 1988 Supp SCC 686, State, Govt. of NCT of Delhi v. Sunil and another, 2001(1) RCR (Criminal) 56 : 2001(1) SCC 652 and Ramjee Rai and others v. State of Bihar, 2006(4) RCR (Criminal) 289 : 2006(13) SCC 229. Appreciating the evidence on record on the unveil of the aforesaid principles, we do not perceive any acceptable reason to discard the testimony of the official witnesses which is otherwise reliable and absolutely trustworthy.

40. In Pramod Kumar v. State (GNCT) of Delhi, 2013(6) SCC 588, Supreme Court holds,

> [10]. …There is no denial of the fact that the occurrence had taken place in the house of Chander Pal who has turned hostile. However, from his testimony and other evidence brought on record, it is evident that the occurrence took place in his house. His turning hostile does not affect the case of the prosecution. The witnesses from the department of police cannot per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony. This Court, after referring to State of U.P. v. Anil Singh, 1990(3) R.C.R (Criminal) 585 : 1988 Supp SCC 686, State, Govt. of NCT of Delhi v. Sunil and another, 2001(1) R.C.R.(Criminal) 56 : (2001) 1 SCC 652 and Ramjee Rai and others v. State of Bihar, 2006(4) R.C.R. (Criminal) 289 : (2006) 13 SCC 229, has laid down recently in Kashmiri Lal v. State of Haryana, 2013(3) R.C.R.(Criminal) 259 : 2013(4) Recent Apex Judgments (R.A.J.) 28 , that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence…

41. In Krishan Chand v. State of HP, (2018) 1 SCC 222, Supreme Court holds,

> [15]. From the evidence which has come on record, it is quite clear that the place, where the accused is alleged to have been apprehended, cannot be said to be an isolated one as the house of Govind Singh DW-2 is situated on the edge of Patarna bridge. Thus the version of the complainant PW-6 that independent witnesses could not be associated as it was an isolated place does not inspire confidence. Moreover, from the evidence of Govind Singh PW-2 the case of the prosecution regarding apprehension of the accused, at Patarna bridge, while being in possession of bag containing 7 kgs of charas, becomes highly

> doubtful because had he been so apprehended, by the police, this fact was to come to his notice, for the reason, that his house is situated at the edge of the bridge in which he resides, along with his family.
>
> [17]. In our opinion, the High Court failed to appreciate that the harsher is the punishment, the more is the strictness of proof required from the prosecution and that failing to associate independent witnesses at the time of recovery created a dent in the case of prosecution.
>
> [18]. As rightly pointed out by the counsel for the appellant that the High Court failed to appreciate that in the absence of independent witnesses, the evidence of the police witnesses must be scrutinized with greater care especially when police witnesses contradicted themselves on the issue as to in whose hand writing the seizure memo, the arrest memo, consent memo and the NCB form were written and the evidence adduced by the prosecution is not reliable.
>
> [20]. It is settled law that the testimony of official witnesses cannot be rejected on the ground of non-corroboration by independent witness. Though, in the present case, the prosecution, in support of its case, has examined the Complainant PW-6 and Umesh Kumar PW-4 who have supported the alleged recovery of charas from the accused. However, there are material contradictions, as pointed in their statements, which make the prosecution case highly doubtful. In our considered view, the High Court by not taking into account the contradictions in the evidence adduced held that in case there are minor contradictions in the depositions of the witnesses, the same are bound to be ignored and convicted the appellant as aforesaid.
>
> [21]. In view of the material contradictions which have come on record, we find that the High Court wrongly convicted the appellant as the evidence adduced by the prosecution was not carefully scrutinized by the High Court. We are of the considered opinion that the High Court committed error in convicting and sentencing the appellant.

42. In State of Himachal Pradesh v. Pardeep Kumar, 2018(13) SCC 808, Supreme Court holds,

> [6]. We have considered the matter and have heard the learned counsels for the parties. So far as examination of independent witnesses in support of the prosecution case is concerned all that would be necessary to say in this regard is that examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case. In the present case, according to the prosecution, independent witnesses were not available to witness the recovery of the contraband due to extreme cold. The fact that the incident took place at about 6.30 p.m. on 27-01-2009 and that too on the Manali-Kulu road may lend credence to the prosecution version of its inability to produce independent witnesses. In the absence of any animosity between the police party and the accused and having regard to the large quantity of contraband that was recovered (18.85 kgs.), we are of the view that it is unlikely that the contraband had been planted/foisted in the vehicle of the

accused persons.

43. In Surinder Kumar v. State of Punjab (2020) 2 SCC 563, a three-judge bench of Supreme Court holds,

> [14]. Further, it is contended by learned senior counsel appearing for the appellant that no independent witness was examined, despite the fact they were available. In this regard, it is to be noticed from the depositions of Devi Lal, Head Constable (PW-1), during the course of cross examination, has stated that efforts were made to join independent witnesses, but none were available. The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed.

44. A survey of the above-mentioned judicial precedents leads to the following outcome.

45. If the witnesses are not accomplices, what then is their position?[2] There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence.[3] But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.[4] Judicial approach has to be cautious in dealing with such evidence.[5] We cannot forget that it may not be possible to find independent witness at all places, at all times.[6] Ordinarily, the public at large show their disinclination to come forward to become witnesses[7]. The obligation to take public witnesses is not absolute…If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated.[8]

46. It is settled law that the testimony of official witnesses cannot be rejected on the ground of non-corroboration by independent witness[9]; it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statement cannot be faulted with.[10] The mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that same should not be believed[11]; examination of independent witnesses is

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[2] State of Bihar v. Basawan Singh, AIR 1958 SC 500, Constitutional Bench of Supreme Court of India, [Para 10].
[3] Masalti v. The state of U.P., AIR 1965 SC 202, a four-member bench of Supreme Court of India, [Para 14].
[4] Masalti v. The state of U.P., AIR 1965 SC 202, a four-member bench of Supreme Court of India, [Para 14].
[5] Masalti v. The state of U.P., AIR 1965 SC 202, a four-member bench of Supreme Court of India, [Para 14].
[6] Ajmer Singh v. State of Haryana, (2010) 3 SCC 746, [Para 16].
[7] Kashmiri Lal v. State of Haryana, 2013(6) SCC 595, [Para 9].
[8] Ajmer Singh v. State of Haryana, (2010) 3 SCC 746, [Para 16].
[9] Krishan Chand v. State of HP, (2018) 1 SCC 222, [Para 20].
[10] Sumit Tomar v. State of Punjab, (2013) 1 SCC 395, [Para 3].
[11] Surinder Kumar v. State of Punjab (2020) 2 SCC 563, [Para 14].

not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case.[12]

47. There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance[13]; there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion.[14] The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds.[15] If the evidence of the police officer is found acceptable it would be an erroneous proposition that court must reject the prosecution version solely on the ground that no independent witness was examined.[16] If in the course of scrutinising the evidence the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust.[17] Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence does not in any way affect the creditworthiness of the prosecution case[18]; The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.[19]

48. The British philosopher, jurist, and social reformer Jeremy Bentham conveyed his conviction that a witness is a cornerstone of a fair judicial system when he articulated, “Witnesses are the eyes and ears of justice.” While the Indian Evidence Act 1872 does not explicitly provide a definition for a witness, the definition of ‘Fact’[20] elucidates an understanding that a witness is one who perceives, infers, or possesses knowledge of a given fact. It is in the trial that elements of bias, prejudice, and interest are assessed, and resultantly, the admissibility and quality of the evidence are evaluated. A witness is a person who, based on their conscious observation or experience, has relevant knowledge of the happening or non-happening of an event and states or testifies about it. The job of a Judge is to mine and refine the truth.

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[12] State of Himachal Pradesh v. Pardeep Kumar, 2018(13) SCC 808, [Para 6].
[13] Kalpnath Rai v. State, (1997) 8 SCC 732, [Para 90].
[14] Kashmiri Lal v. State of Haryana, 2013(6) SCC 595, [Para 9].
[15] Karamjit Singh v. State (Delhi Administration), 2003(5) SCC 291, [Para 8].
[16] Kalpnath Rai v. State, (1997) 8 SCC 732, [Para 90].
[17] Kashmiri Lal v. State of Haryana, 2013(6) SCC 595, [Para 9].
[18] Tahir v. State (Delhi), (1996) 3 SCC 338, [Para 6].
[19] Ajmer Singh v. State of Haryana, (2010) 3 SCC 746, [Para 16].
[20] As per Section 3 of Indian Evidence Act, 1872, “Fact” means and includes—
(1) anything, state of things, or relation of things, capable of being perceived by the senses;
(2) any mental condition of which any person is conscious.

49. An appreciation of the entire evidence in the light of the judicial precedents mentioned above and applying such law to the factual scenario that despite an inference that the police intentionally did not associate any independent witness, such non-examination of independent witnesses did not point out that either the police had planted the poppy on the accused, or it was someone else whom the police tried to absolve by implanting the accused, or was prejudicial to the accused. The non-examination of the person from whom the scale was brought and the police officer who had carried the scale and the weights would also not cause prejudice to the appellant because of the absence of any cross-examination on these aspects. The statements of police officials cannot be discarded because they are police officials; however, before that is done, their testimonies must inspire confidence, which they do in the given evidence proved in this trial, viz-a-viz the nature of suggestions put to the witnesses in the defence, and the joint stand of all the accused in 313 CrPC of denial simpliciter. The impugned judgment led to the same result that this court arrived at after independently appreciating the evidence and applying the law. To conclude, the prosecution has proved its case beyond a reasonable doubt.

**Appeal dismissed**. Order suspending the sentence of the appellant is recalled. All pending applications, if any, are closed.

**(Anoop Chitkara),**
**Judge**

**06.11.2023**
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: **YES**.