



2026 INSC 854

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.3897 OF 2025

KASHMIR RAM @ PAPPI **... APPELLANT(S)**

VERSUS

STATE OF PUNJAB **... RESPONDENT(S)**

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. The instant criminal appeal arises out of SLP (Criminal) No. 13839 of 2025 assailing the judgment dated 30.10.2019 passed by the High Court of Punjab and Haryana at Chandigarh in CRA-S-2073-SB-2018, whereby the appeal preferred by the Appellant against his conviction and sentence stood dismissed.
2. Kashmir Ram @ Pappi (hereinafter referred to as “the Appellant”) and Dharam Pal @ Bobby, co-accused brother of the Appellant, were convicted and sentenced

by the Special Court, Jalandhar, in CIS Case No. NDPS/1160/2014 vide judgment dated 26.03.2018 under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act 1985”) to rigorous imprisonment for ten years and a fine of INR 1,00,000/- (Rupees One Lakh only) and, in default of payment of fine, to undergo rigorous imprisonment for a further period of one year.

3. Dharam Pal @ Bobby, and the Appellant preferred a joint appeal, which stood dismissed by the impugned judgment. Dharam Pal @ Bobby has till now chosen not to challenge the judgment and is, thus, not before this Court.
4. Both the above mentioned accused, stood forwarded by the Station House Officer, Police Station Phillaur, District Jalandhar, to face trial under Section 15 of the NDPS Act 1985 upon the allegation that on 04.05.2014 at about 11:30 AM, in the area of Pul Nehar, Tehang, they were found in conscious possession of ten plastic bags of poppy husk, each of twenty kilograms, from the back portion of Tata Safari vehicle and further of eight plastic bags of poppy husk,

each of twenty kilograms, on disclosure kept in the room of their house without any valid licence or permit.

5. The prosecution case is that on 04.05.2014 Inspector Shiv Kumar, Incharge, Special Staff, Jalandhar, along with other police officials, had laid a naka at the Canal Bridge, Village Tehang, in connection with the checking of suspected persons and vehicles. At about 11:00 AM, a secret informer disclosed to him that the Appellant and his brother were selling poppy husk on a large scale in the area. They had kept plastic bags containing poppy husk in a Safari car bearing registration number PB-08-AM-2821 and they were proceeding from Saifabad towards Tehang for the purpose of supplying the same. Finding the information reliable, the Investigating Officer scribed a ruqa and sent it to Police Station Phillaur, upon the basis whereof FIR No. 89 dated 04.05.2014 came to be registered under Sections 15, 61 and 85 of the NDPS Act 1985. The ruqa was exhibited as Ex. P-1 and the formal FIR as Ex. P-2.
6. A nakka was thereafter laid at the disclosed place. The Tata Safari, when appeared, was signalled to stop. The

driver attempted to turn it around but the vehicle was apprehended. The person at the wheel disclosed his name as Dharam Pal @ Bobby and the person seated adjoining the driver's seat as Kashmir Ram @ Pappi- the Appellant, both residents of Village Saiffabad. Upon being apprised of their right to be searched in the presence of a Magistrate or a Gazetted Officer, both declined to be searched by the Investigating Officer and elected to be searched before a Gazetted Officer, separate memos to that effect being prepared as Ex. P-3 and Ex. P-4. The Investigating Officer thereupon telephoned the Deputy Superintendent of Police (D), apprising him of the receipt of the secret information and of the apprehension of the vehicle and the accused, and requesting him to reach the spot. Deputy Superintendent of Police (D) Ashwani Kumar arrived, apprised both accused that he was a Gazetted Officer and that they were at liberty to be searched before any other Gazetted Officer or a Magistrate, and both reposed confidence in him, separate consent memos being accordingly prepared. Independent witnesses were approached but showed their unwillingness to join the proceedings.

7. The search of the vehicle was conducted under the supervision of the Deputy Superintendent of Police (D). Beneath a tarpaulin at the rear were found ten plastic bags, all of which contained poppy husk. The contents were emptied upon the tarpaulin and mixed, two samples of 250 grams each were drawn, and the remaining material, weighing approximately 200 kilograms, was converted into bulk parcels. The Deputy Superintendent of Police (D) affixed his seal bearing the impression "AK" upon all the parcels and the Investigating Officer his seal bearing the impression "SK", and Form M-29, Ex. DC, was filled in at the spot bearing both impressions. The recovered substance and the vehicle were taken into police possession vide recovery memo Ex. P-6, and both accused were arrested. A personal search of both was also conducted vide memos Ex. P-9 and Ex. P-10, from which nothing was recovered.
8. Upon separate disclosure statements, Ex. P-12 and Ex. P-13, a further eight plastic bags of poppy husk, weighing approximately 160 kilograms, were recovered from a room in the house the accused at Village Saiffabad, the identical procedure of mixing, sampling

and sealing being followed and a second Form M-29, Ex. DB, being prepared. Upon return to the Police Station the case property was produced before the Station House Officer, who affixed his seal bearing the impression "PSS" on all the parcels as also the Forms M-29, whereafter it was deposited with the Mohrir Head Constable.

9. On the following day, 05.05.2014, the case property was produced, together with both accused, before the Illaqa Magistrate. The case property was re-deposited with the Mohrir Head Constable the same day, and two sample parcels, representing the two separate recoveries, were forwarded to the office of the Chemical Examiner, Kharar, where they were received on 20.05.2014. The reports of the Chemical Examiner, Ex. D2 and Ex. PY, identified the material in each parcel as poppy husk and recorded the seals intact and as tallying with the specimen impressions borne upon the Forms M-29. Upon completion of the investigation the challan came to be presented, and both accused were charge-sheeted under Section 15 of the NDPS Act 1985, to which they pleaded not guilty and claimed trial.

10. The prosecution examined six witnesses, namely, Constable Raman Kataria, sample carrier, as PW-01; Charanjit Kaur, Junior Assistant in the office of the District Transport Officer, Jalandhar, as PW-02; Head Constable Parminder Singh, the then Mohrir Head Constable, as PW-03; Inspector Shiv Kumar, the Investigating Officer, as PW-04; Sub-Inspector Surinder Singh, witness of recovery, as PW-05; and Deputy Superintendent of Police (D) Ashwani Kumar as PW-06. PW-02 proved, vide Ex. PW-2/A, that the vehicle stood registered in the name of M/s Plasma Records Entertainment and was thereafter transferred to one Buta Singh. In their statements recorded under Section 313 CrPC 1973 both accused denied the incriminating circumstances and pleaded false implication at the instance of the then Sarpanch of their village. In defence, Darshan Ram, the sitting Sarpanch of Village Saiffabad, was examined as DW-01, who deposed to a prior quarrel in the year 2011 between the accused and the former Sarpanch, and to the accused having been picked up from their home and a false recovery having been planted upon them; he admitted in cross-examination that no application

complaining of the alleged false implication had been moved before any higher officer.

11. The cross-examination of the prosecution witnesses elicited certain admissions upon which the defence founded its case. It is sufficient to notice in outline, at this stage, as they are being examined in their proper place hereinafter. PW-04 admitted that he had not reduced the secret information into writing or sent the same to a superior officer at any stage of the case, and that PW-06 was holding current duty charge, the regular Deputy Superintendent of Police not then being available. PW-06 admitted that he had never been informed of the secret information in writing and had never seen it, and that he came to be confirmed in the substantive rank only in the year 2016. Certain divergences were also elicited as to the date upon which the samples were deposited with the Chemical Examiner, as to the number of parcels carried, and as to whether the specimen seal impression had been taken upon a piece of cloth.
12. Before the Special Court it was urged for the accused that no effort had been made to reduce the secret information into writing or to inform the higher

authorities even after a reasonable delay, and that the non-compliance with Section 42 of the NDPS Act 1985 was fatal to the prosecution, reliance being placed upon *Darshan Singh v. State of Haryana*¹ and *Rajender Singh v. State of Haryana*². The Special Court set out Section 42 in extenso, noticed *Karnail Singh v. State of Haryana*³, wherein *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*⁴ and *Sajan Abraham v. State of Kerala*⁵ had been considered, and further placed reliance upon *Bahadur Singh v. State of Haryana*⁶. Upon that footing it held that PW-04, having received the information while on the move, having sent the ruqa Ex. P-1 upon the basis whereof the FIR came to be registered, and having thereafter summoned the Deputy Superintendent of Police to the spot, had substantially complied with the provision, and that no prejudice was shown to have been caused to the accused.

13. It was next urged that no independent witness had been associated with either recovery and that Section 100(4) CrPC 1973 had not been complied with in

¹ 2016 (1) RCR (Criminal) 333 (SC)

² 2011 (3) RCR (Criminal) 856 (SC)

³ (2009) 8 SCC 539

⁴ (2000) 2 SCC 513

⁵ (2001) 6 SCC 692

⁶ (2010) 4 SCC 445

respect of the search of the house. The Special Court held that two independent and respectable inhabitants of the locality had not been summoned before the search of the house was conducted, and that the recovery of eight bags therefrom stood vitiated on that account. Apropos Section 50 of the NDPS Act 1985, it was urged that PW-06 was not a Gazetted Officer on 04.05.2014 and was thus not in a capacity to search the accused in terms of the consent given by them. Relying upon *State of Himachal Pradesh v. Pawan Kumar*⁷ and *State of Haryana v. Ranbir alias Rana*⁸, the Special Court held the provision to have no application, it being attracted only in the case of a personal search of the accused and not where the search is made of a vehicle which he was at the relevant time using, and that it was accordingly of no effect upon the prosecution case that the officer who supervised the search was not a regular Deputy Superintendent of Police.

14. The contention that the link evidence was missing was rejected, the Special Court holding that the reports Ex. D2 and Ex. PY, read with the corresponding Forms M-

⁷ (2005) 4 SCC 350

⁸ AIR 2006 SC 1796

29, established that two samples had been forwarded, the one relating to bags 1 to 10 and the other to bags 11 to 18, that both reports recorded receipt on 20.05.2014, and that the divergences elicited in cross-examination were inadvertent. The non-examination of the Station House Officer was held not to be fatal, he having proceeded on ex-India leave and having thereafter remained absent from duty, and PW-04 having proved his seal impression upon all the parcels; and the non-examination of the Chemical Analyst was likewise held not to be fatal, his report standing tendered under Section 293 CrPC 1973. In conclusion, the Special Court held that the prosecution had failed to prove its case in respect of the eight bags recovered from the house but had proved it in respect of the ten bags recovered from the vehicle, and convicted both accused under Section 15(c) of the NDPS Act 1985. Upon quantum, the plea that the convicts were poor persons and first offenders was considered and declined, the quantity being commercial.

15. In appeal, the High Court took up the contentions issue-wise, namely, non-compliance with Sections 42 and 50; the non-examination of the Chemical Analyst

and of the Station House Officer; the reliability of the oral evidence, which it reserved to be taken up at the end; and the absence of link evidence. As regards Section 42, it reproduced paragraph 35 of *Karnail Singh case (supra)* and held that the Investigating Officer having received the information while not at the Police Station but on the move, it was not necessary that the same be immediately reduced into writing and passed on to the immediate official superior; that he had in fact informed the Police Station by sending a communication; and that the Deputy Superintendent of Police had thereafter been informed on telephone and requested to reach the place of recovery. It accordingly found substantive compliance.

16. Apropos Section 50, the High Court recorded that the provision has no applicability where the vehicle is searched and the recovery made therefrom. It noticed the submission that a personal search had also been conducted, as would be clear from the memo, and rejected it upon *State of Punjab v. Baljinder Singh*⁹ holding the search of the vehicle and the personal search following upon it, to be two separate and

⁹ Criminal Appeal Nos. 1565-66 of 2019, decided on 15.10.2019

independent steps, so that where no narcotics have been recovered upon the latter while narcotics have been recovered from the former, the entire search does not stand vitiated; and it took the view that the contention founded upon the current duty charge held by PW-06 could not therefore be accepted. With regard to the absence of link evidence, it held that the vehicle was found in the possession and occupation of the appellants and that the circumstance of its registration in the name of a third party did not assist them. Referring to Section 54 of the NDPS Act 1985 and observing that the principle of reverse onus is now well established and recognised, it held that the onus lay upon the appellants.

17. The High Court held further that the defence, having sought to establish false implication at the behest of the then Sarpanch by examining the subsequent Sarpanch, had failed to create a dent in the case set up by the prosecution. Observing that the recovery was a large one and that the investigating agency was required to be extra vigilant, cautious and meticulous, and having prima facie found that police officials had attempted to mislead the Court, it directed that a copy

of the judgment be forwarded to the Director General of Police, Punjab, for information and such further action as might be found necessary against the police officials concerned. The appeal was accordingly dismissed.

18. Learned Counsel for the Appellant contends that what the record discloses is not delayed but total non-compliance with Section 42 of the NDPS Act 1985, and that the distinction is decisive. He places reliance upon the admission of PW-04 that he had not reduced the secret information into writing or sent the same to a superior officer at any stage of the case, and upon that of PW-06 that he was never informed of the secret information in writing and had never seen it. It is urged that the ruqa sent for registration of the FIR is a step taken under the Code of Criminal Procedure and cannot be pressed into service as compliance with a distinct statutory obligation; that a telephonic summons to an officer cannot supply the want of a writing which the statute exacts; and that the Courts below erred in treating either circumstance, or both together, as substantial compliance. Reliance is placed upon *Karnail Singh case (supra)* and upon *State of*

*Punjab v. Balbir Singh*¹⁰, and in particular upon the proposition that where a private conveyance in a public place or in transit is sought to be searched and seized, the requirements of Section 42 are to be complied with.

19. It is contended further that Section 50 of the NDPS Act 1985 stood violated, a personal search of both accused having admittedly been conducted vide memos Ex. P-9 and Ex. P-10, and PW-06, before whom the accused elected to be searched, having held the post of Deputy Superintendent of Police only on current duty charge on 04.05.2014 and having been confirmed in the substantive rank as late as the year 2016. It is urged that the offer and the search which follows upon it constitute a composite transaction, and that a consent given to an officer who did not hold the rank represented to the accused is no consent in the eye of law. Reliance is placed upon *State of Punjab v. Baldev Singh*¹¹.

20. The remaining grounds urged are that the sample parcels, drawn on 04.05.2014, reached the office of the

¹⁰ (1994) 3 SCC 299

¹¹ (1999) 6 SCC 172

Chemical Examiner only on 20.05.2014, in breach of Standing Order 1/88 dated 15.03.1988 and of Section 52A of the NDPS Act 1985, reliance being placed upon *Union of India v. Mohanlal*¹²; that the Chemical Analyst was not examined and that the report tendered under Section 293 CrPC 1973 could not, without more, be made the foundation of a conviction, reliance being placed upon *Thana Singh v. Central Bureau of Narcotics*¹³; that no independent and respectable witness of the locality was associated with either recovery, so that the very infirmity which persuaded the Special Court to discard the recovery from the house ought to have persuaded it to discard the recovery from the vehicle; and that no link evidence connects the Appellant with the vehicle, PW-02 having proved that it stood registered in the name of a third party who was never examined, investigated or proceeded against, the Appellant having in any event been no more than a passenger seated adjoining the driver. It is urged, as the culmination of these submissions, that the High Court, having itself recorded prima facie findings that three of the six

¹² 2016 SCC OnLine SC 606

¹³ (2013) 2 SCC 590

prosecution witnesses had attempted to mislead the Court or had deposed against the record, and having gone to the length of directing a reference to the Director General of Police, Punjab, could not consistently have sustained the conviction upon the testimony of those very witnesses.

21. Per contra, learned Counsel for the Respondent-State submits that no infirmity attaches to the concurrent findings returned by the two Courts below and that their appreciation of the evidence is not to be reopened as though the present were a further appeal upon facts. It is submitted that the order of the Sub-Divisional Judicial Magistrate dated 05.05.2014 furnishes independent, contemporaneous and judicial corroboration of the integrity of the seals within a day of the recovery, which no infirmity in the testimony of an individual police witness is capable of displacing; that Section 42 of the NDPS Act 1985 stands satisfied where the substance of the information is acted upon with promptitude by an officer who receives it while on patrol, as held in *Karnail Singh case (supra)*, literal and contemporaneous recording not being exacted in such a situation; and that the requirement of dispatch

within seventy-two hours under Standing Order 1/88 is directed against adulteration or substitution, so that where the seals are shown to be intact and to tally, the purpose of the requirement stands achieved and no question of the delay vitiating the trial arises, reliance being placed upon *Narcotics Control Bureau v. Kashif*¹⁴. It is submitted finally that discrepancies which do not touch the core of a prosecution case otherwise proved do not discredit it, reliance being placed upon *State of Uttar Pradesh v. Naresh*¹⁵; that the presumption arising under Section 54 of the NDPS Act 1985 was never rebutted, the evidence of DW-01 having been considered and rejected by both the Courts below; and that the sentence awarded is the minimum prescribed for a commercial quantity, no material having been placed to warrant any lesser punishment. He accordingly prays for dismissal of the instant appeal.

22. We have heard learned Counsel for both the parties and, gone through the record as well as the judgments passed by the Special Court and by the High Court.

23. Before we delve into the factual analysis based upon

¹⁴ (2024) 11 SCC 372

¹⁵ (2011) 4 SCC 324

the legal principles governing each of the contentions raised, it is necessary to bear in mind the character of the statute under consideration. The NDPS Act 1985 is a special law enacted to curtail the menace of illicit traffic in narcotic drugs and psychotropic substances, and to that end it confers upon the authorities powers of entry, search, seizure and arrest without warrant which are comprehensive in their reach. Those powers are matched by punishments which are stringent and which, in the case of a commercial quantity, admit of no sentence below the statutory minimum. It is precisely because the powers conferred are wide and the consequences of conviction severe that the Legislature has hedged their exercise about with safeguards, and it is well settled that those safeguards are to be construed strictly and that their observance is not to be treated as an empty formality. At the same time, a safeguard is enacted to secure a purpose, and the enquiry in a given case must be directed to whether that purpose has in truth been served upon the facts obtaining, and not merely to whether a prescribed form has been faithfully reproduced. The harmonious balance so struck, between the protection of the individual against the hazards of an unregulated

search and the protection of the community against a traffic which the statute was enacted to suppress, lies at the core of the provisions which fall for our consideration. It is upon that approach that we have examined each of the contentions urged before us.

24. We are conscious that the jurisdiction conferred upon this Court by Article 136 of the Constitution of India, 1950 is discretionary and extraordinary, and that an appeal by special leave is not a further appeal upon facts. We have nevertheless considered it appropriate, regard being had to the nature of the grounds urged and to the sentence which the Appellant is presently undergoing, to examine each of the contentions upon its own merits and to record our findings thereon, rather than to dispose of the appeal upon the limits of that jurisdiction alone. The weight to be attached to the circumstance that the findings assailed are concurrent findings of two Courts is a matter to which we shall return at the conclusion of this judgment.

25. The first issue that falls for our consideration, and that upon which the appeal principally turns, is the compliance with Section 42 of the NDPS Act 1985. For the said purpose, an analysis of the bare text of the

provision is undertaken hereinafter. Section 42, insofar as it is material, is worded as follows:

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed ... is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

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

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

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act ...; and

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

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

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

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

26. From the perusal of the provision it is evident that where the empowered officer proceeds upon prior information given by any person, that information is necessarily to be taken down in writing, whereas where he proceeds upon his personal knowledge no recording of the reasons of his belief is exacted, save that under the proviso the grounds of belief must be recorded if the search is to be conducted between sunset and sunrise; and that sub-section (2) obliges the officer, wherever he has taken down information in writing or recorded grounds of belief under the proviso, to send a copy thereof to his immediate official superior within seventy-two hours. To the extent so indicated the provisions are mandatory, and their contravention would affect the prosecution case and vitiate the trial, as was held by a three-Judge Bench of this Court in paragraph 25(2-C) of *Balbir Singh case (supra)*, relied

upon by the Appellant:

“Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.”

27. The content of the obligation so cast, and the consequences of a departure from it, were thereafter settled by the Constitution Bench in *Karnail Singh case (supra)*, which considered *Abdul Rashid Ibrahim Mansuri case (supra)* and *Sajan Abraham case (supra)* and stated the resulting position in paragraph 35 in the following terms:

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

(b) But if the information was received when the officer was not in the police station, but while he was on the move

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

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42 ... Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

28. The submission of the Appellant, put at its highest, is that the present case answers to the concluding limb of clause (d) above, being that of an officer who does not record the information at all and does not inform his official superior at all, and that the concurrent

finding of substantial compliance is therefore not merely erroneous but one which no Court could reasonably have reached upon the material. In support of that construction reliance was placed, before the Special Court, upon *Darshan Singh case (supra)*, wherein this Court held in paragraph 13 that the mandate of Section 42(1) requiring the recording in writing of the details pertaining to the receipt of secret information, as also the communication of the same to the superior officer, is separate and distinct from the procedure stipulated under the provisions of the Code of Criminal Procedure; that the two procedures are exclusive of one another; that compliance with one would not infer compliance with the other; and that compliance with Section 42 —

“... will not be assumed, merely because the Station House Officer concerned had registered a first information report, which was also dispatched to the Superintendent of Police, in compliance with the provisions of the Criminal Procedure Code.”

29. The proposition so laid down in *Darshan Singh case (supra)* is unexceptionable and we respectfully affirm it. The registration of an FIR and its onward transmission through the ordinary channels of the Code of Criminal Procedure are no substitute for the

distinct obligation which Section 42 casts, and compliance with the latter is not to be assumed from the former. It is nevertheless necessary to notice the precise vice at which that proposition is directed. It is directed against an assumption, and against the practice of treating the registration of an FIR, without more, as discharging an obligation which the statute casts separately and independently. It does not enact a rule of exclusion, whereby the circumstance that an FIR came to be registered upon a writing emanating from the empowered officer himself is to be shut out from consideration altogether when the Court comes to determine, upon the totality of the material, whether the statutory purpose has in fact been served. The distinction is one between assuming compliance from a single circumstance and weighing that circumstance along with others, and it is a distinction which the Courts below did not overlook.

30. Having so understood the law, we may turn to what the Courts below in fact did. Upon a fair reading of both judgments, the finding of substantial compliance rests not upon the registration of the FIR alone but upon three matters taken together. The first is that the

information reached PW-04 at 11:00 AM while he was at a nakabandi upon a public road and not at the Police Station, and that it related to a vehicle then in transit and expected imminently, which is a situation answering precisely to clause (b) of paragraph 35 of *Karnail Singh case (supra)*, where the exigency is such that the taking down of the information in writing before acting upon it is neither feasible nor practical. The second is that PW-04 did not merely proceed to act upon the information; he scribed the ruqa, Ex. P-1, and dispatched it to the Police Station through Constable Nirbhai Singh No. 1106 before the interception was effected, so that a writing emanating from him, recording the substance of what he had learnt, was brought into existence contemporaneously with the receipt of the information and preceded the search. The third is that he thereupon telephoned the Deputy Superintendent of Police (D), communicated to him the receipt of the secret information as well as the apprehension of the vehicle and the accused, and summoned him to the spot, the search having been carried out under his supervision upon his arrival.

31. It was upon a factual matrix of precisely that character

that this Court held in *Bahadur Singh case (supra)*, relied upon by the Special Court, that there had been substantial compliance, a wireless message having been sent to the immediate higher officer and a ruqa containing the facts and circumstances of the case having been sent from the spot to the Police Station, upon the basis whereof the FIR came to be registered, and no prejudice having been shown to have been caused to the accused by the non-reduction of the secret information into writing. We do not find that the Special Court erred in applying it, nor that the High Court erred in affirming the conclusion so reached.

32. The admission of PW-04 in his cross-examination, upon which the Appellant rests the whole of his case under this head, is therefore not to be read in isolation from the circumstances aforesaid. Read along with them, what the admission establishes is that no entry was made in the register concerned and that no copy was separately transmitted to the immediate official superior, and not that the officer proceeded in secrecy or that the substance of the information was withheld altogether from the record and from every superior. That is a materially different case from the one

contemplated by the concluding limb of clause (d) of paragraph 35 of *Karnail Singh case (supra)*, and equally a materially different case from *Darshan Singh case (supra)*, where nothing beyond the registration of the FIR and its routine onward dispatch was placed before the Court. We are accordingly not persuaded that the concurrent finding can be characterised as one of total non-compliance.

33. Upon a consideration of the circumstances as a whole, we hold that there was substantial compliance with the requirements of Section 42 of the NDPS Act 1985. The information, received upon a public road and relating to a vehicle then in transit and expected imminently, called for immediate action of the kind contemplated by clause (b) of paragraph 35 of *Karnail Singh case (supra)*; its substance was reduced into writing in the ruqa, Ex. P-1, and dispatched before the search was undertaken; the officer superior in rank was informed of its receipt, was summoned to the spot, and the search was conducted in his presence and under his supervision; and no prejudice of any description has been shown to have been occasioned to the Appellant by the manner in which the officer

proceeded. The case is thus not one of a total absence of compliance, and the delayed and imperfect character of what was done stands sufficiently explained by the exigency which the situation presented.

34. That conclusion is fortified, and independently supported, by the circumstance that the finding assailed is a concurrent one. Whether there is adequate or substantial compliance with Section 42 is, upon the express terms of *Karnail Singh case (supra)*, a question of fact to be decided in each case. That question was raised before the Special Court, was argued upon the very judgements now pressed before us and was answered against the Appellant; it was raised again before the High Court and was answered against him a second time, each Court having addressed itself to the material upon the record. Even if we had entertained a doubt in the matter, which we do not, it would not have been open to this Court, in the exercise of the jurisdiction conferred by Article 136 of the Constitution of India, to substitute for a view reasonably taken upon the record on a different appreciation of the same material. The ground pressed

into service, as mentioned above, consequently fails.

35. The next issue that falls for our consideration is with respect to Section 50 of the NDPS Act 1985. The safeguard there enacted operates upon the search of the person of an individual, its object being to protect a person against the hazards of an unwitnessed personal search, and it does not extend to the search of a bag, an article, a container or a conveyance. That is the effect of *Pawan Kumar case (supra)*, applied by the Special Court, and of *Ranbir alias Rana case (supra)*. *Baldev Singh case (supra)*, upon which the Appellant places reliance, is a decision of a Constitution Bench and declares the provision to be mandatory; but what it declares mandatory is the safeguard attending the search of the person from which the incriminating recovery is made, and it does not convert every personal search which may incidentally be conducted in the course of an investigation into the search upon which a conviction founded elsewhere must stand or fall.
36. Upon the record before us, it is not in dispute that a personal search of both accused was conducted vide memos Ex. P-9 and Ex. P-10; the fact is recited in the

evidence of PW-04, PW-05 and PW-06 in materially identical terms and was noticed by the Special Court in its narration of the evidence. It is equally not in dispute that nothing whatsoever was recovered upon that personal search, and that the conviction rests wholly and exclusively upon the ten bags of poppy husk recovered from beneath the tarpaulin at the rear of the Tata Safari. The High Court addressed this aspect precisely, and did so upon a formulation more careful than that adopted by the Special Court, which at one place in its reasoning observed that no personal search had been conducted at all. The High Court did not deny the personal search; it recorded the submission that such a search had been conducted as would be clear from the memo, and answered it upon *Baljinder Singh case (supra)*, holding the search of the vehicle and the personal search following upon it to be two separate and independent steps, so that where nothing is recovered upon the latter while the narcotics are recovered from the former, the entire search does not stand vitiated. That, in our considered view, is the correct approach, and we adopt it. We hold, accordingly, that Section 50 of the NDPS Act 1985 was not attracted to the search which yielded the recovery

beneath the tarpaulin at the rear of TATA Safari vehicle upon which the conviction rests, and that no question of its breach arises in the facts present in the case in hand.

37. It follows that the further contention as to the rank held by PW-06 on 04.05.2014 does not arise for our determination, Section 50 of the NDPS Act 1985 not being attracted to the search which yielded the recovery, the status of the officer before whom the accused elected to be searched cannot affect the validity of that recovery.
38. We come next to the interval between the drawing of the samples on 04.05.2014 and their deposit with the Chemical Examiner on 20.05.2014, said to offend Standing Order 1/88 dated 15.03.1988 as well as Section 52A of the NDPS Act 1985. The object of a prescription requiring prompt dispatch is to foreclose the possibility of tampering, substitution or adulteration during the period for which the samples remain outside judicial control; and where that possibility stands independently foreclosed, the object of the prescription is served notwithstanding the interval. In the present case, it stands foreclosed upon

two independent footings. On the day following the recovery the entire case property and the sample parcels were produced before the Sub-Divisional Judicial Magistrate, whose order records the seals “SK”, “AK” and “PSS” as intact, records the inventory report as correct, and records the drawing of four further representative samples under her own seal “PS” a judicial act, contemporaneous, and recorded by an authority wholly independent of the investigating agency. And upon receipt at the Laboratory, the reports Ex. D2 and Ex. PY record the seals as intact and as tallying with the specimen impressions borne upon the Forms M-29, Ex. DB and Ex. DC. Nothing has been placed before us, as nothing was placed before either Court below, to suggest interference/tampering with the parcels during the intervening period.

39. In such circumstances, the interval is a procedural irregularity which does not, of itself, vitiate the trial. The position was stated by this Court in *Kashif case* (*supra*), in paragraph 41, in the following terms:

“41. From the above decisions, the position that emerges is that this Court in a catena of decisions, has approved the procedure of spot searches and seizures in

compliance with the Standing Orders and the notifications issued by the NCB and the Central Government, and upheld the convictions on being satisfied about the search and seizure made by the officers as per the provisions of the Act and being satisfied about the scientific evidence of FSL reports, etc. Even otherwise, in view of the law laid down by the Constitution Benches in Pooran Mal and in Baldev Singh, any procedural illegality in conducting the search and seizure by itself, would not make the entire evidence collected thereby inadmissible. The court would have to decide the admissibility of evidence in the context and the manner in which the evidence was collected and was sought to be used during the course of trial. The evidence collected during the course of investigation in legal and proper manner and sought to be used in the course of trial with regard to the seized contraband substance could not be simply brushed aside, on the ground of procedural irregularity if any, committed by the officer concerned authorised in making application to the Magistrate as contemplated under Section 52-A of the Act.”

40. *Mohanlal case (supra)*, upon which the Appellant places reliance, is concerned principally with the machinery for the sampling, certification and disposal of seized narcotic substances and with the directions issued for securing the working of that machinery. It does not carry the Appellant's case beyond the point already considered, no material having been placed to suggest that the integrity of the samples was in fact compromised during the interval complained of. Apropos the non-examination of the Chemical Analyst, the report of the Chemical Examiner stood tendered

under Section 293 CrPC 1973, which provides:

“(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.”

41. The report was thus admissible in evidence without formal proof, sub-section (2) preserving the power of the Special Court to summon and examine the person by whom it was made an authority which exists to be invoked. The record placed before us does not disclose that any application for the examination of the Chemical Analyst was made on behalf of the accused at any stage of the trial and came to be declined, nor is it suggested that the reports Ex. D2 and Ex. PY are unreliable upon their face or that the material analysed was other than the material seized. In the absence of any such request and of any such foundation, the contention founded upon *Thana Singh case (supra)* does not carry the matter any further.
42. We turn now to the two related contentions upon which the Appellant placed his principal reliance

before us, namely, the absence of independent witnesses, and the asserted inconsistency in convicting upon the one recovery while disbelieving the other. The absence of independent and respectable inhabitants of the locality was the very circumstance upon which the Special Court declined to act upon the recovery of eight bags from the house. That the same Court acted upon the recovery of ten bags from the vehicle does not, upon analysis, disclose any inconsistency. The two recoveries were effected at different places, at different hours of the day, and under different statutory requirements. The search of a dwelling house attracts Section 100(4) CrPC 1973, which reads:

“(4) Before making a search under this Chapter, the officer or other person about to make it shall 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 and may issue an order in writing to them or any of them so to do.”

43. The search of a vehicle intercepted upon a public road does not attract that provision. The Special Court applied the requirement where the statute imposed it, and declined to apply it where the statute did not; and

in doing so it drew a distinction which the law itself draws, rather than falling into inconsistency. Nor is it correct to contend that the disbelief of one limb of a prosecution case must necessarily entail the rejection of the other. What is required of a Court is that it separate the acceptable from the unacceptable and act upon the former wherever the former is capable of standing upon its own feet. Adopting the words of this Court in paragraph 49 of *Arvind Kumar alias Nemichand & Ors. v. State of Rajasthan*¹⁶, referred to in *Ramabora alias Ramaboraiah & Anr. v. State of Karnataka*¹⁷:

“49. The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance ... When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject.”

44. Applying that principle to the present factual matrix,

¹⁶ (2021) SCC OnLine SC 1099

¹⁷ (2022) SCC OnLine SC 996

we find the recovery from the vehicle to be separable from the recovery from the house in every material respect. It preceded the disclosure statements; it rests upon a distinct recovery memo, Ex. P-6; it produced a distinct Form M-29, Ex. DC, and a distinct sample which yielded a distinct report, Ex. PY, relating to bags 1 to 10; and it stands independently vouched by the order of the Sub-Divisional Judicial Magistrate dated 05.05.2014. The evidence is not inseparable, and the exercise of sifting was neither impossible nor productive of an unacceptable residue.

45. The findings recorded by the High Court against PW-01, PW-03 and PW-06 fall to be considered upon the very same principle, and we are unable to read them as the Appellant would have us read them. Those findings are directed to the credit of the witnesses upon three identified particulars, namely, whether the specimen seal impression was taken upon a piece of cloth, whether Form M-29 bore the signature of the Magistrate, and whether the Laboratories at Mohali and Kharar are distinct institutions. It is instructive that upon each of those three particulars the witnesses were found to be in error precisely because

the documentary record showed them to be in error; the very material which exposed the infirmity is the material upon which the conviction rests. Even further, none of those particulars touches the fact of the interception, the presence of the Appellant within the vehicle, the recovery of the ten bags, the drawing and sealing of the samples in the presence of PW-06, the production of the case property before the Magistrate on the following day, the intactness of the seals as judicially recorded, or the identity of the material as poppy husk as established by the reports of the Chemical Examiner. Upon each of those matters the prosecution case rests not upon the credit of any individual police witness but upon a contemporaneous judicial order and upon forensic material which no party has impeached.

46. It was upon this footing that the High Court, while recording in terms that there was some substance in the argument addressed to it, declined to hold the statutory presumption in favour of the prosecution to have been rebutted; and upon our own examination of the material we are of the same view, and hold that the infirmities found do not displace the case which the

prosecution has otherwise proved. A witness disbelieved upon a collateral particular is not, for that reason alone, to be discarded upon every particular; and where the core of the prosecution case stands independently established by material aliunde, discrepancies which do not go to the root of the matter do not entitle an accused to an acquittal, as was held in *Naresh case (supra)*. The direction issued by the High Court that a copy of its judgment be forwarded to the Director General of Police, Punjab, was a direction addressed to the conduct of the officers concerned and to the standards expected of the investigating agency in a case of large recovery; it was not, and was never intended to be, a finding that the recovery had not taken place.

47. Relating to the submissions that the vehicle was never connected with the Appellant, it is sufficient to observe that what is material for the purposes of Section 15 of the NDPS Act 1985 is possession and not title. PW-02 established that the vehicle stood registered first in the name of M/s Plasma Records Entertainment and thereafter in the name of Buta Singh; that establishes who owned the vehicle, but it does not establish who

was in possession of it, or of its contents, at 11:30 AM on 04.05.2014. Upon that question the evidence upon the record is that both accused were within the vehicle, that the driver attempted to turn it around upon being signalled to stop, and that ten bags of poppy husk lay beneath a tarpaulin immediately behind them. That the Appellant was seated adjoining the driver rather than at the wheel does not avail him, regard being had to Section 54 of the NDPS Act 1985, which provides:

“54. Presumption from possession of illicit articles. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of (a) any narcotic drug or psychotropic substance or controlled substance ... for the possession of which he fails to account satisfactorily.”

48. The presumption having thus been attracted, the onus lay upon the Appellant to account satisfactorily for the presence of the contraband. The only account tendered was that of false implication at the instance of the former Sarpanch, spoken to by DW-01, and that version was considered and rejected by both the Courts below, the High Court holding that the defence had failed to create a dent in the case set up by the prosecution. DW-01 himself admitted that he had moved no application before any higher officer

complaining of the alleged false implication and did not know of any such application having been moved by anyone else. Upon our own consideration of that evidence we are satisfied that it falls short of discharging the onus which the statute casts, and we hold that the presumption arising under Section 54 of the NDPS Act 1985 stood unrebutted. The rejection of that version by the Courts below is, in any event, neither perverse nor unsupported by the record, and thus, we decline to disturb it.

49. The sentence as imposed, when seen in relation to the quantity recovered from the vehicle, being approximately 200 kilograms of poppy husk, a commercial quantity, the sentence of ten years of rigorous imprisonment and fine of INR 1,00,000/- (Rupees One Lakh only) awarded under Section 15(c) of the NDPS Act 1985 is the minimum prescribed by that provision. The plea that the convicts were poor persons and first offenders was placed before the Special Court at the stage of quantum, which was considered by it, leading to awarding of minimum sentence. No material has been placed before us upon which any interference with the sentence could be

founded.

50. Taking the grounds together, as we are bound to do, our conclusions upon the merits are these. There was substantial compliance with Section 42 of the NDPS Act 1985, and no prejudice was occasioned to the Appellant. Section 50 was not attracted to the search which produced the recovery, and the consent given by the accused was in any event not procured by any concealment as to the rank of the officer before whom it was given. The interval preceding the dispatch of the samples is a procedural irregularity which is answered by a contemporaneous judicial order recording the seals to be intact, and no material suggests that the integrity of the samples was in fact compromised. The report of the Chemical Examiner was admissible without formal proof and its author was never sought to be examined. The requirement of associating independent witnesses was given effect to wherever the statute imposed it, and the recovery from the vehicle is separable in every material respect from that which was discarded. The infirmities in the oral evidence as noticed by the High Court, do not touch, the documentary and forensic material upon which the

conviction rests. And the presumption arising under Section 54 of the NDPS Act 1985 was never displaced. Each of the grounds urged accordingly fails upon its own merits.

51. We would add, as an independent and sufficient reason for the same result, that every one of the findings so assailed is a concurrent finding of fact returned by the Special Court and affirmed by the High Court. It is well settled that such findings are not ordinarily to be interfered with in the exercise of the jurisdiction under Article 136 of the Constitution of India unless a prima facie perversity or absurdity is made out, as was observed in the decision of this Court in *Balak Ram v. State of Uttar Pradesh*¹⁸. Neither perversity nor absurdity has been demonstrated before us upon any of the heads canvassed. Upon that state of the record, and upon our findings recorded hereinabove, no case for interference is made out.
52. In the light of the foregoing, the instant appeal is dismissed. The conviction of the Appellant under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and the sentence of ten years'

¹⁸ (1975) 3 SCC 219, Paragraph 26

rigorous imprisonment along with a fine of INR 1,00,000/- (Rupees One Lakh only), and in default of payment thereof, rigorous imprisonment for a further period of one year, as recorded by the Special Court, Jalandhar, vide judgment dated 26.03.2018 and affirmed by the High Court vide the impugned judgment dated 30.10.2019, are upheld.

53. Pending application(s), if any, shall also stand disposed of.

.....J.
[SANJAY KAROL]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
AUGUST 12, 2026.**