Dilo Begum vs State Of H.P on 27 March, 2024

Author: Vivek Singh Thakur

Bench: Vivek Singh Thakur

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. Appeal No. 202 of 2020 a/w Cr. Appeal No. 145 of 2020 .

Reserved on: 04.03.2024 Date of Decision: 27.03.2024

1. Cr. Appeal No. 202 of 2020 Dilo Begum ...Appellant.

Versus

State of H.P. .

2. Cr. Appeal No. 145 of 2020
Naseer Mohammed

State of H.P.

Versus

r to

.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge. Hon'ble Mr. Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 Yes For the Appellant(s) : Ms. Tanu Sharma, Advocate, in Cr.

Appeal No. 202 of 2020.

Mr. Kulbhushan Khajuria

Advocate, in Cr. Appeal No. 145 of 2020.

For the Respondent/State : Ms. Seema Sharma, Deputy Advocate General, in both appeals.

Rakesh Kainthla, Judge

The present appeals are directed

judgment and order dated 07.03.2020, vide which the appellants (accused persons before the Trial Court) were convicted of the commission of an offence punishable under Section 20(b)(ii)(c) Whether reporters of Local Papers may be allowed to see the judgment? Yes.

read with Sections 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act and were .

sentenced to undergo rigorous imprisonment for 12 years each and to pay a fine of 1,20,000/- each and in default of payment of the fine to further undergo rigorous imprisonment for one year each for the commission of aforesaid offence. In addition to the above, the accused Naseer Mohammed was also convicted of the commission of an offence punishable under Section 473 of the Indian Penal Code (in short 'IPC') and sentenced to undergo rigorous imprisonment for five years and to pay a fine of 10,000/-for the commission of the aforesaid offence. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeals are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 20, 25 and 29 of the NDPS Act. It was asserted that ASI-Govind Pal (PW19), HHC-

Mohammad Aslam (PW1), Constable Sunil Kumar (PW4), HHC-

Manohar Lal (PW2), LC Rajni Rani (not examined), LC Sabina (PW7) were present on traffic checking and nakabandi duty at Behi near Koti Tissa, Chamba Road in the official vehicle bearing registration No. HP-48-1220 with I.O. kit, electronic scale, mega .

light, official camera etc. A motorcycle bearing registration No. HP-12A-2732 came from Tissa. ASI-Govind Pal signalled the driver to stop the motorcycle. One woman was sitting as a pillion rider, who had kept a purse on her left shoulder. The motorcycle driver revealed his name as Naseer and the pillion rider revealed her name as Dilo Begum. She got frightened on inquiry by the police. The police called Tarun Abrol (PW3) from a nearby shop and checked the purse being carried by Dilo Begum. One white shawl was found inside the purse. The purse was unzipped and it was found to contain a carry bag (Ext. P6). The carry bag was opened and it was found to contain charas (Ext. P7). The charas was weighed with the help of an electronic weighing scale and its weight was found to be 2.010 kgs. The charas was put in the carry bag. The Carry bag was put in the purse. Shawl (Ext. P5) was also put in the purse (Ext.P4). The purse was wrapped in a cloth parcel (Ext. P1). The parcel was sealed with six impressions of seal 'SB'.

The seal impression (Ext.PW1/A) was taken on a separate piece of cloth. NCB-1 Form (Ext. PW19/A) was filled in triplicate. A sample seal was put on the Form. The parcel and the vehicle bearing registration No. HP-12A-2732 were seized vide memo (Ext.PW1/B). Signatures of witnesses Tarun Abrol, HHC .

Mohammed Aslam and LC Sabina Devi were obtained on the memo. A copy of the seizure memo was supplied to each of the accused. Rukka (Ext. PW15/B) and its copy (Ext. PW8/A) were prepared and handed over to HHC-Manohar Lal with a direction to carry the original to the police station and the carbon copy to the Deputy Superintendent of Police, Headquarters. HHC-

Manohar Lal handed over the original Rukka at Police Station, Sadar and its carbon copy to the Deputy Superintendent of Police, Chamba. FIR (Ext. PW15/A) was registered in the Police Station based on the Rukka. The case file was handed over to HHC-

Manohar Lal with a direction to carry it to the spot. HHC-

Manohar Lal handed over the case file to ASI Govind Pal, who filled in the FIR number on the documents. Deputy Superintendent of Police Vir Bahadur handed over the copy of Rukka to HHC Joginder Kumar (PW8) after making his endorsement on it. HHC-Joginder Kumar entered the copy of the Rukka in the receipt register at Serial No.16, a copy of which is Ext. PW8/B. Deputy Superintendent of Police Vir Bahadur also put his signatures on the register. Further investigation was conducted by Sub Inspector-Bhagwant Singh (PW18), who got the medical examination of the accused persons conducted at .

Regional Hospital, Chamba on the same day. He produced the sealed parcel, NCB-1 Form in triplicate, seal sample and accused before ASI Ram Gopal (PW9), who was officiating as SHO. ASI Ram Gopal re-sealed the parcel with six impressions of seal 'SA'.

He obtained the sample seal (Ext. PW9/A). He also filled the relevant columns of the NCB-I Form and put the seal impression on the Form. He prepared the re-sealing memo (Ext. PW9/B) and handed over the seal to Constable Vinod Kumar after the use.

Vinod Kumar also put his signatures on the sample seal and re-

seal memo. He handed over the case file and the case property to HC-Rajput Pardeep (PW10). He made an entry in the register of Malkhana at Sr. No.820/16 and deposited the case property and the documents in Malkhana. He handed over the case property to SI Bhagwant Singh (PW18) on 17.12.2016 to take it to the Court to certify the correctness of the inventory. SI Bhagwant Singh produced the accused persons and case property before the learned CJM, Chamba on 17.12.2016. Learned CJM issued a certificate (Ext. PW18/A). SI-Bhagwant Singh deposited the case property with HC-Rajput Pardeep on his return. HC-Rajput Pardeep made the entry at Sr. No. 820/16 regarding the receipt of the case property and made the entries in the daily diary. He .

handed over the parcel to Constable Pawan Kumar (PW5) with a direction to carry it to FSL, Junga vide RC No.334/16 (Ext.

PW10/C). Constable Pawan Kumar deposited all the articles and documents at FSL, Junga and handed over the receipt to MHC on his return. Constable Khem Raj brought the case property and the result of analysis (Ext. PX) from FSL Junga and handed them over to MHC, P.S. Sadar, Chamba. The statements of the remaining witnesses were recorded as per their version and after the completion of the investigation, the challan was prepared and presented before the Court.

3. ASI-Subhash Chand conducted further investigation.

He filed an application (Ext. PW16/G) to obtain the details of the vehicle. Ramesh Chand, Clerk RTO office Bilaspur (PW12) issued the screen report (Ext. PW12/A) showing that the motorcycle bearing registration No. HP-69A-0991 was owned by Kuldeep Singh. Kuldeep Singh (PW13) made a statement that his motorcycle was stolen and he had reported the matter to the police. ASI-Subhash Chand filed an application (Ext. PW16/H) before PP, Jogon and obtained the complaint of Kuldeep Singh (Ext. PW16/J). He also seized a copy of the registration certificate (Ext. PW13/A) vide seizure memo (Ext. PW13/B). He obtained a .

copy of the FIR (Ext. PW16/P) regarding the theft of the motorcycle. He found that the registration plate used by the motorcycle was forged, so he recorded the statement of the original owner of the vehicle bearing registration No. HP-12A-

2732. After the completion of further investigations, Shamsher

4. to Singh (PW21) filed a supplementary charge sheet in the Court.

The accused-Dilo Begum was charged with the commission of offences punishable under Sections 20, 25 and 29 of the NDPS Act. Accused Naseer Mohammed was charged with the commission of offences punishable under Sections 20, 25 and 29 of the NDPS Act and Section 473 of the IPC. Both the accused persons pleaded not guilty and claimed to be tried.

5. The prosecution examined 21 witnesses to prove its case. HHC-Mohammad Aslam (PW1), HHC Manohar Lal (PW2), Constable-Sunil Kumar (PW4) and LC-Sabina Devi (PW7) are the official witnesses to the recovery. Tarun Abrol (PW3) was the independent witness to the recovery but he did not support the prosecution case. Constable Pawan Kumar (PW5) carried the case property to FSL, Junga. Constable Khem Raj (PW6) brought the case property and the result of the analysis from FSL Junga. HHC .

Joginder Kumar (PW8) proved that the copy of the rukka was handed over to Deputy Superintendent of Police, Chamba, who handed it over to him. ASI-Ram Gopal (PW9) was working as SHO, who had resealed the case property and recorded the statement of constable Vinod Kumar. HC-Rajput Pradeep (PW10) was working as MHC with whom the case property was deposited. LHC-Suresh Kumari (PW11) was posted as Assistant Reader to the Superintendent of Police,

Chamba to whom the special report was handed over. Ramesh Chand (PW12) was posted as a Clerk in the office of RTO, Bilaspur and he proved the screen report of the motorcycle. Kuldeep Singh (PW13) is the owner of the motorcycle bearing registration No. HP-69A-0991.

Dinesh Kumar (PW14) prepared the challan. ASI-Sampuran Singh (PW15) registered the FIR No. 273 of 2016 dated 16.12.2016 (Ext. PW15/A). ASI Subhash Chand (PW16) and SI Bhagwant Singh (PW18) conducted further investigations. HC-Vijay Kumar (PW17) proved the FIR No. 153 of 2017, dated 23.7.2017 registered at Police Station, Nalagarh regarding the theft of the motorcycle.

ASI-Govind Pal (PW19) was heading the police party, which effected the recovery. Bhagat Ram (PW20) proved the entry in the daily diary made in the Police Post, Jogon. Shamsher Singh .

(PW21) proved that he had sold the motorcycle bearing registration No. HP-12A-2732 to a junk dealer.

6. The accused-Dilo Begum in her statement recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety. She stated that she had got a case opened regarding the death of her brother Mohammed, who was killed by Shamido and Mohammed Ali. She was ill and admitted to Civil Hospital, Chamba. Two stents were implanted on her. She was innocent and the witnesses deposed against her falsely. She did not choose to lead any defence evidence.

7. The accused-Naseer Ahmed denied the prosecution case in its entirety. He stated that he was falsely implicated and he was innocent. He also did not lead any defence evidence.

8. The Learned Special Judge held that the statements of the official witnesses corroborated each other. Independent witness did not support the prosecution case; however, that is not significant because it is common for independent witnesses to turn hostile in the cases under the NDPS Act. The independent witness admitted his presence and the presence of a police party on the spot. He admitted his signatures on various documents.

.

He could not give any valid explanation for putting his signatures on the documents; therefore, his testimony was not sufficient to discard the prosecution case. There were minor contradictions in the testimonies of official witnesses but these contradictions were bound to come due to the failure of the memory with time.

The charas was recovered when the police party was checking the vehicles without any prior information; therefore, the provisions of Section 100 (4) of Cr.P.C. or Section 42 of the NDPS Act do not apply to the present case. Both the accused were travelling together and the burden shifted upon them under Section 35 of the NDPS Act to rebut the presumption of mental state. This presumption was not rebutted. The case property was duly sealed at the time of its receipt in FSL, Junga, which clearly shows that there was no tampering with the case property. The same was confirmed to be charas on analysis. There was a minor discrepancy in the weight of the charas, which could have

come due to the difference in the precision of the two scales used on the spot and in the laboratory. There was no necessity to comply with the requirement of Section 50 of the NDPS Act. It was duly proved that the accused-Dilo Begum was in possession of the charas and the other accused had abetted the possession of .

charas by her. It was also proved that the motorcycle was stolen and a forged registration plate was placed on the same; hence, the accused were convicted and sentenced as aforesaid.

9. Being aggrieved from the judgment and order passed by the learned Special Judge, two separate appeals have been filed. In the appeal filed by accused Dilo Begum, it was asserted that the learned Special Judge misread, misinterpreted and mis-

appreciated the evidence on record and proceeded to convict and sentence the accused without any legally admissible evidence.

The evidence was not appreciated in its right perspective and it was evaluated on an un-realistic standard. There was no satisfactory evidence to prove the guilt of the accused. The story put forward by the prosecution was improbable and was not proved beyond a reasonable doubt. There were material contradictions and improvements in the prosecution case and the independent witness did not support the prosecution case.

His testimony was sufficient to discard the prosecution version.

The police failed to associate independent witnesses and this was a major flaw in the prosecution case. ASI-Govind Pal should not have conducted a further investigation after the recovery of the contraband but he continued with the investigation and prepared .

various documents. There was a discrepancy in the weight of the contraband, which affected the prosecution case adversely. The benefit of the discrepancy should have been given to the accused.

I.O.-Bhagwant Singh stated that he had produced the case property before learned CJM, Chamba. A similar statement was made by Subhash Kumar (PW16). These contradictions made the prosecution case regarding the integrity of the case property suspect. The seals, used to put the seal impression, were also not produced before the Court. No vehicle was challaned by the police. At least, no document to this effect was produced before the Court. The location of the accused was not established from the mobile phones and an adverse inference should have been drawn against the prosecution. The accused Dilo Begum was ill and she was admitted to the hospital on the date of the incident.

There was a violation of Section 100 of Cr.P.C., as well as, Sections 42 and 50 of the NDPS Act, which made the prosecution case suspect. When the prosecution case was not proved beyond reasonable doubt, the question of shifting the burden to the accused did not arise. Hence, it was prayed that the accused be acquitted.

.

10. In the appeal filed by Naseer Mohammed, it was asserted that mandatory provisions of the NDPS Act were not complied with by the police party. No independent witness was associated. There were various contradictions in the statements of official witnesses. As per the prosecution, the recovery was effected from co-accused Dilo Begum and the present accused is not involved in the commission of the offence. Therefore, it was prayed that the present appeal be allowed and the accused be acquitted.

11. We have heard Ms Tanu Sharma, learned counsel for the appellant/accused Dilo Begum, Mr Kulbhushan Khajuria, learned counsel for the accused Naseer Mohammed and Ms Seema Sharma, learned Deputy Advocate General, for the respondent/State.

12. Ms. Tanu Sharma, learned counsel for the appellant/accused-Dilo Begum submitted that there is a discrepancy in the weight of the material object produced before the Court, which makes the prosecution case regarding the integrity of the case property suspect. The inventory was not produced on record. No independent witness was present at the .

time of proceeding under Section 52(A) of the NDPS Act;

therefore, she prayed that the accused-Dilo Begum be acquitted.

13. Mr Kulbhushan Khajuria, learned counsel for the accused-Naseer Mohammed submitted that as per the prosecution case, the recovery was effected from co-accused-

Dilo Begum and not from the accused-Naseer Ahmed. The accused Nasser Ahmed was driving the motorcycle as per the prosecution and could not have any knowledge regarding the articles being carried by Dilo Begum in her purse. He had simply given a lift to Dilo Begum and cannot be held liable for abetting the possession of narcotics. Therefore, he prayed that the accused be acquitted.

14. Ms Seema Sharma, learned Deputy Advocate General, for the respondent/State supported the judgment and order passed by the learned Special Judge and submitted that the learned Special Judge has dealt with each and every aspect of the prosecution case in detail. There is no infirmity in the judgment and order passed by the learned Special Judge; hence, she prayed that the present appeals be dismissed.

.

15. We have given considerable thought to the submissions at the bar and have gone through the records carefully.

16. ASI-Govind Pal stated that he, HHC-Mohammed Aslam, HHC Manohar Lal, Constable-Sunil Kumar, LC Sabina and LC Rajni were present at Behi near Koti on Chamba Tissa road in a vehicle bearing registration No. HP-48-1220 on 16.12.2016 for nakabandi duty. One red motorcycle bearing

registration No.HP-12A-2732 came from Tissa side. He signalled the motorcycle to stop. One boy and one woman were riding the motorcycle. The driver revealed his name as Naseer and the pillion rider revealed her name as Dilo Begum. The pillion rider became perplexed during the interrogation. The police became suspicious and associated independent witness Tarun Abrol. The purse of accused Dilo Begum was checked. One white shawl came out of the purse after opening the first zip. One blue carry bag was found after opening the second zip. The carry bag was opened and it was found to contain a hard substance in the shape of bundles and sticks. The substance was smelled and it was found to be charas/cannabis. The weight of the charas was found .

to be 2.010 kg after weighing it on an electronic weighing scale.

The carry bag and white shawl were also put in the purse. The purse was sealed in a cloth parcel. Six seal impressions of Seal 'SB' were put on the parcel. The seal impression was taken on a separate piece of cloth. NCB-I Form was filled in triplicate. A seal impression was put on the NCB-1 Form. The seal was handed over to Tarun Abrol after its use. Cloth parcel, NCB-I Form, Sample seal, Motorcycle and key were seized by the police vide seizure memo (Ext. PW1/B). The copies of the seizure memo were supplied to the accused free of cost. Rukka was prepared and was sent to P.S. Sadar, Chamba through HHC Manohar Lal and its copy was also handed over to the same constable for being delivered to S.P. Chamba. He prepared the site plan and recorded the statements of witnesses as per their versions. He asked SHO Dinesh Kumar to send the second I.O. to the spot. ASI-Bhagwant Singh visited the spot and the case property was handed over to him.

17. He stated in his cross-examination that LC-Sabina and Rajni had accompanied him from SIU, Chamba. He associated them because Lady constable-Shankuntla was on medical leave. The arrival reports of LC Sabina and Rajni were .

entered at SIU, Chamba. The naka was laid first at Karodi.

Thereafter, the police party went to Behi. The police party left Karodi at 1:00 AM. No vehicle was challaned at Karodi and Behi.

The accused did not have any documents of the motorcycle. He did not check the driving license of the accused. There was one shop on the spot and three rooms owned by other persons. No customer was present in the shop at the time of the incident.

Village Behi is located at a distance of 200 meters from the spot.

He did not know about the gram panchayat of Behi. He did not associate Pradhan, Up Pradhan of village Behi. Accused Dilo Begum took the purse out of her shoulder. He had not taken out the purse from her. A personal search of Dilo Begum was conducted by LC Rajni and LC Sabina inside the room. The photographs were taken and video recording was made at the time of the opening of the purse; however, those were not produced in the Court. He handed them over to the second I.O. He had prepared the seizure memo, and site plan and recorded the statements of witnesses. The second IO got conducted the medical examination of the accused persons and interrogated them. HHC

Mohammed Aslam was a witness to the inventory list, which was signed by him and the second I.O. No independent .

witness was associated while preparing the inventory. ASI-

Bhagwant Singh reached the spot at 6:30 PM. He reached the SIU Office at 8:05 PM. He did not remember the number of vehicles, which had crossed the spot, during the investigation. He did not remember the number of customers who had visited the shop of Tarun Abrol. NCB-I Form in triplicate was filled on the spot.

HHC-Manohar Lal reached at 6:30 PM. He denied that no motorcycle was intercepted, the accused were not riding any motorcycle and a false case was made against the accused. He stated in his cross-examination by learned counsel for the accused-Naseer Mohammed that seizure memo was prepared first and rukka was prepared thereafter. It took about 6-7 hours to complete the investigation. He filled columns Nos.1 to 8 of the NCB-I form. He admitted that there was one workshop near the shop of Tarun Abrol. He denied that the workshop was open on the date of the incident.

18. HHC-Mohammed Aslam (PW1) supported the prosecution case in his examination-in-chief and made a similar statement as was made by ASI-Govind Pal; therefore, his examination-in-chief is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that the police .

party proceeded from SIU, Chamba at about 10:30 AM. The report regarding the departure from SIU, Chamba was recorded by ASI Govind Pal. The naka was laid at Karodi at 11:30 am and the police party remained at Karodi till 12:30 PM. He could not tell the distance between Chamba and Karodi. The place Karodi fell before Koti and he could not tell the distance between Karodi and Koti. No naka was laid at Balu, Sarol, Kiani and Pukhari. He did not know which places were mentioned in the departure report as this report was entered by ASI Govind Pal. The police party reached Behi/spot at about 12:45 PM. He did not notice the distance between Behi and Koti. The police party checked 10-15 vehicles at Karodi but did not issue any challan. He did not remember the identification or registration number of any vehicle checked by the police party at Karodi. The police had checked 8-10 vehicles before the arrival of the motorcycle. No challan was issued at Koti. He could not tell the registration number of any vehicle checked by the police party at Koti. He did not know whether the motorcycle of the accused was challaned or not. The accused-Naseer Mohammed could not produce any documents of the vehicle. Tarun Abrol was standing near the spot when the motorcycle was stopped. There were three shops of one .

owner on the spot. Two other shops were under construction.

Tarun Abrol is the employee of the owner of the shops. He did not know the name of the owner of the shop. He took the photographs after the recovery. Dilo Begum was searched by LC-

Sabina and LC-Rajni Rana. He volunteered to say that her search was conducted at the time of jamatalashi before that only the purse was searched. ASI-Govind Pal took the purse from Dilo Begum. Dilo Begum was searched by the lady constable after taking her to the side of the road. The male members were present at that time. The search of Dilo Begum was conducted before the arrival of the second Investigating Officer and after the sending of the Rukka. He had not taken the photographs or prepared the video recording at the time of taking the purse from the Dilo Begum by ASI Govind Pal. ASI-Govind Pal had also informed SP, Chamba about the recovery of the contraband but he could not state the time of the call made by ASI-Govind Pal.

ASI Bhagwan Dass reached the spot at about 7:00 pm. He did not know whether ASI Govind Pal informed Pradhan or Up-Pradhan of Gram Panchayat, Koti about the recovery. The SIU was constituted to investigate the criminal activities in the area. He denied that the accused were not present on the spot, no recovery .

was effected from them or no proceedings were conducted on the spot. He stated in his cross-examination by learned counsel for the accused-Naseer Mohammed that the NCB-I form in triplicate was filled first but he could not tell, which columns of the NCB-I form were filled by ASI-Govind Pal. He did not remember the time of recording his statement. It took about 5:30 hours to complete the proceedings on the spot. The case file was brought by HHC-Manohar Lal at about 6:30 pm. ASI-Bhagwan Dass came to the spot in the official vehicle of police station Sadar, Chamba.

The inventory list was prepared after the arrival of the second Investigating Officer. The case property and the documents were handed over to the second Investigating Officer on his arrival. He admitted that no contraband was recovered from the accused-

Naseer. He denied that Naseer was driving the motorcycle.

19. HHC Manohar Lal (PW2) also supported the prosecution case and made a similar statement as was made by ASI Govind Pal in his examination-in-chief; therefore, his examination-in-chief is not being reproduced to avoid prolixity and repetition. He stated in his cross-examination that departure rapat was recorded by ASI Govind Pal. He (Manohar Lal) was driving the official vehicle bearing registration No. HP-

.

48-1220. No naka was laid at Balu, Sarol, Kiani and Pukhari. He did not know the distance between Behi and Koti and Chamba and Karodi. The police had checked 8-10 vehicles at Karodi but no challan was issued at Karodi. 0-15 vehicles were checked at Behi but no challan was issued. The accused failed to produce any document of the vehicle but no challan of the motorcycle was issued. There were three shops at Behi but he did not know the names of the owners of the shops. One person was employed in those shops. He did not know the population of village Behi. He was called by ASI Govind Pal before the police party started from SIU, Chamba. He did not know whether any call was made by ASI Govind Pal to him or any other police official after he had departed from the spot with the rukka till his arrival at the spot with the case file. No photographs were taken when the

accused was signalled to stop. The accused Dilo Begum was searched by LC-Sabina. She was taken to the side of the road about 5-6 steps away from the spot. She was not searched in an enclosed space.

No photographs were taken at the time of her search. 5-6 persons were present at the time of her search. Village Behi falls within the jurisdiction of Gram Panchayat Prahnvi. No Pradhan or Up Pradhan was informed about the apprehension of the .

accused. No vehicle or pedestrian passed through the spot during the proceedings. He remained on the spot for about one and a half hours till he left with the rukka. He admitted that all the vehicles pass through Behi while going to Tissa, Balehi, Suluni etc. HC-Mohammad Aslam took 4 to 5 photographs on the spot;

however, no video recording was made. He took a lift while coming from the spot with the rukka till Balu. He did not remember the number of vehicles in which the lift was taken by him or the name of its driver. It took about 15-20 minutes to Dy.S.P. office from police Sation Sadar, Chamba. He went on foot up to Balu and boarded the bus thereafter. ASI-Govind Pal searched the male accused. Rukka and the seizure memo were prepared in his presence but he did not put his signatures on the memo. He denied that no accused were apprehended at the spot and no recovery was effected from them.

20. He stated in his cross-examination by learned counsel for the accused Naseer that there was a workshop near the place of the incident. He was not aware that the house of the Pradhan of village Behi was located at a distance of 100-150 meters from the spot. No statement was recorded in his presence.

ASI-Bhagwan Dass came to the spot at about 7:00 PM. He .

admitted that no recovery was effected from the accused-Naseer.

He denied that the accused Naseer was not driving the motorcycle and he was falsely implicated.

21. PW4 Sunil Kumar also supported the prosecution case in his examination-in-chief and made a similar statement as was made by ASI Govind Pal; therefore, his examination-in-

chief is also not being reproduced. He stated in his cross-

examination that Lady Constables Sabina and Rajni Rana came to SIU, Chamba at about 8:10 a.m. They had not put their signatures on their arrival rapat. They were called because the lady constable of SIU was on leave on that day. He was not aware whether any written communication was sent to LCs Sabina and Rajni Rana. HC-Shokat Ali remained present in the SIU Office after the departure of the police party. No naka was laid at Balu, Sarol, Kiani and Pukhari. 10-12 vehicles were checked at Karodi.

No vehicle was challaned at Karodi. 8-10 vehicles were checked before the arrival of the motorcycle. No vehicle was challaned at Behi. There was one shop and one workshop at Behi. 2-4 shops were under construction. He did not know the names of the owners of the shop and the workshop. He did not notice the number of vehicles parked in the workshop on the date of the .

incident. He did not know the name of Pradhan, Up Pradhan of village Behi. The search of Dilo Begum was conducted by LC Sabina by taking her to the side of the road for some distance.

She was not searched in the enclosed space. No photography or videography was conducted while searching Dilo Begum. He remained on the spot from 1:30 pm to 7:00 pm. He did not notice the number of vehicles or pedestrians crossing the spot. He volunteered to say that he was busy in the proceedings. He admitted that Chamba-Tissa Road is the State highway and the vehicles frequently ply on that road. The proceedings were conducted on the road. Most documents were prepared by the Investigating Officer himself. He did not notice the number of people in the shop and workshop at Behi at that time. The inventory was prepared in his presence but he did not remember the names of the persons, who had signed the inventory list. He denied that the accused did not arrive at the spot nor any recovery was effected from them. He stated in cross-

examination by learned counsel for the accused Naseer that recovery and seizure memos were prepared at the first instance.

He did not remember whose statements were recorded by the Investigating Officer at the first instance. The accused were .

arrested vide separate memos at about 6:15 pm and 6:20 pm. He admitted that no recovery was effected from the accused-Naseer.

He denied that the accused-Naseer was not driving the motorcycle.

22. LC-Sabina (PW7) has also supported the prosecution case. She also made a similar statement in her examination-in-

chief as was made by ASI-Govind Pal; hence, the same is not being reproduced. She stated in her cross-examination that no charas/cannabis was recovered from the person of Dilo Begum during her personal search. The personal search of accused Dilo Begum was not conducted by a lady police official. ASI Govind Pal did not give his search to Dilo Begum before searching her purse.

The police party proceeded from SIU, Chamba at about 10:30 am.

ASI Govind Pal directed her to accompany the police party. She volunteered to say that an entry regarding their departure was recorded in SIU, Chamba. She did not receive any telephone from ASI Govind Pal. She did not stop between SIU Chamba and the spot. She corrected to say that a naka was laid at Karodi. She did not know the distance between Karodi and the spot. The police party remained at Karodi from 11:30 am to 12:30 pm. They reached on the spot at about 12:45 pm. They

checked 7-8 vehicles .

at Karodi and 7-8 vehicles on the spot. The police did not challan any vehicle on the date of the incident. There was one shop on the spot and witness Tarun Abrol was present in the shop at the time of the incident. The accused persons were stopped at a distance of 10-15 steps from the shop. She did not remember the time of the arrival of the second Investigating Officer but it was not dark. The jamatalashi of Dilo Begum was conducted before the arrival of the second Investigating Officer. They reached the police station, Sadar Chamba at about 8-8:15 pm. There were houses on the upper side of the road. Pedestrians and vehicles passed through the spot. She denied that she was not present on the spot. She stated in her cross-examination by learned counsel for the accused Naseer that her statement was recorded by the Investigating Officer once on the spot but she did not remember the time of recording her statement. She did not know the number of memos prepared by the Investigating Officer on the date of the incident. She could not specify the distance of villages located on the upper side of the road. She admitted that no contraband was recovered from the accused-Naseer. She denied that no proceedings were conducted on the spot.

.

23. Tarun Abrol (PW3), was associated as an independent witness. He did not support the prosecution case. He stated that he was working in a shop at Behi Koti. He did not remember the date but the police had laid a naka and nothing had happened in his presence. He was permitted to be cross-examined by the learned Public Prosecutor. He denied the prosecution case regarding the stopping of the motorcycle, search of the purse, and recovery of the contraband. He also denied the seizure of the purse and preparation of the parcel; however, he admitted his signatures on the sample seal and recovery memo. He stated that he had studied up to 8th standard. He could read and write Hindi.

He stated that his signatures were obtained on the blank paper and cloth but he did not make any complaint to the senior Police Official regarding the taking of his signatures. He admitted that he was deposing this fact for the first time in the Court. He denied that he was making a false statement to save the accused persons. He refused to identify the parcel or the articles kept inside the parcel.

24. It was submitted that the statement of this witness is sufficient to discard the prosecution case. When the independent .

witness did not support the prosecution case, two versions appear on the record and the version favourable to the accused has to be preferred to the version favourable to the prosecution.

It is necessary to understand the concept of the hostile witness to appreciate this submission. This concept was explained by the Hon'ble Supreme Court in Sat Paul v. Delhi Admn., (1976) 1 SCC 727: 1976 SCC (Cri) 160. It was held that initially, it was not permissible for a party to discredit his witness when he turned unfavourable to him, however, this rule was subsequently discarded and the concept of hostile and unfavourable witness was introduced. A hostile witness is the one, who is not desirous of telling the truth while an unfavourable witness is the one who does not prove the fact,

which is sought to be proved by examining him. The Indian Evidence Act did not adopt this distinction and simply permitted the party to put the questions in the nature of cross-examination to a witness with the permission of the Court. The permission is not dependent upon the fact that the witness has shown hostility to the party.

Therefore, no party is precluded from relying upon any part of the statement of the witness, who has been called by a party. It was observed:

> .
>
> "30. The terms "hostile witness", "adverse witness", "unfavourable witness", and "unwilling witness" are all terms of English law. At Common law, if a witness exhibited manifest antipathy, by his demeanour, answers and attitude, to the cause of the party calling him, the party was not, as a general rule, permitted to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. This rule had its foundation on the theory that by calling the witness, a party represents him to the Court as worthy of credit, and if he afterwards attacks his general character for veracity, this is not only mala fide towards the Court, but, it"would enable the party to destroy the witness if he spoke against him, and to make him a good witness if he spoke for him with the means in his hand of destroying his credit if he spoke against him". (See Best on Evidence, p. 630, 11th Edn.) This theory or assumption gave rise to a considerable conflict of opinion as to whether it was competent for a party to show that his own witness had made statements out of court inconsistent with the evidence given by him in court. The weight of the ancient authority was in the negative.
>
> 31. In support of the dominant view it was urged that to allow a party directly to discredit or contradict his own witness would tend to multiply issues and enable the party to get the naked statement of a witness before the jury, operating in fact as substantive evidence, that this course would open the door wide open for collusion and dishonest contrivance.
>
> 32. As against this, the exponents of the rival view, that a party should be permitted to discredit or contradict his own witness who turns unfavourable to him, argued that this course is necessary as a security against the contrivance of an artful witness, who otherwise might recommend himself to a party by the promise of favourable evidence and afterwards by hostile evidence .
>
> ruin his cause. It was reasoned further parties that this is a question in which not only the interests of litigating panics are involved, but also the more important general interests of truth, in criminal as well as in civil proceedings, that the ends of justice are best attained by allowing a free and ample scope for scrutinising evidence and estimating its real value, and that in the administration of criminal justice more especially, the exclusion of the proof of contrary statements might be attended with

the worst consequences. Besides it by no means follows that the object of a party in contradicting his own witness is to impeach his veracity, it may be to show the faultiness of his memory. (See Best, p. 631, 11th Edn.)

33. The rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms "hostile witness" and "unfavourable witness" and by attempting to draw a distinction between the two categories. A "hostile witness" is described as one who is not desirous of telling the truth at the instance of the party calling him, and an "unfavourable witness" is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact. (See Cross on Evidence, p. 220, 4th Edn., citing Stephen's Digest of the Law of Evidence.)

34. In the case of an "unfavourable witness", the party calling him was allowed to contradict him by producing evidence aliunde but the prohibition against cross-examination by means of leading questions or by contradicting him with his previous inconsistent statements or by asking questions with regard to his discreditable past conduct or previous conviction continued. But in the case of a "hostile" witness, the Judge could permit his examination-in-chief to be conducted in the manner of cross-examination to the extent to which he considered necessary in the interests of justice. With the leave of the court, leading questions .

could be put to a hostile witness to test his memory and perception or his knowledge of the facts to which he was deposing. Even so, the party calling him, could not question him about his bad antecedents or previous convictions, nor could he produce evidence to show that the veracity of the witness was doubtful. But the position as to whether a previous inconsistent statement could be proved against a hostile witness remained as murky as ever.

35. To settle the law with regard to this matter, Section 22 of the Common Law Procedure Act, 1854 was enacted. It was originally applicable to civil proceedings but was since re-enacted in Section 3 of the Criminal Procedure Act, 1865 and extended in identical terms to proceedings in criminal courts as well.

36. Section 3 provides:

"A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony, but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement,"

(emphasis added)

37. The construction of these provisions, however, continued to cause difficulty, particularly in their application to "unfavourable" witnesses. In Greenough v. Eccles [(1859) 5 CBNS 786: 28 LJCP 160:

> 141 ER 315], these provisions were found so confusing that Cockburn, C.J. said that "there has been a great blunder in the drawing of it, and on the part of those who adopted it".
>
> .

38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, and "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross- examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-

examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath v. Prasannamoyi [AIR 1922 PC 409: 72 IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in order granting such permission it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.

39. It is important to note that the English statute differs materially from the law contained in the Indian Evidence Act in regard to cross-examination and contradiction of his own witness by a party. Under .

English law, a party is not permitted to impeach the credit of his own witness by general evidence of his bad character, shady antecedents or previous conviction. In India, this can be done with the consent of the court under Section 155. Under the English Act of 1865, a party calling the witness can "cross-examine" and contradict a witness in respect of his previous inconsistent statements with the leave of the court, only when the court considers the witness to be "adverse". As already noticed, no such condition has been laid down in Sections 154 and 155 of the Indian Act and the grant of such leave has been left completely to the discretion of the Court, the exercise of which is not fettered by or dependent upon the "hostility" or "adverseness" of the witness. In this respect, the Indian

Evidence Act is in advance of English law. The Criminal Law Revision Committee of England in its Eleventh Report, made recently has recommended the adoption of a modernised version of Section 3 of the Criminal Procedure Act, 1865, allowing contradiction of both unfavourable and hostile witnesses by other evidence without leave of the court. The report is, however, still in favour of retention of the prohibition on a party's impeaching his witness by evidence of bad character.

40. The danger of importing, without due discernment, the principles enunciated in ancient English decisions, for interpreting and applying the Indian Evidence Act, has been pointed out in several authoritative pronouncements. In Praphulla Kumar Sarkar v. Emperor [AIR 1931 Cal 401: ILR 58 Cal 1404: 32 Cri LJ 768 (FB)] an eminent Chief Justice, Sir George Rankin cautioned, that "When we are invited to hark back to dicta delivered by English Judges, however eminent, in the first half of the nineteenth century, it is necessary to be careful lest principles be introduced which the Indian Legislature did not see fit to enact." It was emphasised that these departures from English law "were taken either to be improvements .

in themselves or calculated to work better under Indian conditions".

41. Unmindful of this substantial difference between English law and Indian law, on the subject, the Calcutta High Court in some of its earlier decisions, interpreted and applied Section 154 with reference to the meaning of the term "adverse" in the English statute as construed in some English decisions, and enunciated the proposition that where a party calling a witness requests the court to declare him "hostile", and with the leave of the court, cross-examines the witness, the latter's evidence should be excluded altogether in criminal cases. This view proceeds on the doctrine enunciated by Campbell, C.J. in the English case, Faulkner v. Brine [(1858) 1 F&F 254] that the object of cross-examination of his own witness by a party is to discredit the witness in toto and to get rid of his testimony altogether. Some of these decisions in which this view was taken are:

> Luchiram Motilal v. Radhe Charan [AIR 1922 Cal 267 :
>
> (1921) 34 CLJ 107]; E. v. Satyendra Kumar Dutt [AIR 1923 Cal 463: 36 CLJ 173: 24 Cri LJ 193]; Surendra v. Ranee Dassi [AIR 1923 Cal 221: ILR 47 Cal 1043: 70 IC 687], Khijiruddin v. E. [AIR 1926 Cal 139: 42 CLJ 506: 27 Cri LJ 266] and Punchanan v. R. [AIR 1930 Cal 276: ILR 57 Cal 1266: 31 Cri LJ 1207 (DB)]

42. The fallacy underlying this view stems from the assumption that the only purpose of cross-examination of a witness is to discredit him; it ignores the hard truth that another equally important object of cross- examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering around to his former statement. Thus, showing the .

faultness of the memory in the case of such a witness would be another object of cross-examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or a leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic attitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way.

43. Protesting against the old view of the Calcutta High Court, in Shobraj v. R. [AIR 1930 Pat 247: ILR 9 Pat 474:

> 124 IC 836] Terrell, J., pointed out that the main purpose of cross-examination is to obtain admission, and it would be ridiculous to assert that a party cross-

examining a witness is therefore prevented from relying on admission and to hold that the fact that the witness is being cross-examined implies an admission by the cross-examiner that all the witness's statements are falsehood.

44. The matter can be viewed yet from another angle. Section 154 speaks of permitting a party to put to his own witness "questions which might be put in cross-

examination". It is not necessarily tantamount to "cross-examining" the witness. "Cross-examination", strictly speaking, means cross-examination by the adverse party as distinct from the party calling the witness (Section 137 of the Evidence Act). That is why Section 154 uses the phrase "put any questions to him which might be put in cross-examination by the adverse party". Therefore, neither the party calling him, nor the adverse party is, in law, precluded from relying on any part of the statement of such a witness.

45. The aforesaid decisions of the Calcutta High Court were overruled by a Full Bench in the Praphulla Kumar .

Sarkar case. After an exhaustive survey of case law, Rankin, C.J. who delivered the main judgment, neatly summed up the law at p. 1428-30 of the report:

> "In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that section he is 'cross-examined' to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross- examined him can take no advantage from any part of his evidence. There is moreover no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say."

46. After answering in the negative, the three questions viz. whether the evidence of a witness treated as "hostile" must be rejected in whole or in part, whether it must be rejected so far it is in

favour of the party calling the witness, whether it must be rejected so far as it is in favour of the opposite party, the learned Chief Justice proceeded:

> "... the whole of the evidence so far as it affects both parties favourably or unfavourably must go to the jury for what it is worth.
>
> *** If the previous statement is the deposition before the committing Magistrate and if it is put in under Section 288 of the Criminal Procedure Code, so as to become evidence for all purposes, the jury may in effect be directed to choose between the two statements because both statements are evidence of the facts stated therein. But in other cases, the jury may not be so directed, because prima facie the previous statement of the witness is not evidence at all against the accused of the truth of the fact stated therein. The proper direction to the jury is that .
>
> before relying on the evidence given by the witness at the trial the jury should take into consideration the fact that he made the previous statement, but they must not treat the previous statement as being any evidence at all against the prisoner of the facts therein alleged.
>
> *** In a criminal case, however, the previous unsworn statement of a witness for the prosecution is not evidence against the accused of the truth of the facts stated therein save in very special circumstances, e.g., as corroboration under Section 157 of his testimony in the witness-box on the conditions therein laid down. If the case be put of the previous statement having been made in the presence and hearing of the accused, this fact might under Section 8 alter the position; but the true view even then is not that the statement is evidence of the truth of what it contains, but that if the jury think that the conduct, silence or answer of the prisoner at the time amounted to an acceptance of the statement or some part of it, the jury may consider that acceptance as an admission (King v. Norton [(1910) 2 KB 496], Percy William v. Adams [(1923) 17 Crim App Rep 77]). But apart from such special cases, which attract special principles, the unsworn statement, so far as the maker in his evidence does not confirm and repeat it, cannot be used at all against the accused as proof of the truth of what it asserts."

47. We are in respectful agreement with this enunciation. It is a correct exposition of the law on the point.

48. The Bombay [E. v. JehangirCama, AIR 1927 Bom 501:

> 29 Bom LR 996: 28 Cri LJ 1012 (DB)], Madras [Ammathayar v. Official Assignee, AIR 1933 Mad 137 (DB):
>
> ILR 56 Mad 7], Patna [Nebti v. R.ILR 19 Pat 369: AIR 1940 .

> Pat 289: 41 Cri LJ 910 (DB); Shahdev v. Bipti, AIR 1969 Pat 415: 1969 Cri LJ 1527], Rajasthan [Nandkishore v. Brijbehari, : AIR 1955 Raj 65 (DB): ILR 1954 Raj 822], Oudh [Shyam Kumar v. E., AIR 1941 Oudh 130: 42 Cri LJ 165: 191 IC 466], Punjab [Khushal Singh Sunder Singh Bhatia v. State, AIR 1955 NUC (Punj) 5715.]. Madhya Pradesh [In re Kalusingh, AIR 1964 MP 30 : (1964) 1 Cri LJ 198], Orissa [Rana v. State, AIR 1965 Ori 31 : (1965) 1 Cri LJ 315: 30 Cut LT 517], Mysore [In Re KaibannaTippanna AIR 1966 Mys 248: 1966 Cri LJ 1155], Kerala [Raman Pillai Gangadharan Pillai v. State, 1951 Ker LT 471 (DB)] and Jammu and Kashmir [Badri Nath v. State, AIR 1953 J&K 41:
>
> 1953 Cri LJ 1719 (DB)] courts have also taken the same view.

49. In the case of an unfavourable witness, even in England the better opinion is that where a party contradicts his own witness on one part of his evidence, he does not thereby throw over all the witness's evidence, though its value may be impaired in the eyes of the court. (Halsbury, 3rd Edn., Vol. 15, para 805.)

50. In Bradley v. Ricardo [(1831) 8 Bing 57: 131 ER 321: 1 LJ CP 36] when it was urged as an objection that this would be giving credit to the witness on one point after he has been discredited on another, Tindal, C.J. brushed it aside with the observation that "difficulties of the same kind occur in every cause where a jury has to decide on conflicting testimony".

51. In Narayan NathuNaik v. State of Maharashtra [(1970) 2 SCC 101: 1970 SCC (Cri) 316 : (1971) 1 SCR 133] the court actually used the evidence of the prosecution witnesses who had partly resiled from their previous statements to the extent they supported the prosecution, for corroborating the other witnesses."

25. Ultimately, it was held that when a witness is cross-

examined, his evidence is not washed off the record and it is for .

the Judge to consider whether as a result of such cross-

examination, the witness stands thoroughly discredited or can still be believed. He may rely upon his testimony in the light of other evidence on record but where his credit has been shaken altogether, his testimony has to be discarded in the whole. It was observed:

> "52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-
>
> examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or

> can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.
>
> 53. It was in the context of such a case, where, as a result of the cross-examination by the Public, the Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. State (Delhi Admn.) with the aforesaid rule of caution -- which is not to be treated as a rule of law -- in mind, said that the evidence of such a witness is to be rejected en bloc.
>
> .
>
> 54. In the light of the above principles, it will be seen that, in law, part of the evidence of the panch witnesses who were thoroughly cross-examined and contradicted with their inconsistent police statements by the Public Prosecutor, could be used or availed of by the prosecution to support its case. But as a matter of prudence, on the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of the cross-examination, their credit was substantially if not wholly, shaken. It was, therefore, not proper for the courts below to pick out a sentence or two from their evidence and use the same to support the evidence of the trap witnesses." (Emphasis supplied)

26. Section 155 (3) of the Indian Evidence Act permits a party to impeach the credit of a witness by proving a former statement inconsistent with any part of his evidence, which is liable to be contradicted. When Sections 154 and 155(3) are read together, it is apparent that when a witness is discredited by showing that he had made an inconsistent statement on the former occasion, he stands discredited to that extent. The party can rely upon the other part of the evidence of such a witness.

Thus, the question is whether the credit of the witness has been impeached with reference to his previous statement or not and if it is so, his testimony has to be discarded to that extent and if not, the same can be relied upon.

.

27. The Hon'ble Supreme Court again held in Rajesh Yadav v. State of U.P., (2022) 12 SCC 200: 2022 SCC OnLine SC 150, that the evidence of a hostile witness is not discarded in toto but the Court has to separate the untruth, exaggeration and improvements. It was observed:

r to "22. The expression "hostile witness" does not find a place in the Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from the chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness.

Even a chief examination could be termed as evidence. Such evidence would become complete after the cross- examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion.

23. On the law laid down in dealing with the testimony of a witness over an issue, we would like to place .

reliance on the decision of this Court in C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] : (SCC pp. 596- 97, paras 81-85) "81. It is settled legal proposition that : (Khujji case [Khujji v. State of M.P., (1991) 3 SCC 627: 1991 SCC (Cri) 916], SCC p. 635, para 6) '6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such r witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.' (Vide Bhagwan Singh v. State of Haryana [Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389: 1976 SCC (Cri) 7], Rabindra Kumar Dey v. State of Orissa [Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233: 1976 SCC (Cri) 566], Syad Akbar v. State of Karnataka [Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59] and Khujji v. State of M.P. [Khujji v. State of M.P., (1991) 3 SCC 627: 1991 SCC (Cri) 916], SCC at p. 635, para 6)

82. In State of U.P. v. Ramesh Prasad Misra [State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360: 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu SonbaShinde v. State of Maharashtra [Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543: 2003 .

SCC (Cri) 112], GaganKanojia v. State of Punjab [GaganKanojia v. State of Punjab, (2006) 13 SCC 516 : (2008) 1 SCC (Cri) 109], Radha Mohan Singh v. State of U.P. [Radha Mohan Singh v. State of

U.P., (2006) 2 SCC 450 : (2006) 1 SCC (Cri) 661], SarveshNarain Shukla v. Daroga Singh [SarveshNarain Shukla v. Daroga Singh, (2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188] and Subbu Singh v. State [Subbu Singh v. State, (2009) 6 SCC 462 : (2009) 2 SCC (Cri) 1106].

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW

51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with the law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is a settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the .

incident, minor discrepancies are bound to occur in the statements of witnesses. Vide Sohrab v. State of M.P. [Sohrab v. State of M.P., (1972) 3 SCC 751: 1972 SCC (Cri) 819], State of U.P. v. M.K. Anthony [State of U.P. v. M.K. Anthony, (1985) 1 SCC 505: 1985 SCC (Cri) 105], Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217: 1983 SCC (Cri) 728], State of Rajasthan v. Om Prakash [State of Rajasthan v. Om Prakash, (2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411], Prithu v. State of H.P. [Prithu v. State of H.P., (2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502], State of rU.P. v. Santosh Kumar [State of U.P. v. Santosh Kumar, (2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and State v.

Saravanan [State v. Saravanan, (2008) 17 SCC 587 :

(2010) 4 SCC (Cri) 580] ."

24. This Court in Vinod Kumar v. State of Punjab [Vinod Kumar v. State of Punjab, (2015) 3 SCC 220 : (2015) 2 SCC (Cri) 226 : (2015) 1 SCC (L&S) 712] had already dealt with a situation where a witness after rendering testimony in line with the prosecution's version, completely abandoned it, in view of the long adjournments given permitting an act of manoeuvring. While taking note of such situations occurring with regularity, it expressed its anguish and observed that : (SCC pp. 244-46, paras 51-53 & 57) "51. It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to

many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this .

nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and re-examined.

52. It is settled in law that the testimony of a hostile witness can be relied upon by the prosecution as well as the defence. In re-examination by the Public Prosecutor, PW 7 has accepted about the correctness of his statement in the court on 13-9-1999. He has also accepted that he had not made any complaint to the Presiding Officer of the court in writing or verbally that the Inspector was threatening him to make a false statement in court. It has also been accepted by him that he had given the statement in the court on account of fear of false implication by the Inspector. He has agreed to have signed his statement dated 13-9-1999 after going through and admitting it to be correct. It has come in the re-

examination that PW 7 had not stated in his statement dated 13-9-1999 in the court that recovery of tainted money was not effected in his presence from the accused or that he had been told by the Inspector that the amount has been recovered from the accused. He had also not stated in his said statement that the accused and witnesses were taken to the Tehsil and it was there that he had signed all the memos.

53. Reading the evidence in its entirety, PW 7's evidence cannot be brushed aside. The delay in cross-examination has resulted in his prevarication from the examination-in-chief. But, a significant one, his examination-in-chief and the re- examination impel us to accept the testimony that he had gone into the octroi post and had witnessed .

about the demand and acceptance of money by the accused. In his cross-examination, he has stated that he had not gone with Baj Singh to the Vigilance Department at any time and no recovery was made in his presence. The said part of the testimony, in our considered view, does not commend acceptance in the backdrop of the entire evidence in the examination-in-chief and the re-examination.

***

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial.

That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-

examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be .

countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to a violation of the rule of law and eventually turn such trials into a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. 57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-

chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite a series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot be allowed to be .

lonely; a destitute."

28. Therefore, it is permissible for the Court to rely upon the testimony of a hostile witness, if he has not been discredited altogether and if the statement is corroborated by other evidence.

29. In the present case, the witness has denied his previous statement in its entirety; therefore, his credit has been shaken completely and no reliance can be placed upon his testimony.

30. This Court has also laid down in Ian Stilman versus.

State 2002(2) Shim. L.C. 16 that where a witness has been cross-

examined by the prosecution with the leave of the Court, his statement cannot be relied upon. It was observed:

> 12. It is now well settled that when a witness who has been called by the prosecution is permitted to be cross-

examined on behalf of the prosecution, such a witness loses credibility and cannot be relied upon by the defence. We find support for the view we have taken from the various authorities of the Apex Court. In Jagir Singh v. The State (Delhi Administration), AIR 1975 Supreme Court 1400, the Apex Court observed :

> "It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit .
>
> this witness altogether and not merely to get rid of a part of his testimony".

31. Further, the learned Trial Court had rightly held that the mere fact that the independent witness has not supported the prosecution case is insufficient to reject the prosecution case. It was laid down by this Court in Budh Ram Versus State of H.P. 2020 Cri.L.J.4254 that merely because independent witnesses have turned hostile is no reason to discard the prosecution version. It was observed:

> "Though the independent witnesses, PW-1 Rajiv Kumar and PW-2 Hira Lal, were declared hostile and were cross- examined, however, the law in respect of appreciating the testimonies of such witnesses is well settled. Hon'ble Apex Court in titled Sudru versus State of Chhattisgarh, (2019) 8 SCC 333 relying upon Bhajju versus State of M.P., 2010 4 SCC 327, has again reiterated the well-settled principle that evidence of hostile witness can be relied upon by the prosecution version. Merely because a witness has turned hostile, the same does not render his evidence or testimony inadmissible in trial and such conviction can be based upon such testimony, if it is corroborated by other reliable evidence.
>
> In a case titled Raja and Others versus State of Karnataka, (2016) 10 SCC 506 the Apex Court observed that the evidence of a hostile witness cannot be altogether

> discarded and as such it is open for the Court to rely on the dependable part of such evidence which stands duly corroborated by other reliable evidence on record.

In a case titled Selvaraj @ Chinnapaiyan versus State represented by Inspector of Police, (2015) 2 SCC 662 the Apex .

Court has observed that in a situation/case, wherein, the witness deposes false in his/her cross-examination, that itself is not sufficient to outrightly discard his/her testimony in examination-in-chief. The Court held that a conviction can be recorded believing the testimony of a such witness given in examination-in-chief, however, such evidence is required to be examined with great caution.

In Ashok alias Dangra Jaiswal versus State of Madhya Pradesh, (2011) 5 SCC 123, has held as under:-

> "the seizure witness turning hostile may not be very rsignificant by itself, as it is not an uncommon phenomenon in criminal trial particularly in cases relating to NDPS Act."

32. Therefore, the accused cannot be acquitted merely because the independent witness has turned hostile.

33. When the testimony of the independent witness is seen carefully, it is apparent that he has admitted the presence of the police on the spot. He also admitted his signatures on various documents, sample seal and the case property. He stated that he was literate and could read and write Hindi. He has not given any explanation for putting his signatures. He admitted that no complaint was made by him to any person regarding obtaining his signatures. Therefore, his testimony establishes the presence of the accused and the police; and obtaining his signatures on various documents. Dealing with almost the same situation, the .

Hon'ble Supreme Court held in Raveen Kumar v. State of H.P., (2021) 12 SCC 557: (2023) 2 SCC (Cri) 230: 2020 SCC OnLine SC 869 that the testimony of such a witness cannot be used to discard the prosecution case. It was observed on page 566:

> "21. Although declared hostile by the prosecution, Nam Singh (PW 1), admits to being literate and having signed his statement on the spot. During cross-examination he admits to having duly perused the contents of these documents before having signed them, and of not being under any form of police pressure, thus, seriously undermining any oral statement to the contrary. His deposition independently establishes that the Maruti van of the appellant had indeed been stopped, the appellant's consent was taken, a search had been conducted, certain items were seized and some substance had been weighed and sealed. Although PW 1 claimed not to have specifically witnessed the seizure of the charas, but he has not denied so either. He submits that he had gone back to his shop to attend to some customers at

> that stage of the search.
>
> However, he admits to having been shown the extracted sample of charas, which he identified before the trial court. Thus, far from undermining the prosecution version, PW 1's statement broadly corroborates and strengthens the seizure of contraband substance from the possession of the appellant."

34. Therefore, the prosecution case cannot be discarded because the independent witness has not supported the same.

35. Learned counsel for the appellant-Dilo Begum has restricted her arguments to the violation of Section 52(A) of the .

NDPS Act; however, many pleas were taken in the Memorandum of Appeal. Since this is a first appeal and a valuable right of the convict to ask the Court to re-appreciate the evidence; therefore, it is the bounden duty of the Court to go through the evidence and deal with the points raised by the appellant/accused in the during the arguments.

r to Memorandum of Appeal even though these were not pressed

36. It was submitted that there are various contradictions in the testimonies of eyewitnesses, which are irreconcilable and mutually destructive. The following contradictions noticed by the learned Trial Court were highlighted:-

> I) As per the prosecution story, two lady Constables Savina and Rajni were present at the time of recovery of alleged contraband, but as per HHC Mohammad Aslam (PW1), the search of accused Dilo Begum was conducted by ASI Govind Pal, whereas (PW2) HHC Manohar Lal stated that accused Dilo Begum was searched by LC Savina.
>
> II) (PW1) states that videography has been conducted by him, whereas (PW2) states that no videography was conducted by (PW1) in his presence. (PW4) has also contradicted the statements of both these witnesses.
>
> III) The inventory vide which ASI Govind Pal had handed over the further investigation to ASI Bhagwant Singh has not been brought on record.
>
> .
>
> IV) In cross-examination (PW1) stated that they checked 10-15 vehicles at Karodi, but none was challaned. He further stated that before the arrival of the accused on motorcycles, they had checked 8-10 vehicles.

However, as per (PW2), they had checked 8-10 vehicles at Karodi and 10-15 vehicles at the spot, but did not challan anyone, whereas as per the statement of Constable Sunil Kumar (PW4), they had checked 10-12 vehicles at Karodi and before the arrival of the accused at Behi, they had checked 8-10 vehicles. V) As per I.O. (PW19), the seal 'SB' after use was handed over to witness Tarun Abrol, but this witness (PW3) has denied having been handed over the same.

37. Learned Trial Court held that these contradictions are not on vital aspect of the case. The incident took place on 16.12.2016 and the statements of witnesses were recorded after more than one year. These contradictions were bound to occur due to the difference in the power of observation and retention.

They are trivial and do not affect the core of the prosecution case.

The principles of appreciation of ocular evidence were explained by the Hon'ble Supreme Court in Balu Sudam Khalde And Another Versus The State Of Maharashtra AIR 2023 SC 1736, as under: -

> "25. The appreciation of ocular evidence is a hard task. There is no fixed or straightjacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:
>
> "I. While appreciating the evidence of a witness, the approach must be whether the evidence of the .
>
> witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.
>
> II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which did not have this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.
>
> III. When an eyewitness is examined at length it is quite possible for him to make some discrepancies.
>
> But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. IV. Minor discrepancies on trivial matters not

touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or .

as between two statements of the same witness) is an unrealistic approach for judicial scrutiny. VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder. X. In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events, which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be .

overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding the sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

> XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the latter statement, even if the latter statement is at variance with the former to some extent it would not be helpful to contradict that witness."

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat 1983 Cri LJ 1096 : (AIR 1983 SC 753) Leela Ram v. State of Haryana AIR 1995 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

38. It was laid down by the Hon'ble Supreme Court in Karan Singh Vs State of U.P. 2022 (2) RCR (Criminal) 239, that the Court has to examine the evidence of the witnesses to find out whether it has a ring of truth or not. The Court should not give undue importance to omission, contradictions and discrepancies which do not go to the heart of the matter. It was observed:-

> "This Court, in Rohtash Kumar v. State of Haryana, 2013 14 SCC 434 held:-
>
> "24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is .
>
> undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness..."

[42] Referring to Narayan Chetanram Chaudhary and Another v. State of Maharashtra, 2000 AIR(SC) 3352, Mr Tyagi argued that minor discrepancies caused by lapses in memory were acceptable, but contradictions were not. In this case, there was no contradiction, only minor discrepancies.

[43] In Kuriya and Anr. v. State of Rajasthan, 2012 10 SCC 433 this Court held:

> "30. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even in law render credentials to the depositions. The improvements or variations must essentially relate to the material

particulars of the prosecution .

case. The alleged improvements and variations must be shown with respect to the material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements.

Reference in this regard can be made to the judgments of this Court in Kathi Bharat Vajsur v. State of Gujarat, 2012 5 SCC 724, Narayan Chetanram Chaudhary v. State of Maharashtra, 2000 8 SCC 457, Gura Singh v. State of Rajasthan, 2001 2 SCC 205 and Sukhchain Singh v. State of Haryana, 2002 5 SCC 100.

31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case, that the Court has to consider whether the witness was stating the truth or not.

[(Ref. Sunil Kumar v. State (Govt. of NCT of Delhi), 2003 11 SCC 367].

32. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 persons can hardly be expected to state a minute-by-minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with the utmost exactitude. It is a settled principle of law that every improvement or variation .

cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to Ashok Kumar v. State of Haryana, 2010 12 SCC 350 and Shivlal v. State of Chhattisgarh, 2011 9 SCC 561."

[44] In Shyamlal Ghosh v. State of West Bengal, 2012 7 SCC 646, this Court held:

"46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. ..... Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution

substantially. Every variation may not be enough to adversely affect the case of the prosecution.

49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation. We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused."

[45] In Rohtash Kumar v. State of Haryana, 2013 14 SCC 434, this Court held:-

"24. ... The court has to examine whether the evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out .

in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness..."

39. Similar is the judgment in Anuj Singh Vs State of Bihar, AIR 2022 SC 2817, wherein it was observed:-

"[17] It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed on hand or foot but the constant narrative of the witnesses is that the appellants were present at the place of occurrence armed with guns and they caused the injury on informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions as observed by this court in Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra, 2000 8 SCC 457. This Court while considering the issue of contradictions in the testimony, while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be ground to discredit the testimony of the witnesses. The relevant portion of para 42 of the judgment reads as under:

"42. Only such omissions which amount to a contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution

becomes doubtful and not .

otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differs from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is a contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness."

40. Therefore, in view of the binding precedents of the Hon'ble Supreme Court the statements of the witnesses cannot be discarded due to omissions, contradictions or discrepancies.

The Court has to see whether the discrepancies affect the prosecution case adversely or not and whether they are related to the core of the prosecution case or the details.

41. In the present case, the learned Trial Court had rightly held that the contradictions do not affect the core of the prosecution case and were bound to come when the witnesses are cross-examined at length due to the difference in perception and power of retention. The discrepancy regarding the number of vehicles checked by the police can occur due to differences in perception and retention. The discrepancy regarding the search of Dilo Begum is more apparent than real because all the official witnesses consistently stated that the search of the accused Dilo .

Begum was conducted by LC Sabina by taking her to the side of the road; whereas the purse was searched by ASI Govind Pal.

Thus, there is no real contradiction regarding the search of the accused Dilo Begum. Discrepancy regarding the video recording and the photograph can occur due to the failure of memory with time. The fact that the inventory was not brought on record will not cast doubt on the consistent statements of the official witness. Tarun Abrol did not support the prosecution case and his credit was thoroughly impeached; hence, the fact that he has not supported the prosecution case regarding handing over the seal to him is not significant. Therefore, the plea taken in the Memorandum of Appeal that the contradictions were material and mutually destructive, which affected the core of the prosecution case cannot be accepted.

42. It was also submitted in the Memorandum of Appeal that there is a violation of Section 100(4) of Cr.P.C., as well as, Section 42 of the NDPS Act.

43. Section 42 of the ND&PS Act reads as under: -

"42. Power of entry, search, seizure and arrest without warrant or authorisation (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the .

departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military 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 knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

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

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

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

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

> Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief (2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

44. It is apparent from the perusal of this Section that it is in two parts. The first part provides that any empowered officer receiving any information, which is taken down in writing that any narcotics drugs or psychotropic substance etc. are kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset enter into such building, conveyance or enclosed place and in case of resistance, break open any door or remove any obstacle and seize such drug or substance, material and conveyance and detain any person who has committed the offence. The second part provides that if such .

warrant of authorization cannot be obtained without affording of opportunity for the concealment of the evidence or escape of the offender, he may enter or search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief 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.

45. Therefore, the grounds of the belief 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 are to be recorded when the search is to be conducted between sunset and sunrise based on prior information and not otherwise. If the search is conducted between sunrise and sunset, it is sufficient that the information is reduced to writing. It was laid down in State of Punjab Vs Baldev Singh, 1999 (6) SCC 172, that an empowered officer may carry out the arrest or search without a warrant between sunrise and sunset and without recording his reasons of belief. However, when the search has to be conducted between sunset and sunrise the grounds of belief have to be recorded and sent to an .

immediate official superior. It was observed: -

> "9. Sub-section (1) of S. 42 lays down that the empowered officer, if has prior information given by any person, should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter IV have been committed or that materials which may furnish evidence of the 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 he may do so without recording his reasons of belief.
>
> 10. The proviso to sub-section (1) lays down that if the empowered 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. Vide sub-section (2) of S. 42, the empowered officer who takes down information in writing or records the grounds of his belief under the proviso to sub-section (1), shall forthwith send a copy of the same to his immediate official superior." (Emphasis supplied)

46. This position was reiterated in State of Rajasthan vs Jagraj Singh @ Hansa 2016 (11) SCC 687 and it was held:

> "Section 42 (1) indicates that any authorised officer can carry out a search between sunrise and sunset without a warrant or authorisation. The scheme indicates that in the event the search has to be made between sunset and sunrise, the warrant would be necessary unless the officer has reasons to believe that a search warrant or authorisation cannot be obtained without affording the opportunity for the escape of

> the offender which grounds of his belief has to be recorded."

47. Similar is the judgment in Ram Charan Jatav vs. State .

of U.P. AIROnline 2020 All 2477 wherein it was held:

> 23. In State of Punjab v Balbir Singh, (1994) 3 SCC 299, referring to the provision of section 42 (1) and (2), the Supreme Court has laid down that the arrest and seizure may be carried out between sunrise and sunset and for that, there is no need of a warrant. But, if the search is to be conducted between sunset to sunrise, a warrant is required. But the exception is that if the officer conducting the search has reason to believe that a warrant cannot be obtained without affording an opportunity of concealment or escape to the offender he must record in writing his reason for such belief.

48. In the present case, the recovery was effected at 1:30 pm; therefore, there was no requirement for obtaining the warrant or recording the ground of belief. Further, the statements of the witnesses clearly show that the police were on nakabandi duty when the motorcycle came and the police signalled the driver to stop it. When the inquiries were made from the driver of the motorcycle and the pillion rider, the pillion rider got perplexed, which led to suspicion. Therefore, the police had no prior information and it was a case of chance recovery.

Hence, the provision of Section 42 of the NDPS Act did not apply to the present case.

.

49. It was further stated in the Memorandum of Appeal that the Pradhan and independent persons were not associated in the present case. As already stated, the police did not have any prior information and the accused were apprehended based on suspicion. In similar circumstances, it was laid down by this Court in Chet Ram Vs State of Himachal Pradesh Criminal Appeal no. 151/2006 decided on 25.7.2008 that when the accused was apprehended after he tried to flee on seeing the police, there was no necessity to associate any person from the nearby village. It was observed: -

> "(A)appellant was intercepted and search of his bag was conducted on suspicion, when he turned back and tried to flee, on seeing the police. Police officials did not have any prior information nor did they have any reason to believe that he was carrying any contraband. They overpowered him when he tried to run away and suspected that he might be carrying some contraband in his bag. Therefore, the bag was searched and Charas was recovered. After the recovery of Charas, there was hardly any need to associate any person from the nearby village, because there remained nothing to be witnessed.

It is by now well settled that non-association of independent witnesses or non-supporting of the prosecution version, by independent witnesses where they are associated, by itself is not a ground to

acquit an accused. It is also well-settled that the testimony of official witnesses, including police officials, carries the same evidentiary value as the testimony of any other person. The only difference is that Courts have to be more .

circumspect while appreciating the evidence of official witnesses to rule out the possibility of false implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinizing the evidence of official witnesses, in a case where independent witnesses are not associated, contradictions and inconsistencies in the testimony of such witnesses are required to be taken into account and given due weightage, unless satisfactorily explained. Of course, it is only the material contradictions and not the trivial ones, which assume significance." (Emphasis supplied)

50. While dealing with a similar case of a chance recovery, it was laid down by the Hon'ble Supreme Court in Kashmira Singh Versus State of Punjab 1999 (1) SCC 130 that the police party is under no obligation to join independent witnesses while going on patrolling duty and the association of any person after effecting the recovery would be meaningless. It was observed:

> "3. Learned counsel for the appellant has taken us through the evidence recorded by the prosecution as also the judgment under appeal. Except for the comment that the prosecution is supported by two police officials and not by any independent witness, no other comment against the prosecution is otherwise offered. This comment is not of any value since the police party was on patrolling duty and they were not required to take along independent witnesses to support recovery if and when made. It has come in the evidence of ASI Jangir Singh that after the recovery had been effected, some people had passed by. Even so, obtaining their counter-signatures on the documents already prepared would not have lent any further credence to the prosecution version."

51. This position was reiterated in Avtar alias Tarri Vs .

State of HP, 2022 Supreme(HP) 345, wherein it was held:-

> "24. As regards the second leg of the argument raised by learned counsel for the appellant, it cannot be said to be of much relevance in the given facts of the case. The fact situation was that the police party had laid the 'nakka' and immediately thereafter had spotted the appellant at some distance, who got perplexed and started walking back. The conduct of the appellant was sufficient to raise suspicion in the minds of police officials. At that stage, had the appellant not been apprehended immediately, police could have lost the opportunity to recover the contraband.
>
> Looking from another angle, the relevance of independent witnesses could be there, when such witnesses were immediately available or had already been associated at the place of 'nakka'. These, however, are not mandatory conditions and will always depend on the fact situation of each and every case. The reason is that once the

> person is apprehended and is with police, a subsequent association of independent witnesses, may not be of much help. In such events, the manipulation, if any, cannot be ruled out."

52. It was laid down by the Hon'ble Supreme Court of India in Raveen Kumar Versus State of Himachal Pradesh AIR 2020 SC 5375 that non-association of the independent witnesses will not be fatal to the prosecution case. However, the Court will have to scrutinize the statements of prosecution witnesses. It was observed:

> "19. It would be gainsaid that the lack of independent witnesses are not fatal to the prosecution case.[Kalpnath Rai vs. State, (1998) AIR SC 201] However, such omissions cast an added duty on Courts to adopt a greater degree of .
>
> care while scrutinising the testimonies of the police officers, which if found reliable can form the basis of a successful conviction."

53. This position was reiterated in Rizwan Khan Versus State of Chhattisgarh (2020) 9 SCC 627, wherein, it was observed:

> "8.2 Having gone through the entire evidence on record and the findings recorded by the courts below, we are of the opinion that in the present case, the prosecution has been successful in proving the case against the accused by examining the witnesses PW3, PW4, PW5, PW7 and PW8. It is true that all the aforesaid witnesses are police officials and two independent witnesses who were Panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313, Cr.P.C.
>
> There is no law that the evidence of police officials unless supported by independent evidence, is to be discarded and/or unworthy of acceptance.
>
> It is settled law that the testimony of the official witnesses cannot be rejected on the grounds of non-corroboration by an independent witness. As observed and held by this Court in a catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case, [see Pardeep Kumar (supra)]. In the recent decision in the case of Surinder Kumar vs. State of Punjab, (2020) 2 SCC 563, while considering a somewhat similar submission of non-examination of independent witnesses, while dealing with the offence under the NDPS Act, in paragraphs 15 and 16, this Court observed and held as under:
>
> "15. The judgment in Jarnail Singh vs. State of Punjab (2011) 3 SCC 521, relied on by the counsel for the .

respondent-State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because the prosecution did not examine any independent witness, would not necessarily lead to a conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.

16. In State (NCT of Delhi) vs. Sunil, (2011) 1 SCC 652, it was held as under (SCC p. 655) "It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature."

Applying the law laid down by this Court on the evidence of police officials/police witnesses to the facts of the case in hand, referred to hereinabove, we are of the opinion as the police witnesses are found to be reliable and trustworthy, no error has been committed by both the courts below in convicting the accused relying upon the deposition of the police officials."

54. Similar is the judgment of the Hon'ble High Court in Balwinder Singh & Anr. Vs State of H.P., 2020 Criminal L.J. 1684, wherein it was held: -

> "3. (iii) Learned defence counsel, contended that in the instant case, no independent witness was associated by the Investigating Officer, therefore, the prosecution case cannot be said to have been proved by it in accordance with .
>
> provisions of the Act. Learned defence counsel, in support of his contention, relied upon titled Krishan Chand versus State of H.P.,2017 4 CriCC 531 3(iii)(d). It is by now well settled that prosecution case cannot be disbelieved only because the independent witnesses were not associated."

55. This position was reiterated in Kallu Khan Vs State of Rajasthan, AIR 2022 SC 50, wherein it was held: -

> "16. The issue raised regarding conviction solely relying upon the testimony of police witnesses, without procuring any independent witness, recorded by the two courts, has also been dealt with by this Court in the case of Surinder Kumar (supra) holding that merely because independent witnesses were not examined, the conclusion could not be drawn that accused was falsely implicated. Therefore, the said issue is also well-settled and in particular, looking to the facts of the present case, when the conduct of the accused was found suspicious and a chance recovery from the vehicle used by him is made from a public place and proved beyond a reasonable doubt, the appellant cannot avail any benefit on this issue. In our view, the concurrent findings of the courts do not call for interference."

56. Thus, in view of the binding precedents of the Hon'ble Supreme Court and High Courts, the prosecution case cannot be doubted because the independent witnesses were not associated in a case of chance recovery and the submission that the prosecution case has to be discarded due to failure to associate independent witness is not acceptable.

.

57. It was submitted in the Memorandum of Appeal that the accused-Dilo Begum also asserted in her statement recorded under Section 313 of Cr.P.C. that she was ill and admitted to the Civil Hospital, Chamba and this plea was not considered by the learned Trial Court. This submission cannot be accepted. No record of the civil hospital was produced to establish this fact.

The best evidence of the admission of accused Dilo Begum was the record maintained by Civil Hospital, Chamba and in the absence of the record, the learned Trial Court cannot be faulted for discarding this plea.

58. Dilo Begum also stated that the case was made against her as she had opened a case, in which her brother Sher Mohammed was killed by Shamido and Mohammad Ali. It is difficult to believe that the Police would have any enmity with the accused-Dilo Begum merely because she had complained about the death of her brother. The police are bound to investigate the commission of a cognizable offence and cannot have any grudge against any person, who had asked the Police to do their duty; therefore, this is hardly any reason to falsely implicate the accused-Dilo Begum.

.

59. Further, it was not suggested to any of the prosecution witnesses that the case was filed against Dilo Begum due to any enmity with her. It was only suggested to the witness that a false case was registered against Dilo Begum without mentioning any reason. A party has a duty to put so much of the case to the witness as concerns him in his cross-examination. It was laid down by Calcutta High Court in A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44, that the counsel is bound to put to each of his opponent witness so much of his case as concerns of his particular witness or in which that witness had any share. It was observed:

> "9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had

any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure .

leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.

10. On this point the most important and decisive authority is Browne v. Dunn, reported in (1893) 6 R 67. It is a decision of the House of Lords where Lord Herschell, L.C., Lord Halsbury, Lord Morris and Lord Bowen were all unanimous on this particular point. Lord Chancellor Herschell, at page 70 of the report observed:

"Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass is by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses."

11. Lord Halsbury, the other member of the House of Lords, at page 76 of the same report said:

"My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To .

my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to."

12. In fact Lord Halsbury described the situation as a "perfect outrage" at page 77 of the said report. After quoting the evidence the learned Lord said:

> "My Lords, it seems to me that it would be a perfect outrage and violation of the proper conduct of a case at Nisi Prius if, after the learned counsel had declined to cross-examine the witness upon that evidence, it is not to be taken as a fact that witness did complain of the plaintiff's proceedings, that he did receive advice, that he went round to Mr. Dunn as a solicitor, and that he did sign that retainer, the whole case on the other side being that the retainer was a mere counterfeit proceeding and not a genuine retainer at all."

13. The same view is expressed in the 13th Edition of Odger on Pleading and Practice at page 261 and the 9th Edition of Phipson on Evidence at pages 497-98."

60. A similar view was taken in Ravinder Kumar Sharma v.

State of Assam, (1999) 7 SCC 435: 1999 SCC OnLine SC 887, wherein it was held: -

> 29. The High Court was, in our opinion, wrong in concluding that there was the absence of reasonable and probable cause because the action, in view of the notification of the Central Government, was unauthorised or illegal. Illegality does not by itself lead to such a .

conclusion. Further, there is no truth in the appellant's case that on 1-10-1977 at the time of seizure, he informed Defendants 2 and 3 about the gazette notification. The point is that such an assertion was not made even in the bail application moved after arrest. As to the contention that the appellant and the owners of paddy showed permits to Defendants 2 and 3, we do not find sufficient pleading on this aspect. In any case, we find that no question was put when the 2nd defendant was cross-examined. As pointed out by Sarkar on Evidence (15th Edn., 1999, Vol. 2, p. 2179) in the context of Section 138 of the Evidence Act, r "Generally speaking, when cross-examining, a party's counsel should put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witness or in which he had a share."

61. This position was reiterated in CBI v. Mohd. Parvez Abdul Kayuum, (2019) 12 SCC 1: (2019) 4 SCC (Cri) 32: 2019 SCC OnLine SC 832, wherein it was observed:

> 155. It was also urged that that Mohmed Parvez was produced at Civil Hospital at the time when the statement was recorded, renders the confessional statement unreliable. No such question during his cross-

examination has been put to PW 21 as to the presence of Parvez Sheikh, A-9, in hospital at 10 a.m. A-9 was required to be produced before the Magistrate on 9-6- 2003 i.e. within 48 hours as required under Section 32 of POTA. Neither he stated so in the written retraction of the confessional statement that he was at the time in the hospital when the confessional statement is said to have been recorded. It was necessary to discredit the recording of the confession by PW 21 to put it in the cross- examination and to seek his explanation. Cross- examination is not a matter of procedure but a matter of .

substance as held in Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128 : AIR 1945 Nag 60], Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683], A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359] and Jai Shankar Prasad v. State of Bihar [Jai Shankar Prasad v. State of Bihar, (1993) 2 SCC 597: 1993 SCC (L&S) 646: AIR 1993 SC 1906; Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906].

62. Thus, failure to put this part of the defence to the prosecution witnesses will mean that this defence was abandoned or it was an afterthought.

63. It was further submitted in the Memorandum of Appeal that there was a violation of Section 50 of the NDPS Act as the search was not effected in the presence of the Magistrate or the Gazetted Officer. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in Ranjan Kumar Chadha v. State of H.P., 2023 SCC OnLine SC 1262 that the police is bound to take the accused to the nearest Magistrate or the Gazetted Officer if he so requires and not otherwise. It was observed:

> "62. Section 50 of the NDPS Act only goes so far as to prescribe an obligation to the police officer to inform the suspect of his right to have his search conducted either in the presence of a Gazetted Officer or Magistrate. Whether or not the search should be conducted in the presence of a Gazetted Officer or Magistrate ultimately depends on the exercise of such right as provided under Section 50. In the .
>
> event the suspect declines this right, there is no further obligation to have his search conducted in the presence of a Gazetted Officer or Magistrate, and in such a situation the empowered police officer can proceed to conduct the search of the person himself. To read Section 50 otherwise would render the very purpose of informing the suspect of his right a redundant exercise. We are of the view that the decision of this Court in Arif Khan (supra) cannot be said to be an authority for the proposition that notwithstanding the person proposed to be searched has, after being duly apprised of his right to be searched before a Gazetted Officer or Magistrate, but has expressly waived this right in clear and unequivocal terms; it is still mandatory that his search be conducted only before a Gazetted Officer or Magistrate.
>
> 63. A plain reading of the extracted paragraphs of Arif Khan (supra) referred to above would indicate that this Court while following the ratio of the decision of the Constitution Bench in Vijaysinh Chandubha Jadeja (supra) held that the same has settled the position of law in this behalf to the effect that, whilst it is imperative on the part of the empowered officer to apprise the person of his right to be searched only before a Gazetted Officer or Magistrate; and this requires strict compliance; this Court simultaneously proceeded to reiterate that in Vijaysinh Chandubha Jadeja (supra) "it is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act".

64. There is no requirement to conduct the search of the person, suspected to be in possession of a narcotic drug or a psychotropic substance, only in the presence of a Gazetted Officer or Magistrate, if the person proposed to be searched, after being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate categorically waives such right by electing to be searched .

by the empowered officer. The words "if such person so requires", as used in Section 50(1) of the NDPS Act would be rendered otiose, if the person proposed to be searched would still be required to be searched only before a Gazetted Officer or Magistrate, despite having expressly waived "such requisition", as mentioned in the opening sentence of sub-Section (2) of Section 50 of the NDPS Act. In other words, the person to be searched is mandatorily required to be taken by the empowered officer, for the conduct of the proposed search before a Gazetted Officer or Magistrate, only "if he so requires", upon being informed of the existence of his right to be searched before a Gazetted Officer or Magistrate and not if he waives his right to be so searched voluntarily, and chooses not to exercise the right provided to him under Section 50 of the NDPS Act.

65. However, we propose to put an end to all speculations and debate on this issue of the suspect being apprised by the empowered officer of his right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or Magistrate. We are of the view that even in cases wherein the suspect waives such right by electing to be searched by the empowered officer, such waiver on the part of the suspect should be reduced into writing by the empowered officer. To put it in other words, even if the suspect says that he would not like to be searched before a Gazetted Officer or Magistrate and he would be fine if his search is undertaken by the empowered officer, the matter should not rest with just an oral statement of the suspect. The suspect should be asked to give it in writing duly signed by him in presence of the empowered officer as well as the other officials of the squad that "I was apprised of my right to be searched before a Gazetted Officer or Magistrate in accordance with Section 50 of the NDPS Act, however, I declare on my own free will and volition that I would not like to exercise my right of being searched before a Gazetted Officer or Magistrate and I may be searched by the empowered officer." This would lend more credence to the compliance .

of Section 50 of the NDPS Act. In other words, it would impart authenticity, transparency and creditworthiness to the entire proceedings. We clarify that this compliance shall henceforth apply prospectively.

64. In the present case, the accused never required that he should be taken to the Gazetted Officer of the Magistrate;

therefore, there was no obligation to take him to the Magistrate or the Gazetted Officer.

65. It is not the case of the prosecution that the recovery was effected from the personal search of the accused. It was laid down by the Hon'ble Supreme Court in State of Punjab Versus Baljinder Singh & another, (2019) 10 SCC 473, that where the recovery was effected from the bag, briefcase etc., non-

compliance with section 50 is not fatal. It was observed:

> "14. The law is thus well settled that an illicit article seized from the person during a personal search conducted in violation of the safeguards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contraband. But the question is if there be any other material or article recovered during the investigation, would the infraction with respect to personal search also affect the qualitative value of the other material circumstance.
>
> 15. At this stage we may also consider the following observations from the decision of this Court in Ajmer Singh v. State of Haryana [(2010) 3 SCC 746] : (2010 AIR SCW 1494, Para 16).] .
>
> "15. The learned counsel for the appellant contended that the provision of Section 50 of the Act would also apply while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of the learned counsel. It requires to be noted that the question of compliance or non-compliance with Section 50 of the NDPS Act is relevant only where a search of a person is involved and the said section is not applicable nor attracted where no search of a person is involved. Search and recovery from a bag, briefcase, r container, etc. do not come within the ambit of Section 50 of the NDPS Act, because firstly, Section 50 expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of the search. Thirdly, this issue in our considered opinion is no more res Integra in view of the observations made by this Court in Madan Lai v. State of H.P. [(2003) 7 SCC 465] : (AIR 2003 SC 3642). The Court has observed: (SCC p.
>
> 471, para 16) (at p. 3645, para 17 of AIR) "16. A bare reading of Section 50 shows that it only applies in the case of a personal search of a person.
>
> It does not extend to a search of a vehicle or a container or a bag or premises (see Kalema Tumba v. State of Maharashtra[(1999) 8 SCC 257]: (AIR 2000 SC
>
> 402), State of Punjab v. Baldev Singh [(1999) 6 SCC 172] : (AIR 1999 SC 2378) and Gurbax Singh v. State of Haryana [(2001) 3 SCC 28]): (AIR 2001 SC 1002). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to a search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case. Above being the position, the contention regarding non-

compliance with Section 50 of the Act is also without .

any substance."

16. As regards the applicability of the requirements under Section 50 of the Act is concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

17. The conclusion (3) as recorded by the Constitution Bench in para 57 of its judgment in Baldev Singh (AIR 1999 SC 2378) clearly states that the conviction may not be based "only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

In the instant case, the personal search of the accused did not result in the recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

18. The decision of this Court in Dilip's (AIR 2007 SC 369) case, however, has not adverted to the distinction as discussed herein above and proceeded to confer an advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in said judgment in Dilip's case is not correct and is opposed to the law laid down by this Court in Baldev Singh (AIR 1999 SC 2378) and other judgments.

.

19. Since in the present matter, seven bags of poppy husk each weighing 34 kgs. were found from the vehicle which was being driven by accused Baljinder Singh with the other accused accompanying him, their presence and possession of the contraband material stood completely established."

66. This position was reiterated in Kallu Khan Vs State, AIR 2022 SC 50 and it was observed:-

> "15. Simultaneously, the arguments advanced by the appellant regarding non-compliance with Section 50 of the NDPS Act are bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance with the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of a motorcycle at a public place, the seizure of contraband was made, as revealed. Therefore, compliance with Section 50 does not attract in the present case. It is settled in the case of Vijaysinh(supra) that in the case of the personal search only, the provisions of Section 50 of the Act are required to be complied with but not in the case of the vehicle as in the present case, following the judgments of Surinder Kumar(supra) and Baljinder Singh(supra). Considering the facts of this Court, the argument of non-compliance of Section 50 of NDPS Act

advanced by the counsel is hereby repelled."

67. Similar is the judgment in Dayalu Kashyap versus State Of Chhattisgarh, 2022 (1) RCR(Cri) 815(SC) wherein it was observed:-

> "5. Learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-Section (1) of Section 50 of the Act is something which goes contrary to the mandate of the law and in a way affects the protection provided by the said Section to the accused. To support his .
>
> contention, he has relied upon the judgment of State of Rajasthan v. Parmanand & Anr., 2014 5 SCC 345, more specifically, para 19. The judgment, in turn, relied upon a Constitution Bench judgment of this Court in State of Punjab v. Baldev Singh, 1999 6 SCC 172 to conclude that if a search is made by an empowered Officer on prior information without informing the person of his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only the on basis of possession of illicit articles recovered from his person. The third option stated to be given to the accused to get himself searched by the Officer concerned not being part of the statute, the same could not have been offered to the appellant and thus, the recovery from him is vitiated.
>
> 6. In the conspectus of the facts of the case, we find the recovery was in a polythene bag which was being carried on a Kanwad. The recovery was not in person. Learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus, cannot be relied upon. We cannot give such an extended view as is sought to be contended by learned counsel for the appellant."

68. Therefore, the defence cannot take any advantage of the failure of the police to take the accused to the Magistrate or the Gazetted Officer.

69. The police officials have deposed consistently about their visit to the spot, the arrival of the motorcycle, signalling the .

driver to stop the motorcycle, inquiry from the rider of the motorcycle, Dilo Begum becoming perplexed, the search and recovery of a purse containing charas and other things. There is nothing in their cross-examination to show that they have any motive to depose falsely against the accused. Their testimonies corroborate each other on material aspects. It was laid down by this Court in Budh Ram Versus State of H.P. 2020 Cri.L.J.4254 that the testimonies of the police officials cannot be discarded on the ground that they belong to the police force. It was observed:

> "11. It is a settled proposition of law that the sole testimony of the police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. There is also no rule of law, which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise trustworthy. Rule of prudence may require more careful scrutiny of their evidence. Wherever, the evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force."

70. Similar is the judgment in Karamjit Singh versus State AIR 2003 S.C 3011 wherein it was held:

> .
>
> "The testimony of police personnel should be treated in the same manner as a 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 depend upon the facts and circumstances of each case and no principle of general application can be laid down."

(Emphasis supplied)

71. This position was reiterated in Sathyan v. State of Kerala, 2023 SCC OnLine SC 986 wherein it was observed:

> 22. Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the evidence of such a police officer is found to be reliable, trustworthy then basing the conviction thereupon, cannot be questioned, and the same shall stand on firm ground. This Court in Pramod Kumar v. State (Govt. of NCT of Delhi) 2013 (6) SCC 588
>
> 13. This Court, after referring to State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt.

of NCT of Delhi) v. Sunil [(2001) 1 SCC 652: 2001 SCC (Cri) 248] and Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626] has laid down recently in Kashmiri Lal v. State of Haryana [(2013) 6 SCC 595: AIR 2013 SCW 3102] 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 shows 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 the quality of the evidence weighs over the quantity of evidence.

23. Referring to State (Govt. of NCT of Delhi) v. Sunil 2001 (1) SCC 652, in Kulwinder Singh v. State of Punjab (2015) 6 SCC 674 this court held that: --

> "23. ... That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on record the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence."

24. We must note, that in the former it was observed: --

> "21... At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature... If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

25. Recently, this Court in Mohd. Naushad v. State (NCT of Delhi) 2023 SCC OnLine 784 had observed that the .

testimonies of police witnesses, as well as pointing out memos do not stand vitiated due to the absence of independent witnesses.

26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses can nay be discarded simply because independent witnesses were not examined. The correctness or authenticity is only to be doubted on "any good reason" which, quite apparently is missing from the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW - 1 and PW - 2, which the courts below have found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of testimony of the police

witnesses as undertaken by the trial court and is confirmed by the High Court vide the impugned judgment, cannot be faulted with."

72. Therefore, the testimonies of the police officials are accepted and it is held that the accused-Dilo Begum was found in possession of a purse containing 2.010 kgs of black substance.

73. It was submitted that the integrity of the case property has not been proved. As per the prosecution, 2.010 kgs of substance was found. The articles were produced before the learned CJM, who issued a certificate (Ext PW18/A) mentioning that the contraband contained in a parcel was weighed in his presence, which came to 2.920 grams. The report of analysis (Ext. PX) mentions that the total weight of the parcel was 2.910 Kg and the weight of the Exhibit was 1.97 kg. Thus, there is .

variation in the weight of the substance and once the learned CJM had recorded that the weight of the contraband was 2.920 kgs, the fact that only 1.97 kgs charas was found in the FSL would establish that the case property had not remained intact till its arrival in the FSL. This submission appears to be attractive but cannot withstand the scrutiny. Learned CJM had passed an order dated 17.12.2016, in which, it was mentioned that both the accused along with the case property were produced before him.

The case property i.e. pulinda was sealed with six impressions of seal 'SB'. All seals were duly intact. The Investigating Officer had shown his intention to take the entire case property for sample purposes; hence, there was no need to take a sample by opening the parcel. The case property was weighed with the electronic weighing machine, and its weight was found to be 2.920 kg along with pulinda. The contraband so recovered was handed over to the Investigating Officer.

74. This order clearly shows that the learned CJM never opened the parcel and he had weighed the parcel so produced before him. The weight of the entire parcel was found to be 2.920 kg. The weight of the parcel in the laboratory was also found to be 2.920 kg. Thus, there was a difference of only 10 grams, which .

can occur due to the different sensitivities of the weighing instruments; hence, no advantage can be derived from the fact that the learned CJM has mentioned the weight of the contraband as 2.920 kgs because the contraband referred by learned CJM in his certificate, if read with the order, will mean the entire parcel

75. to and not the substance, which was recovered inside the purse.

It was also submitted that no inventory was prepared, which is mandatory as per the requirement of Section 52(A). This submission is contrary to the record since the inventory of the seized narcotic drugs is available on record as Ext. PW16/B. It also mentions the quantity of the charas/cannabis as 2.010 kgs of the parcel weighing 2.920 kgs. Thus, not only the inventory is available on record but the same is as per the order of the learned CJM, hence, the submission that no inventory was prepared and produced before the learned CJM is not acceptable.

76. ASI Subhash Chand also filed an application (Ext.

PW16/A) for the disposal of the case property under Section 52-A of the NDPS Act on 18.02.2017. Learned CJM passed an order and issued a certificate (Ext. PW16/C). He obtained 2 samples of 25 grams each. This application was filed after the issuance of the .

result of the analysis and receipt of the case property from FSL Junga. Constable Khem Raj (PW6) specifically stated that he had handed over the case property and the result of analysis to MHC Sadar, Chamba on 27.01.2017. Thus, the result of the analysis was received on 27.01.2017 and the application for disposal was filed on 18.02.2017.

77. to It was submitted in the Memorandum of Appeal that two samples of 25 grams each have been drawn by learned CJM and the difference should have been much more. The samples were taken after the analysis; therefore, the same would not make any difference to the weight of the exhibit when it was analyzed in the laboratory.

78. It was also submitted in the Memorandum of Appeal that as per the prosecution 2.010 kg substance was recovered on the spot, whereas, the weight of the exhibit was found to be 1.970 kg in the laboratory. Thus, there was a difference of 40 grams in the weight of the substance. Learned Trial Court had rightly held that this difference could have occurred due to the different sensitivity of the weighing instruments on the spot and in the laboratory, hence, the same is not fatal to the prosecution.

.

79. It was further submitted in the Memorandum of Appeal that independent witness Tarun Abrol has not produced the seal in the Court and this is fatal to the prosecution case. This submission is not acceptable. It was laid down by the Hon'ble Supreme Court in Varinder Kumar Versus State of H.P. 2019 (3) It was observed: -

r to SCALE 50 that failure to produce the seal in the Court is not fatal.

> "6. We have considered the respective submissions. PW10 is stated to have received secret information at 2.45 P.M. on 31.03.1995. He immediately reduced it into writing and sent the same to PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla. At 3.05 P.M. PW7, Head Constable Surender Kumar stopped PW5, Naresh Kumar and another independent witness, Jeevan Kumar travelling together, whereafter the appellant was apprehended at 3.30 P.M. with two Gunny Bags on his Scooter which contained varying quantities of 'charas'. PW8, Shri Jaipal Singh, Dy.S.P., C.I.D., Shimla who had arrived by then gave notice to the appellant and obtained his consent for carrying out the search. Two samples of 25 gms. each were taken from the two Gunny Bags and sealed with the seal 'S', and given to PW5. PW2, Jaswinder Singh the Malkhana Head Constable resealed it with the seal 'P'. The conclusion of the Trial Court that the seal had not been produced in the Court is therefore perverse in view

> of the two specimen seal impressions having been marked as Exhibits PH and PK. It is not the case of the appellant that the seals were found tampered with in any manner."

80. It was specifically held in Virender Kumar (supra) that when the sample seals were produced before the Court, the .

conclusion of the Trial Court that seals were produced before the Court was perverse.

81. In the present case, the prosecution had produced the sample seals (Ext. PW1/A and Ext. PW8/A) before the Court, which bear the legible seal impression. Therefore, the Court could compare the seal with the seal on the case property and there was no necessity to produce the original seals, which were put on the parcel. Learned Trial Court had noticed while recording the statement of HHC Mohammad Aslam (PW1) that the parcel (Ext P1) was sealed with six impressions of Seal 'SB' and 'SA' each. Five seal impressions of FSL and three seal impressions of CJM, Chamba. The seals were intact. Thus, as per the observations of the learned Trial Court, the seal was found intact and the plea that there was any tampering with the case property or the integrity of the case property was not established is not acceptable.

82. It was further submitted in the Memorandum of Appeal that ASI-Govind Pal conducted the investigation after effecting the recovery and this is fatal to the prosecution case.

This submission is not acceptable. It was laid down by the .

Hon'ble Supreme Court in Mukesh vs. State (NCT of Delhi) AIR 2020 SC 4794 that the accused cannot be acquitted on the ground that the police officer who effected the recovery had conducted the investigation unless some prejudice is shown. It was observed:

r to "12. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

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

> II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that the informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-
>
> .
>
> to-case basis. A contrary decision of this Court in the case of Mohan Lal vs. State of Punjab (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled."
>
> 83. In the present case, no prejudice was shown and the prosecution case will not become suspect because the person, who effected the recovery had conducted the investigation.
>
> 84. It was further submitted in the Memorandum of Appeal that Bhagwant Singh (PW18) testified that he had produced the case property before learned CJM, whereas, Subhash Kumar also stated that he had produced the case property before learned CJM, Chamba. This is a misreading of the evidence because the case property was produced on two occasions before the learned CJM-once, before the analysis and second after the analysis by two different Investigating Officers.

Therefore, there is no contradiction in the present case.

85. It was further submitted that the location of accused Dilo Begum and accused Naseer Mohammad was not pin-pointed with the help of mobile phones being carried by them. There is no such requirement. As already stated, the testimonies of the police .

officials are corroborating each other. The presence of the police party on the spot was also not denied by Tarun Abrol, the independent witness, even though, he had not supported the prosecution case regarding the recovery; therefore, the presence of the police on the spot is duly established and there was no need to further prove the same by analyzing the mobile phone to pinpoint the location of the police party and the accused.

86. The failure to produce the inventory of handing over the documents and the case property to the second Investigating Officer, the photographs and the video recording were also adversely commented upon in the Memorandum of Appeal. This failure would have assumed significance if the testimonies of the police officials were found to be contradictory because, in such a situation, the same would have required corroboration from independent sources. Since, in the present case, the testimonies were found to be satisfactory and truthful; therefore, there was no necessity to

corroborate these by independent evidence and the prosecution case cannot be discarded due to the failure to produce the inventory, photographs and video recording.

87. The result of the analysis shows that the substance was found to be cannabis containing 18.76% W/W resin in it. The .

link evidence is complete and the integrity of the case property has been established as noticed above; therefore, it was duly proved that accused Dilo Begum was found in possession of 1.97 Kg of charas.

88. Accused Naseer Mohammed was driving the vehicle in which, accused-Dilo Begum was sitting as a pillion rider. A similar situation occurred in Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLine SC 874, wherein, the contraband was recovered from the vehicle and it was held that all the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

> "19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.
>
> 20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.
>
> 21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.
>
> .
>
> 22. The expression "possession" is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52] to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.
>
> 23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

> 24. As noted in Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756] possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.
>
> 25. The word "possession" means the legal right to possession (see Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498 : (1972) 2 WLR 1306 (HL)]). In an interesting case it was observed that where a person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See Sullivan v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966 : (1976) 2 WLR 361 (QBD)] .)
>
> 26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.
>
> 27. In the factual scenario of the present case, not only possession but conscious possession has been established.
>
> .
>
> It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."

89. It was submitted that accused Naseer Mohammed had given a lift to accused Dilo Begum and he is not responsible for the charas, if any, recovered from her possession. There is nothing on record to establish this submission. It was never suggested to any of the witnesses that the accused-Naseer Mohammed had given a lift to accused-Dilo Begum. Even the accused-Naseer Mohammad had not stated any such fact in his statement recorded under Section 313 of Cr.P.C. No evidence was led to prove this fact. It was not even asserted that the accused are not known to each other. Therefore, in these circumstances, the only possible inference, which can be drawn is that accused Naseer Mohammed was also in possession of the charas and the learned Trial Court has rightly held that the burden would shift upon him under Section 35 of the NDPS Act to rebut this presumption. No evidence was led to rebut this presumption;

therefore, he was rightly held guilty of the commission of an offence punishable under Section 20(b)(ii)(c) of the NDPS Act.

90. Learned Trial Court sentenced the accused to undergo rigorous imprisonment for 12 years and to pay a fine of .

1,20,000/- each and in default of payment of the fine to further undergo rigorous imprisonment for one year each for the commission of an offence punishable under Section 20(b)(ii)(c) read with Section 25 and 29 of NDPS Act. The accused were found in possession of 1.970 kg of charas, which is a huge quantity.

r to Such a quantity could not have been meant for self-consumption and the learned Trial Court had rightly held that the consumption of charas is impacting the young generation adversely, therefore, a deterrent view was required to be taken to dissuade the accused and the like-minded person from resorting to the commission of the similar offence. Hence, the rigorous imprisonment for 12 years is not excessive. The amount of 1,20,000/- also cannot be said to be excessive and no interference is required with the same.

91. Section 473 of the IPC punishes a person, whoever makes or counterfeits any seal, plate or other instrument for making an impression that the same shall be used for committing any forgery. The accused-Naseer Mohammad was found driving a motorcycle bearing registration No. HP-12A-

2732. Samsher Singh (PW21) stated that he had purchased the motorcycle bearing registration No. HP-12A-2732, which he had .

sold to Rishu Pal, the junk dealer. He did not sell his motorcycle to any person at Chamba. He stated in his cross-examination by learned counsel for the accused-Naseer Mohammad that no sale, or purchase of affidavits were executed by Rishu Pal. However, his statement that he is the owner of a motorcycle Calibre was

92. to not challenged in the cross-examination.

The seizure memo, rukka shows that the accused was found driving a motorcycle-Pulsar and not Caliber. Therefore, the motorcycle being driven by the accused was not owned by Samsher Singh and could not have registration No. HP-12A-2732 because it was assigned to a Caliber and not to a Pulsar.

93. Kuldeep Singh (PW13) stated that he is the owner of the motorcycle Pulsar bearing registration No. HP-69A-0991.

His motorcycle was stolen by some unknown person on one occasion but it was recovered at some distance from the shop. He parked his motorcycle on 05.08.2016 and found that it was missing on 06.08.2016. He complained to P.P. Jogon and he handed over the RC to the police. He stated in his cross-

examination by learned counsel for the accused-Naseer Mohammad that his statement was recorded by the police at .

police Post, Jogon as well as by the police of District Chamba. He denied that he had not handed over any RC to the police.

94. It is apparent from the cross-examination of this witness that his testimony that he is the owner of the vehicle bearing registration No. HP-69A-0991 was not challenged in the correct.

r to cross-examination, hence, the same has to be accepted as

95. His testimony is corroborated by the statement of Ramesh Chand (PW12), who was posted as a Clerk in the office of RTO Bilaspur. He stated that he had handed over the screen report of the motorcycle to the police. The motorcycle was owned by Kuldeep Singh. He proved the screen report. He stated in his cross-examination that his statement was not recorded by the Police. He denied that no application was moved or that he had not handed over any screen report to the police.

96. Therefore, it was duly proved by the statement of these witnesses that the vehicle bearing registration No. HP-

69A-0991 was stolen from the possession of Kuldeep Singh. Its registration plate was changed and the registration plate issued to Shamsher Singh in respect of his motorcycle-Caliber was .

affixed on the same.

97. The term 'document' has been defined under Section 29 of the IPC as any matter expressed or described upon any substance by means of letter, figures or marks or by more than one of these means intended to be used or which may be used as evidence of that matter. Therefore, the document is the matter written upon the substance and not a substance containing the writing. The illustration provides that a writing expressed is a document. Therefore, the document is not the paper on which something is written but the writing, which has been written on the document. In the present case, the registration number written through figures and words upon a plate was a matter and would fall within the definition of a document. The registration number HP-12A-2732 was not allotted to the motorcycle being driven by accused-Naseer Mohammed. It was put on the motorcycle with the intent to make anyone believe that this registration number was allotted to the motorcycle being driven by the accused-Naseer Mohammad; therefore, it will fall within the definition of making a false document because it was intended to be believed that this registration number (the document) was issued by the authority of RTO by which, it was .

not issued -- because it was issued to Shamsher Singh and not to Kuldeep Singh, the owner of the motorcycle. The accused-Naseer Mohammed had used the forged registration plate as genuine, therefore, his act would fall within the definition of Section 471 of IPC.

98. It is not the case of the prosecution that the registration plate was used for making the impression or was to be used for committing any forgery. The plate itself was a forgery and was not an instrument for forgery, therefore, the case will not fall within the definition of Section 473 of IPC but under Section 471 of IPC.

99. The accused had used the motorcycle bearing the forged registration place. He did not have the valid documents.

The motorcycle was stolen and the accused would have known that the motorcycle was bearing a forged registration plate hence, his case would be covered under Section 471 of IPC.

100. Both Sections 473 and 471 of IPC deal with the forged documents. Section 471 provides the punishment for using a forged document as genuine, whereas, Section 473 deals with possessing an instrument for forgery. The offence punishable .

under Section 471 is punishable as if forgery has been committed, whereas, the offence punishable under Section 473 of IPC is punishable with imprisonment for 7 years. Possessing an instrument for committing forgery is an aggravated form of committing the forgery because the accused goes a step further and prepares an instrument for committing the forgery. Further, in the present case, the accused has cross-examined the witnesses regarding the allotment of the registration plate to Shamsher Singh (PW21), and theft of the motorcycle, therefore, no prejudice is caused to the accused. Hence, the conviction of the accused is altered from the commission of an offence punishable under Section 473 of the IPC to the one under Section 471 of the IPC.

101. The learned Trial Court had sentenced the accused-

Naseer Mohammed to undergo rigorous imprisonment for five years and to pay a fine of 10,000/-. The offence punishable under Section 471 is to be punished as if the forgery has been committed. In the present case, the forgery was committed of a record maintained by a public office, namely, Registration and Licensing Authority, therefore, the same would fall within the definition of Section 466 of IPC and is punishable with .

imprisonment of 7 years and a fine. Since it was a public record, therefore, the punishment of 5 years cannot be said to be excessive and no interference is required with the same.

102. No other point was urged.

103. Consequently, the present appeals fail and are dismissed. r (Vivek Singh Thakur) Judge (Rakesh Kainthla) Judge 27th March, 2024 (saurav pathania)