# State Of Himachal Pradesh vs Raju Ram on 14 November, 2024

## Author: Vivek Singh Thakur

## Bench: Vivek Singh Thakur

Neutral Citation No. ( 2024:HHC:11339-DB ) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. Appeal No. 196 of 2015 Reserved on: 05.11.2024 Date of Decision: 14.11.2024 State of Himachal Pradesh ...Appellant.

Versus

Raju Ram

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/State: Mr. Varun Chandel, Additional Advocate General.

For the Respondent : Mr Ritta Goswami, Senior Advocate with Ms Komal Chaudhary, Advocate.

Rakesh Kainthla, Judge The present appeal is directed against the judgment dated 05.12.2014 passed by learned Special Judge, Kinnaur, Sessions Division at Rampur Bushahr (learned Trial Court), vide which the respondent (accused before learned Trial Court) was acquitted of the commission of an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (in short 'ND&PS Act'). (Parties shall hereinafter be referred to in the Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Neutral Citation No. ( 2024:HHC:11339-DB ) same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the commission of an offence punishable under Section 20 of the ND&PS Act. It was asserted that SI Raj Kumar (PW9), HC Mohinder Singh (PW2), HHC Lachman Dass, and Constable Jai Singh (PW1) were present at Shamshar Chowk in the official vehicle bearing registration No. HP34A-3830 being driven by Constable Mukesh Kumar on 02.07.2013. The accused came towards Shamshar Chowk at 4 am. He returned after seeing the police and tried to run away. SI Raj Kumar (PW9) apprehended the accused based on suspicion. The accused revealed his name as Raju Ram on enquiry. The accused was carrying a backpack (Ext. P2). The place was lonely and deserted. The police waited for the independent witnesses but none came. Hence, the police officials were associated as witnesses. SI Raj Kumar (PW9) informed the accused

that he had a legal right to be searched before a Magistrate or the Gazetted Officer. The accused consented to be searched by the police. A consent memo (Ext.PW-1/A) was prepared. SI Raj Kumar (PW9) gave his personal search to the Neutral Citation No. ( 2024:HHC:11339-DB ) accused, nothing incriminating was found in his possession. Memo (Ext. PW-1/B) was prepared. The police checked the backpack and found black spheres in it. The accused revealed that spheres (Ext.P3) were charas. SI Raj Kumar (PW9) also checked the spheres and found them to be charas. The weight of charas was found to be 1 kg 700 grams. The charas was put in the backpack. The backpack was put in a cloth parcel (Ext.P1) and the parcel was sealed with six impressions of seal 'O'. The seal impression (Ext. PW-1/C) was taken on a separate piece of cloth. NCB-1 Form (Ext. PW-7/C) was filled in triplicate. A seal impression was put on the NCB-1 Form. The seal was handed over to Constable Jai Singh (PW-1) after the use. The charas was seized vide memo (Ext.PW-1/D). SI Raj Kumar (PW9) prepared a rukka (Ext. PW-9/A) and handed it over to Constable Jai Singh (PW1) with the directions to carry it to the Police Station. Constable Jai Singh (PW1) handed over the rukka to HC Lokender (PW7) who recorded the FIR (Ext. PW-7/F). SI Raj Kumar (PW9) conducted the investigation on the spot. He prepared the site plan (Ext. PW-9/B) and recorded the statements of witnesses as per their version. He arrested the accused. The case property was deposited with HC Lokinder Singh (PW7) who made an entry at Sl. No. 332 of Malkhana Register (Ext. PW-7/A) and Neutral Citation No. ( 2024:HHC:11339-DB ) deposited the case property in Malkhana. He handed over the case property, sample seal, and NCB-1 Form to Constable Pritam Singh (PW3) with the direction to carry them to SFSL Junga, vide R.C. No. 45 of 2013 (Ext. PW-7/B). Constable Pritam Singh (PW3) deposited all the articles at SFSL Junga and handed over the receipt to HC Lokinder Singh (PW-7) on his return. SI Raj Kumar (PW9) prepared the special report (Ext. PW-5/A) and handed it over to HHC Chande Ram (PW4) with the directions to carry it to SDPO Ani. HHC Chande Ram (PW-4) handed over the special report on 03.07.2013 to SDPO. SDPO made the endorsement on the special report and handed it over to his Reader. LHC Bhuvneshwari (PW5) made the entry in the register (Ext. PW-5/B) and retained the special report on record. The result of the analysis (Ext. PW-8/A) was issued in which it was mentioned that the exhibit was an extract of cannabis and a sample of charas. Statements of the remaining witnesses were recorded as per their version and after the completion of investigation, the challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court charged the accused with the commission of an offence punishable under Section 20 of the Neutral Citation No. ( 2024:HHC:11339-DB ) ND&PS Act, to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined nine witnesses to prove its case. Constable Jai Singh (PW1), and HC Mohinder Singh (PW2) are the official witnesses to the recovery. Constable Pritam Singh (PW3) carried the case property to SFSL, Junga. HHC Chande Ram (PW4) carried the special report to SDPO Ani. LHC Bhuvneshwari (PW5) was posted as Reader to SDPO to whom the special report was handed over. HHC Santosh Kumar (PW6) brought the case property and the result of analysis from SFSL, Junga. HC Lokinder Singh (PW7) was posted as MHC to whom the rukka and the case property were handed over. SHO Rohit Mrigpuri (PW8) conducted the partial investigation and prepared the chargesheet. SI Raj Kumar (PW9) effected the recovery and conducted the investigation.

5. The accused in his statement recorded under Section 313 of Cr.P.C. denied the prosecution case in its entirety. He stated that he was taken from his home by the police after threatening him with a revolver. He was innocent. The statement of Chaman Lal (DW-1) was recorded in defence.

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6. The learned Trial Court held that the testimonies of police officials did not inspire confidence. There were discrepancies in the statements of the prosecution witnesses due to which it was difficult to rely upon them. The independent witnesses were not associated and the contradictions became significant in their absence. The seal was not produced before the Court which would further cast doubt upon the prosecution case. The defence version that the accused was arrested from his home and brought to the police station was probable, therefore, the accused was acquitted.

7. Being aggrieved from the judgment passed by the learned Trial Court, the State has filed the present appeal asserting that the learned Trial Court failed to properly appreciate the evidence led before it. The official witnesses had supported the prosecution case and learned Trial Court erred in ignoring the testimonies of the official witnesses. Minor contradictions were blown out of proportion and these were not sufficient to discredit the statements of the prosecution witnesses. The non-production of the seal before the Court was not fatal. The accused was apprehended at a secluded place and no independent witnesses could have been joined. Therefore, it was prayed that the present Neutral Citation No. ( 2024:HHC:11339-DB ) appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. We have heard Mr Varun Chandel, learned Additional Advocate General for the appellant/State and Ms Ritta Goswami, learned Senior Advocate assisted by Ms Komal Chaudhary, learned counsel for the respondent/accused.

9. Mr Varun Chandel, learned Additional Advocate General for the appellant/State submitted that the learned Trial Court erred in acquitting the accused. The accused was apprehended at 4 AM at a lonely place and there was no possibility of the association of independent witnesses. The minor contradictions in the statements of the official witnesses were not sufficient to discredit them as the contradictions are bound to come with time. The non-production of the seal before the Court is not fatal and the learned Trial Court erred in acquitting the accused on the ground of non-production of the seal. Hence, he prayed that the present appeal be allowed. He relied upon the judgments of Sathyan versus State of Kerala SLP (Crl.) No. 9710/2023 and Sohan Lal vs. State of Himachal Pradesh Criminal Appeal No. 305 of 2014 decided on 02.11.2016 in support of his submission.

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10. Ms Ritta Goswami, learned Senior Advocate for the respondent/accused supported the judgment passed by the learned Trial Court. She submitted that the non-association of independent witnesses is fatal to the prosecution case. There was non-compliance with the provisions of Section 55 of the ND&PS Act because the case property was not resealed by the SHO. There is a discrepancy in the case property stated to be recovered on the spot and the case property analyzed in the laboratory

which becomes significant in the absence of the seal. The contradictions were rightly held to be sufficient to discredit the prosecution's version. Therefore, she prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in Mallappa v. State of Karnataka, (2024) 3 SCC 544: 2024 SCC OnLine SC 130 that while deciding an appeal against acquittal, the High Court should see whether the evidence was properly appreciated on record or not; second whether the finding of the Court is illegal or affected by the error of law or fact and thirdly; whether the view Neutral Citation No. ( 2024:HHC:11339-DB ) taken by the Trial Court was a possible view, which could have been taken based on the material on record. The Court will not lightly interfere with the judgment of acquittal. It was observed:

> "25. We may first discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretised when the case ends in acquittal. It is so because once the trial court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.
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> 26. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to reappreciate or re-visit the evidence on record. However, the power of the High Court to reappreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the trial court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the trial court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.
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> 27. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The "two-views theory" has been judicially recognised by the courts and it comes into play when the appreciation of Neutral Citation No. ( 2024:HHC:11339-DB ) evidence results in two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an

equally plausible view in favour of the innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. Therefore, when two views are possible, following the one in favour of the innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the trial court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eye of the law.

28. In Selvaraj v. State of Karnataka [Selvaraj v. State of Karnataka, (2015) 10 SCC 230: (2016) 1 SCC (Cri) 19]: (SCC pp. 236-37, para 13)

"13. Considering the reasons given by the trial court and on an appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in Jagan M. Seshadri v. State of T.N. [Jagan M. Seshadri v. State of T.N., (2002) 9 SCC 639: 2003 SCC (L&S) 1494] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus : (SCC p. 643, para 9) '9. ... We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeals against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The Neutral Citation No. ( 2024:HHC:11339-DB ) view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.'"

29. In Sanjeev v. State of H.P. [Sanjeev v. State of H.P., (2022) 6 SCC 294: (2022) 2 SCC (Cri) 522], the Hon'ble Supreme Court analysed the relevant decisions and summarised the approach of the appellate court while deciding an appeal from the order of acquittal. It observed thus: (SCC p. 297, para 7) "7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see Vijay Mohan Singh v. State of Karnataka [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436 :

(2019) 2 SCC (Cri) 586] and Anwar Ali v. State of H.P. [Anwar Ali v. State of H.P., (2020) 10 SCC 166 :

(2021) 1 SCC (Cri) 395] ).

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see Atley v. State of U.P. [Atley v. State of U.P., 1955 SCC OnLine SC 51: AIR 1955 SC 807]). 7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see Sambasivan v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412: 1998 SCC (Cri) 1320])."

13. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

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14. Constable Jai Singh (PW1), HC Mohinder Singh (PW2) and SI Raj Kumar (PW9) consistently stated that the police party was on a patrolling duty at Shamshar Chowk. The accused came from Gugra towards Shamshar Chowk. He returned after seeing the police party and tried to run away. Police apprehended him and the accused was found in possession of the backpack. Thus, it was a case of chance recovery and the police did not have any prior information regarding the transportation of charas. 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 Neutral Citation No. ( 2024:HHC:11339-DB ) would not have lent any further credence to the prosecution version."

15. In similar circumstances, it was laid down by this Court in Chet Ram Vs State Criminal Appeal no. 151/2006 decided on 25.7.2018 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 Neutral Citation No. ( 2024:HHC:11339-DB ) is only the material contradictions and not the trivial ones, which assume significance." (Emphasis supplied)

16. It was laid down by the Hon'ble Supreme Court of India in Raveen Kumar v. State of H.P., (2021) 12 SCC 557 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 carefully. It was observed:

> "19. It would be gainsaid that the lack of independent witnesses is 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."

17. 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.
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> Neutral Citation No. ( 2024:HHC:11339-DB ) 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)].
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> 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:
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> "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.
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> 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 in 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 Neutral Citation No. ( 2024:HHC:11339-DB ) 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."

18. Similar is the judgment of this 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."

19. 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."

20. A similar view was taken in Kehar Singh v. State of H.P., 2024 SCC OnLine HP 2825 wherein it was observed:

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> 16. As regards non-association of the independent witnesses, it is now well settled that non-association of the independent witnesses or non-supporting of the prosecution version by independent witnesses itself is not a ground for acquittal of Appellants/accused. It is also well settled that the testimonies of the official witnesses, including police officials carry the same evidentiary value as the testimony of any other person. The only difference is that the Court has to be most circumspect while appreciating the evidence of the 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 scrutinising the evidence of the official witnesses, in cases where independent witnesses are not associated, contradictions and inconsistencies in the testimonies of such witnesses are required to be taken into account and given due weightage, unless satisfactorily explained. However, the contradiction must be material and not trivial one, that alone would assume significance.

17. Evidently, this is a case of chance recovery, therefore, the police party was 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.

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19. A similar reiteration of law can be found in the judgment rendered by the learned Single Judge of this Court in Avtar @ Tarri v. State of H.P., (2022) Supreme HP 345, wherein it was observed as under: --

> "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 Neutral Citation No. ( 2024:HHC:11339-DB ) 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."

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22. A similar reiteration of law can be found in a very recent judgment of the Coordinate Bench of this Court in Cr. A. No. 202 of 2020, titled Dillo Begum v. State of H.P., decided on 27.03.2024."

21. Thus, in view of the binding precedents of this Court and Hon'ble Supreme Court, the non-association of independent witnesses is not fatal and the prosecution case cannot be discarded due to the non-association of independent witnesses. However, the Court will have to carefully scrutinize the testimonies of the police officials.

22. When the testimonies of the police officials are carefully seen, the following contradictions emerge:-

> i) Constable Jai Singh (PW1) stated that they started from the Police Station Ani at 12:00 AM midnight, HC Mohinder Singh (PW2) stated that they had departed from the police station Ani after midnight and he did not remember where he was on that night from 10 PM to 12 midnight. SI Raj Kumar (PW9) stated that they proceeded from the police station Ani at 10 PM on 01.07.2013. The entry in the daily diary (Ext. PW-

Neutral Citation No. ( 2024:HHC:11339-DB ) 7/E) mentions that the police party had left the police station at 22:00 hours.

ii) Constable Jai Singh (PW1) stated that the police party had not gone to Brad. Although the Brad was located at a distance of 2 km towards Luhri from Ani. HC Mohinder Singh (PW2) stated that they had not gone to village Brard. SI Raj Kumar (PW9) stated that they had patrolled at village Brad, old Bus-stand Ani, new bus stand Ani and thereafter went to Shamshar Chowk. HC Mohinder Singh (PW2) and Constable Jai Singh (PW1) were with him when they went towards Brad.

iii) Constable Jai Singh (PW1) stated that 1-2 vehicles had passed through Shamshar Chowk during the naka, HC Mohinder Singh (PW2) stated that no naka was set up between Police Station Ani and

Shamshar Chowk. A few vehicles had crossed Shamshar Chowk after setting up naka. SI Raj Kumar (PW9) stated that some vehicles had crossed the police party which were stopped and checked by the police.

iv) Constable Jai Singh (PW1) stated that the police had a torch with them and there was one bulb in a shop. HC Mohinder Singh (PW2) also stated that police had a torch with them and there was one bulb at the spot. SI Raj Kumar (PW9) stated that the police had a searchlight. They had switched on the light of the police vehicle and there was one bulb in a shop.

23. It was laid down by the Hon'ble Supreme Court in Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577: 2003 SCC OnLine SC 756 that the evidence of the prosecution must be tested for its inherent consistency: consistency with the account of other witnesses and consistency with undisputed facts. It was observed:

> "21. .... Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' accounts would require a Neutral Citation No. ( 2024:HHC:11339-DB ) careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including the medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

24. It was held in David Piper Vs. Mark Hales 2013 EWHC B1 (QB) that the Court has to see whether the statement of the witness is consistent or not. It was observed: -

> 34. The guidance about how courts approach this is given in the extra-judicial writing of the late Lord Bingham of Cornhill approved by the courts is apposite. In "The Judge as Juror: The Judicial Determination of Factual Issues" published in "The Business of Judging", Oxford 2000, reprinted from Current Legal Problems, vol 38, 1985 p 1-27, he wrote:
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> ". . . Faced with a conflict of evidence on an issue substantially affecting the outcome of an action, often knowing that a decision this way or that will have momentous consequences on the parties' lives or fortunes, how can and should the judge set about his task of resolving it? How is he to resolve which witness is honest and which dishonest, which reliable and which unreliable?
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> The normal first step in resolving issues of primary fact is, I feel sure, to add to what is common ground between the parties (which the pleadings in the action should have identified, but often do not) such facts as are shown to be incontrovertible. In

many cases, letters or minutes written well before there was any breath of dispute between the parties may throw a Neutral Citation No. ( 2024:HHC:11339-DB ) very clear light on their knowledge and intentions at a particular time. In other cases, evidence of tyre marks, debris or where vehicles ended up may be crucial. To attach importance to matters such as these, which are independent of human recollection, is so obvious and standard a practice, and in some cases so inevitable, that no prolonged discussion is called for. It is nonetheless worth bearing in mind, when vexatious conflicts of oral testimony arise, that these fall to be judged against the background not only of what the parties agree to have happened but also of what plainly did happen, even though the parties do not agree.

The most compendious statement known to me of the judicial process involved in assessing the credibility of an oral witness is to be found in the dissenting speech of Lord Pearce in the House of Lords in Onassis v Vergottis [1968] 2 Lloyds Rep 403 at p 431. In this, he touches on so many of the matters which I wish to mention that I may perhaps be forgiven for citing the relevant passage in full:

''Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, and who think that they are Neutral Citation No. ( 2024:HHC:11339-DB ) morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point, it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process, contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

Every judge is familiar with cases in which the conflict between the accounts of different witnesses is so gross as to be inexplicable save on the basis that one or some of the witnesses are deliberately

giving evidence which they know to be untrue . . .. more often dishonest evidence is likely to be prompted by the hope of gain, the desire to avert blame or criticism, or misplaced loyalty to one or other of the parties. The main tests needed to determine whether a witness is lying or not are, I think, the following, although their relative importance will vary widely from case to case:

> (1) the consistency of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;

Neutral Citation No. ( 2024:HHC:11339-DB ) (2) the internal consistency of the witness's evidence;

(3) consistency with what the witness has said or deposed on other occasions;

(4) the credit of the witness in relation to matters not germane to the litigation;

(5) the demeanour of the witness.

The first three of these tests may in general be regarded as giving a useful pointer to where the truth lies. If a witness's evidence conflicts with what is clearly shown to have occurred or is internally self-contradictory, or conflicts with what the witness has previously said, it may usually be regarded as suspect. It may only be unreliable, and not dishonest, but the nature of the case may effectively rule out that possibility.

The fourth test is perhaps more arguable. . . ."

35. The following guidance of Lord Goff in Grace Shipping v. Sharp & Co [1987] 1 Lloyd's Law Rep. 207 at 215-6 is also helpful.

> "And it is not to be forgotten that, in the present case, the Judge was faced with the task of assessing the evidence of witnesses about telephone conversations which had taken place over five years before. In such a case, memories may very well be unreliable; and it is of crucial importance for the Judge to have regard to the contemporary documents and the overall probabilities. In this connection, their Lordships wish to endorse a passage from a judgment of one of their number in Armagas Ltd v. Mundogas S.A. (The Ocean Frost), [1985] 1 Lloyd's Rep. 1, when he said at p. 57: -
>
> "Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular Neutral Citation No. ( 2024:HHC:11339-DB ) regard to their motives and the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and the overall

> probabilities, can be of very great assistance to a Judge in ascertaining the truth." [emphases added]. That observation is, in their Lordships' opinion, equally apposite in a case where the evidence of the witnesses is likely to be unreliable; and it is to be remembered that in commercial cases, such as the present, there is usually a substantial body of contemporary documentary evidence."

In that context, he was impressed by a witness described in the following terms.

> "Although like the other main witnesses, his evidence was a mixture of reconstruction and original recollection, he took considerable trouble to distinguish precisely between the two, to an extent which I found convincing and reliable."

That is so important, and so infrequently done."

36. This approach to fact-finding was amplified recently by Lady Justice Arden in the Court of Appeal in Wetton (as Liquidator of Mumtaz Properties) v. Ahmed and others [2011] EWCA Civ 610, in paragraphs 11, 12 & 14:

> 11. By the end of the judgment, it is clear that what impressed the judge most in his task of fact-finding was the absence, rather than the presence, of contemporary documentation or other independent oral evidence to confirm the oral evidence of the respondents to the proceedings.
>
> 12. There are many situations in which the court is asked to assess the credibility of witnesses from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge and he or she has to decide whose evidence, and how much evidence, to accept. This task is not to be carried out Neutral Citation No. ( 2024:HHC:11339-DB ) merely by reference to the impression that a witness made by giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the 'demeanour' of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary but it could be other oral evidence, for example, if the issue was whether a defendant was an employee, the judge would naturally consider whether there were any PAYE records or evidence, such as evidence in texts or e-mails, in which the defendant seeks or is given instructions as to how he should carry out work. This may be particularly important in cases where the witness is from a culture or way of life with which the judge may not be familiar. These situations can present particular dangers and difficulties to a judge.
>
> 14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied

> that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence.

37. Contemporaneity, consistency, probability and motive are key criteria and more important than demeanour which can be distorted through the prism of prejudice: how witnesses present themselves in a cramped witness box surrounded for the first time with multiple files can be distorted, particularly elderly ones being asked to remember minute details of what happened and what was said, and unrecorded, nearly 4 years later as here. Lengthy witness Neutral Citation No. ( 2024:HHC:11339-DB ) statements prepared by the parties' lawyers long after the events also distort the accurate picture even though they are meant to assist the court."

25. In the present case the statements of the prosecution witnesses are not consistent. Learned Trial Court had rightly held that these inconsistencies would assume significance in the absence of independent witnesses.

26. It is the admitted case of the prosecution that the recovery of black spheres was effected from the backpack being carried by the accused. This fact was mentioned in the recovery memo (Ext. PW-1/D), rukka (Ext. PW-9/A), FIR (Ext. PW-7/F), and special report (Ext. PW-5/A). Constable Jai Singh (PW1) stated in his examination-in-chief that SHO Raj Kumar (PW9) searched the bag and recovered black balls. HC Mohinder Singh (PW2) stated that black balls were found after opening the bag. SI Raj Kumar (PW9) stated that the bag was searched and it was found to contain the loose round-shaped black substance. However, the SFSL report (Ext PW-8/A) mentions that cannabis in the form of balls and stick pieces was found in a brownish-green coloured cloth bag. There is no explanation for the presence of the sticks. Further, the documents and the statements of the witnesses mention the colour of the bag as light green bearing Mark 'Chelsea Football Club', whereas the result of the analysis mentions the colour of the bag as Neutral Citation No. ( 2024:HHC:11339-DB ) brownish green and does not mention 'Chelsea Football Club'. This assumes significance in view of the statement of Constable Jai Singh (PW1) to whom the seal was handed over. He stated that he had kept the seal that was given to him in Police Station Ani. This means that the seal was lying in the Police Station and the possibility of tampering with the case property cannot be ruled out.

27. SI Raj Kumar (PW9) stated in his cross-examination that he filled out the NCB-1 Form after sealing the bag. He filled the column No.1 to 11 of the NCB-1 Form on the spot. Column No.11 mentions the date and time of the deposit with MHC as 02.07.2013 at 8 AM. The entry in the Malkhana register (PW-7/A) also mentions the time of the deposit as 02.07.2013 at 8 AM. The learned Trial Court had rightly pointed out that SI Raj Kumar (PW9) could not know on the spot that case property would be deposited with the MHC at 8 AM. This shows that either the statement of SI Raj Kumar (PW9) regarding the filling of column No.11 on the spot is incorrect or the NCB-1 Form was filled after the deposit of the case property. This shows that either the false statement was made or the false document was prepared.

28. A perusal of the documents prepared by the investigation officer shows that the FIR number was mentioned in Neutral Citation No. ( 2024:HHC:11339-DB ) red ink in the sample seal (Ext. PW-1/C), seizure memo (Ext. PW-1/D), NCB-1 Form (Ext. PW-7/C). However, the site plan mentions the FIR number in blue ink, unlike the other documents. SI Raj Kumar (PW9) stated in his cross-examination that Constable Jai Singh (PW1) went with the rukka on foot and returned to the spot on foot. He recorded the statements of Constable Jai Singh (PW1) and HC Mohinder Singh (PW2) after Jai Singh's arrival. He prepared the site plan after the departure of Constable Jai Singh with rukka but before his arrival with the police case file. He was not aware of the FIR number when he prepared the site plan. He has not provided any explanation for mentioning the FIR number in the same ink.

29. In Manjit Singh vs. State 2001(2) Cur. L.J. (HP) 106 the FIR number was written on the memo with the same pen and ink. It was held by the Division Bench of this Court that the same will make the prosecution case doubtful. It was observed:

> "34. In view of the FIR number finding mention in the aforesaid documents "in fact, three inferences are possible, viz.(i) either the F.I.R. had been recorded before the search and seizure, or (ii) the FIR number had been inserted therein after the FIR was recorded, or (iii) the documents were prepared only after the investigating officer received the number of the F.I.R. from the police station. In case the FIR had been lodged before the recovery but contains details of search and recovery the only inference would be that the recovery was planted/fake and will cut at the root of the case entitling the accused to acquittal. In case the documents Neutral Citation No. ( 2024:HHC:11339-DB ) regarding search and recovery are prepared only after receipt of the FIR number from the police station, it will suffer from the vice of delay in preparing such documents which must be prepared immediately after the action taken and as a result thereof the recovery will be rendered doubtful. However, in case of insertion of the number of the FIR on the documents which had been prepared immediately after the search and recovery will not necessarily be rendered illegal or doubtful."

30. This position was reiterated in State of H.P. vs. Gurdeep Lal Latest HLJ 2002(2) 1018 (HPHC) wherein it was observed:

> 12. A perusal of Ext. PD shows that F.I.R. No is mentioned on the top of this memo. It is not known as to how the F.I.R.

came to be recorded on this memo. A reading of the memo itself shows that the case had not been registered by that time and only a Rooka for the registration of the case had been sent. It appears that Ext. PD came to be prepared only after the registration of the case and much after the search alleged to have been carried out.

13. A Division Bench of this Court in Gabriel Vs. State of H.P 1989 (1) Sim. L.C. 78. Where the seizure memo. Contained F.I.R. number, has held that in no circumstances the memo. Could

contain the number of the F.I.R. as it does, because the F.I.R. was recorded in the police Station only on the receipt of the report. The investigation, therefore, was found to be not above board. To a Similar effect a learned Single judge of the Delhi High Court in Mohd. Hashim Vs. State (2000 Cri. L.J. 1510) and Zofar Vs, State (2000 Cri. L.J. 1589) has held the preparation of the memo, to be doubtful.

14. If the memo. Ext. PD is held to be doubtful, then the statement of the Investigation Officer with regard to the compliance of the provisions of section 50 of the NOPS Act, in view of the specific statement made by Pw-10, cannot be accepted. It may be mentioned that the other independent witness to the recovery, namely, Shadi Lal has not been examined and was given up as unnecessary."

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31. A similar view was taken in State of H.P. vs. Dinesh Kumar 2017 (Supp) Shim. LC 78 wherein it was observed:

> "26. In the documents, i.e. sample seal impression of 'H' on cloth Ext. PW6/C, site plan Ext. PW7/B and arrest memo Ext. PW7/C, the number of FIR on the top has been filled in in such a manner so as to reflect that it was filled in. After preparation of the document on getting the number of FIR at 10.30 p.m. However, perusal of consent memo Ext. PW6/A and memo of personal search of Investigating Officer Ext. PW6/B indicates that the number of FIR has been filled in by preparing the documents in one go from top to bottom. Not only this, Ext. PW5/C is a sample seal impression of seal 'K' used for resealing. At the time of preparing this document, the number of FIR was available with the police party and SI Om Chand, but in this document, the number of FIR has been reflected to have been entered later on by reflecting the same in a manner so that it appears that it was inserted in the document later on.
>
> 27. The documents which were prepared before lodging the FIR contain the number of FIR in a manner as it has been written in one go at the time of preparation of documents whereas the documents prepared after having the number of FIR reflect the number of FIR purported to have been inserted later on. It appears that the entire proceedings were taken at a place other than the spot, to say at the police station, and the sequence of preparation of these documents was also not in the manner as it should have been or has been alleged in the prosecution story. All this strengthens doubt in the prosecution case."

32. Therefore, the mentioning of the FIR number in the site plan will make the prosecution case suspect.

33. It was submitted by Ms. Ritta Goswami, learned Senior counsel for the accused that the prosecution has not complied with Neutral Citation No. ( 2024:HHC:11339-DB ) the mandatory requirement of Section 55 of the ND&PS Act. This submission is not acceptable. It was laid down by

this Court in Duni Chand Vs. State of H.P. 2001 (2) Shim. LC 206 that the provisions of Section 55 of the ND&PS Act are not mandatory and the accused cannot be acquitted due to their non-compliance. It was observed:

> "16. The learned Counsel next contended that the provisions of Section 55 of the NDPS Act have not been complied with by the Investigating Officer which has caused serious prejudice to the accused. It is the evidence of PW-7 that after the contraband was recovered from the possession of the accused, PW-1 Pyar Singh was asked to bring scales and weights from his nearby tea shop and thereafter recovered Charas was weighed. Two samples of 25 grams each and two samples of 10 grams each of 'Battis' (small sticks) and 'Golas' (small balls) were taken from the recovered charas and the samples were sealed with three seals of seal bearing impression 'K'whereas the remaining Charas was sealed with six seals of the same impression. PW-7 deposited the case property with JPW-4 MHC Des Raj. PW-4 deposed that on 26.11.1999, ASI Kishan Dass had brought four samples duly sealed with sample seal and deposited the same in Police Malkhana which was kept by him in safe custody. On 28.11.1999, he took out one sample of 25 grams sealed with a seal bearing impression 'K' with three seals and handed over the sample to Constable PW-3 Amin Chand for being carried to Forensic Science Laboratory, Kandaghat. Shri Kishan Chand (PW-6) was the Inspector/Station House Officer of the Police Station, Kihar during the relevant time. He deposed that on 26.11.1999, he had gone to Dharamshala. Section 55 of the NDPS Act authorizes the Officer-in-charge of the police station to take charge and keep in safe custody pending the orders of the Magistrate all articles seized under this Act within the local area of his police station and which can be delivered to him and shall allow any officer who may accompany such articles to the police station or who may be Neutral Citation No. ( 2024:HHC:11339-DB ) deputed for the purpose, to affix his seal to such articles or to take sample from them and all samples so taken shall also be sealed with a seal of the Officer-in-charge of the Police Station. Provisions of Section 55 are directory in nature and in the present case, undisputedly, no seal was affixed by the Officer-in-charge of the Police Station upon the seized contraband. It appears that PW-6 could not affix his seed as an officer-in-charge of the police station upon the samples deposited by PW-7 with PW-4 as PW-6 was not present in the police station on 26.11.1999. The contention of the learned Counsel that as there was no re-seal of the samples by the station house officer under Section 55 of the NDPS Act, the possibility of tampering with the samples could not be ruled out is unfounded and cannot be accepted. If there is any such irregularity committed by the Investigating Agency, the same shall not vitiate the proceedings in this case. The decision of Deep Chand v. State of Himachal Pradesh, 1995 (2) Sim. L.C. 256, relied upon by the learned Counsel for the accused, turns out on the facts of that case. It is well settled by now that the defence will have to show that failure of justice has resulted due to non-compliance of the directory provisions of Section 55 of the NDPS Act. In Gurbax Singh v. State of Haryana, 2000 (1) Crimes 235, their Lordships of Supreme Court have held that the provisions of Sections 52 and 57 are directory and violation of

these provisions would not ipso facto vitiate the trial or conviction. The judgment proceeded to hold that the Investigating Officer cannot totally ignore these provisions and such violation will have a bearing on appreciation of evidence regarding the arrest of the accused or seizure of the article. In that case, the Investigating Officer has admitted that the seal which was affixed on the muddamal parcel was handed over to the witness and was kept with him for ten days. The witness also admitted that the muddamal parcels were not sealed by the officer-in-charge of the police station as required under Section 55 of the NDPS Act. The prosecution in that case has not laid any evidence as to whether the chemical analyser received the sample with proper intact seals and it created a doubt whether the same sample was sent to the Chemical analyser. On the basis of the evidence and faulty Neutral Citation No. ( 2024:HHC:11339-DB ) investigation by the prosecution, their Lordships came to the conclusion that it would not be safe to convict the accused for the serious offence of poppy husk. The learned Counsel for the accused also relied upon State of H.P. v. Bhike Ram, 1995 (2) Sim. L.C. 335; Thanni Ram v. State of Haryana, 2000 SCC (Cri) 189; State of Punjab v. Tek Ram, 1997 (1) CLR 579, Criminal Appeal No. 1 of 1999 i.e. Raj Kumar v. State of H.P., decided on 17.11.2000, Karam Singh v. State of Punjab, 1988 (2) Crimes 278 Punjab and Haryana High Court, Bhajan Singh v. State of Haryana, 1988 (1) Crimes 444; Punjab and Haryana High Court, Rajesh v. State, 1989 (3) Crimes 638 Delhi, Pradeep Kumar v. State, 1989 Cri. L.J. 2438 Delhi High Court, Chhote Lal v. State of Rajasthan, 1990 (1) Crimes 246; Wilson Dayal v. State, 1993 (1) Crimes 207, Delhi High Court, Bala Ram v. State of Rajashtan, 1993 (2) Crimes 1130, Mansaram v. State of M.P., 1994 (2) Crimes 346 and Ravinder Singh v. State of Punjab, 1997 (3) Crimes 60 Punjab and Haryana High Court.

17. The ratio of the law laid down in the above-said judgments is that if it is assumed that the provisions of Section 55 of the NDPS Act are directory in nature, this does not mean that those have not to be complied with. The only fact of such provisions would be that the prosecution has to explain that those were not complied with. If the explanation for non-compliance is satisfactory, it has to be seen whether any prejudice has been caused to the accused or not. In the present case, as stated above, the prosecution has rendered an explanation that the officer-in-charge of the police station was out of station at the time when the seized articles were brought by PW~7 to the police station, Kihar and handed over to PW-4. PW-4 has categorically deposed that all the parcels remained intact during the period they remained in his custody. PW-3 stated that PW-4 handed over the sealed parcel duly sealed with a seal bearing the impression 'K' along with parcel seals to him for taking them to CTL. Kandaghat on 28:11.1999. He took the same sealed parcels to Kandaghat and deposited them in Kandaghat on 29.11.1999; He categorically stated that the parcels remained intact during the period they remained in his custody. In the teeth of the satisfactory explanation rendered by the prosecution, we are of the view that non-

Neutral Citation No. ( 2024:HHC:11339-DB ) compliance of Section 55 is a mere irregularity and failure to comply with will not vitiate the entire prosecution case

which is otherwise proved against the accused."

34. Similarly, it was held in State of Punjab v. Leela, (2009) 12 SCC 300: (2010) 1 SCC (Cri) 568: 2009 SCC OnLine SC 883 that the provision of section 55 of NDPS Act is directory. It was observed:

"13. It is not in dispute that provisions of Section 55 are directory in nature. In the instant case, the DSP who was examined as PW 1 is an officer and was higher in rank or of the same rank as the SHO in the instant case. There is no reason indicated as to how the accused has been prejudiced by PW 1 putting his seal instead of the SHO. The provisions are directory and as there is no doubt about the authenticity of the official act, the High Court ought not to have held that there was non-compliance with the requirement of Section

50."

35. It was laid down by this Court in Angoori Devi and Others Versus State of Himachal Pradesh 2005 (2) Shim. LC 176, that the provision of Section 55 regarding the resealing of the case property is a directory and not mandatory. It was observed:-

> "24. In Fredrick George v. State of Himachal Pradesh (2002 Cr.L.J. 4600), while dealing with a similar question as in hand, this Court held as under:
>
> "32. In so far as the other case law relied upon by the learned Counsel for the accused to support his contention is concerned, the crux thereof is that in the given circumstances of a case, non-compliance of Section 55 of the Act may lead to the conclusion that possibility of the case property having been tampered with cannot be ruled out and as a result of prejudice thus caused to the accused, the conviction of the accused cannot be sustained. There cannot be any Neutral Citation No. ( 2024:HHC:11339-DB ) dispute with this proposition and once the non- compliance of the provisions of Section 55 of the Act is coupled with such circumstances, which may raise doubts about the safe custody of the case property, the benefit of the doubt is bound to be given to the accused. It follows that the provisions of Section 55 of the Act are not mandatory and non-compliance thereof ipso facto is not fatal to the case of the prosecution but such non-compliance has to be kept in view while appreciating the link evidence led by the prosecution to prove that the case property and samples had not been tampered with."

25. In Rajesh Basniyat v. State of Himachal Pradesh (Latest HLJ 2004 (HP) 875), this Court held as under :

> "22. Be it stated that by now it is well settled in view of the various judgments of this Court and the Apex Court that provisions of Section 55 of the NDPS Act are not mandatory but are directory. The effect of non- compliance of these provisions ipso facto is not fatal to the case of prosecution but it affects the appreciation of evidence".

26. In view of the above, it is clear that provisions of Section 55 of the Act are meant only to re-enforce the link evidence regarding safe custody of the case property and non- compliance thereof ipso facto will not vitiate the trial or conviction. In case there is other cogent and reliable link evidence about safe custody of the case property ruling out any tampering therewith, non-compliance of Section 55 of the Act will have no adverse bearing on the case of the prosecution.

36. It was laid down by this Court in Prem Bahadur Vs State of H.P., 2009 (1) Shim. L.C. 65, that the provisions of Sections 52 and 55 are not mandatory and directory. When the investigating officer was the SHO and he had not resealed the case property believing Neutral Citation No. ( 2024:HHC:11339-DB ) that since he was SHO and there was no such requirement, it is not sufficient to acquit the accused. It was observed:-

> "12. From a perusal of the aforesaid two judgments, it is apparent that the provisions of Sections 52 and 55 are not mandatory but only directory. If there is substantial compliance with the same, the accused cannot be acquitted. If there are sufficient reasons for non-compliance of the Sections then also the accused cannot claim the benefit of acquittal under these provisions. At best, the Court may have to scrutinize the prosecution evidence with greater care and caution.
>
> 13. In the present case, the recovery of the Charas has been proved beyond a reasonable doubt. We cannot lose, the sight of the fact that the investigating officer PW6 was also the SHO of the Police Station, Manali. He presumed that he was the in-charge of the police station and, therefore, provisions of Sections 52 and 55 were not applicable to him. At best it can be presumed that when he was the investigating officer, some other police officer must be deemed to be in charge of the police station. At best we can presume that MHC Khem Chand (PW 2) was the in-charge of the police station. However, even if we presume that MHC Khem Chand (PW 2) was the in-charge of the police station, then the mere non- compliance of Sections 52 and 55 by not putting the seal on the sample would not by itself be a ground to acquit the accused."

37. Therefore, the prosecution case cannot be doubted due to non-compliance with Section 55 of the ND&PS Act.

38. Thus, the learned Trial Court had taken a reasonable view which could have been taken based on the evidence led before it and no interference is required while deciding an appeal against acquittal.

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39. Consequently, the present appeal fails and the same is dismissed.

40. A copy of this judgment along with the records of the learned Trial Court be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Vivek Singh Thakur) Judge (Rakesh Kainthla) Judge 14th November, 2024 (Nikita)