

(1989) 10 GUJ CK 0006
In the Gujarat High Court
Case No : Criminal Appeal No. 844 of 1989

Aslambhai Ibrahimbhai Memon and Another	APPELLANT
Vs	
The State of Gujarat	RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

Constitution of India, 1950 — Article 25(5)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 20(2), 33, 36, 37

Citation : (1990) CriLJ 1787 : (1990) 1 GLR 150

Hon'ble Judges : M.B. Shah, J; B.S. Kapadia, J

Bench : Division Bench

Advocate : E.E. Saiyed, for the Appellant; M.A. Bukhari, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Kapadia, J.—The present appeal is directed against the order of conviction u/s 20(b)(2) of the Narcotic Drugs and Psychotropic Substances Act and the sentence to each of the two accused in R. I. for 10 years and fine of Rs. 1,00,000/- and in default to pay fine, further R. I. for six months passed by the learned Addl. Sessions Judge, Surat on September 21, 1988 in Sessions Case No. 92 of 1988.

2. The facts of the case in short, are as under:

2.1. On February 23, 1988 when Police Inspector Shri V.N. Desai was in his D.C.B. Office, he received secret information to the effect that one Aslam Ibrahim residing at Chowk Bazar, Madariwad was doing business of Charas and that, on that day, in the evening, a big quantity was to be received. At that time, Deputy Commissioner of Police Shri Cehiot and Police Sub-Inspector Shri Vyas, Shri Sevale and Shri Valvi were also present. Accordingly, two panchas were called and they were also made to understand about the raid, and they went in rickshaw to Chowk Bazar and were separately keeping watch. At about 23.15

hours both the present appellants came from Saiyadpura four roads and they were coming towards Madariwad through the main road. At that time, they were accosted and, on enquiry, accused No. 1 disclosed his name as Aslam Ibrahim. He had with him a plastic bag of blue colour wherein there was one steel container, in which five packets wrapped in newspaper were found. On examining the packets, it was found that, in four packets, there were four lumps of charas and in the fifth packet, there were four lumps of small and big size. On smelling it, it was found to be charas. On searching person of Aslam Rs. 100/- were found. Immediately, thereafter the other accused -- Ibrahim Mustafa was also searched, and from his pant's pocket, 18 plastic packets containing pieces of charas were found and an amount of Rs. 79.50 was also found. All the said pieces were brought out and on smelling, it was found to be charas.

2.2. Thereafter, the house of Aslam was searched and from there, a small tin box containing a small plastic box was found. In the said plastic box there were seven weights, viz. one of 50 grams, three of 20 grams, one of 10 grams and one of 5 grams and a small scale was also found along with a stapler and three boxes of pin.

2.3. The aforesaid four lumps were weighed and each of them found to be of 240 grams, and the other four lumps were also weighed and the same found to be of 440 grams. Similarly, the quantity of charas recovered from Ibrahim Mustafa was also weighed and it was found to be of 30 grams. Sample was collected from each lump of charas recovered from Aslam and it was about 50 grams. Similarly, the quantity of charas i.e. 18 pieces recovered from Ibrahim Mustafa was also packed separately. The said samples were then packed and the signature of the Panch along with the wax seal of Police Inspector, D.C.B. was applied and after making the panchnama, the said muddamal was seized and, thereafter, the Chemical Analysis report was also filed. Thereafter, the crime was registered against the accused and, after completing the investigation, the charge-sheet was filed and the accused were tried for the said offence. The learned Judge, after carefully scrutinising the evidence of the prosecution witnesses, has passed the aforesaid order of conviction and sentence.

3. In this case, after receiving the record, Mr. E.E. Saiyad, learned Advocate for the appellants, argued before us at length by making profuse use of evidence on record and raised various points.

3.1. The first point that Mr. Saiyad has raised is that the seal of D.C.B. which was affixed on the forwarding letter to the Forensic Science Laboratory is not legible. We have perused the same today. Since it is handled in the trial Court by number of hands, the seal is in the broken condition. However, the question is whether at the time when the samples of muddamal were sent to the Chemical Analyser of the Forensic Science Laboratory, the seal was intact or not. On perusal of the report of the Chemical Analyser, which is at Ex. 12, it is clearly stated that they had received two parcels in the sealed condition and the said seal was similar to the specimen seal. This clearly disclosed that the said seal of D.C.B., which was

affixed on the forwarding letter was intact and legible and, therefore, we do not find any substance in this contention.

3.2. The second point that he has raised is that the accused are not identified before the Court and he has relied on the deposition by the Pancha to the effect that he was not knowing any of the accused before the incident. However, it is clear from his evidence that he has stated that Saheb (Police Inspector) had pointed out Aslam and told him that he was Aslam and saying so, a sign was shown to the Police and the Police surrounded him. It is also clear from the evidence of the other prosecution witness that the accused were already there with him right from the time of the raid and thereafter they were arrested. Mr. Desai, Police Inspector, D.C.B. in his deposition has clearly stated about the identification of the said two accused and it may be stated that, no such question challenging their identification was put to him during the cross-examination. They were arrested on the spot and were not released on bail. Therefore, there is no question of roping these two appellants as accused and allowing the real culprit to go scot free. In view of the evidence on record, we are satisfied that there is no substance in this contention on the point of identification of the accused.

3.3. It is also contended that the Panch does not speak about the finding of Rs. 100/- from Aslam and Rs. 79.50 from Ibrahim. However, it is clear from the evidence of Shri Yadav as well as Shri Desai, Police Inspector, D.C.B. and from the Parichnama that the said amount was found. Finding of the said amount would be an additional link, but that does not, in any way, affect the deposition of the Panch on the point of possession of charas by the appellants. Hence, we do not find any substance in this contention also.

3.4. It is also submitted by Mr. Saiyed that the grounds of arrest were not informed to the accused. He submits that Sub-section (1) of Section 52 of the aforesaid Act provides that any officer arresting a person u/s 41, 42, 43 or 44, shall, as soon as may be, inform him of the grounds of such arrest. It may be stated that similar such provision is also there in the Code of Criminal Procedure in Section 50(1). Mr. Saiyad submits that he should be supplied with the ground in detail in writing. It may be clarified that there is no question of applying the principles laid down by the Supreme Court with regard to the interpretation of the word "ground" used in Article 25(5) of the Constitution of India. That interpretation would have no bearing because here in this case the accused is to face trial and at the time of arrest the accused is to be informed, what offence he has committed. The information which is required to be given is similar to the information which is required to be given under Sub-section (1) of Section 50 of the Criminal P. C. Further, this is an arrest by informing accused for what offence they are arrested and the Panchnama is done in their presence and they are asked as to whether they got any pass or permit for having "charas". Since the Police Inspector Shri Desai did not get anything of that sort, he filed the complaint, which clearly indicates that the accused were informed of the grounds

for such arrest. No question is asked to Mr. Desai, Investigating Officer, in cross-examination on this point and the appellants were also supplied with all the papers of investigation before the charge is framed by the learned Addl. Sessions Judge, Surat against the appellants in the present case. Hence, there is no non-compliance of Section 52(1) of the Act. In any event, there is no prejudice to the appellants even if the breach of the Section is assumed. In any view of the matter, this point, in no way, affects the conviction and sentence passed against the present accused particularly when the guilt is brought home by cogent and sufficient evidence establishing the charge against them after giving full opportunity to cross-examine the prosecution witnesses. Hence, we do not find any substance in this contention.

3.5. It is also submitted by Mr. Saiyed that mandatory provision of Sub-section (3) of Section 52 is not complied with. It may be stated that the person who has arrested the present appellants is Shri Desai, Police Inspector, D.C.B., who is in charge of Police Station, Surat. When that is so, there is no question of complying with Clause (a) of sub-Section (3) of Section 52. It may be noted that this provision is necessary inasmuch as in sub-Section (2) of Section 41 as well as Section 42, many officers are enumerated therein, are empowered for search and seizure, and detaining and arresting the persons besides the Police Officers and, therefore, the said provision has been incorporated. But, once when the Police Officer in charge of the Police Station himself is arresting a person, there is no question of taking him to the nearest Police Station and, therefore, the said submission, in our opinion, will not be attracted in the facts and circumstances of the present case. Hence, we do not find any substance in that contention.

3.6. It is also submitted by Mr. Saiyed that there is a breach of Sub-section (4) of Section 52 inasmuch as the officer to whom the article is forwarded has not taken measures for disposal according to law. It may be stated that, here the Investigating Officer is Shri Desai himself, who has seized the article and arrested the accused. He is the officer empowered to investigate u/s 53 of the Act. When that is so, Sub-section (4) thereof would not be applicable inasmuch as it would apply only in those cases in which the person, other than the person who is empowered to investigate, has seized the article or arrested the person and has forwarded to the person who is in charge of the Police Officer empowered u/s 53. Apart from that, it is clear in this case that the muddamal was immediately within five days despatched to the Forensic Science Laboratory for its examination. Thereafter the report has been received. In that view of the matter, it cannot be said that Sub-section (4) of Section 52 is not complied with.

3.7. It is also submitted that the mandatory provision of Section 37 has not been complied with and, therefore, also the investigation is bad. It may be stated that Mr. Desai in his deposition has clearly stated that the superior officer was informed about the commission of the offence under the Narcotic Drugs and Psychotropic Substances Act and also about the muddamal and sending thereof to the Forensic Science Laboratory. Even in the cross-examination, he has stated

that, he had sent a special report to the Police Commissioner on the night with his own signature and that was entered in the despatch book and there is a signature in token of receiving the same in the despatch book. When that is so, the provision of Section 57 have been fully complied with and, therefore, we do not find any substance in the said contention.

3.8. The contention is also raised on the point that there is breach of notification, which is issued in respect of search and seizure of the buildings and other enclosed premises after sunset. It may be stated that the said notification, in the present case, would not have its application inasmuch as the accused i.e. present appellants, were searched in open place and charas was found from both of them. It may be that, in subsequent part of the Panchnama on the point of finding of the scale and weights from the house of Aslam there may be an irregularity and that the notification has not been complied with to that extent only. But the said scale and weights have nothing to do with the commission of offence and, therefore, though some part of the Panchnama might be affected still, however, the major part of the search and seizure for which Panchnama is drawn for the alleged commission of the offence is made outside the premises and, therefore, the notification would not, in any way, affect that part of the search and seizure and Pancha-nama and, therefore, we do not find any substance in this contention.

3.9. Mr. Saiyed has strongly contended that the provisions of Sections 41, 42 and 43 which prescribe the procedure for search, seizure, detention and arrest, are mandatory and when there is a breach of any of the provisions thereof, the important safeguard available to the accused, who is charged with the offence, for which the minimum sentence is prescribed should be scrupulously complied with and non-compliance thereof should result in acquittal of the accused. He has further elaborated his contention by pointing out that Sub-section (2) of Section 41 also prescribes that the information received by the Police Officer empowered by the State Government has to be taken in writing and similar provision is also made in Section 42 and, therefore, when the search and seizure, and arrest were made without recording the alleged secret information received by the said officer in writing, the accused were deprived of their right to cross-examine the Investigating officer on this point and, therefore, the accused-appellants should be acquitted.

With a view to properly appreciating the above contention, it is necessary to reproduce the relevant portion of the said sections viz. Sub-sections (1) and (2) of Section 41, Sub-section (1) of Section 42, and Section 43 :

"41. Power to issue warrant and authorisation-- (1)A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any

narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed.

41(2) Any such officer of gazetted rank of the departments of Central Excise, Narcotics, Customs, Revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excises, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under Chapter IV or that any narcotic drug, or psychotropic substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed in any building, conveyance, or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable, to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest a person or search a building conveyance or place."

"42(1) Any such officer (being 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 or of the Border Security Force 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, central, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge, or information given by any person and taken down in writing, that any narcotic drug or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence 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 Chapter IV relating to such drug or substance; 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 Chapter IV relating to such drug or substance:

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 recording the grounds of his belief."

"43. Any officer of any of the departments mentioned in Section 42 may--

(a) seize, in any public place or in transit, any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter IV relating to such drug or substance;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter IV, and, if such person have any narcotic drug or psychotropic substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation: For the purpose of this Section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, to public."

3.10. It is clear from the combined reading of the aforesaid Sections that the officers, including that of the Police Department, empowered by the State Government either by general or special order have the power to further authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable, to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest a person or search a building, conveyance or place. So, Sub-section (2) deals with the additional powers of the said officer empowered by the State Government to further delegate his powers to his subordinate not below the rank of a peon, sepoy or constable. But such powers can be exercised on condition that, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under Chapter IV or that any narcotic drug, or psychotropic substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed in any building, conveyance or place.

3.11 Similarly, Sub-section (1) of Section 42 also speaks about the entry and search in any such building, conveyance or place, search and seizure, and

detention and arrest of such person, provided he has reason to believe from .personal knowledge or information given by any person and taken down in-writing, that any narcotic drug or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place. Thus, the intention of the Legislature in Sections 41 and 42 is different as revealed from the language of Sections as stated above from the one in Section 43 which authorises any officer of the departments mentioned in Section 42 for search, seizure, arrest and detention in any public place or in transit in respect of any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and, along with such drug or substance, any animal or conveyance or article is liable to be confiscated under the Act, or any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter IV relating to such drug or substance.

3.12 Thus, Section 42 speaks about search and seizure from any building, conveyance or enclosed place, while Section 43 speaks about the search and seizure from public place or in transit. It is important to note that the wordings of Sections 41 and 42 with regard to information taken in writing have been deliberately omitted by the Legislature ;in Section 43 and in our view, that has been done so advisedly inasmuch as the police Officer empowered u/s 42 may get information with regard to the person in any public place or in transit at the last moment and if he has to undergo the procedure of taking that information in writing and recording the reasons for his belief, possibly such information may not be useful. When that is so, whenever any search or seizure is to be made in any public place or in a vehicle in transit or any person is to be arrested or detained from a public place, it is not intended by the Legislature to take down the said information in writing.

3.13. Further, for appreciating this contention it would be necessary to consider Sections 37, 41, 42 and 43 of the Act. Section 37 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this Act shall be cognizable. There is no provision in the Act which states that the procedure prescribed under the Criminal Procedure Code would not be applicable. Where the Legislature wanted to provide that a particular provision of the Criminal Procedure Code would not be applicable, the Legislature specifically provided to that effect. This would be clear by referring to Sections 33, 36 and 51. Therefore, in our view, the provisions of the Criminal Procedure Code would be applicable to the investigation, enquiry and trial except for which specific contrary provisions are made under the Act. u/s 4(2) of the Criminal Procedure Code all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Criminal Procedure Code. u/s 37 of the Act the offences punishable under the Narcotic Act are cognizable ones. u/s 2(c) of the Criminal

Procedure Code "cognizable offence" means an offence for which a police officer is entitled to arrest without warrant. Therefore, for the offences punishable under the Narcotic Act a police officer is entitled to investigate the offence in accordance with the provisions of the Criminal Procedure Code. However, taking into consideration the seriousness and the gravity of the offence the Legislature thought it advisable that apart from the police officers who are entitled to investigate under the Criminal Procedure Code, the powers be given to other officers and, therefore, specific provisions are made to that effect in the Act. In this light if we consider the provisions of Sections 41, 42 and 43, it would be clear that Section 41(I) provides that a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf--

(i) may issue a warrant for the arrest of any person whom he has reason to believe to have committed, any offence punishable under Chapter IV, or

(ii) may issue a warrant for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed.

Under Sub-section (2) the Central Government or the State Government is entitled to empower by general or special order officers mentioned therein to authorise any officer subordinate to him but superior in rank to a peon, sepoy, or a constable, to arrest a person who has committed an offence punishable under Chapter IV or search a building, conveyance or place by day or by night where any narcotic drug or psychotropic substance has been kept or concealed. u/s 42 of the Act any of the officers mentioned therein can be empowered by general or special order by the Central Government or by the State Government if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of the offence 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 the Chapter IV relating to such drug or substance, 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 Chapter IV relating to such drug or substance:

Provided that if such officer has reason to believe that a certain warrant or authorisation cannot be obtained without according 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."

This Section talks of any officer superior in rank to a peon, sepoy or constable who may not be gazetted officer while Sub-section (2) of Section 41 deals with officers of gazetted rank. Section 43, provides for seizure and arrest in public place by an officer mentioned in Section 42 of the Act.

The other most relevant Section is Section 52 of the Act which is as under:

"52(1) Any officer arresting a person u/s 41, Section 42, Section 43 or Section 44 shall, as soon as may be; inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under Sub-section (1) of Section 41 shall be forwarded without the necessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under Sub-section (2) of Section 41, Section 41, 42, Section 43 or Section 44 shall be forwarded without the necessary delay to--

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered u/s 53;

(4) the authority or officer to whom any person or article is forwarded under sub-Section (2) or Sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article."

Under Sub-section (1) of Section 52 any officer arresting a person under Sections 41, 42, 43 or 44 is required to inform such persons of the grounds for arrest. If the person is arrested under the warrant issued by a Magistrate u/s 41(1), then the arrested person is required to be forwarded without necessary delay to the Magistrate by whom the warrant was issued. In other case where a person is arrested and article is seized u/s 41(2), Sections 42, 43 or 44 is required to be forwarded to (a) the officer-in-charge of the nearest police station or (b) the officer empowered u/s 53. The next Section which requires consideration is Section 53 of the Act which reads as under:

"53. (1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or Border

Security Force or any class of such officer with the powers of an officer-in-charge of a police station for the investigation of the offence under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act."

Section 53(1) empowers the Central Government after consultation with the State Government to invest any officer of the department of central excise, narcotice, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for purposes of investigating the offences under the Act. Same is the position under sub-Section (2) which empowers the State Government to invest any officer of the department of drugs control, revenue or excise or any class of such officers with the similar power. But this section nowhere provides that the said officer shall be deemed to be an officer-in-charge of a police station or that he shall be considered to be an officer-in-charge of a police station for the purposes of this Act. All that Section 53 provides is that for the purpose of his enquiry the officer empowered u/s 53 shall have the powers of an officer-in-charge of police station at the time of investigating the offences under this Act. Therefore, the officer empowered u/s 53 shall have all the powers of an officer-in-charge of a police station investigating a cognizable case. But these powers are only limited for the purpose of investigation. In view of these sections it is apparent that considering the seriousness of the offence the Legislature thought that apart from investigation by the police under the Criminal Procedure Code, some other officers mentioned in Sections 41, 42, 43 or 53 be empowered to discharge certain duties as specified therein. But this does not mean that a police officer who is investigating the offence under the Act is not required to follow the procedure prescribed under the Criminal Procedure Code. He has to investigate in accordance with the provisions of the Criminal Procedure Code. To the other officers limited powers are given. u/s 53 the Central Government or the State Government, as the case may be, is entitled to invest any officers of the department mentioned therein with the powers of an officer in charge of police station for the investigation of the offence under the Act. From the aforesaid discussion it would be clear that if the competent plice officer has investigated the offence under the Act, there is no question of following any proceedings other than the procedure prescribed under the Criminal Procedure Code.

3.14 In the present case also, search and seizure, and arrest and detention of the accused were made in the public place and, therefore, the provisions of Sections 41 and 42 are not attracted. It may be also mentioned that u/s 42, Gujarat State has authorised all Police Officers above the rank of a Head constable to enter, search, seize and arrest without warrant or authorisation. When that is so, there is no question of further authorising any other person for search, seizure and arrest and here in this case, Mr. Desai, who is Police

Inspector, D.C.B. in charge of Surat Police Station, has himself carried out the search and seizure of the goods and also has arrested and detained the appellants. Under the circumstances we do not find any substance on this point.

3.15. Mr. Saiyad has relied on the judgment in the case of Hakam Singh Vs. Union Territory, . With respect to the learned Judge, it may be stated that the learned Judge has inadvertently read in Section 43 that the said information given by any person has to be taken down in writing, which is not there in Section 43. That is clear from the reading of para 7 of the said judgment.

3.16. It is also important to note that, here in this case, the Police Inspector has already sent all necessary reports required to be sent u/s 57 to his immediate superior and that includes the F.I.R., which includes the information received. When that is so, it cannot be said that there will be no chance to cross-examine the officer with regard to the factum and contents of the Information received. Under the circumstances, we do not find any substance in this contention.

3.17 Mr. Saiyed also submitted that the whole case is based on the sole evidence of the Police Inspector Shri Desai, who is the complainant in the case and who has made the search of the appellants and seized the muddamal. Hence the learned Judge has erred in convicting the appellants on that evidence. He has relied on the judgment in the case of Bhagwan Singh Vs. The State of Rajasthan, . On perusal of the facts of the said case, it is clear tha the said case would not be applicable to the facts of the present case. In the above referred case of the Supreme Court, allegation of offer of bribe by the accused-- appellant to the Police Head Constable was made. Entire cases of prosecution solely rested on the testimony of the Head Constable and his subordinate police constables. Memo relating to the seizure of currency notes from the accused-appellant was also signed as Panch witnesses by Head Constable and his subordinate police constables. In the said case, no effort was made to get independent witnesses in whose presence seizure could be made. The whole episode is shrouded in secrecy and the entire story sounded unnatural. In the background of those facts, the Supreme Court observed in para 5 of the said judgment as under:

"But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial Court and the High Court and that has resulted in serious miscarriage of justice calling for interference from the Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial Court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances, Head Constable Ram Singh could undertake investigation? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case....."

Further, it has been observed by the Supreme Court that "the infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the First Information Report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case."

3.18. In the said case, the main testimony was that the Head Constable Ram Singh and other constable were only examined and no specific independent witness was examined to depose to the offer of bribe by the appellant. Under the circumstances, the Supreme Court allowed the appeal and set aside the conviction. In the present case the facts are quite different. It is true that the search and seizure were taken by the Police Inspector, Shri Desai and he has filed the F.I.R., but there is nothing personal with Police Inspector, Shri Desai like in the aforesaid Supreme Court case. In this case, the independent Panch witnesses are examined and their evidence is reliable. There is also the evidence of other officers as well as the independent evidence of the Chemical Analyser's report and, therefore, the observations made in the aforesaid case of the Supreme Court would not be applicable to the facts of the present case.

4. During the course of argument Mr. E.E. Saiyed, learned Advocate for the appellants, has led us to the evidence of the witnesses and we have also examined the same. We do not find any error in the appreciation of the evidence, and we hold that the order of conviction passed by the trial Court is absolutely right and hence, this appeal is dismissed.