
(2001) 05 RAJ CK 0045
In the Rajasthan High Court
Case No : Criminal Appeal No. 182 of 1999

Labh Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 41, 42, 43, 50, 67

Citation : (2002) CriLJ 28 : (2002) 2 RCR(Criminal) 288 : (2002) 1 RLW 586 : (2002) 1 WLC 692 : (2002) 1 WLN 545

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : M.L. Garg and J.S. Choudhary, for the Appellant; S.K. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Garg, J.—The abovenamed three appeals are being decided by this common judgment as they have been preferred against the common judgment and order dated 24.2.1999 passed by the learned Special Judge, NDPS Cases, Bikaner in Sessions Case No. 7/96 by which he convicted accused appellants Labh Singh, Major Singh and Mangal Singh for the offence u/s 8/21,29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act"), accused appellant Mohd. Arshad for the offence under Sections 23 and 29 of the NDPS Act and accused appellants Arvinder Singh and Harjeet Singh @ Pappa for the offence u/s 29 of the NDPS Act and sentenced them in the following manner:-

Name of accused appellants

Convicted under Section

Sentence awarded to each accused appellant.

1. Labh Singh

8/21 of the NDPS Act

Fifteen years RI and to pay fine of Rs. one lac. in default of payment of fine, to further undergo 6 months RI.

2. Major Singh

3. Mangal Singh

29 of the NDPS Act

Fifteen years RI and to pay fine of Rs. one lac, in default of payment of fine, to further undergo 6 months RI.

Both sentences were ordered to run concurrently.

4. Mohd. Arshad

23 of the NDPS Act

Fifteen years RI and to pay fine of Rs. one lac. in default of payment of fine, to further undergo 6 months RI.

29 of the NDPS Act

Fifteen years R1 and to pay fine of Rs. one lac. in default of payment of fine, to further undergo 6 months RI.

Both sentence were ordered to run concurrently.

5. Arvinder Singh

29 of the NDPS Act

Fifteen years RI and to pay fine of Rs. one lac. in default of payment of fine, to further undergo 6 months RI,

6. Harjeet Singh @ Pappa (Absconder)

Note :-

1. That in appeal No. 145/99, one of the accused appellants, namely, Harjeet Singh @ Pappa was declared absconder by this Court on 8.3.2000 and thus, his appeal was separated from the appeal of accused appellant No.1 Arvinder Singh of that appeal.

2. That since in appeal No. 158/99, accused appellant Mohd. Arshad was not being represented by any counsel as the same was filed by him through jail, therefore, Shri J.S. Choudhary was appointed as Amicus Curiae on behalf of accused appellant Mohd. Arshad and he has argued the case on his behalf.

2. The facts giving rise to these appeals, in short, are as follows:-

On 17.8.1996, PW19 Shri R.K. Jain, who was Intelligence Officer, Directorate of Revenue Intelligence (for short DRI), Jaipur presented a complaint before the Special Judge, NDPS Cases (Sessions Judge), Bikaner against the above named accused appellants slating inter-alia that on 22.5.1996, PW8 S. Parmeshwaran, Intelligence Officer, DRI, New Delhi received a secret information to the effect that one Lab Singh (accused appellant), resident of Amritsar would be going to Bombay via Bikaner in Truck No. WMQ 3348 (hereinafter referred to as the Truck) with narcotic drugs (heroin) concealed in the subject truck on 22-24.5.1996. That information was reduced into writing by PW 8 S. Parmeshwaran and the same is Ex.P/28 and PW8 S.Parmesh-waran forwarded the same in original to his higher officers, who gave instructions to other officers.

On the basis of that information, a team under the chairmanship of PW 10 Kuldeep Singh was constituted for raiding that Truck and in that Team, apart from PW10 Kuldeep Singh and other officers of the DRI at Delhi, Officers posted in Regional Office at Jaipur, namely, PW 16 Om Prakash, PW 17 V.K. Gupta, PW 18 T.C. Gupta and PW 19 R.K. Jain were also members.

That information was also sent to the office of DRI at Bikaner and on 23.5.1996. PW 10 Kuldeep Singh reached Bikaner alongwith Alok Tiwari, S.K. Ratra, Rajeev Sidana (PW 7) and other officers and on that day, two motbirs, namely, PW 12 Liyakat Ali and PW 13 Mahendra Singh were contacted from Bikaner and they were asked to become motbirs and they accepted to become motbirs.

Thereafter, PW10 Kuldeep Singh alongwith two motbirs PW12 Liyakat Ali and PW13 Mahendra Singh and other members of the Raiding Party, reached National Highway No. 15, which connects Bikaner to Ganganagar and made Nakabandi near Check Post, where officers of DRI posted at Jaipur, namely, PW 16 Om Prakash, PW 17 V.K. Gupta, PW 18 T.C. Gupta and PW 19 R.K. Jain were already there and they waited for the arrival of the Truck for which they had secret information. Truck for which they had secret information. Thereafter, at about 19.30 (7.30 PM), raiding party proceeded towards Ganganagar and thus, they crossed nearabout 11 kms. and then found the Truck in question, which was standstill and in that Truck one person was sitting and on being asked, he told his name as Labh Singh (accused appellant) and he further told that two more persons, namely, Major Singh and Mangal Singh (since the hub of the Truck had broken) had gone to Bikaner and they would be coming just now and after 15 minutes, both Major Singh and Mangal Singh (accused appellants) came there. It was stated that Major Singh was owner of the Truck and Mangal Singh was driver of the Truck and in preliminary enquiry, these three accused appellants, namely, Lab Singh, Major Singh and Mangal Singh told that the Truck in question was loaded with the bags of wheats, but when they were seriously questioned, they told the Raiding Party that in between the bags of wheats, two suitcases were also there, in which packets of heroin were kept for the purpose of taking to Bombay. Since at that time there was some darkness, all the three accused appellants alongwith the Truck were brought to the office of the Customs situated in Rani

Bazar, Bikaner. Thereafter, PW16 Om Prakash gave notice u/s 50 of the NDPS Act to the accused appellants asking them whether they wanted to be searched before him i.e. PW 16 Om Prakash or the Magistrate and the notice which was given to accused appellant Lab Singh is Ex.D/7, that of accused appellant Major Singh is Ex.D/6 and that of accused appellant Mangal Singh is Ex.D/7. These accused appellants gave their consent that they could be searched in presence of PW16 Om Prakash. Thereafter, Truck was searched and on search two suitcase marked "Dunhill" of blue colour were recovered, which were found beneath the bags of wheats. One suitcase was marked as X and other suitcase was marked as Y and both were locked and the key of both the suitcase was with accused appellant Labh Singh. Thereafter, first suitcase X was opened and in that, 27 packets were found and they were marked as XI to X27 and on opening second suitcase Y, 25 packets were found and they were marked as Y1 to Y25 and all the above packets packets were containing brown powder, which gave positive result of heroin, when tested with drug detection kit. The total weight of the packets of heroin was found to be 52.575 kgs. and net weight of the heroin was found to be 50.755 kgs. Thereafter, seven lots were prepared and in lot No. 1 packets XI to X10, in lot No. 2 packets XII to X20, in lot No. 3 packets X21 to X.27, in lot No. 4 packets Y1 to Y10, in lot No. 5 packets Y1 1 to Y20, in lot No. 6 packets Y21 to Y23 and in lot No. 7 packets Y24 to Y25 were kept. Out of seven lots, equal quantity of heroin was taken, which comes to 10 grms. from each lot and, thereafter, two samples of 5 grms. each were prepared. Thus, total 14 samples were prepared and they were sealed on the spot separately and marked as follows:-

1. XA-1,XA-2
2. XB-1,XB-2
3. XC-1,XC-2
4. YA-1,YA-2
5. YB-1,YB-2
6. YC-1,YC-2
7. YD-1,YD-2

The fard of search and seizure was prepared on the spot and the same is Ex.P/356. The information to superior officer about the search and seizure was sent through Ex.P/357.

Thereafter, PW10 Kuldeep Singh handed over the samples and recovered articles to PW11 M.C. Verma, who deposited the same in the Malkhana and made entries in the Maikahana Register Ex.P/355 and, thereafter, PW17 V.K. Gupta took the samples to Government Opium & Alkaloid Works, Neemuch alongwith forwarding letter Ex.P/364 and deposited the same at Neemuch and receipt of depositing the samples at Neemuch is Ex.P/365 and the report of the Government Opium &

Alkaloid Works, Neemuch is Ex.P/366, where it was stated as under:-

"Each of the seven samples are found by qualitative and quantitative analysis to be opium derivative (diacetyl morphine) within the meaning of Section 2 XVI of NDPS Act."

After the proceedings of search and seizure of the said heroin by PWIO Kuldeep Singh, statement of the accused appellant Labh Singh u/s 67 of the NDPS Act was recorded by PW 19 R.K. Jain 67 of the NDPS Act was recorded by PW 19 R.K. Jain and the same is Ex.P/376 and in that statement, accused appellant Labh Singh revealed the following facts:-

1. That heroin which was recovered from the Truck in question belonged to him and the same was to be sold at Bombay to one Rehman and he (accused appellant Labh Singh) purchased that heroin from Pakistan national Arshad (accused appellant) through Harjeet Singh (accused appellant), resident of Amritsar.
2. That earlier also he purchased 5kg. heroin at the rate of Rs. 60,000/-per kg. and sold at the rate of Rs. 70,000/- per kg. to Rehman.
3. That he came in contact with accused appellant Harjeet @ Pappa at Amritsar, who used to send ascitic and N-hydrade from Indian to Pakistan and in return, he used to get heroin and accused appellant Harjeet Singh told him that he used to take heroin from accused appellant Arshad and in case accused appellant Labh Singh wanted he could arrange heroin at cheap rate and in the meantime, accused appellant Labh Singh contracted with one Rehman at Bombay, who agreed to take heroin at the rate of Rs. 70,000/- per kg. and accused appellant Labh Singh also gave his telephone number to Rehman and the deal was finalised between accused appellants Labh Singh, Arshad, Harjeet Singh and Rehman to the effect that accused appellant Labh Singh would get heroin at the rate of Rs. 60,000/- per kg. and the same would be sold by him at Rs. 70,000/- per kg.
4. That after some time, accused appellant Harjeet Singh told accused appellant Labh Singh that 50 kg. heroin would be brought by accused appellant Arshad and in case he wanted to purchase, he would talk to accused appellant Arshad. Then, accused appellant Labh Singh told Harjeet Singh, accused appellant that he contacted Rehman and Rehman agreed to take it.
5. That thereafter, he contracted one owner of the Truck Major Singh (accused appellant) and he agreed that he will charge Rs. 35,000/- for transporting the above heroin from Amritsar to Bombay.
6. That accused appellants Harjeet Singh and Arshad both came to his house on 20th May and told him that 50 kgs. heroin had been received and they handed over to him two suitcase of blue colour in which 50 kgs. heroin was kept and it was agreed that on 25/26th May, these heroin would be handed over by him to Rehman.

7. That accused appellants Harjeet Singh and Arshad told accused appellant Labh Singh that they were going Delhi, where they would slay in Hotel Hansa Delux and they further told him to telephone them before one day of reaching Bombay so that day and place of meeting could be decided. They also gave the telephone number of Hotel Hansa Delux Delhi and the same was recovered from the pocket of accused appellant Labh Singh.

8. That on 20th May he contacted accused appellant Major Singh for arranging Truck and thus, Truck was arranged and on the night of 21st May, bags of wheats were put in the Truck alongwith the suitcase and thus, at about 2.30 AM on 22nd May, he alongwith Major Singh and Mangal Singh, accused appellants left for Bombay through Truck and when they were going to Bikaner via Ganganagar, hub of the Truck was broken and accused appellants Mangal Singh and Major Singh went to Bikaner and he remained in the Truck and in the meanwhile, Raiding Party came there.

Thereafter, on 24.5.1996, statements of the accused appellants Major Singh and Mangal Singh u/s 67 of the NDPS Act were recorded by PW 17 V.K. Gupta and they are Ex.P/26 and Ex.P/27 respectively. They also gave the statement in consonance with the statement given by the accused appellant Labh Singh.

On the basis of the facts disclosed by the accused appellant Labh Singh during recording of his statement u/s 67 of the NDPS Act, search of Room No. 103 of Hotel Hansa Delux, Karole Bagh was made.

Search of Room No. 103 of Hotel Hansa Delux, Karole Bagh, Delhi

The case of the prosecution further is that on 24.5.1996 search of Room No. 103 of Hotel Hansa Delux, Delhi was made by PW14 Sanjay Srivastava in presence of PW5 Rakesh Gupta and Nandlal and in that room, Harjeet Singh and Arshad (both accused appellants) were found. Before making their search, notices Ex.P/2 and Ex.P/359 u/s 50 of the NDPS were given by PW 14 Sanjay Srivastava to accused appellants Arshad and Harjeet Singh respectively asking whether they wanted to be searched before the Magistrate or Gazetted Officer and they gave their consent that they could be searched before the Gazetted Officer and therefore, their search was made in presence of PW 6 B.S. Bakshi. During search, a brief case of black colour belonging to accused appellant Harjeet Singh was recovered and on opening it, Driving License of accused appellant Harjeet Singh and Visiting Card of Nanak Roadways Corporation, Roshanara Road, Delhi were recovered and on search of accused appellant Arshad, ticket of Shalabdi Express was recovered. The fard of these proceedings was prepared on the spot and the same is Ex.P/15. The driving license of the accused appellant Harjeet Singh was seized through Ex.P/16. The visiting card is Ex.P/17 and ticket of Shatabdi Express is Ex.P/18. The receptionist of that Hotel was PW5 Rakesh Gupta, who produced the list of those persons, who stayed in that Hotel and the same is Ex.P/29 and on that day, the room in the Hotel was booked in the name of Harjeet Singh, accused appellant.

After that search, PW6 B.S. Bakshi summoned accused appellant Harjeet Singh on 24.5.1996 through notice, Ex.P/19 for recording his statement u/s 67 of the NDPS Act and on 24.5.1996, statement of the accused appellant Harjeet Singh was recorded by PW 6 B.S. Bakshi and the same is Ex.P/20, in which he has stated:-

1. That for the last six months, he was in contact with Pakistan national Arshad (accused appellant) and accused appellant Arshad was involved in smuggling of contraband articles and on 15th May, 1996 accused appellant Arshad informed him that he should help him so that 52 kgs. heroin could be passed through Indian Border and he told accused appellant Arshad that he knew one officer of the BSF and he contacted that officer and that officer agreed to the proposal put forwarded by accused appellant Arshad.
2. That as per agreement, on the morning of 20th May, 1996 when accused appellant Arshad reached Burji No. 74, that officer alongwith his two junior officers brought accused appellant Arshad alongwith heroin in a Maruti Gypsy to his house.
3. That therefore, it was disclosed that the name of that officer was Arvinder Singh (accused appellant) and the names of his two juniors were PW 1 Chamanlal and PW2 Nagesh Kumar.
4. That as soon as the heroin was received by him from accused appellant Arshad he contacted accused appellant Labh Singh and the same was handed over by him to Labh Singh for transporting to Bombay.
5. That he was told by the officers of DRI that heroin, which was handed over by him to accused appellant Labh Singh has been seized.

Statement of accused appellant Arshad

The statement of accused appellant Arshad u/s 67 of the NDPS Act was recorded by PW3 R.A. Sharma on 24.5.1996 and the same is Ex.P/5, where he confirmed the statement given by accused appellant Harjeet Singh. He further told that 50 kgs. heroin was brought by him from Pakistan and Indian border was crossed by him with the help of accused appellant Arvinder Singh.

Statement of accused appellant Arvinder Singh

On 25.5.1996, a notice Ex.P/21 was given to the accused appellant Arvinder Singh by PW6 B.S. Bakshi for recording his statement and PW6 B.S. Bakshi recorded his statement on 25.5.1996 and the same is Ex.P/22 and his further statement was recorded on 26.5.1996 and the same is Ex.P/23 and both statements were written by accused appellant Arvinder Singh himself in his own hand writing and he also confirmed the statement given by the two accused appellants, namely, Harjeet Singh and Arshad.

It may be stated here that in the statement, which was given by accused appellant Arvinder Singh on 25.5.1996 (Ex.P/22) he did not confess his guilt, but

in another statement which was given on 26.5.1999 (Ex.P/23), he admitted all the facts narrated by other two accused appellants, namely, Harjeet Singh and Arshad stating that in conspiracy he helped both accused appellants Harjeet Singh and Arshad and he allowed the accused appellant Arshad to cross the Indian Border alongwith 52 kgs. heroin in his vehicle, which was being driven by himself and at that time, PW1 Chamanlal and PW2 Nagesh Kumar were also with him.

Thereafter, on 26.5.1996, the statement of PW1 Chamart Lal u/s 67 of the NDPS Act was also recorded by PW 14 Sarjay Srivastava and the same is Ex.P/1 and the statement of PW2 Nagesh Kumar u/s 67 of the NDPS Act was also recorded on 26.5.1996 by PW 4 B.D. Mishra and the same is Ex.P.3.

All the aforesaid statements of the accused appellants confirmed the story given by one and another.

Thus, all the accused appellants have committed offence under Sections 21, 23 and 29 of the NDPS Act and accused appellants Labh Singh, Major Singh, Mangal Singh, Harjeet Singh, Arshad and Arvinder Singh were arrested through Ex.P/3776A, Ex.P/370, Ex.P/371, Ex.P/9, Ex.P/6 and Ex.P/8 respectively and after usual investigation, complaint was filed against them in the Court of Special Judge, NDPS Cases, Bikaner.

On 3.1.1997, the learned Special Judge, NDPS Cases, Bikaner framed charges against the accused appellants in the following manner:-

Name of accused appellants

Charges

1. Labh Singh

Sections 8/23 and 29 and

2. Major Singh

8/21 of the NDPS Act

3. Mangal Singh

4. Arshad

Sections 8/23&29 of the NDPS Act.

5. Harjeet Singh

Section 8/23 and 29 of the NDPS Act.

6. Arvinder Singh

NDPS Act.

The charges were read over and explained to the accused appellants. They

denied the charges and claimed trial.

During trial, the prosecution in support of its case examined as many as 19 witnesses and got exhibited some documents. Thereafter, statements of the accused appellants u/s 313 Cr.P.C. were recorded.

After conclusion of trial, the learned Special Judge, NDPS Cases, Bikaner through his judgment and order dated 24.2.1999 convicted and sentenced the accused appellants in the manner as indicated above holding inter-alia.

1. That since the heroin was recovered from [he Truck in question and thus, it was not a personal search and, therefore, compliance of Section 50 o. the NDPS Act was not necessary in the present case.

2. That Truck in question would be termed as public carrier or public conveyance and the recovery would also be classified as recovery from public place and, therefore, in these circumstances, provisions of Section 42 of the NDPS Act would not be applicable, rather provisions of Section 43 of the NDPS Act would be applicable.

3. That in the case of accused appellant Arvinder Singh, prior sanction u/s 197 Cr.P.C. was not at all required.

4. That statements of all the accused appellants u/s 67 of the NDPS Act were recorded in time and it cannot be said that accused appellants remained in custody for a longer period and, therefore, their statements were recorded.

5. That when the statements of the accused appellants u/s 67 of the NDPS Act were recorded, they were not accused at that time nor they were arrested.

6. That accused appellant Arvinder Singh through Ex.D/2 retracted his confession, but that would not affect her earlier statements Ex.P/22 and Ex.P/23 recorded u/s 67 of the NDPS Act, as they were retracted by him with delay.

7. That it is wrong to say that Delhi Team had no jurisdiction to make search and seizure at Bikaner.

8. That if two motbirs of the fard of search and seizure Ex.P/356, namely, PW12 Liyakat AH and PW13 Mahendra Singh have been declared hostile, it would not affect the proceedings of search and seizure.

9. That prosecution has proved beyond all reasonable doubts that during the search and seizure from Truck in question, 52 packets containing heroin were found from the possession of the accused appellants Labh Singh, Major Singh and Mangal Singh.

10. That compliance of Section 57 of the NDPS Act has been made in the present case.

11. That all the accused appellants gave their statements u/s 67 of the NDPS Act voluntarily and they have failed to rebut that they were recorded with coercive

measures.

12. That from the statements Ex.P/22 and Ex.P/23 of accused appellant Arvinder Singh recorded u/s 67 of the NDPS Act, the case of smuggling of 52 packets of heroin from Pakistan to India and link with two other accused appellants Harjeet Singh and Arshad is well proved.

13. That the statements of accused appellants, namely, Arvinder Singh, Harjeet Singh and Arshad further get corroboration from the fact that the same heroin, which was brought from Pakistan to India was recovered from the Truck in question at Bikaner.

14. That the prosecution has proved its case beyond all reasonable doubts against all the accused appellants for the offences for which they were charged.

Aggrieved from the said judgment and order dated 24.2.1999 passed by the learned Special Judge, NDPS Cases, Bikaner, these three appeals have been preferred by the accused appellants.

3. in these appeals, the following submissions have been made by the learned counsel for the accused appellants:-

Appeal No. 145/99 Arvinder Singh v. U.O.I.

In this appeal, the main contention of the learned counsel appearing for appellant Arvinder Singh is that the statements Ex.P/22 and Ex.P/22 and Ex.P/23 of accused appellant Arvinder Singh were recorded by PW6 U.S. Bakshi on 25.5.1996 and 26.5.1996 and the same were recorded after adopting coercive measures and these statements have no value as the same were retracted by accused appellant Arvinder Singh through Ex.D/2 and furthermore, since he has received so many awards including the Presidential Award for his rendering best services to India on Pakistan-India Border, therefore, to think that such a person would indulge himself in such illegal activities, is beyond imagination and from this point of view also, the case against this accused appellant Arvinder Singh should not be held to be proved.

Hence it is prayed that the appeal filed by accused appellant Arvinder Singh be allowed and he be acquitted of the charges framed against him.

Appeal No. 158/99 Arshad v. U.O.I.

In this appeal, the learned counsel appearing for accused appellant Arshad has argued that the statement of accused appellant Arshad Ex.P/5 u/s 67 of the NDPS Act recorded by PW3 R.A. Sharma on 24.5.1996, was not voluntary one and thus, no reliance can be placed on that statement.

Hence, it is prayed that this appeal be allowed and the accused appellant Arshad be acquitted of the charges framed against him,

Appeal No. 182/99 Labh Singh & Ors. v.. U.O.I.

In this appeal, the following submissions have been made by the learned counsel appearing for accused appellants Labh Singh, Major Singh & Mangal Singh:-

1. That the fard of search and seizure Ex.P/356 cannot be regarded as recovery memo.
2. That compliance of Sections 42 and 50 of the NDPS Act has not been made by the prosecution.
3. That the learned Special Judge should not have placed reliance on the statements of the accused appellants recorded u/s 67 of the NDPS Act as they were not given by them voluntarily.

Hence, it is prayed that this appeal be allowed and the accused appellants Labh Singh, Major Singh and Mangal Singh be acquitted of the charges framed against them.

4. On the other hand, the learned counsel appearing for the respondent Union of India has submitted that the findings of conviction recorded by the learned Special Judge, NDPS Cases, Bikaner are based on correct appreciation of evidence on record and they do not suffer from any infirmity, therefore, no interference is called for with the impugned judgment and order.

5. I have heard the learned counsel for the accused appellants and the learned counsel for the respondent Union of India and perused the record of the case.

Secret information Ex.P/28 received by PW8 S. Parmeswaran

6. PW8 S. Parmeshwaran states in examination in chief that on 22.5.1996 he was intelligence Officer in the DR1 at Delhi and on that day he received a secret information to the effect that in Truck No. WMQ 3348, accused appellant Labh Singh after taking heroin from Amritsar would go to Bombay via Bikaner between the period from 22.5.1996 to 24.5.1996. He has further stated that this information was reduced into writing by him in Ex.P/28 and it was in his own hand writing and it bears his signatures at place C to D. He has further stated that he passed that information to his higher officer Shri Alok Tiwari and this information Ex.P/28 also bears the signatures of Shri Alok Tiwari at place G to H.

In cross examination, PW8 S. Parmeswaran has admitted that the information which was received by him, was reduced into writing in Ex.P/28 and the same was forwarded by him to his higher officer Shri Alok Tiwari.

7. On the basis of that information, a Raiding Party under the headship of PW10 Kuldeep Singh was constituted and members of that raiding party were PW16 Om Prakash, PW17 V.K. Gupta, PW 18 T.C. Gupta, PW19 R.K. Jain and PW7 Rajeev Sidana and others.

Proceedings of search and seizure from Truck No. WMQ 3348 at Bikaner

8. PW10 Kuldeep Singh states in his statement that on 22.5.1996 he was posted in DR1 At Delhi and he reached Bikaner on 23.5.1996 alongwith Alok Tiwari, K.S.

Ratra, Rajeev Kumar Sidana (PW 7) and other officials. He further states that after reaching there, he called two independent witnesses, namely, PW12 Liyakat AH and PW 13 Mahendra Singh and they all went to National Highway Bikaner Ganganagar Road near Check Posi, where PW16 Om Prakash, PW 17 V.K. Gupta, PW18 T.C. Gupta and PW 19 R.K. Jain, other officers of DRI from Jaipur Range also assembled there. He has further stated that they all waited for one and half hour, but the Truck in question did not come and, therefore, they proceeded towards road that was going to Ganganagar and after crossing 11 kms. they found the truck in question standing and they stopped their vehicle and asked the person, who was sitting in that Truck and he told him name as accused appellant Labh Singh and he further told that alongwith him, two more persons were there and he told their names as Major Singh and Mangal Singh (accused appellants), who had gone to Bikaner to make repair of the hub of the Truck. He has further stated that after 15 minutes, accused appellants Major Singh and Mangal Singh also came there and after interrogation, accused appellant Labh Singh told that beneath the bags of wheats, in two suitcase, heroin was hidden. He has further stated that since at that time there was darkness, therefore, accused appellants were brought in the Customs Office situated at Bikaner. Thereafter, notices u/s 50 of the NDPS Act were given by PW16 Om Prakash to these three accused appellants Labh Singh, Major Singh and Mangal Singh separately Ex.D/5, Ex.D/6 and Ex.D/7 respectively asking them whether they wanted to be searched before the Magistrate or before himself i.e. PW16 Om Prakash (Gazetted Officer) and they gave their consent that search could be made in presence of PW16 Om Prakash (Gazetted Officer) and they gave their consent that search could be made in presence of PW16 Om Prakash. Therefore, the tarpaulin of the Truck was removed and two suitcase of blue colour marked "Dunhill" were recovered and they were marked as X and Y respectively. He has further stated that from suitcase marked X, 27 packets were recovered and they were marked as XI to X27 and from the suitcase marked Y, 25 packets were recovered and they were marked as Y1 to Y25 and all the above packets were containing brown powder, which gave positive result of heroin, when tested with drug detection kit. Thereafter, as already stated above, seven lots were prepared, in which packets were kept and out of seven lots, equal quantity of heroin was taken, which comes to 10 grms. from each lot and, thereafter, two samples of 5 grms. each were prepared. The fard of search and seizure was prepared on the spot and the same is Ex.P/356. The information to superior officer about the search and seizure was sent through Ex.P/357. Thereafter, PW10 Kuldeep Singh handed over the samples and recovered articles to PW 11 M.C. Verma, who deposited the same in the Malkhana and made entries in the Malkhana Register and, thereafter, PW 17 V.K. Gupta took the sample to Government Opium & Alkaloid Works, Neemuch alongwith forwarding letter Ex.P/364 and deposited the same at Neemuch and receipt of depositing the sample at Neemuch is Ex.P/365 and the report of the Government Opium & Alkaloid Works, Neemuch is Ex.P/366.

9. The statement of PW 10 Kuldeep Singh gets corroboration from the statements of PW16 Om Prakash, PW17 V.K. Gupta, PW18 T.C. Gupta and PW19 R.K. Jain on the point of recovery and search and seizure of so called heroin from the Truck in question, in which three accused appellants namely, Labh Singh, Major Singh and Mangal Singh were found. All these witnesses have been cross examined at length, but nothing has come out which affects their testimony.

10. From the statements of PW 10 Kuldeep Singh, PW16Om Prakash, PW17 V.K. Gupta, PW18 T.C. Gupta and PW19 R.K. Jain, the fact that 52 packets of heroin were recovered from the Truck in question on the intervening night of 23/24/5/1996 at Bikaner and in that Truck, three accused appellants, namely, Labh Singh, Major Singh and Mangal Singh were there and Major Singh was owner of the Truck, Mangal Singh was driver of the Truck and Labh Singh, who was carrying these packets from Amritsar to Bombay was also in the Truck.

11. Thus, from the above evidence, it is also proved that the heroin recovered from the Truck in question was in joint possession of the three accused appellants, namely, Labh Singh, Major Singh and Mangal Singh.

12. On the said recovery, it is argued by the learned counsel for the accused appellants that the said recovery is vitiated because of non-compliance of mandatory provisions of Section 42 and 50 of the NDPS Act.

On Section 42 of the NDPS Act

13. On this point, the case of the learned counsel for the accused appellant is that since there was secret information which was reduced into writing in Ex.P/28, but its copy to superior officers as required u/s 42(2) of the NDPS Act was not sent as the original was sent to higher officer by PW8 S.Parmeswaran. Thus, there is clear out non-compliance of the mandatory provisions of Section 42 of the NDPS Act.

14. On the other hand, the learned counsel appearing for the respondent Union of India has argued that in the present case recovery of contraband heroin has been made in a Truck, which is a public vehicle and, therefore, the provisions of Section 42 of the NDPS Act are not attracted and the provisions of Section 43 of the NDPS Act would apply and the learned Special Judge has also held so.

15. Before discussing the factual aspect of the present case, legal position in respect of Section 42 of the NDPS Act has to be mentioned here.

Legal position in respect of Section 42 of the NDPS Act

16. There is no dispute on the point that provisions of Section 42 of the NDPS Act, if they are applicable in any case, are mandatory. For that the decisions of the Hon"ble Supreme Court in State of Punjab v. Balbir Singh (1), Mohinder Kumar v. The State Panaji, Goa (2), State of Punjab v. Baldev Singh (3), and Abdul Rashid Ibrahim Mansuri v. State of Gujarat (4), may be seen.

17. The next question that arises for consideration is in what cases provisions of

Section 42 of the NDPS Act would apply.

18. The provisions of Section 42 of the NDPS Act are applicable in the case in which a building, conveyance or enclosed place is to be entered into and searched. If such places are not to be entered into and searched, the provisions of Section 42 of the NDPS Act will not be applicable. The powers which have been conferred are to enter, search, seize and arrest without warrant or authorization. Under proviso to sub-section (1) Section 42 of the NDPS Act 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 the sunset and sunrise after recording the grounds of his belief.

19. Thus, it is clear that the provisions of Section 42 of the NDPS Act would be only applicable when search, seizure and arrest have to be effected without warrant or authorisation in any building, conveyance or enclosed place. If such places are not to be entered into and searched, the provisions of Section 42 of the NDPS Act will not be applicable. Section 41 & 42 of the NDPS Act apply when there is a prior information about the presence of the contraband article in any building, conveyance or enclosed place, while Section 43 applies when information as such is not about the presence of a contraband article at any of such place, but such article is likely to be brought in any public place.

20. On purpose, it may be stated here that the provisions of Section 42 of the NDPS Act requiring the information received to be reduced into writing u/s 42(1) has a definite purpose. The purpose is that story of secret information may not be connected to support any version that is put in the Court. It is intended that the accused must know that information has been given to enable him or his counsel to cross-examine with reference to it. It cannot be a defence to the violation of this mandatory requirement that information was received while on patrol duty or while being away from police station. Even in such a case, the information can be reduced in writing.

21. In the present case, the alleged heroin was recovered from the Truck in which three persons, namely, accused appellants Labh Singh, Major Singh and Mangal Singh were there and the learned Special Judge came to the conclusion since the Truck in question is a public vehicle, therefore, search from the Truck in question would amount to search in public place and the said Truck would also amount to public conveyance and, therefore, provisions of Section 42 of the NDPS Act would not be applicable and, rather, provisions of Section 43 of the NDPS Act would apply.

22. Now it is to be seen whether above findings of the learned Special Judge are correct one or not.

23. In this respect, it would be worthwhile to quote here the Explanation attached to Section 43 of the NDPS:-

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

24. Explanation to Section 43 of the NDPS Act says that for the purposes of this section, public place includes any public conveyance, hotel, shop or other place which is intended for use by, or which is accessible to, the public. Thus, in order to be covered by the expression "public place", the place should be such where public may go as of right. Mere fact that entry in any such place is regulated one will not change that place into a place other than a public place.

25. in Section 42 as well as Section 43, the word conveyance" in there. The difficulty that arises when conveyance is there, in what manner it should be interpreted.

26. in my view, in Section 43, the word "conveyance" is qualified by the word "public" but in Section 42, it is not qualified by any such word. Thus, it is only public conveyance which is covered by section 43, but conveyance other than public conveyance will be covered by Section 42 of the NDPS Act.

27. The Hon"ble Supreme Court in State of Punjab v. Balbir Singh (supra) has held as under:-

"We may mention here that Section 43 which deals with the power of seizure and arrest in public places is slightly different from Section 42 in certain respects. The empowered officer while acting u/s 43* need not record any reasons of his belief. This Section also does not mention anything about the empowered officer having prior information given by any person or about recording the same, as compared to Section 42."

28. Thus, clear position emerging out of the above mentioned decision is that an empowered officer while effecting search, seizure or arrest in any public place u/ s 42 of the NDPS Act need not record reasons of his belief nor is he required to reduce to writing any information received by him before effecting search, seizure or arrest, etc. in any public place under this Section 43.

29. As already stated above, search in the present case has been effected from the truck. in India, the Truck, which carries goods from one place to another on public demand and on consideration, in all circumstances would be regarded as public conveyance. Therefore, the Truck in question from which contraband heroin was recovered would be treated as public conveyance and when it is treated as public conveyance, no question of application of Section 42 of the NDPS Act arises and the provisions of Section 43 of the NDPS Act would apply in the present case.

30. in these circumstances, the findings of the learned Special Judge that provisions of Section 42 of the NDPS Act are not applicable in the present case, but provisions of Section 43 of the NDPS Act would apply, are liable to be confirmed as they are based on correct appreciation of facts and law.

On Section 50 of the NDPS Act

31. On this point, the case of the learned counsel for the accused appellants is that in the present case, compliance of mandatory provisions of Section 50 of the NDPS Act has not been made by the prosecution and because of non-compliance of these provisions, the whole trial stands vitiated.

32. In the present case, the alleged heroin was recovered from the Truck and the learned Special Judge has held that since there was no personal search and heroin was recovered for the Truck, therefore, compliance of Section 50 of the NDPS Act was not necessary.

33. In my considered opinion, since contraband heroin was recovered from the Truck and there was no personal search, therefore, no question of compliance of Section 50 of the NDPS Act arises, though notices u/s 50 of the NDPS Act were given to the accused appellants separately. Thus, the findings of the learned Special Judge that in the present case compliance of Section 50 of the NDPS Act was not necessary are liable to be confirmed, as they are based on correct appreciation of facts and law.

34. No doubt both motbirs of the fard of search and seizure Ex.P/356, namely, PW15 Liyakat Ali and PW16 Mahendra Singh have been declared hostile, but they have admitted their signatures on the fard of search and seizure Ex.P/356. The statement of PW 10 Kuldeep Singh, who conducted the search and seizure, was corroborated by the statements of other witnesses, namely, PW16 Om Prakash, PW17 V.K. Gupta, PW18 T.C. Gupta and PW19 R.K.Jain, and in these circumstances, it appears that both motbir witnesses are not telling truth for the reasons best known to them.

35. Thus, if both motbir witnesses, namely, PW15 Liyakat Ali and PW 16 Mahendra Kumar of fard of search and seizure Ex.P/356 have been declared hostile, the case of the prosecution is not affected, rather since they have admitted their signatures on relevant documents, it should be held that these documents were executed in their presence.

Statements u/s 67 of the NDPS Act of accused appellants Labh Singh, Major Singh and Mangal Singh

36. The statement of accused appellant Labh Singh u/s 67 of the NDPS Act was recorded by PW19 R.K. Jain on 24.5.1996 and the same is Ex.P/376 and he was arrested through Ex.P/376A on 24.5.1996.

37. The statement of accused appellant Major Singh u/s 67 of the NDPS Act was recorded by PW17 V.K. Gupta on 24.5.1996 and the same is Ex.P/26. He was arrested by PW17 V.K. Gupta on 24.5.1996 through Ex.P/370.

38. The statement of accused appellant Mangal Singh u/s 67 of the NDPS Act was recorded on 24.5.1996 by PW17 V.K. Gupta and the same is Ex.P/27. He was arrested by PW17 V.K. Gupta on 24.5.1996 through Ex.P/371.

39. On these statements which were recorded u/s 67 of the NDPS Act, it has been argued by the learned counsel for the accused appellants that they cannot be read in evidence, as they are hit by Article 20(3) of the Constitution of India and furthermore, they were recorded under coercion and pressure and were not voluntary one.

40. So far as this argument is concerned, it would be discussed when the case of accused appellants Arvinder Singh and Arshad would be discussed.

41. it may be stated here that apart from taking corroboration from these so-called statements of the accused appellants recorded u/s 67 of the NDPS Act, the case of search and seizure of heroin and possession of these three accused appellants Labh Singh, Major Singh and Mangal Singh over the alleged heroin, is well proved from the evidence just discussed above.

42. it may be stated here that during recording of statement Ex.P/376 of the accused appellant Labh Singh u/s 67 of the NDPS Act by PW19 R.K. Jain, the following facts emerged:-

1. That he came in contact with accused appellant Harjeet at Amrit-sar, who used to send a'scitic N-hydrate from India to Pakistan and in return, he used to get heroin and accused appellant Harjeet Singh told him that he used to take heroin from accused appellant Arshad and in case accused appellant Labh Singh wanted he could arrange heroin at cheap rate and in the meantime, accused appellant Labh Singh contacted with one Rehman at Bombay, who agreed to take heroin at the rate of Rs. 70,000/- per kg. and accused appellant Labh Singh also gave his telephone number to Rehman and the deal was finalised between accused appellants Labh Singh, Arshad, Harjeet Singh and Rehman to the effect that accused appellant Labh Singh would get heroin at the rate of Rs. 60,000/- per kg. and the same would be sold by him at Rs. 70,000/- per kg.

2. That after some time, accused appellant Harjeet Singh told accused appellant Labh Singh that 50 kg. heroin would be brought by accused appellant Arshad after crossing Pakistan Border and in case he wanted to purchase, he would talk to accused appellant Arshad. Then, accused appellant Labh Singh told Harjeet Singh, accused appellant that he had contacted Rehman and Rehman agreed to take it.

3. That thereafter, he contracted the owner of the Truck Major Singh (accused appellant) and he agreed that he would charge Rs. 35,000/- for transporting the above heroin from Amritsar to Bombay.

4. That accused appellants Harjeet Singh and Arshad both came to his house on 20th May and told him that 50 kgs. heroin had been received and they handed over to him two suitcase in which 50 kgs. heroin was kept and it was agreed that on 25th May, these heroin would be handed over by him to Rahman at Bombay.

5. That accused appellants Harjeet Singh and Arshad told accused appellant Labh

Singh that they were going Delhi, where they would stay in Hotel Hansa Delux and they further told him to telephone them before one day of reaching Bombay so that day and place of meeting could be decided. They also gave the telephone number of Hotel Hansa Delux Delhi and the same was recovered from the pocket of accused appellant Labh Singh.

43. On the basis of the above facts revealed from the statement of the accused appellant Labh Singh, PW6 B.S. Bakshi, who was the officer in the DRI, authorised PW14 Sanjay Srivastava to make search in Room No. 103, Hotel Hansa Delux, Delhi.

Search of Room No. 103, Hotel Hansa Delux, Saraswali Marg, Karole Bagh, Delhi

44. PW 6 B.S. Bakshi, who was officer in the DRI has stated that he authorised PW14 Sanjay Srivastava to make search in Room No. 103, Hotel Hansa Delux, Delhi and the Authority Ex.P/14 bears his signatures at place A to B.

45. PW 14 Sanjay Srivastava states that on 24.5.1996 he was intelligence Officer in DRI at Delhi and on that day he made search in Room No. 103 at Hotel Hansa Delux, Delhi and authorisation letter is Ex.P714, which bears signatures of PW5 Rakesh Gupta and Nandlal, it also bears the signalures of accused appellants Harjeet Singh and Arshad and it also bears the signatures of PW6 B.S. Bakshi also. He further slates that before making search, notices Ex.P/2 and Ex.P/359 u/ s 50 of the NDPS were given by him to the accused appellants Arshad and Harjeet Singh respectively asking them whether they wanted to be searched before the Magistrate or Gazetted Officer and they gave their consent that they could be searched before the Gazetted Officer and therefore, their search was made in presence of PW6 B.S. Bakshi. During search, a brief case of black colour belonging lo accused appellant Harjeet Singh was recovered and on opening it, Driving License of accused appellant Harjeet Singh and Visiting Card of Nanak Roadways Corporation, Roshan Ara Road, New Delhi were recovered and on search of accused appellant Arshad, licket of Shatabdi Express was recovered. The fard of these proceedings was prepared on the spot and the same is Ex.P715. He has further stated that the fard of search and seizure Ex!P715 was written in his own hand writing and it bears his signatures at place K lo L and it also bears the signatures of PW5 Rakesh Gupta at place G to H, Nandlal at place I to J, PW6 B.S. Bakshi at place A to B, accused appellant Harjeet Singh al place C to D and accused appellant Arshad at place E to F. The driving license appellant Arshad at place E to F. The driving license of the accused appellant Harjeet Singh was seized through Ex.P716. The visiting card is Ex.P/17 and ticket of Shatabdi Express is Ex.P/18. The receptionist of that Hotel was PW5 Rakesh Gupta, who produced the list of those persons, who stayed in that Hotel and the same is Ex.P/29 and on that day, the room in the Hotel was booked in the name of Harjeet Singh, accused appellant.

46. The statement of PW14 Sanjay Srivastava is fully corroborated by the statement of PW6 B.S. Bakshi in respect of search of Room No. 103, Hotel Hansa

Delux, Delhi on material points. PW5 Rakesh Gupta, who was motbir to fard of search and seizure Ex.P/15, has further admitted that Room No. 103 of that Hotel was booked in the name of accused appellant Harjeel Singh on 24.5.1996, but on point of search, he has been declared hostile.

47. Thus, from the statements of PW14 Sanjay Srivastava and PW6 B.S. Bakshi, the fact that Room No. 103 of Hotel Hansa Delux, Delhi was searched is well proved and it is also well proved that during search, the accused appellants Harjeet Singh and Arshad were found in side that room and during search, the driving licence Ex.P/16 of the accused appellant Harjeet Singh, visiting card of Nanak Roadways Corporation Ex.P/17 and ticket of Shatabdi Express Ex.P/18 were recovered.

48. Hence, the facts, which were got revealed through the statement of accused appellant Labh Singh, were further established during search of Hotel Hansa Delux, Delhi and as per his statement, the accused appellants Harjeet Singh and Arshad were found in Room No. 103 during search of that Hotel.

49. Thereafter, PW6 B.S. Bakshi summoned accused appellant Harjeet Singh through notice Ex.P/19 dated 24.5.1996 for recording his statement u/s 67 of the NDPS Act and on 24.5.1996, statement of the accused appellant Harjeet Singh was recorded by PW6 B.S. Bakshi and the same is Ex.P/20, in which he has stated:-

1. That for the last six months, he was in contact with Pakistan national Arshad (accused appellant) and accused appellant Arshad was involved in smuggling of contraband articles and on 15th May, 1996 accused appellant Arshad told him on phone that he has arranged 52 kgs. heroin from Haji Mishal and asked him to help in crossing border and upon this he told accused appellant Arshad that he knew one officer of the BSF known as JAD and he contacted that officer and that officer agreed to the proposal put forwarded by accused appellant Arshad.

2. That as per agreement, on the morning of 20th May, 1996 when accused appellant Arshad reached Burji No. 74, thalofficer alongwith his two junior officers brought accused appellant Arshad alongwith heroin in a Maruli Gypsy to his house.

3. That thereafter, it was disclosed that the name of that officer was Arvinder Singh (accused appellant) and the names of his two juniors were PW1 Chamanlal and PW2 Nagesh Kumar.

4. That as soon as the heroin was received by him, he contacted accused appellant Labh Singh and the same was handed over by him to Labh Singh for transporting to Bombay.

5. That he was told that 52 kgs. heroin, which was being transported in a Truck by accused appellant Labh Singh, has been intercepted by the DRI officer on 23.5.1996. He further states that this is the same consignment of heroin, which has been handed over to accused appellant Labh Singh for delivery in Bombay.

50. Thereafter, statement of accused appellant Arshad u/s 67 of the NDPS Act was recorded by PW3 R.A. Sharma on 24.5.1996 and the same is same is Ex.P/5. where he confirmed the statement given by accused appellant Harjeet Singh and he has further stated that he was involved in the smuggling of contraband heroin and gold biscuit etc. and he used to send these articles from Pakistan to India and on 19.5.1996 he left Pakistan for India and alongwith him three more persons, namely, Asgar, Javed and Iqbal were also there and on 20.5.1996 at about 3.00 AM they reached Burji No. 74 and as per arranged plan, Gypsy of green colour came at Burji No. 74 and from that Gypsy, three persons came out and out of these three persons, one was officer of the BSF, whose name was JAD and he came alongwith two more officers and that officer told him to put his luggage in his Gypsy and, therefore, he kept 52 kg. heroin in the Gypsy and sat on the back seat in the Gypsy and he was introduced with these officers by Tahalsingh, who is now in jail and, thereafter, they went to me house of Pappa @ Harjeet Singh and then, he and accused appellant Pappa went to the house of accused appellant Labh Singh for giving the said 52 kg. heroin to accused appellant Labh Singh and, thereafter, they came back to the house of accused appellant Pappa and thereafter, accused appellant Pappa @ Harjeet Singh went to book the ticket for Delhi in Shatabdi Express for 21.5.1996 and then he came back after booking the ticket and at about 10.45. they reached Delhi and at about 11.45 they reached in the Hotel "Hansa Delux" situated at Karole Bagh and stayed in Room No. 103.

51. On the basis of the above informations revealed from the statements of accused appellants Harjeet Singh and Arshad, the accused appellant Arvinder Singh was summoned through notice Ex.P/21 dated 25.5.1996 by PW6 B.S. Bakshi for recording his statement.

Statements Ex.P/22 and Ex.P/23 u/s 67 of the NDPA Act of accused appellant Arvinder Singh

52. On 25.5.1996, a notice Ex.P/21 was given to the accused appellant Arvinder Singh by PW6 B.S. Bakshi for recording his statement and PW6 B.S. Bakshi recorded his statement u/s 67 of the NDPA Act on 25.5.1996 and the same is Ex.P/22 and his another statement was recorded on 26.5.1996 and the same is Ex.P/23 and both statements were written by accused appellant Arvinder Singh himself in his own hand writing before PW6 B.S. Bakshi and he also confirmed the statement given by the two accused appellants, namely, Harjeet Singh and Arshad on material points.

53. in the statement Ex.P/22, the accused appellant Arvinder Singh has stated that he joined JAD in Amritsar in Oct. 1994 and since he was in Intelligence he was not supposed to put on uniform except on certain inspections and during his tenure at Amrilsar, he made number of informers whom we call sources, who give information regarding smuggling activities of operators and his team was allotted two Government vehicles one Mahindra Jeep and the other Maruti Gypsy. He has further stated that he was given number of good cases and earned

medals and he was given number of good cases and earned medals and rewards. When he was shown the photograph of Mohd. Arshad, Pakistan national, he told that Mohd. Arshad had been working as source for him for the last one month. He was also shown the photo of accused appellant Harjeet Singh @ Pappa and he told that accused appellant Harjeet Singh was also working for him as source for the last six months. He has admitted that he met accused appellant Arshad earlier on two times and he also met accused appellant Arshad on 19th May, 1996 in the early hours of morning near Burji No. 74 and at that time, he was in his Gypsy and PW1 Chamanlal and PW2 Nagesh Kumar were also with him. He also knew that accused appellant Arshad was involved in the smuggling of heroin into India and accused appellant Arshad requested him to help in transporting his consignment of heroin in his BSF vehicle and also offered money for helping in crossing the Border and transportation. He has further stated that he told accused appellant Arshad that it would not be possible for him to transport the consignment in his own vehicle and upon this, he was annoyed with him. He has further stated that he was introduced to accused appellant Harjeet Singh @ Pappa around Oct./Nov. 1995 at Kwality Restaurant, Amritsar by his Inspector Dhir Singh. However, on actual question whether in his vehicle on 20.5.1996, 52 kgs, heroin was kept or not, he replied in negative.

54. in his second statement Ex.P/23 recorded on 26.5.1996 u/s 67 of the NDPS Act, the accused appellant Arvinder Singh has stated that he has not given correct factual position and truth in his earlier statement Ex.P/22 recorded on 25.5.1996 and he admitted that on the relevant date, he alongwith PW1 Chamanlal and PW2 Nagesh Kumar reached Burji No. 74 in Ajnala Sector at about 0545 hours on 20.5.1996 in green colour Maruti Gypsy and seeing accused appellant Arshad on the other side of gate, he asked accused appellant Arshad to put the bags containing approx. 50 kgs. heroin in the vehicle and he drove the vehicle to Amritsar, where he handed over the heroin alongwith accused appellant Arshad to accused appellant Harjeet Singh, who was already waiting for him on Ajnala Road near his residence.

55. The main argument of the learned counsel for the accused appellants Arvinder Singh and Arshad is that the so-called statements Ex.P/22 and Ex.P/23 of accused appellant Arvinder Singh and Ex.P/5 of accused appellant Arshad recorded u/s 67 of the NDPS Act, which have been referred to above, cannot be read in evidence, as they are hit by Article 20(3) of the Constitution of India and furthermore, they were not voluntary one and they have been recorded under coercion and pressure and by adopting third degree measures by the officers of the DRI.

56. On the other hand, the learned counsel appearing for the respondent Union of India has argued that the learned Special Judge has rightly placed reliance on the statements of these accused appellants recorded u/s 67 of the NDPS Act and they connect each and every accused appellant with the commission of crime for which they have been charged.

Legal aspect of Section 67 of the NDPS Act

57. For convenience, Section 67 of the NDPS Act is reproduced hereinbelow:-

"67. Power of call for information etc. Any officer referred to in Section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act-(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

58. This section is analogous to Section 107 of the Customs Act, 1962 and Section 39 of the Foreign Exchange Regulation Act, 1973.

59. This section empowers an officer referred to in Section 42 who is authorised in this behalf by the Central Government or a State Government to call for information, require any person to produce or deliver any document or thing, or to examine any person, in connection with the contravention of any provision of this Act. To invoke this section, firstly the officer must be one referred to in Section 42 who is authorised in this behalf by the concerned Government, and secondly, such officer should be making an enquiry in connection with the contravention of any provisions of this Act. it confers investigatory powers.

60. This provision is wide in its terms and is clearly designed to facilitate the investigatory process by examination without restriction on person, place or time. The use of the expression "any person" itself indicates that the officer is competent to "examine a person who is subsequently arraigned as an accused in respect of a contravention of the Act. He would obviously be a person who can be considered to be acquainted with the facts and circumstances of the case. in most of the cases he would indeed be the best person to throw light with regard to the contravention of the prohibited operation.

61. The sole purpose of an enquiry under this section is to ascertain if there is any contravention of the provisions of NDPS Act or any rule or order made thereunder. in such enquiry, not only the person who subsequently may become the accused with reference to the matter under enquiry, but also persons who are conversant or suspected to be conversant with such contravention are examined. This is the reason why in the section the words "any person" are used so as to denote all the persons inclusive of the persons who subsequently become accused.

62. The Hon'ble Supreme Court in Raj Kumar Karwal v. Union of India and Others (5), has held that officers invested u/s 53 of the N.D.P.S. Act with the powers are not police officers within the meaning of Section 25 of the Indian

Evidence Act. Thus, the statements recorded by them are not hit by Section 25 of the Indian Evidence Act.

63. The terms "custody" and "arrest" are not synonymous terms. It is true that in every arrest there is a custody, but riot vice versa. A custody may amount to an arrest in certain cases, but not in all cases. A person who is taken by the Customs Officer or by the officers of DRI under NDPS Act either for the purpose of enquiry or interrogation or investigation cannot be held to have come into custody and he cannot be deemed to have been arrested from the moment he was taken into custody.

64. In an enquiry held u/s 107 or Section 108 of the Customs Act or u/s 67 of the NDPS Act, not only the person who subsequently may become the accused with reference to the matter under enquiry, but also persons who are conversant or suspected to be conversant with the smuggling of any goods, are examined. This is the reason why in the sections the words "any person" are used so as to denote all the persons inclusive of the persons who subsequently become accused. At that stage, there is no question of arrest. Arrest comes into the picture only when an officer empowered in this behalf by general or special order has reason to believe that any person has been guilty of an offence under the provisions of NDPS Act. In legal sense, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested.

65. For invoking Article 22(2) of the Constitution of India, two requirements must be satisfied; (1) The person should have been arrested; (2) he should have been detained in custody. At the stage of inquiry, or investigation or interrogation held u/s 107 or Section 108 of the Customs Act or u/s 67 of the NDPS Act, the person required or summoned for such enquiry or examination is not arrested, nor has he become an accused.

66. Clause (3) of Article 20 of the Constitution of India provides: "No person accused of any offence shall be compelled to be a witness against himself." From an analysis of this clause, it is apparent that in order to claim the benefit of the guarantee against testimonial compulsion embodied in this clause, it must be shown, firstly, that the person who made the statement was "accused of any offence", secondly, that he made this statement under compulsion.

67. In a proceeding u/s 67 of the NDPS Act, when any person is required or summoned for an enquiry, that person is not an accused person. The phrase "accused of any offence" would mean that only a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in his prosecution, would fall within its ambit.

68. Thus, it can be concluded that the statement recorded u/s 67 of the NDPS Act is admissible in evidence, if it is made voluntarily and without fear, inducement or coercion.

69. if the confession made to Customs Officer or on the same analogy before the officer under the NDPS Act under coercion, conviction cannot be sustained on that basis, as held by the Hon''ble Supreme Court in *Sevanlilal v. State of Maharashtra* (6).

70. Keeping the above principles in mind, the statements of the accused appellants Arvinder Singh and Arshad recorded u/s 67 of the NDPS Act are being examined critically and to see whether the findings of the learned Special Judge by which he placed reliance on them holding that they were made voluntarily and they were made before their arrest, are correct one or not.

Accused appellant Arvinder Singh

71. The accused appellant Arvinder Singh was summoned by PW6 B.S. Bakshi through notice Ex.P/21 dated 25.5.1996 for recording his statement u/s 67 of the NDPS Act and in pursuance of the said notice, he appeared and his statement Ex.P/22 was recorded on 25.5.1996 by PW6 B.S. Bakshi and thereafter, on 26.6.1996 he gave another statement Ex.P/23 which was also recorded by PW6 B.S. Bakshi. Therefore, he was arrested by PW4 B.D. Mishra through arrest memo Ex.P/8 on 26.5.1996 at 3.00 PM.

72. PW6 B.S. Bakshi states that he recorded the statements u/s 67 of the NDPS Act of accused appellant Arvinder Singh Ex.P/22 and Ex.P/23 on 25.5.1996 and 26.5.1996 respectively and he has further stated that these statements were recorded by accused appellant Arvinder Singh himself in his own hand writing and it bears the signatures of accused appellant Arvinder Singh on each and every page. He has further stated that accused appellant Arvinder Singh identified the photos of accused appellants Arshad and Harjeet Singh. Thus, recording of statements Ex.P/22 and Ex.P/23 u/s 67 of the NDPS Act on 25.5.1996 and 26.5.1996 has been proved by PW6 B.S. Bakshi.

73. So far as recording of statements Ex.P/22 and Ex.P/23 by accused appellant Arvinder Singh himself in his own hand writing is concerned, it is not in dispute, but the dispute is on three points, namely:-

(i) That notice Ex.P/21 dated 25.5.1996 issued to accused appellant Arvinder Singh by PW6 B.S. Bakshi does not bear the despatch number.

(ii) That since accused appellant Arvinder Singh has retracted his earlier statements through Ex.D/2, therefore, his earlier statements Ex.P/22 and Ex.P/23 lost their values.

(iii) That statements Ex.P/22 and Ex.P/23 of accused appellant Arvinder Singh recorded u/s 67 of the NDPS Act were not voluntary one.

74. The learned counsel for the accused appellant Arvinder Singh has argued

that notice Ex.P/21 dated 25.5.1996 by which the accused appellant Arvinder Singh was summoned does not bear despatch number and thus, its validity is doubtful.

75. PW6 B.S. Bakshi, who issued the notice Ex.P/21 to the accused appellant Arvinder Singh, has stated in his cross examination that the said notice was given to accused appellant Arvinder Singh in his office on 25.5.1996 and his earlier statement Ex.P/22 was also recorded by him on 25.5.1996 and earlier to that, he recorded the statement of another accused Harjeet Singh on 24.5.1996 and that statement is Ex.P/20 and he has further stated that he was confident that accused appellant Arvinder Singh had given the statements voluntarily.

76. in my opinion, whether Ex.P/21 notice bears despatch number or not, but if the same has been given to accused appellant Arvinder Singh in the office, service is complete and as it bears the signature of accused appellant Arvinder Singh with date, validity of notice Ex.P/21 cannot be questioned.

77. There is one more aspect that through Ex.D/2, the accused appellant Arvinder Singh retracted his statements given earlier i.e. Ex.P/22 and Ex.P/23.

78. Ex.D/2 is dated 27th May, 1996, but before Magistrate, it was produced on 10.6.1996. The learned Special Judge has given the finding that this retraction was made by the accused appellant Arvinder Singh with delay and since his earlier statements Ex.P/22 and Ex.P/23 were recorded in his own hand writing, therefore, no question of doubt arises and thus, the learned Special Judge held that the statements Ex.P/22 and Ex.P/23 recorded u/s 67 of the NDPS Act were made voluntarily by this accused appellant Arvinder Singh and they were made before his arrest through Ex.P/8 by PW4 B.D. Mishra.

79. Now it is to be seen whether the above findings of the learned Special Judge are correct one or not.

80. As far as the voluntary nature of statement of accused appellant Arvinder Singh in concerned, his statements Ex.P/22 and Ex.P/23 were recorded on 25.5.1996 and 26.5.1996 respectively and retraction was made by him for the first time through Ex.D/2 and the same was received by the Magistrate on 10.6.1996. Further the above two statements Ex.P/22 and Ex.P/23, which run into many pages, were recorded by the accused appellant Arvinder Singh himself in his own hand writing. This fact also gives credence to his statements. The suggestions that these statements were recorded under force, duress or coercion were rejected by PW6 B.S. Bakshi and he has categorically slated that they were made voluntarily by the accused appellant Arvinder Singh. The statement of accused appellant Arvinder Singh Ex.P/23 recorded on 26.5.1996 u/s 67 of the NDPS Act clearly reveals how 52 packets of heroin were brought in India from Pakistan and accused appellant Arshad, Pakistan national brought these packets with the help of this accused appellant Arvinder Singh and this accused appellant Arvinder Singh helped accused appellant Arshad in crossing the Indian Border and he kept the 52 packets of heroin in his own Jeep and thereafter, it was

handed over to accused appellant Harjeet Singh, who thereafter handed over to accused appellant Labh Singh. All these facts clearly go to show that the said heroin which was seized at Bikaner from the Truck in question was the same which was transported from Pakistan to India with the help of this accused appellant Arvinder Singh.

81. Thus, the statements Ex.P/22 and Ex.P/23 of accused appellant Arvinder Singh recorded u/s 67 of the NDPS Act by PW6 B.S. Bakshi appear to have been made voluntarily and without any fear, inducement or coercion and thus, the theory that they were not made voluntarily was rightly rejected by the learned Special Judge and the so-called retraction made through Ex.D/2 would not be helpful to rebut the statements Ex.P/22 and Ex.P/23. Hence, the findings of the learned Special Judge in this respect are liable to be confirmed, as they are based on correct appreciation of facts and law.

82. By the statements Ex.P/22 and Ex.P/23 recorded u/s 67 of the NDPS Act, the accused appellant Arvinder Singh confirmed the statements given by two other accused appellants, namely, Harjeet Singh and Arshad on material points i.e. how from Pakistan-India border, 52 Kgs. heroin was smuggled, how he was instrumental in bringing the said 52 Kgs. herein from Pakistan to India and how he was involved in it.

83. So far as the argument that accused appellant Arvinder Singh was a man who was awarded many awards and thus, from such a person to think that he would indulge himself in such illegal activities is beyond imagination, was rightly negated by the learned Special Judge by holding that a person of good character can become a bad character at any moment and vice versa.

Accused appellant Arshad

84. The statement Ex.P/5 of the accused appellant Arshad u/s 67 of the NDPS Act was recorded on 24.5.1996 by PW3 R.A. Sharma and, thereafter, he was arrested through Ex.P/6 on 24.5.1996 at 9.30 PM by PW3 R.A. Sharma.

85. I have gone through the statement given by the accused appellant Arshad and it appears that he made the statement u/s 67 of the NDPS Act voluntarily and without fear, inducement or coercion. He was arrested after recording his statement u/s 67 of the NDPS Act through Ex.P/6 on 24.5.1996 at 9.30 PM. Thus, the learned Special Judge has rightly placed reliance on the statement of (his accused appellant Arshad recorded u/s 67 of the NDPS Act.

86. The statement Ex.P/5 of the accused appellant Arshad further gets corroboration from the statements of other co-accused appellant on material points i.e. how 52 kgs. heroin was smuggled from Pakistan to India with the help of accused appellant Arvinder Singh and, thereafter, it was handed over by him to accused appellant Harjeet Singh and thereafter, Harjeet Singh handed over the said 52 Kgs. heroin to accused appellant Labh Singh.

Accused appellants Labh Singh, Major Singh and Mangal Singh

87. The statement Ex.P/376 of accused appellant Labh Singh u/s 67 of the NDPS Act was recorded on 24.5.1996 by PW19 R.J. Jain and thereafter, he was arrested by PW19 R.K. Jain on 24.5.1996 at 4.00 PM through Ex.P/376A.

88. The statement Ex.P/26 of accused appellant Major Singh u/s 67 of the NDPS Act was recorded on 24.5.1996 by PW17 V.K. Gupta and, therefore, he was arrested by PW17 V.K. Gupta on 24.5.1996 through Ex.P/370.

89. The statement Ex.P/27 of accused appellant Mangal Singh u/s 67 of the NDPS Act was recorded on 24.5.1996 by PW17 V.K. Gupta and, thereafter, he was arrested through Ex.P/371 on 24.5.1996.

90. I have also gone through the statements of the accused appellants Labh Singh, Major Singh and Mangal Singh recorded u/s 67 of the NDPS Act and it does not appear that these statements were recorded under fear, inducement or coercion, but it rather appears that these statements were made voluntarily by these three accused appellants and they were made prior to their arrest. Thus, the learned Special Judge was right in placing reliance on the statements of accused appellants Labh Singh, Major Singh and Mangal Singh recorded u/s 67 of the NDPS Act.

91. Thus, from these statements, the case of the prosecution that 52 kgs. heroin was handed over by accused appellant Harjeet Singh to accused appellant Labh Singh is well proved and, thereafter, the fact that it was being transported in the Truck of accused appellant Major Singh for heavy consideration from Amritsar to Bombay via Bikaner is also well proved and it is also proved that the said heroin was kept in the Truck beneath the gunny bags of wheat and at the time of search of the Truck, the possession over the contraband heroin was found to be of three accused appellants, namely, Labh Singh, Major Singh and Mangal Singh, as discussed above.

92. On voluntariness of the statements recorded u/s 67 of the NDPS Act especially of accused appellant Arvinder Singh, this Court has considered the evidence recorded by the learned trial court, where cross examination of this witness and other witnesses have been done and the learned trial court has come to the conclusion that the statements were made voluntarily and this Court sees no special reason to take different view in the matter. Recently, the Hon'ble Supreme Court in *T. Thomson v. State of Kerala and Anr.* (7), has held that unless and until special circumstances are there, different view should not be taken.

93. Hence, the argument that the statements of the accused appellants u/s 67 of the NDPS Act were not voluntary one and they were made under coercion, inducement and pressure and they are hit by Article 20(3) of the Constitution of India, stands rejected and it is held that the statements u/s 67 of the NDPS Act were made by the accused appellants Arvinder Singh, Arshad, Labh Singh, Major Singh and Mangal Singh voluntarily and without any fear, inducement or coercion and thus, they are admissible in evidence and reliance can be placed on them

and they are not hit by Article 20(3) of the Constitution of India, as they were made before their arrest. In these circumstances, the learned Special Judge was right in placing reliance on them.

94. In my considered opinion, the prosecution has proved its case beyond all reasonable doubts against the accused appellants Arvinder Singh, Arshad, Labh Singh, Major Singh and Mangal Singh showing as to how they were involved and the role played by each of them at various places in smuggling of 52 kg. heroin from Pakistan to India.

95. For the reasons stated above, the findings of the learned Special Judge by which he came to the conclusion that 52 kgs. heroin was transported from Pakistan to India and it was brought from Pakistan to India by accused appellant Arshad and accused appellant Arvinder Singh helped the accused appellant Arshad in crossing the Indian border and accused appellant Arvinder Singh took that 52 kgs. heroin in his own vehicle and, thereafter, it was handed over to accused appellant Harjeet Singh and thereafter, accused appellant Harjeet Singh handed over to accused appellant Labh Singh and thereafter, when it was being transported to Bombay via Bikaner in the Truck, at Bikaner the Truck in question, on secret information, was seized and from the said Truck, two suitcase containing the same 52 kgs. heroin were recovered and at that time, accused appellants Labh Singh, Major Singh and Mangal Singh were in the truck, are liable to be confirmed, as they are based on reliable, legal and cogent evidence and I see no reason to dissent from the findings arrived at by the learned Special Judge, as they are arrived at after taking into consideration all material available on record and the learned Special Judge has assigned valid reasons for each and every argument raised by the learned counsel appearing for accused appellants in the trial court and thus, the findings of conviction recorded by the learned Special Judge are liable to be confirmed and the above mentioned appeals are liable to be dismissed.

96. Looking to the quantity of heroin recovered in the present case and looking to its price in global market, in my opinion, sentence of 15 years R1 awarded by the learned Special Judge to the accused appellants does not appear to be excessive and hence, on point of sentence also, the accused appellants are not entitled to any leniency.

Accordingly, the abovementioned three appeals being No. 182/99 filed by accused appellants Labh Singh, Major Singh, Mangal Singh; No. 145/99 filed by accused appellant Arvinder Singh except that of accused appellant No. 2 Harjeet Singh and No. 158/99 filed by the accused appellant Arshad fail and they are dismissed after confirming the judgment and order dated 24.2.1999 passed by the learned Special Judge, NDPS cases, Bikaner in Sessions Case No. 7/96.

97. The record of this case be not weeded out till the appeal of accused appellant No.2 Harjeet Singh in appeal No. 145/99, who has been declared absconder vide order dated 8.3.2000, is decided.