

(2013) 04 MP CK 0037

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2 of 2009

Mehga Singh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 15(c),
41, 42, 43

Citation : (2013) CriLJ 4126 : (2013) ILR (MP) 2194

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : R.K. Soni and Mr. Sushil Goswami, for the Appellant; R.K. Shrivastava, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Saxena, J.—In this appeal, appellants-accused Nos. 1 and 2 challenge their conviction u/s 8 read with section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentence of rigorous imprisonment for ten years and to pay fine of Rs. 1,00,000/- (Rs. One Lac Only), in default to suffer further rigorous imprisonment for one year recorded by the learned Special Sessions Judge in N.D.P.S. Special Case No. 11/2007 by a judgment and order dated 3rd October 2008. The relevant facts giving rise to the appeal are as under:

On 2nd October 2007, L.S. Baghel, Assistant Sub-Inspector of Police Station Gwalior got a secret information through informer that two persons belonging to Sikh community were reaching on Yadav Dharmkanta at Morena Road Gwalior carrying with four begs having Pappy straw powder in a auto-rickshaw for transporting the said materials to Delhi. On receiving said information, he recorded the same in Daily diary register maintained in Police Station Gwalior. Thereafter, he sent the information in writing to his Superior Officer (CSP). He

called the witnesses in Police Station and apprised of the said information. Then he after recording departure time in the Daily diary register went to search of the spot with police force and two panch witnesses. As they reached, two persons, namely, Mehga Singh and Arun Singh were seen present on the spot while unloading four begs from the auto-rickshaw. He, in presence of police force and panch witnesses, namely Lai Singh Bhadoria and Gandharv Singh informed the suspects about the informer's information. Thereafter by adopting all mandatory formalities in writing, he arrested the accused and seized the contraband narcotic drugs from their possession. Weighing apparatus were then procured and what was found with the appellants was weighed. Thus, what was found from appellants was 61 killo poppy straw. Thereafter, two samples of 100 each grams from begs were taken and marked as Article A/1 and A/2. The rest material were put in two plastic begs which were closed with staple pins and put separately and sealed. They were marked as Article-A. Four empty begs are closed in one packet and marked as Article-B.

The seized articles were labelled with the signatures of the panch witnesses and sealed. Both the appellants were then arrested and brought to Police Station. The seized crime materials were handed over for being deposited in the property room of the police station to Head Constable Moharir. The investigation was handed over to ASI Hari Mohan Sharma. He also sent the special report of crime to his Superior Officer. Further investigation was carried out during which a report of the Chemical Analyser was obtained which revealed that what was found from the appellants was poppy straw. On completion of the investigation, the appellants were charge-sheeted in the Sessions Court, Gwalior.

2. It is argued by the learned counsel that independent witnesses who participated in the proceedings of seizure turned hostile and did not support the prosecution version. Even the witness who weighted the contraband material on the spot also did not support the prosecution case. Apart from it, there are material contradictions in statements of L.S. Baghel (PW-6) ASI, of Police Station Gwalior who conducted the entire seizure and arrest of the accused on the spot and Head Constable Vinod Sharma (PW-3), hence, their statements do not inspire confidence. Further submission of the learned counsel for the appellants is that no procedure as laid down in sections 42, 50, 51, 52, 55 and 57 of the Act was followed by the Investigating Officer in this case and, therefore, it would be risky to rely upon the uncorroborated testimony of two police officials, namely, L.S. Baghel (PW-6), Assistant Sub Inspector and Vinod Sharma (PW-3), Head Constable and heavily sentence the present appellants. In the light of the aforesaid submissions, it is prayed that by allowing the appeal, the conviction and sentence as awarded by the trial Judge may be set aside and the appellants may be acquitted of the charges. In support of the submissions aforesaid, learned counsel placed reliance on the following decisions:

(a) Ashok Kumar Sharma Vs. State of Rajasthan,

(b) Babu Vs. State of Kerala 2001(1) MPWN SN 80 (SC) 128.

(c) Ram Narayan Raikwar Vs. State of M.P., of this court.

(d) Un-reported judgment dated 6th December 2012 of this court in Criminal Appeal No. 782/2009 (Raju Vs. State of M.P.).

(e) Un-reported judgment dated 20th September 2012 of this court in Criminal appeal No. 319/2010 (Manoj Vs. State of M.P.).

3. On the other hand, the learned Panel Lawyer in his submission supported the impugned judgment and requested for dismissing the appeal.

4. In order to appreciate the submission of the learned counsel for the appellants it would be well to remember the well settled principles of law that mere irregularity in following the procedural law or some infirmity therein would not by itself vitiate the trial and consequent conviction recorded against accused persons unless it is shown by the defence that in not following the procedural law prejudice is caused to the defence.

5. It is no doubt true that the evidence of Assistant Sub-Inspector L.S. Baghel (PW-6) and Vinod Sharma (PW-3) Head constable supports the prosecution case in toto as stated hereinabove. The point is whether the learned trial Judge was right in accepting the evidence of Head constable and Assistant Sub-Inspector who were police witnesses as credible and trustworthy so as to hold that the prosecution proved its case beyond shadow of reasonable doubt against the appellants.

6. With a view to bring home the guilt to the appellants, the prosecution in all examined seven witnesses i.e., Assistant Sub-Inspector L.S. Baghel (PW-6), head constable Vinod Sharma (PW-3) and as also two panch witnesses viz. Lalji Singh (PW-1) and Gahdharv Singh (PW-2). The other witnesses were Mohar Singh (PW-4), Ramesh Babu Sharma (PW-5) and Hari Mohan Sharma (PW-7).

7. L.S. Baghel (PW-6) Assistant Sub Inspector in his evidence deposed that on 2nd October 2007 at about 11.30 p.m., in noon, he received an oral information from informant that two Sikh persons are likely to come in a auto-rickshaw carrying with poppy straw materials and they are intending to go to Delhi. He wrote the information received from informant in a Daily Entry Register (Roznamcha) kept in a police station. Thereafter, he prepared the memo (Ex. P/1) with respect to the said information. He sent the copy of the memo prepared on information so received to the City Superintendent of Police. Copy of acknowledgment receipt from the office of the City Superintendent of Police is filed alongwith charge-sheet. Thereafter he alongwith Head Constable Vinod Sharma, Constable Sitaram, Naresh Sharma and two witnesses, namely, Lalji Singh and Gandharva Singh went to the suspected place as mentioned in report of the Informer. On Yadav Dharmkanta place at Morena Road, they saw that two Sikh persons were alighting from auto-rickshaw and putting four begs on the road side. On his enquiry, they informed their names as Mehga Singh and Arun Singh. He informed of them the informer's information and about their rights to

be searched by himself or in the presence of a gazetted officer or nearest Judicial Magistrate in compliance of Section 50 of the Act. In this regard, the memo of search was prepared. Consent of accused was recorded in the memo (Ex. P/2). After their consent, the search was conducted in the presence of witnesses and police force. Thereafter, the memo of personal search (Ex. P/3) was prepared. The search of the begs owned by the accused was done. Packets of 1-1 kg. were found contained in those four begs which were put down from the auto-rickshaw by the accused which is a public place. The material in plastic packets kept in luggage was identified by testing and visualizing the material which prima facie revealed as poppy straw. Memo of identification of material (Ex. P/4) was prepared on the spot. The material kept in four begs was weighted at weighing apparatus after taking the same from both the appellants. The weight of material found in four begs was 61 kg. After taking two samples each of 100 gms. they were sealed and the rest material after containing in two plastic begs were sealed by seizure memos Ex. P/5 and P/6. Accused Megha Singh and Arun Singh were arrested on the spot by arrest memos Ex. P/7 and Ex. P/8. Then this witness alongwith police force, witnesses, arrested accused and with seized materials returned back to police station. Seized articles were handed over to Head Constable Moharrir. Report of the incident Ex. P/13 was lodged in Police Station. The seized sample packets drawn from the seized articles from accused Article A-1 and A-2 were sent by draft Ex. P/14 to the Regional Forensic Science Laboratory Gwalior. Four empty begs (three red and black coloured and one gray coloured) seized from accused were marked as Article-A and Article-C and contraband material seized from accused Mehga Singh and Arun Singh was kept in one white coloured plastic beg marked as Article-D which were later on produced before the trial court and were marked in evidence. On seizure chits were affixed on seized articles on the spot which bear his signatures and the signature of two panch witnesses namely, Lalji Singh and Gandharv Singh. In cross-examination, he admitted that the information received from informer was written at Serial No. 98 of Daily diary register (Roznamcha) of Police Station and the entry of returning back of police force which went with him to the spot with all full descriptions was entered into at Serial No. 109 of the said register. The seized material with other articles after were sealed on the spot were handed over to the Head Constable Moharir who also entered the same in property register of the police station.

8. Vinod Sharma (PW-3) Head Constable of the Police Station Gwalior who accompanied the officer and did all proceedings including recovery and seizure and arrest of the accused on the spot in his deposition fully supported the version of witness L.S. Baghel (PW-6). Likewise, Lalji Singh (PW-1), a panch witness fully supported the version of L.S. Baghel (PW-6). However, at last of cross-examination of this witness he had joined hands with accused and thereafter accepted the suggestions of defence that he is under pressure and due to previous acquaintance with police officer, namely, L.S. Baghel (PW-6) he has stated so and supported the proceedings conducted on the spot. He further

disclosed that his signatures were obtained on blank memos at the police station. However, considering the statement of this witness as a whole, it appears that he had supported the prosecution version. Another panch witness, namely, Gandharv Singh (PW-2) turned hostile and he did not support the prosecution version at all. Even, Mohar Singh (PW-4) who weighed the contraband articles seized from accused on the spot did not support the statement of L.S. Baghel (PW-6) as well as the prosecution version.

9. Ramesh Babu Sharma (PW-5) deposed that on 2nd October 2007, he was posted in P.S., Gwalior (M.P.). On that day, Assistant Sub Inspector of the Police Station Gwalior handed over one envelop containing the information received from the informer alongwith acknowledgment to be delivered to the office of CSP Gwalior which was delivered against acknowledgment vide Ex. P/11. He delivered that envelop to Head Constable Ramsuresh Singh posted as Reader in the office of the CSP. On subsequent day on 3rd October 2007, Station House Officer delivered an envelop enclosing the detailed report for delivery to the office of CSP Gwalior. He also delivered that envelop to Head Constable Ramsuresh Singh, Reader of CSP and an acknowledgment receipt of delivery (Ex. P/12) was deposited in Police Station Gwalior. On perusal of the acknowledgment (Ex. P/11) it clearly shows that an information memo prepared against entry recorded in Daily Entry Register (Roznamcha) was delivered to the Reader of CSP on the same day. The final report written and sent by Station House Officer of Police Station was also delivered on the next day of incident by acknowledgment Ex. P/12.

10. L.S. Baghel (PW-6) and Vinod Sharma (PW-3) deposed that after completing all proceedings including seizure of contraband articles and arrest of the accused they alongwith police force and two independent witnesses on the spot went to the police station where L.S. Baghel lodged the F.I.R. and deposed about seizure of the contraband articles. This fact is also mentioned in final report (Ex. P/5) sent on next day of incident to City Superintendent of Police. It is true that Head Constable Moharir who deposited the contraband articles and the Station House Officer were not examined by the prosecution before the trial Judge but the fact is proved from the record by the evidence so adduced that the contraband articles were packed and properly sealed and produced before the trial Judge where they were exhibited by the witness L.S. Baghel.

11. The submission of the learned counsel for the appellants is that in not taking the appellants to the nearest Gazetted Officer or the nearest Magistrate for being searched, grave prejudice is caused to the defence in this case inasmuch as the appellants were perhaps sure that they did not possess any contraband goods and would be more safe and secured if searched in the presence of either a Gazetted Officer or a Magistrate. The least, therefore, that Assistant Sub-Inspector L.S. Baghel should have done in this case was to take the appellants before the nearest Gazetted Officer or Magistrate and search the appellants in the presence of such a Gazetted Officer or Magistrate which would have assured

fair investigation.

12. This court is not inclined to believe and accept the submission of learned counsel for the appellants to the extent that in not following the procedure laid down in section 50 of the NDPS Act, grave prejudice was caused to the appellants in the facts and circumstances of this particular case. Section 50 of the Act provides as under:

50. Conditions under which search of persons shall be conducted. (1) When any officer duly authorized u/s 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the gazetted officer or the Magistrate referred to in sub-section (1).

(3) The gazetted officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised u/s 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided u/s 100 of the Code of Criminal Procedure, 1973.

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

13. In this respect, a reference may be made to the case of Sukhdev Singh Vs. State of Haryana, at page 219, wherein it has been observed as follows:

14. ...

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

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of Central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has

reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset--

- (a) enter into and search any such building, conveyance or place;
- (b) in case of resistance, break open any door and remove any obstacle to such entry;
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

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

15. Section 42 can be divided into two different parts: first is the power of entry, search, seizure and arrest without warrant or authorization as contemplated under sub-section (1) of the said section; second is reporting of the information reduced to writing to a higher officer in consonance with sub-section (2) of that section. Sub-section (2) of Section 42 had been a matter of judicial interpretation as well as of legislative concern in the past. Sub-section (2) was amended by Parliament vide Act 9 of 2001 with effect from 2-10-2001. After amendment of this sub-section, the word "forthwith" stood amended by the words "within seventy-two hours". In other words, whatever ambiguity or leverage was provided for under the unamended provision, was clarified and resultantly, absolute certainty was brought in by binding the officer concerned to send the intimation to the superior officers within seventy-two hours from the time of

receipt of information. The amendment is suggestive of the legislative intent that information must reach the superior officer not only expeditiously or forthwith but definitely within the time contemplated under the amended sub-section (2) of Section 42. This, in our opinion, provides a greater certainty to the time in which the action should be taken as well as renders the safeguards provided to an accused more meaningful. In the present case, the information was received by the empowered officer on 4-2-1994 when the unamended provision was in force. The law as it existed at the time of commission of the offence would be the law which will govern the rights and obligations of the parties under the NDPS Act.

21. ...The provisions of Section 42 are intended to provide protection as well as lay down a procedure which is mandatory and should be followed positively by the investigating officer. He is obliged to furnish the information to his superior officer forthwith. That obviously means without any delay. But there could be cases where the investigating officer instantaneously, for special reasons to be explained in writing, is not able to reduce the information into writing and send the said information to his superior officers but could do it later and preferably prior to recovery. Compliance with Section 42 is mandatory and there cannot be an escape from its strict compliance.

25. There is patent illegality in the case of the prosecution and such illegality is incurable. This is a case of total non-compliance, thus the question of substantial compliance would not even arise for consideration of the Court in the present case. The twin purposes of the provisions of Section 42 which can broadly be stated are that: (a) it is a mandatory provision which ought to be construed and complied with strictly; and (b) compliance of furnishing information to the superior officer should be forthwith or within a very short time thereafter and preferably post-recovery (sic prior to recovery).

26. Once the contraband is recovered, then there are other provisions like Section 57 which the empowered officer is mandatory required to comply with. That itself to some extent would minimize the purpose and effectiveness of Section 42 of the NDPS Act. It is to provide fairness in the process of recovery and investigation which is one of the basic features of our criminal jurisprudence. It is a kind of prevention of false implication of innocent persons. The legislature in its wisdom had made the provisions of Section 42 of the NDPS Act mandatory and not optional as stated by this Court in Karnail Singh.

27. Thus, the present appeal merits grant of relief to the accused. We accordingly set aside the judgment of the High Court as well as of the trial court and acquit the accused of the offence u/s 15 of the NDPS Act.

14. It would be worthwhile to mention that the State of Madhya Pradesh in compliance of Section 42 of the Act issued the following Notification authorizing the officers for investigating the narcotic drugs, which is quoted below:

Notification F. No. B-6- 35-VSR 85-4804, dated 11th November 1985, published

in M.P. Rajpatra, Extraordinary, dated 14-11-1985. In exercise of the powers conferred by Section 42 of the Narcotic Drugs and Psychotropic Substances Act 1985 (No. 61 of 1985) the State Government hereby authorizes following officers for the purposes of this section, within their respective jurisdiction, namely:

1. Excise Department.-

- (i) Excise Commissioner/Additional Commissioner of excise.
- (ii) Deputy Commissioner of Excise.
- (iii) Assistant Commissioner, Excise/Assistant Commissioner of Excise Flying Squad.
- (iv) District Excise Officer/District Excise Officer, Flying Squad.
- (v) Excise Inspector/Excise Inspector, Flying Squad
- (vi) Excise Sub Inspector/Excise Sub Inspector, Flying Squad

2. Police Department.-

- (i) Superintendent of Police/Additional Superintendent of Police
- (ii) Deputy Superintendent of Police
- (iii) Assistant Superintendent of Police
- (iv) Inspector,
- (v) Sub Inspector,
- (vi) Assistant Sub Inspector.

3. Revenue Department.-

- (1) Collector/Additional Collector
- (2) Assistant Collector
- (3) Deputy Collector.
- (4) Tahsildar
- (5) Naib Tahsildar

3. Drug Department.-

- (1) Drug Controller
- (2) Assistant Drug Controller.
- (3) Drug Inspector.

15. In the light of the above legal provisions of law and keeping in view the recent law expressed by the Hon. Apex Court, on examination of the factual aspect of the present case, it appears from the ocular evidence of witness L.S.

Baghel (PW-6) and Head Constable Vinod Sharma (PW-3) that on the day of incident, on receiving secret reliable information about transporting of the narcotic drugs by the accused, the I.O., L.S. Baghel (PW-6) immediately entered the same into Daily diary register (Roznamcha) and thereafter in presence of witnesses he prepared the memo of secret information received from informer (Mukhbir) vide Ex. P/1. The copy of the information memo Ex. P/1 was sent against acknowledgment vide Ex. P/11 through Police Constable No. 1988 Rameshbabu of Police Station Gwalior who delivered the said information contained in an envelop to the Reader Ramsuresh Singh, Head Constable posted in the office of CSP Gwalior, the immediate Superior Officer at about 2.55 p.m., on the same day. Thus, in the said manners, the provisions contained in sub-section (2) to Section 42 of the Act were fully complied with. Further the fact cannot be ignored that the police officer L.S. Baghel who was posted as Assistant Sub Inspector in the Police Station Gwalior was duly authorized for search, seizure and arrest without warrant or authorization under the Act by Notification F. No. B-6- 35-VSR 85-4804, dated 11th November 1985, published in M.P. Rajpatra, Extraordinary, dated 14-11-1985 issued by the State Government and he was a designated officer. So, the mandatory requirement as mentioned u/s 42 is fully complied with by L.S. Baghel, the designated empowered officer for making search, seizure and arrest of persons in his respective local area u/s 42 of the Act.

16. Now with respect to next objection raised about non-compliance of provisions of Sections 50 of the Act, the Hon. Apex Court in Navdeep Singh Vs. State of Haryana, , at page 586 observed as follows:

10. We have carefully perused the provisions of Section 50 of the Act. In our opinion, it may not be necessary to extract the whole provision. The trial court and the High Court have noticed the aforesaid submission made before us, at length. On marshalling of facts and appreciation of evidence, they have reached the conclusion that what was searched is the scooter and not the person of the appellant and, therefore, the provisions of Section 50 of the Act would not apply to the present case. We have also looked into the notice issued to the appellant by PW 3, the investigating officer, before the search was made and we note that a substantial question was put across the appellant as to whether he chooses to be searched by a gazetted officer or a Magistrate. The appellant accorded his consent to be searched by a gazetted officer. In fact, the appellant and the scooter were searched by a gazetted officer as per his request.

11. In our opinion, the provisions do not prescribe any set format for such notice. The essence is to apprise the accused of his legal right of being searched either by a gazetted officer or a Magistrate. Here, when the appellant was apprised of his statutory rights u/s 50 by PW 3 and he opted to be searched by a gazetted officer, then he has, by necessary implication, consciously exercised his right. In that view of the matter, we cannot accept the submission of the learned counsel for the appellant that the mandatory provisions of Section 50 of the Act were

breached.

17. Further, in *Ashok Kumar Sharma Vs. State of Rajasthan*, at page 69: it has been observed as follows:

7. We are in this case concerned only with the question whether PW 1, the officer who had conducted the search on the person of the appellant had followed the procedure laid down u/s 50 of the NDPS Act. On this question, there were conflicts of views by different Benches of this Court and the matter was referred to a five-Judge Bench. This Court in *Vijaysinh Chandubha Jadeja* answered the question, stating that it is imperative on the part of the officer to apprise the person intended to be searched of his right u/s 50 of the NDPS Act, to be searched before a gazetted officer or a Magistrate. This Court also held that it is mandatory on the part of the authorised officer to make the accused aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him and this mandatory provision requires strict compliance. The suspect may or may not choose to exercise the right provided to him under the said provision, but so far as the officer is concerned, an obligation is cast on him u/s 50 of the NDPS Act to apprise the person of his right to be searched before a gazetted officer or a Magistrate.

18. Prior to taking aforesaid view, in the case of *State of Himachal Pradesh Vs. Pawan Kumar*, , at page 357 (Three Judges Bench FB) observed as follows:

6. The question, which requires consideration, is what is the meaning of the words "search any person" occurring in sub-section (1) of Section 50 of the Act. Learned counsel for the accused has submitted that the word "person" occurring in Section 50 would also include within its ambit any bag, briefcase or any such article or container, etc., being carried by such person and the provisions of Section 50 have to be strictly complied with while conducting search of such bag, briefcase, article or container, etc. Learned counsel for the State has, on the other hand, submitted that there is no warrant for giving such an extended meaning and the word "person" (sic) would mean only the person himself and not any bag, briefcase, article or container, etc., being carried by him.

10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilised society. Therefore, the most appropriate meaning of the word "person" appears to be -- "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilised society appropriate coverings and clothings are considered absolutely essential and no sane human

being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the words "search of person". One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made. Either they have to be carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away from the body of the carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free.

19. Having examined the case in the light of the above, it comes from the ocular evidence of witness L.S. Baghel (PW-6), Vinod Sharma (PW-3) and Lalji Singh (PW-1) that when the police party headed by the Investigating Officer L.S. Baghel reached the spot, accused/appellants already reached there through auto-rickshaw and they unloaded the four begs from the said vehicle on the spot. The I.O. then informed the accused about the information received from informer of keeping narcotic drugs by the accused and also informed them of their statutory right, if they so desire for being taken to be searched by the nearest Gazetted Officer of any of the department mentioned in Section 42 or the nearest Magistrate. It was on their wishes to be searched, they were searched by L.S. Baghel. The memo in this regard was prepared. Hence, looking to the statement of the Investigating Officer L.S. Baghel who conducted the search of persons of accused and their luggage in presence of Constable Vinod Sharma (PW-3) and Lalji Singh (PW-1) it appears that the provisions contained in Section 50 were fully followed.

20. The next ground raised by the learned counsel for the appellants is that the empowered officer L.S. Baghel (PW-6) has not followed other mandatory provisions relating to charge of seized articles. In this respect Section 55 of the Act is relevant and reproduced below:-

55. Police to take charge of articles seized and delivered. -- An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

21. In Hardip Singh Vs. State of Punjab, the Hon. Apex Court court observed:-

13. The contention of Mr. Singh that Section 55 of the Act, which is a mandatory provision, was violated is also found to be without merit in the light of the decision of this Court in Karnail Singh Vs. State of Rajasthan, relied by him in order to buttress his argument, wherein, a similar contention was raised that after the seizure the goods were sent to the Superintendent, Central Narcotics Bureau, Kota, who, as per law, was in charge of a police station but had not affixed his seal on the articles and the samples, and therefore the whole of the procedure followed became illegal, entitling the appellant to be acquitted. In the light of the aforesaid submissions, the Supreme Court proceeded to hold that with the application of Section 51 read with Sections 52 and 53, the officer required to affix the seal etc., u/s 55, would be "the officer in charge of the nearest police station" as distinguishable from an officer in charge of a police station empowered u/s 53. It was also held that if the arrested person and the seized articles are forwarded u/s 52(3)(b) to the officer empowered u/s 53, the compliance with Section 55 cannot be insisted upon. The Supreme Court further

held in the said case that keeping in view the multifarious activities and the duties cast upon the officer in charge of the police station under the Code of Criminal Procedure and he being apparently busy with the duties under the Code, the officers mentioned in Section 53 of the Act have been mandated to take action for disposal of the seized narcotic drugs and psychotropic substances by filing an application which, when filed, has to be allowed by the Magistrate as soon as may be.

The appellant has also failed to show any prejudice caused to him for not putting the seal in the sample by the officer-in-charge of the police station. PW 5 has categorically stated that on reaching the Police Station, Ajnala, he handed over the case property with the seals intact to the officer-in-charge of the said police station, who was examined in the trial as PW 1. PW 1 in his deposition has also stated that Inspector Jarnail Singh produced before him the case property and sample on 20.8.1997 with seals intact. He has also stated that so long the said articles remained in his custody and possession, the same were not tampered with. In the light of aforesaid nature of evidence on record, no prejudice is caused to the appellant on that count.

In the case of Ouseph Vs. State of Kerala, [(2004) 10 SCC 647] it was held by this Court that under the provisions of Section 55 of the Act, the requirement may not be mandatory. However in that case in view of peculiar facts of the case and as the contraband articles were kept in totally unsealed condition for near about two months it was held that the same creates doubt.

22. On perusal of the evidence of Vinod Sharma (PW-3) Head Constable posted in Police Station and Lalji Singh (PW-1) who accompanied the police party and were present on the spot at the time of proceedings of seizure and arrest of the accused, it is found that they also well supported the statement of complainant L.S. Baghel (PW-6) ASI, the designated officer empowered under the NDPS Act. They stated that after completing the entire proceedings, the Investigating Officer L.S. Baghel wrote the report (Ex. P/13) and thereafter seized articles were handed over to Head Constable Moharir of Police Station Gwalior. Thus, mandatory provisions as mentioned in Section 55 of the Act were not violated in any manner by the Investigating Officer.

23. Now, the question remains to be answered as to whether while conducting investigation, formalities provided in Section 57 of the Act were completed by the I.O.

Section 57. Report of arrest and seizure. -Whenever a person makes any arrest or seizure under this Act he shall within forty eight hours next such arrest or seizure, make a full report of all particulars of such arrest or seizure to his immediate official superior.

24. In Sukhdev Singh (supra) the Hon. Apex Court same point was considered and held as under:-

26. Once the contraband is recovered, then there are other provisions like Section 57 which the empowered officer is mandatorily required to comply with. That itself to some extent would minimise the purpose and effectiveness of Section 42 of the NDPS Act. It is to provide fairness in the process of recovery and investigation which is one of the basic features of our criminal jurisprudence. It is a kind of prevention of false implication of innocent persons. The legislature in its wisdom had made the provisions of Section 42 of the NDPS Act mandatory and not optional as stated by this Court in Karnail Singh.

25. On reverting to the factual aspects of the present case and perusal of the evidence on record it transpires that after conducting the proceedings on the spot, L.S. Baghel (PW-6) the designated officer returned back to Police Station Gwalior and after depositing the contraband articles in the police station Gwalior lodged the report (Ex. P/13). The In-charge of Police Station on next day within 48 hours, prepared the full report of all particulars of arrest and seizure as required u/s 57 of the Act and the final report written by Station Officer of Police Station was also handed over to constable Ramesh Babu Sharma on next day of incident for being delivered to the CSP office, which was supplied by him to the Head Constable Ramsuresh vide acknowledgment Ex. P/12. So, the compliance of the provisions as enumerated in section 57 of the Act stands established.

26. In this case, the report received from the Chemical Examiner of the Regional Forensic Science Laboratory Gwalior, goes to indicate that the two sealed intact sample packets sent on 3rd October 2007 from Police Station Gwalior by Constable No. 923 Krishna Swarup were examined on 9th October 2007 and till their examination, the seized materials were found intact and sealed by the examiner. It was further found that test of opium Alkaloid and Me-conic Acid was positive and were similar to Botanical features (Pharmacological features) which were same of opium puppy husk capsule powder. So it was opined that the sample material was capsule puppy husk powder. So whatever delay has occurred in between the period for examination of the contraband articles would not be fatal to the prosecution. In Jarnail Singh Vs. State of Punjab, , at page 529: the Hon. Apex court observed as follows:

22. Mr Ujjal Singh then submitted that there was a delay of twelve days in sending the sample of narcotic for chemical examination. This submission, in our opinion, is without any factual basis. The trial court as well as the High Court, on examination of the entire material, concluded that there was sufficient independent evidence produced by the prosecution regarding the completion of link evidence. Therefore, the delay in sending the sample parcel to the office of the chemical examiner pales into insignificance. We are of the considered opinion that mere delay in sending the sample of the narcotic to the office of the chemical examiner would not be sufficient to conclude that the sample has been tampered with. There is sufficient evidence to indicate that the delay, if any, was wholly unintentional.

23. This Court had occasion to deal with a similar issue, in Balbir Kaur v. State of

Punjab the Court made the following observations: (SCC p. 803, para 24)

24. As far as delay in sending the samples is concerned, we find the said contention untenable in law. Reference in this regard may be made to the decision of this Court in Hardip Singh case wherein there was a gap of 40 days between seizure and sending the sample to the chemical examiner. Despite the said fact the court held that in view of cogent evidence that opium was seized from the appellant and the seals put on the sample were intact till it was handed over to the chemical examiner, delay itself is not fatal to the prosecution case.

27. The last contention of the accused/appellants is that the two panch witnesses of all proceedings completed on the spot by designated officer L.S. Baghel (PW-6) and the person who weighted the contraband articles did not support the statement of the Investigating Officer, hence according to the learned defence counsel, the prosecution has not come before this court with clean hands.

28. This contention has no merit because it cannot be stated as a rule that a police officer can or cannot be a reliable witness. At this stage reliance can be placed on the decision rendered in the case of Ajmer Singh Vs. State of Haryana, at page 753: wherein the Hon. Apex Court has been pleased to observe:-

19. The learned counsel for the appellant has submitted that the evidence of the official witnesses cannot be relied upon as their testimony, has not been corroborated by any independent witness. We are unable to agree with the said submission of the learned counsel. It is clear from the testimony of the prosecution witnesses PW 3, Paramjit Singh Ahalwat, DSP, Pehowa; PW 4, Raja Ram, Head Constable and PW 5, Maya Ram, which is on record, that efforts were made by the investigating party to include independent witness at the time of recovery, but none was willing. It is true that a charge under the Act is serious and carries onerous consequences. The minimum sentence prescribed under the Act is imprisonment of 10 years and a fine. In this situation, it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule. Therefore, in the peculiar circumstances of this case, we are satisfied that it would be travesty of justice, if the appellant is acquitted merely because no independent witness has been produced.

20. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.

29. In view of the above, it can be held that if testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other admissible evidence

then statement of such a witness can not be discarded on the ground that he is a police officer. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without being a good ground therefor. In this respect reliance may be placed on the decision in the case of Rameshbhai Mohanbhai Koli and Others Vs. State of Gujarat, , at page 121. Therefore, merely because one of the panch witnesses has turned hostile it will not provide any ground to reject the evidence if the same is based on the testimony of the Investigating Officer alone. Moreover, it is not the case of defence that the testimony of the Investigating Officer suffers from any infirmity or doubt. In this case, the learned trial Judge considered the evidence of the police witnesses viz. L.S. Baghel (PW-6), Vinod Sharma (PW-3) Head Constable and Lalji Singh (PW-1) panch witness and accepted the evidence as credible and trustworthy and convicted the appellants and sentenced them as stated above.

30. From the above facts and circumstances, it is crystal clear that the investigation in this case was fair and proper. At any rate it can be held that the prosecution established and proved its case beyond shadow of reasonable doubt against the appellants in this particular case. In this view of the matter, the appeal fails and the same is dismissed. The impugned judgment and order passed by the learned trial Judge convicting and sentencing the appellants as above are hereby maintained.