

(2018) 07 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No.156 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Mool Chand

RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20, 50
Code of Criminal Procedure, 1973 — Section 173

Citation : (2018) 07 SHI CK 0013

Hon'ble Judges : TARLOK SINGH CHAUHAN, J;CHANDER BHUSAN BAROWALIA, J

Bench : Division Bench

Advocate : Vinod Thakur, J.S.Guleria, Bhupinder??Thakur, G.R.Palsra

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.

1. The instant appeal has been preferred by the State against the acquittal of the respondent in case instituted under Section 20 of the Narcotic Drugs

& Psychotropic Substances Act (for short "ND&PS Act").

2. At the outset, it may be observed that as regards the prosecution story, the same has been correctly set out by the learned Special Judge and, therefore, reproduced as such.

3. The case of the prosecution, in brief, is that on 14.12.2010, a police party consisting of PW-8 Inspector Madan Dhiman, SI Hari Ram, constable

Parmod Kumar, PW-7 constable Narender Kumar and PW-5 Ravi Kumar of SIU, SV and ACB, Mandi, had reached Kullu as per rapat Ext.PW8/B.

The above police party along with Mahender Singh HHG, Parmod Kumar proceeded to Lag Valley in official Van bearing registration No.HP-18A-

2357 vide rapat Ex.PW8/C and was present at place Kamand on 14.12.2010 at about 8.00 p.m. The police party noticed the accused coming from

Kalang side towards Kullu on foot with rucksack on his back. The accused on seeing the police party got perplexed and was asked to stop. On

inquiry, the accused disclosed his name as Mool Chand, son of Shri Hari Chand. The place of occurrence was isolated. Therefore, the Investigating

Officer associated PW-5 constable Ravi Kumar and constable Parmod Kumar, as witnesses and told the accused that his personal search as well as

search of rucksack was required and apprised him of his legal right to be searched either before a Magistrate or a Gazetted Officer vide memo Ext.

PW5/B. The accused consented to be searched by the police present on the spot vide consent memo Ext.PW8/B in presence of the witnesses. On

this, the Investigating Officer and other police officials gave their personal search to the accused in presence of the witnesses, but nothing

incriminating was found vide memo Ex.PW5/A. Thereafter, the Investigating Officer conducted the search of green coloured rucksack Ext.P-2

having two strings and three compartments and from middle compartment one polythene envelope kept beneath a pink bag containing â??dhoopâ??

like black substance wrapped with transparent polythene was found. On smelling and on the basis of experience, the black substance was found to be

â??Charasâ??.

4. The recovered â??Charasâ?? Ext.P-6 was weighed and was found to be seven kilograms. The Investigating Officer put the recovered

â??Charasâ?? Ext.P-6 in the rucksack Ext.P-2 in the same manner and sealed with ten impressions of seal â??Aâ?? and thereafter filled NCB

forms in triplicate Ext.PW1/E and facsimile of seal â??Aâ?? Ext.PW5/C was taken on a piece of cloth. The seal after use was handed over to PW5

Ravi Kumar for safe custody. The case property was taken into possession vide memo Ext.PW5/D and copy of recovery memo was supplied to the

accused free of costs.

5. Thereafter, Investigating Officer prepared rukka Ext.PW1/A and sent the same to Police Station SV & ACB, Kullu through PW-7 constable

Narender Kumar. On receipt of said rukka, PW-1 officiating SHO Inspector Prem Singh registered FIR Ex.PW1/B and made endorsement

Ext.PW1/C on the rukka. PW-1 also prepared the case file and handed over the

same to PW-7 constable Narender Kumar with a direction to hand over the same to the I.O. on his arrival. PW-8 Madan Dhiman prepared the spot map Ext. PW8/A and recorded the statements of the witnesses as per their versions. The accused was apprised about the grounds of arrest vide memo Ext.PW5/E and information qua his arrest was given to his cousin Yashwant on phone as per his wish.

6. Thereafter, the accused along with the case property was taken to Police Station and produced before officiating SHO PW-1 Inspector Prem

Singh, who resealed the parcel Ext.P-1 with seal impression â??Hâ?? at six places and filled the relevant columns of NCB forms in triplicate. He

took facsimile of seal â??Hâ?? Ext.PW1/D and prepared resealing memo Ext.PW1/F. The case property was deposited with MHC PW-3 Hans Raj,

who entered the same in â??malkhanaâ?? register, the abstract of which is Ext.PW3/A. The Investigating Officer prepared special report

Ext.PW2/A and handed over the same to PW-5 constable Ravi Kumar with a direction to submit the same to Superintendent of Police, SV and ACB,

Mandi. The special report was submitted before the S.P., Vigilance, Mandi and entered in the relevant register, the abstract of which is Ext.PW2/B.

7. PW-3 MHC Hans Raj after filling column No.12 of NCB forms in triplicate handed over the parcel Ext.P-1 duly sealed with six seals of seal

â??Aâ?? and resealed with six seals of â??Hâ?? along with relevant documents to PW-4 Paras Ram for depositing the same in FSL, Junga for

chemical analysis vide receipt Ext.PW3/B. PW-4 Paras Ram deposited the same with FSL, Junga and deposited the receipt Ext.PW3/C with PW-3

on his return. On receipt of FSL report Ext.PW1/H, it was found that the exhibit was extract of cannabis and sample of â??Charasâ??. Thereafter,

the challan was prepared under Section 173 Cr.P.C. and presented in the Court for judicial verdict.

8. The Court on consideration of police report and documents sent therewith found prima facie case and sufficient grounds to presume that the

accused has committed offence under Section 20 of the ND&PS Act. The accused was charged accordingly to which he pleaded not guilty and

claimed trial.

9. The prosecution in order to prove its case and to bring home the guilt of accused has examined as many as eight witnesses besides pressing into

service the documentary evidence on record.

10. After closure of the prosecution evidence, the incriminating circumstances and evidence against the accused was put to him and the accused

termed it to be incorrect and wrong. The accused had taken the defence that no recovery of Charas was effected from him. He was innocent

and had been falsely implicated in this case by Jai Chand, who was his rival candidate for the post of Up Pradhan in the elections of Panchayat in

connivance with the police. The accused in his defence examined four witnesses and closed defence evidence.

11. After recording evidence in the aforesaid manner and evaluating the same, the learned Special Judge acquitted the respondent on the ground that

there were material contradictions, improvements and embellishments in the testimonies of the witnesses and evidence led by the prosecution.

12. Notably, the learned Special Judge had acquitted the respondent only on the ground that the evidence led by the prosecution was not trustworthy

and worthy of credence and there were material contradictions, improvements and embellishments in the testimonies of the witnesses and evidence

led by the prosecution.

13. It is vehemently argued by the learned Additional Advocate General for the appellant-State that the judgment passed by the learned Special Judge

is perverse and based on complete misreading of evidence and in addition thereto, the law on the subject has also not been appreciated by the said

Court.

14. On the other hand, Shri G.R.Palsra, learned counsel for the respondent, would contend that the instant case is a simple case of abuse of power

whereby his client has been falsely implicated at the instance of Jai Chand, who was his rival while contesting elections for the post of Up Pradhan in

Panchayat that too in connivance with the police officials, more particularly, PW-7 Narender Kumar, who was known to Jai Chand. We have heard

the learned counsel for the parties and have gone through the material placed on records.

15. At the outset, we may notice that the main reason for acquittal of the respondent is on account of material contradictions in the prosecution case,

which according to the learned Special Judge affected the core of the prosecution case. Therefore, this Court would first consider the scope and ambit

of the appeal against the acquittal.

16. As regards material contradictions, it is more than settled that while appreciating evidence, the Court has to take into consideration whether the contradictions/omissions are of such magnitude that they materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without affecting the core of the prosecution case cannot be made a ground to reject the evidence in its entirety. The trial Court after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course of action, would not be justified in reviewing the same again without justifiable reasons. But the said provision where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses, also makes material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. Even though the normal discrepancies are bound to be there due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition and would not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

17. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

18. As regards the scope of interference in appeal arising out of an order of acquittal, it is well established principle of law, consistently re-iterated and followed by all the Courts is that while dealing with a judgment of acquittal, an appellate Court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court are perverse or otherwise unsustainable. Even though the appellate Court is entitled to consider, whether in arriving at a finding of fact, the trial Court has placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration the evidence brought on

record contrary to law; the appellate Court should not ordinarily set-aside a judgment of acquittal in a case where two views are possible, though the view of the appellate Court may be the more probable one. The trial Court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

19. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right and subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence of this Country. The appellate Court has to bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Therefore, interference with the decision of the trial Court cannot be interfered with in a casual or cavalier manner where the other view is possible, the same should be avoided, unless there are good reasons for such interference. It is only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, that the appellate Court can interfere with the order of acquittal.

20. As regards the same, it can be inferred and drawn where the Court has arrived at a finding of fact by ignoring or excluding the relevant material or has taken into consideration the irrelevant/inadmissible material. A finding may be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

21. The law on the subject has been succinctly dealt with by the Hon'ble Supreme Court in Ghurey Lal vs. State of U.P. 2008 (10) SCC 450, in the following terms:-

43. The earliest case that dealt with the controversy in issue was Sheo Swarup v. King Emperor AIR 1934 PC 227. In this case, the ambit and scope of the powers of the appellate court in dealing with an appeal against acquittal has been aptly elucidated by the Privy Council. Lord Russell writing the judgment has observed as under: (at p. 230):

â...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any

doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.â?|â?? The law succinctly crystallized in this case has been consistently followed by this Court. On proper analysis of the ratio and findings of this case, it is revealed that the findings of the trial court are based on the fundamental principles of the criminal jurisprudence. Presumption of innocence in favour of the accused further gets reinforced and strengthened by the acquittal of the trial court. The appellate court undoubtedly has wide powers of re-appreciating and re-evaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally ill-founded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse.

44. This Court again in the case of Surajpal Singh and Ors. v. State AIR 1952 SC 52, has spelt out the powers of the High Court. The Court has also cautioned the Appellate Courts to follow well established norms while dealing with appeals from acquittal by the trial court. The Court observed as under:

â??7. It is well established that in an appeal under Section 417 Criminal P.C., the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well-settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.â??

This Court reiterated the principles and observed that presumption of innocence of accused is reinforced by an order of the acquittal. The appellate court could have interfered only for very substantial and compelling reasons.

45. In Tulsiram Kanu v. State AIR 1954 SC 1, this Court explicated that the appellate court would be justified in reversing the acquittal only when very substantial question and compelling reasons are present. In this case, the Court used a different phrase to describe the approach of an appellate court against an order of acquittal. There, the Sessions Court expressed that there was clearly reasonable doubt in respect of the guilt of the accused

on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate court came to a different conclusion.

46. In the same year, this Court had an occasion to deal with *Madan Mohan Singh v. State of Uttar Pradesh* AIR 1954 SC 637, wherein it said that

the High Court had not kept the rules and principles of administration of criminal justice clearly before it and that therefore the judgment was vitiated

by non-advertence to and mis-appreciation of various material facts transpiring in evidence. The High Court failed to give due weight and

consideration to the findings upon which the trial court based its decision.

47. The same principle has been followed in *Atley v. State of U.P.* AIR 1955 SC 807, wherein the Court said:

“It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence

and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not

weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses

whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case

of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial

court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the

order of acquittal.”

48. The question was again raised prominently in *Aher Raja Khima v. State of Saurashtra* AIR 1956 SC 217. Bose, J. expressing the majority view

observed (at p.220):

“It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial

and compelling reasons for holding that the trial court was wrong; *Ajmer Singh v. State of Punjab* AIR 1953 SC 76; and if the trial Court takes a

reasonable view of the facts of the case, interference under Section 417 is not justifiable unless there are really strong reasons for reversing that view.

49. In *Balbir Singh v. State of Punjab* AIR 1957 SC 216, this Court again had an occasion to examine the same proposition of law. The Court

observed as under:

It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is

equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of

the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and the slowness of an appellate Court in disturbing

a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and

compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge.

50. A Constitution Bench of this Court in *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200, observed as under: There is no doubt that the

power conferred by Clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by Clause (b) which deals

with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide

whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question

centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High

Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption

is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled for the benefit of a

reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court

is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral

evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers

of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing

with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence.â

The test suggested by the expression ""substantial and compelling reasons"" should not be construed as a formula which has to be rigidly applied in

every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterize the findings

recorded therein as perverse. The question which the Supreme Court has to ask itself, in appeals against conviction by the High Court in such a case,

is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the

appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was erroneous. In answering this question,

the Supreme Court would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants

against the conclusions of the High Court.

51. In *Noor Khan v. State of Rajasthan* AIR 1964 SC 286, this Court relied on the principles of law enunciated by the Privy Council in *Sheo Swarup*

(supra) and observed thus:

âSections 417, 418 and 423 give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to

reach the conclusion that upon that evidence the order of acquittal should be reversed. But in exercising the power conferred by the Code and before

reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the

trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption not weakened by the fact

that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a

finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.â

52. In *Khedu Mohton and Ors. v. State of Bihar* 1970 (2) SC 450, this Court gave the appellate court broad guidelines as to when it could properly

disturb an acquittal. The Court observed as under:

â3. It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417, Cr. P.C. are as extensive as its

powers in appeals against convictions but that court at the same time should bear in mind the presumption of- innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal.

53. In *Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra* 1973 (2) SCC 793, the Court observed thus:

“5...An appellant aggrieved by the overturning of his acquittal deserves the final court's deeper concern on fundamental principles of criminal justice....But we hasten to add even here that, although the learned judges of the High Court have not expressly stated so, they have been at pains to dwell at length on all the points relied on by the trial court as favourable to the prisoners for the good reason that they wanted to be satisfied in their conscience whether there was credible testimony warranting, on a fair consideration, a reversal of the acquittal registered by the court below. In law there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration, In our view the High Court's judgment survives this exacting standard.

54. In *Lekha Yadav v. State of Bihar* 1973 (2) SCC 424, the Court following the case of *Sheo Swarup* (supra) again reiterated the legal position as under:

“6...”. The different phraseology used in the judgments of this Court such as-

(a) substantial and compelling reasons:

(b) good and sufficiently cogent reasons;

(c) strong reasons. are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence

and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the

reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal

was not justified.

55. In *Khem Karan and Ors. v. State of U.P. and Anr.* 1974 (4) SCC 603, this Court observed:

“5...Neither mere possibilities nor remote possibilities nor mere doubts which are not reasonable can, without danger to the administration of justice,

be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony.

56. In *Bishan Singh and Ors. v. State of Punjab* 1973 (3) SCC 288, Justice Khanna speaking for the Court provided the legal position:

“22. It is well settled that the High Court in appeal under Section 417 of the CrPC has full power to review at large the evidence on which the

order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be

placed upon that power unless is be found expressly stated be in the Code, but in exercising the power conferred by the Code and before reaching its

conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility

of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been

acquitted at his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in disturbing a finding of fact

arrived at by a judge who had the advantage of seeing the witnesses.

57. In *Umedbhai Jadavbhai v. State of Gujarat* 1978 (1) SCC 228, the Court observed thus:

“6. In an appeal against acquittal, the High Court would not ordinarily interfere with the Trial Court’s conclusion unless there are compelling

reasons to do so inter alia on account of manifest errors of law or of fact resulting in miscarriage of justice.”

58. In *K. Gopal Reddy v. State of A.P.* (1979) 1 SCC 355, the Court observed thus:

It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons. [Salmond J. in his charge to the jury in *R.V. Fantle* reported in 1959 *Criminal Law Review* 584.]

59. In *Tota Singh and Anr. v. State of Punjab* 1987 (2) SCC 529, the Court reiterated the same principle in the following words:

â??This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally

interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.

60. In *Ram Kumar v. State of Haryana* 1995 Supp. (1) SCC 248, this Court had another occasion to deal with a case where the court dealt with the

powers of the High Court in appeal from acquittal. The Court observed as under:

“15...the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record

was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence

and reach its own conclusions under Sections 378 and 379 (sic 386) CrPC are as extensive as in any appeal against the order of conviction. But as a

rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the

credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of

appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the

main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and

effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. We shall, therefore, examine the evidence and the

material on record to see whether the conclusions recorded by the Trial Court in acquitting the appellant are reasonable and plausible or the same are

vitiating by some manifest illegality or the conclusion recorded by the Trial Court are such which could not have been possibly arrived at by any Court

acting reasonably and judiciously which may in other words be characterized as perverse.

61. This Court time and again has provided direction as to when the High Courts should interfere with an acquittal. In *Madan Lal v. State of J&K*

1997 (7) SCC 677, the Court observed as under:

“8. ...that there must be “sufficient and compelling reasons” or “good and sufficiently cogent reasons” for the appellate court to alter an order of

acquittal to one of conviction....”

62. In *Sambasivan and Ors. v. State of Kerala* 1998 (5) SCC 412, while relying on the case of *Ramesh Babulal Doshi* (Supra), the Court observed

thus:

¶7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the

appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views

are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial

court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that

the appellate court can interfere with the order of acquittal.

63. In *Bhagwan Singh and Ors. v. State of M.P.* 2002 (4) SCC 85, the Court repeated one of the fundamental principles of criminal jurisprudence that

if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which

is favourable to the accused should be adopted. The Court observed as under:

¶7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence

adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be

adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the

court is to ensure that miscarriage of justice is avoided.

64. In *Harijana Thirupala and Ors. v. Public Prosecutor, High Court of A.P.*, 2002 (6) SCC 470, this Court again had an occasion to deal with the

settled principles of law restated by several decisions of this Court. Despite a number of judgments, High Courts continue to fail to keep them in mind

before reaching a conclusion. The Court observed thus:

¶10. The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court.

Yet, sometimes High Courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The

case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and

keep in mind these principles in deciding a case.

11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.

65. In *C. Antony v. K.G. Raghavan Nair* 2003 (1) SCC 1 had to reiterate the legal position in cases where there has been acquittal by the trial courts.

This Court observed thus:

¶6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court.

66. In *State of Karnataka v. K. Gopalkrishna* 2005 (9) SCC 291, while dealing with an appeal against acquittal, the Court observed:

¶17...In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal.

67. In *The State of Goa v. Sanjay Thakran* 2007 (3) SCC 755, this Court relied on the judgment in *State of Rajasthan v. Raja Ram* 2003 (8) SCC 180

and observed as under:

¶15. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.... The principle to be followed by appellate court considering the appeal

against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.

The Court further held as follows:

16. it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with

the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at

by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal

would not take the view which would upset the judgment delivered by the court below.

68. In *Chandrappa and Ors. v. State of Karnataka* 2007 (4) SCC 415, this Court held:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence

before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted

conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such

phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to

curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the

presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be

innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence

is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on

record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its

power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's

conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's

acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness credibility is at issue.

It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial

court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is

going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing

so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision.

Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the

Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour

of the accused.â??

22. Bearing in mind the aforesaid exposition of law and parameters laid therein, we would first proceed to examine the evidence led by the prosecution

and thereafter consider the so called inconsistencies.

23. We, at this stage, would refer to the testimonies of so-called eye witnesses i.e. PW-5 constable Ravi Kumar, PW-7 Narender Kumar and PW-8

Madan Dhiman. They all have deposed that on

14.12.2010, they along with SI Hari Ram, constable Parmod Kumar, constable Mahender Kumar and HHG Parmod Kumar had proceeded for

patrolling in a Van bearing registration No. HP-18A-2357 towards Lag Valley at about 4 p.m. After patrolling, when they laid â??nakaâ?? at

Kamand, they noticed a person coming from Kallang side, who was carrying a rucksack on his right shoulder. The respondent was stopped. PW-8

Madan Dhiman had suspicion that respondent may be in possession of some narcotics or some other illegal substance.

24. Accordingly, the police team gave their personal search to the respondent vide memo Ext.PW5/A and thereafter vide memo Ext.PW5/B he was

asked before whom would he like his bag to be searched. He was further informed of his legal right under Section 50 of the â??ND&PS Actâ?? and

to have such search conducted before a Gazetted Officer or a Magistrate, but the respondent himself opted and gave his consent for being searched

by the police officials, who were present on the spot. Since, this place was a secluded one, no independent witnesses were available and PW-8 joined

two members of his team i.e. PW-5 Ravi Kumar and constable Parmod Kumar as witnesses and conducted the search of rucksack. On search of the

rucksack, it was found containing â??Charasâ?? in the shape of sticks concealed in its middle compartment. The â??Charasâ?? was concealed in

one pink coloured polythene packet and after weighing the same, it was found to be seven kilograms. The â??Charasâ?? so recovered was put in the

rucksack which, in turn, was put in a cloth parcel and sealed with ten seals of

letter A. NCB-1 forms in triplicate Ext.PW1/E were filled on the spot. Facsimile of seal A was taken vide Ext. PW5/C. Thereafter, the recovered Charas was taken in possession vide memo Ext.PW5/D and copy of the same was also supplied to the respondent. PW-8 prepared rukka Ext.PW1/A and sent the same through constable Narender to the police station for registration of the case. PW-8 also prepared spot map Ext. PW8/A along with its marginal notes. The statements of the witnesses were recorded as per their versions. Thereafter, the respondent was arrested after having apprised about the ground of arrest vide memo Ext.PW5/E. The respondent and the case property were produced before Inspector Prem Singh. PW-8 prepared the special report Ext.PW2/A and submitted the same to S.P., SV & ACB, Central Zone, Mandi and the case file thereafter was handed over to Inspector Prem Singh.

25. PW-1 Inspector Prem Singh stated that on 14.12.2010, PW-7 constable Narender Kumar brought rukka Ext.PW1/A on the basis of which he registered FIR Ext.PW1/B and made endorsement Ext.PW1/C and prepared the case file. On the same day at about 11.30 p.m., Inspector Madan Dhiman, produced before him case property i.e. parcel Ext.P-1 containing seven kilograms Charas duly sealed with ten seals of seal A along with NCB forms and sample seal A. He thereafter resealed the cloth parcel with six seals of impression H and facsimile of seal H Ext.PW1/D was also taken and also drawn seal impression H on NCB forms. He filled up columns No.9 to 11 of the said NCB forms Ext. PW1/E. He thereafter prepared certificate Ext.PW1/F qua resealing of the case property and deposited the same along with relevant documents with MHC. He also recorded the statements of the witnesses as per their version. Later on, on 15.12.2010, he prepared docket Ext.PW1/G which was addressed to FSL, Junga. On receipt of the chemical report Ext.PW1/H on 03.03.2011, he prepared the challan and submitted the same in the Court.

26. PW-2 SI Ram Dev stated that he at the relevant time was posted as Reader to S.P., SV & ACB, Mandi and on 16.12.2010, S.P. Virender Sharma handed over to him special report Ext.PW2/A at 10.00 a.m. He identified the signatures of S.P. Virender Sharma on the special report Ext.PW2/A in red circle and entered the same in relevant register, abstract

whereof was proved as Ext.PW2/B.

27. PW-3 HC Hans Raj stated that on 14.12.2010, PW-1 deposited with him parcel Ext.P-1 duly sealed with ten seals of 'A' and resealed with six

seals of 'H', samples of seals 'A' and 'H' along with NCB forms in triplicate Ext.PW1/E. On 15.12.2010, he entered the case

property at Serial No.26 in 'malkhana' register, the abstract of which is Ext.PW3/A. On 15.12.2010, he handed over the parcel Ext.P-1 along

with relevant documents to PW-4 HHC Paras Ram vide RC No.10 of 2010 Ext.PW3/B and docket Ext.PW1/G with a direction to deposit the same in

FSL, Junga. PW-4 deposited RC along with receipt Ext.PW3/C with him on his return.

28. PW-4 HC Paras Ram stated that on 15.12.2010, PW-3 HC Hans Raj handed over sealed parcel Ext.P-1, docket, NCB forms in triplicate,

specimen of seal impressions 'A' and 'H', copy of seizure memo to him vide RC Ext.PW3/B and he deposited the same with FSL,

Junga, on 16.12.2010 and thereafter on his return deposited RC with MHC. He further stated that so long the case property remained in his

possession, the same remained safe and untampered.

29. PW-6 Kapil Sharma, Assistant Chemical Examiner, FSL, Junga stated that the case property along with relevant documents was received in the

laboratory through PW-4 HHC Paras Ram wherein the seals were found intact and tallied with specimen seal sent by the SHO. After examination,

report Ext.PW1/H was issued.

30. Now, advertng to the evidence of the defence. The respondent has examined four witnesses in support of his case.

31. DW-1 Man Dass, President, of the Panchayat, has stated that on 14.12.2010 after election campaign, he was coming back from Mashna to Thach

and at about 6 p.m., the respondent along with four persons met him on the way. Out of them Narender (PW-7), who was known to him and was

related to Jai Chand, who was rival candidate of the respondent, stated that some 'Charas' was recovered from the grass shed near the house

of the respondent and he was to be interrogated. Thereafter, he contacted family members of the respondent, who told that he had gone for

canvassing. The Returning Officer had rejected the nomination papers of the respondent on the ground that he was involved in a case relating to

recovery of Charasâ. In cross-examination, this witness reiterated that constable Narender was known to Jai Chand as he had seen constable

Narender visiting the house of Jai Chand twice. He could not point out the date and time of such visit.

32. DW-2 Tule Ram stated that he is photographer by profession and took photographs Ext.D-1 to Ext. D-6 of the sheds-cum- house of Nanak

Chand, Mool Chand, Sangat Ram, Bala Ram and Daggu alias Fauji, adjoining to the alleged place of recovery.

33. DW-3 Girish Sumra produced the records of the nomination papers of the Panchayat, whereas, DW-4 Suresh Chand stated that he was Assistant

Returning Officer in the concerned elections wherein the nomination papers Ext.DW4/A had been filled up by the respondent for the post of Vice

President on 13.12.2010, however, the same had been withdrawn on

18.12.2010 vide memo Ext.DW4/B. In cross examination, this witness admitted that the withdrawal form Ext.DW4/B was filled up on 15.12.2010 and

not on 18.12.2010. This entire is the evidence led by the parties.

34. As observed earlier, the respondent has been acquitted only on the ground that there were material contradictions, embellishments, improvements

in the case of the prosecution. The contradictions noted by the learned Special Judge are as under:-

(i) Even the prosecution claims the place to be a secluded one, therefore, had not associated any independent witness, but it has come in the cross

examination of the Investigating Officer that photographs Ex.D-1 to D-6 which admittedly pertained to the spot, show the existence of the houses on

the spot;

(ii) Apart from rukka Ext.PW1/A which was prepared on the spot at Kamand, there are other documents especially Ext.PW5/A and Ext.PW5/B

which show that these documents were prepared at Kullu, whereas, seizure memo Ext.PW5/D is silent about the place whether it was prepared at

Kamand or Kullu. Similarly, spot map Ext.PW8/A has been prepared at Kullu;

(iii) As per testimonies of PW-4 and PW-7 and rukka Ext.PW1/A, the respondent was alleged to have been apprehended at 8.00 p.m and thereafter

rukka was received in the police station at 9.30 p.m. However, this was contrary to the statement of PW-1 Prem Singh, who testified that the rukka

was received at 8.00 p.m.;

- (iv) Contradictions regarding the bag being searched inside or outside the vehicle;
- (v) Story of the prosecution regarding spotting of the respondent highly doubtful;
- (vi) There is cutting on the logbook Ext. DA with respect to entry made on 14.12.2010 qua time.

35. We shall now proceed to deal with each of the so-called contradictions and its effect on the case of the prosecution.

No.(i) .

36. Undoubtedly, the photographs Ex.D-1 to D-6 do show the existence of houses and shops near the place where the respondent was apprehended.

However, this in itself is not sufficient to discard the prosecution case. Admittedly, the present is not a case of prior information, but is a case of

chance recovery and we cannot also be unmindful of the fact that the aforesaid photographs have been taken in broad day light, whereas, the

respondent is alleged to have been intercepted somewhere around 8.00 p.m. and that too in December, 2012, when the sun sets around 6.00 p.m.

37. The question of recovery at the time of routine checking was also considered by this Court in State of Punjab versus Baldev Singh etc. etc. (1999)

Criminal Law Journal 3672 and thereafter further considered in Ram Lal and another versus State of H.P. 2005 (1) Shim. L. C. 158 wherein it was

categorically observed that mere non association of the independent witnesses cannot lead to the conclusion that the entire seizure and recovery is

illegal and it was held as under:-

â??9. It is by now well settled that mere non association of independent witnesses cannot lead to the conclusion that the prosecution case is false.

The testimony of police officials associated in the investigation cannot be discarded merely on the ground that they are official witnesses. However, it

is also true that as a rule of caution while appreciating their evidence, this Court should be more cautious and careful if non official independent

witnesses are not associated. In the present case the police party could have easily associated independent witness. As per the prosecution version,

the accused were apprehended suddenly. There was no need to comply with Section 50 of the NDPS Act. The police party went through the motions

of complying with the requirements of this provision. The preparation of the consent memos Ex. PW5/A, Ex. PW5/B, the search by PW-9 and the

preparation of Search Memo Ex. PW5/C itself would have taken atleast fifteen

minutes. Admittedly there was dense population within a distance of 300 meters. Therefore the police had ample opportunity to associate independent witnesses.

10. Mr. Chitkara, learned Counsel in support of his contention has relied upon cases *Kingett Edward Christopher v. State of H.P.*, 1996 (1) Sim. L.C.

122, *Nainu Ram v. State of H.P. & Naresh Kumar and another v. State of H.P.* Latest HLJ 2002 (HP)-(DD) 820, *Sandeep Kumar v. State of H.P.*

2002 (2) Shim. L.C. 224, *State of H.P. v. Vinod Kumar*, 2003 (1) SLJ 174 and *Rajesh Basniyat v. State of H.P.*, Latest HLJ 2004 (HP) 875.

11. We need not refer to all these judgments in detail. The view of this Court has been succinctly Laid down in *Rajesh Basniyat* case (supra) where

this Court has held as follows:

(9) The failure to join independent witness can be attributable to various reasons like reluctance of the people to be witnesses in the cases,

non-availability of witnesses in case of a chance recovery. Therefore, effect of the non-joining the independent witnesses has to be examined in view

of the circumstances of each and every case. In case the omission to join independent witnesses is not deliberate and mala fide but because of

circumstances beyond control the lapse will have least effect on the prosecution case. In any case, the Court will have to be more careful and

cautious in appreciating the evidence. The omission to join independent witnesses ipso facto will not be fatal to the case of prosecution.

13. There is no rule of law to support the contention that testimony of police officials associated in the investigation or investigated the case should not

be acted upon or believed. The police officials are as competent witnesses as any other witnesses. It is a rule of caution that while appreciating their

evidence the Court has to be more cautious and careful and will look into other corroboratory circumstances if any to assess their evidence. In case

such evidence is corroborated by other corroborative evidence and inspires confidence, there is no reason to discredit an official witness simply

because he is official witness.

12. We are in respectful agreement with said judgement. In our view the mere non association of independent witnesses cannot lead to the conclusion

that the entire seizure and recovery is illegal but we shall definitely have to appreciate the evidence of the prosecution with much more care and

caution.â??

38. Whether prosecution case can be doubted only on the ground that all the witnesses are from the police and what would be the effect of non-joining

of independent witnesses where evidence of the prosecution witnesses may be found cogent, convincing and trustworthy and reliable was considered

in detail by the Honâ??ble Supreme Court in Gian Chand and others versus State of Haryana (2013) 14 SCC 420 and it was held that mere non-

joining of independent witnesses where evidence of the prosecution witnesses is found to be cogent, convincing, trustworthy and reliable, cannot cast

doubt on the prosecution version, there seems no reason on record to falsely implicate the accused, more especially, when huge quantity of contraband

was recovered. It was further held that the burden is on the accused, through cross examination of witnesses or through other materials, to show that

the evidence of police officer is unreliable. It is not permissible to presume that the police action is unreliable to start with and it shall be apposite to

refer to the relevant observations as contained in paras 10, 31 to 37 which read thus:-

â??10. All three occupants, i.e. the appellants abandoned the vehicle just after it dashed against the wall and made a desperate attempt to escape but

were apprehended by the police party. The Trial Court examined the matter elaborately and after appreciating the evidence of the witnesses, came to

the conclusion that there were no discrepancies in the statements of the three officials, i.e. prosecution witnesses. Their statements inspired

tremendous confidence and thus, there was no reason for the court to discard the testimony of the official witnesses. The grievance had also been

raised before the Trial Court that the chit carrying contents of case property was not available on the bags. However, this did not give any benefit to

the accused as there was overwhelming evidence on record to prove that the seizure of ten bags had actually been made from the accused. Further

the contents of the samples sent for chemical analysis gave positive results on analysis in the laboratory.â??

â??31. The next question for consideration does arise as to whether it is necessary to examine an independent witness and further as to whether a

case can be seen with doubt where all the witnesses are from the police department.

32. In *Rohtash v. State of Haryana* (2013) 14 SCC 434, this court considered the issue at length and after placing reliance upon its earlier judgments

came to the conclusion that where all witnesses are from the police department, their depositions must be subject to strict scrutiny. However, the

evidence of police officials cannot be discarded merely on the ground that they belong to the police force, and are either interested in the investigating

or the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars should be sought. The Court held as

under:

“Thus, a witness is normally considered to be independent, unless he springs from sources which are likely to be tainted and this usually means that

the said witness has cause, to bear such enmity against the accused, so as to implicate him falsely. In view of the above, there can be no prohibition to

the effect that a policeman cannot be a witness, or that his deposition cannot be relied upon.”

(See also: *Paras Ram v. State of Haryana*, AIR 1993 SC 1212; *Balbir Singh v. State*, (1996) 11 SCC 139; *Akmal Ahmad v. State of Delhi*, AIR 1999

SC 1315; *M. Prabhulal v. Directorate of Revenue Intelligence*, (2003) 8 SCC 449; and *Ravinderan @ John v. Superintendent of Customs*, AIR 2007

SC 2040).

33. In *State, (Govt. of NCT of Delhi) v. Sunil & Anr.* (2001) 1 SCC 652, this Court examined a similar issue in a case where no person had agreed to

affix his signature on the document. The Court observed that: (SCC p. 662, para 21)

“It is an archaic notion that actions of the police officer should be viewed with initial distrust. At any rate, the court cannot begin with the

presumption that police records are untrustworthy. As a proposition of law the presumption should be the other way around.”

The wise principle of presumption, which is also recognised by the legislature, is that judicial and official acts are regularly performed. Hence, when a

police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to

the court to believe that version to be correct if it is not otherwise shown to be unreliable. The burden is on the accused, through cross-examination of

witnesses or through other materials, to show that the evidence of the police

officer is unreliable. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume that police action is unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

34. In *Appabhai & Anr. v. State of Gujarat* AIR 1988 SC 696, this court dealt with the issue of non-examining the independent witnesses and held as under:

“11. The prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether -in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties.”

35. The principle of law laid down hereinabove is fully applicable to the facts of the present case. Therefore, mere non-joining of an independent witness where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot cast doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellants.

36. In the instant case at the time of incident some villagers had gathered there. The Investigating Officer in his cross - examination has made it clear that in spite of his best persuasion, none of them were willing to become a witness. Therefore, he could not examine any independent witness.

37. Section 114 of the Act 1872 gives rise to the presumption that every official act done by the police was regularly performed and such presumption requires rebuttal. The legal maxim *omnia praesumuntur rite et doctè probetur in contrarium solenniter esse acta* i.e., all the acts are presumed to have been done rightly and regularly, applies. When acts are of official nature and went through the process of scrutiny by official persons, a presumption

arises that the said acts have regularly been performed.â??

39. Similar question came up for consideration before Division Bench of this Court in Bahatar Budha Magar versus State of H.P. (2018) 2 RCR

(Criminal) 213, wherein it was held that wherever evidence of police officials after careful scrutiny inspires confidence and is found to be trustworthy

and reliable, it can form basis of conviction even in absence of the independent witnesses not supporting the case of the prosecution. It was further

held that no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or

evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some

independent evidence, such reliable and trustworthy statement can form the basis of conviction. It shall be apposite to refer to the relevant

observations as contained in paras 21 to 23 of the judgment which read thus:-

â??21. As regards, the further contention of the appellant that he could not have been ordered to be convicted solely on the basis of the testimonies of

the official witnesses, we again find no merit in this contention for the simple reason that the credibility of the witnesses has to be tested on the

touchstone of truthfulness. Therefore, wherever evidence of police officials after careful scrutiny inspires confidence and is found to be trustworthy

and reliable, it can form basis of conviction even in absence of the independent witnesses not supporting the case of the prosecution. No infirmity

attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays

down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence,

such reliable and trustworthy statement can form the basis of conviction. (Refer: Aher Raja Khima vs. State of Saurashtra AIR 1956 SC 217, Tahir

vs. State (Delhi) (1996) 3 SCC 338, Girja Prasad (dead by LRs) vs. State of Madhya Pradesh (2007) 7 SCC 625, Tika Ram vs. State of Madhya

Pradesh (2007) 15 SCC 760, Govinda Raju alias Govinda vs. State by Sriramapuram Police Station and another (2012) 4 SCC 722).

22. There is nothing on record to suggest or even remotely doubt the testimony of the police officials whose statements otherwise cannot be rejected

solely on the ground that the witnesses happen to be the police officials and

were the members of the raiding party. (Refer: Sama Alana Abdulla vs. State of Gujarat (1996) 1 SCC 427).

23. Even otherwise, mere non-association of the independent witnesses in the given facts and circumstances of the case cannot be held to be fatal to the prosecution case. After all, the prosecution cannot be asked to perform the impossible once there was no independent witness available at the relevant time, then obviously the I.O. had no other option but to associate the police officials accompanying him as witnessesâ??

No.(ii).

40. To say the least, the observations made by the learned Special Judge are based on complete misreading of the documents. Exhibit PW1/A has been prepared at Kamand as rightly observed by the learned Special Judge. Even, Ext. PW5/A and Ext. PW5/B have not been shown to have been prepared at Kullu, as held, rather these are executed at the spot. Likewise, nowhere is it shown on spot map Ext. PW8/A that the same has been prepared at Kullu. Merely, because all these three documents appear to have been signed by Inspector I/C SIU CR SV&ACB, Mandi, camp at Kullu, does not mean that these documents were in fact executed at Kullu. A perusal of the rukka would show that the same was in fact signed at Kamand at 9.30 p.m. and thereafter sent to the Police Station, Kullu, for registration of FIR which on the basis of the rukka came to be registered at 10.30 p.m.

Once, this is the factual position, then obviously, the statement of PW-1 will have to be reconciled with the overwhelming documentary evidence or else is contrary to record and hence is required to be discarded.

No.(iii).

41. As a matter of fact, in case the statement of PW-7 is adverted to, it would be noticed that he has categorically deposed that after the respondent had signed the papers at 9.30 p.m., he was directed to deliver rukka Ext. PW1/A at Police Station, State Vigilance and Anti Corruption Bureau, Kullu. He reached the police station at 10.30 p.m. and delivered rukka to Inspector Prem Singh, who recorded the FIR Ext. PW1/B and this is so mentioned in the FIR.

No.(iv).

42. As regards the controversy as to whether the bag was searched inside or

outside the vehicle, the same in itself again cannot be held to be a circumstance enough to doubt the case of the prosecution. The fact of the matter is that there are no attending facts and circumstances pointed out by the respondent which may create doubt regarding the case of the prosecution. After all, a huge haul of 7kg Charas could not have been planted on the respondent that too at the instance of Jai Chand in connivance with PW-7 constable Narender, as alleged by the respondent.

No.(v)

43. Once, the presence of the respondent at the spot coupled with his having been arrested at the spot, then the story of the prosecution with regard to his being at the given time and place cannot be doubted.

No.(vi).

44. The mere fact that there was cutting in the logbook Ext.DA with respect to entry made on 14.12.2010, without there being anything further to doubt the presence of the investigating agency and also the respondent at the given time and place, cannot be said so grave and serious so as to doubt the case of the prosecution.

45. Accordingly, the present appeal is allowed. The judgment rendered by the learned Special Judge, Kullu, on 24.12.2011, is set aside. The respondent is convicted under Section 20 of the Act. Convict be produced before this Court to be heard on the quantum of sentence on 27.07.2018.

Bail bonds furnished by the respondent-convict stand cancelled. Registry to prepare and send the production warrants forthwith.