

Karam Chand Vs. the State

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Court : Delhi

Decided On : Dec-16-2005

Reported in : 126(2006)DLT272; 2006(86)DRJ174

Judge : B.N. Chaturvedi, J.

Acts : Narcotic Drugs and Psychotropic Substances Act - Sections 20, 29, 42, 42(1), 42(2), 43, 50, 55 and 57; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Crl. A. 141 of 2001

Appellant : Karam Chand

Respondent : The State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : P.R. Thakur and; S.P. Pandey, Advs

Disposition : Appeal allowed

Judgement :

B.N. Chaturvedi, J.

1. The appellants, namely, Karam Chand, Narain Singh, Bhim Singh, Narender Kumar and Lagan Singh, faced trial for being in unlawful possession of Charas in

different quantities and each one of them was convicted under Section 20 of the NDPS Act and sentenced to 12 years RI and a fine of Rs. 1 lakh, in default two years RI.

2. The prosecution case unfolds that on 11th of December, 1993, at about 4.45 p.m. a secret information was received by Insp.J.S.Rana at N and CP Cell, Kamla Market, Delhi that four persons possessing a large quantity of Charas would be arriving in a Gypsy No. HP-2 3342 between 6.45 and 7.45 p.m. to effect supply thereof in front of Oasis Hotel in Pitam Pura, Delhi. The information was recorded in Daily Diary. Insp.J.S.Rana apprised Shri B.C.Kalra, ACP/Headquarters and CP Cell of the same. In terms of a direction by ACP B.C.Kalra, a raiding party comprising police officials was organized which proceeded to the given place and reached there at 6.10 p.m. in two official vehicles. The informer also accompanied the raiding party. On reaching Oasis Hotel, Insp.J.S.Rana tried to associate some of the passersby and employees of Hotel Oasis as members of the raiding party but nobody came forward. A wait for sometime yielded result when arrival of the appellants, Karam Chand, Narain Singh, Bhim Singh and Narender Kumar, carrying bags, was noticed on the pavement in front of Oasis Hotel. They were surrounded by the raiding party and made aware of the information received by the police. Each one of them was served with a notice under Section 50 of the NDPS Act. On being so offered, none of them exercised his right of being searched before a gazetted police officer or a Magistrate. On search, a bag held by appellants, Narain Singh and Bhim Singh, from either side, led to recovery of 12 kgs. of Charas. Out of the lot, one kilogram was taken out as sample. The sample and the remaining Charas were packed and sealed separately. The polythene bags being carried by the appellants, Karam Chand and Narender Kumar respectively in their hands, were on checking found to contain Charas weighing 2 kgs. each. 200 gms. was taken out as sample from each lot and the samples as well as remaining Charas were duly packed and sealed. The seal after use was handed over to SI Ravinder Kumar. All the sealed parcels were taken into possession by the police and got deposited in the Malkhana of PS Shalimar Bagh along with CRCL forms. A RUKKA was sent to the police station for registration of a case and on the basis thereof an FIR was registered. All the aforesaid four appellants were eventually arrested. On interrogation, appellant, Karam Chand,

disclosed that apart from the Charas that was recovered, 3 kgs. of Charas was being possessed by his another associate, namely, Lagan Singh-appellant, and a further 10 kg. was lying in the dicky of his Gypsy, which he could get recovered. The police party, accordingly, led by appellant, Karam Chand, reached a place near Madhuban Chowk where his Gypsy had been parked. Lagan Singh-appellant was found sitting on the front seat of the Gypsy beside driver seat. He was apprehended and after serving him with a notice under Section 50 of the NDPS Act, on his search, from a blanket lying over his thighs, 3 kgs. of Charas was recovered, out of which 200 gms. were taken out as sample and the sample as well as remaining Charas were packed and sealed. Besides, at the instance of appellant-Karam Chand, from the dicky of his Gypsy, 10 kgs. of Charas was recovered. One kg. of Charas was lifted out of the same as sample. The sample and balance Charas were put into sealed parcels. All the said sealed parcels were taken into possession by the police. Appellant-Lagan Singh was arrested and the Gypsy was seized by the police. All the above referred sealed parcels along with CRCL forms filled up at the spot, were handed over to SI Panna Lal to get the same deposited in the Malkhana of PS Shalimar Bagh, Delhi. The samples along with CRCL forms were later sent to CRCL, Pusa Road, Delhi and on analysis of respective samples the same were opined to be Charas.

3. At the trial, all the five appellants were jointly charged under Section 29 read with Section 20 of the NDPS Act. Narain Singh and Bhim Singh, appellants were further jointly charged under Section 20 of the NDPS Act. Remaining three appellants, namely, Karam Chand, Narender Kumar and Lagan Singh were individually charged under Section 20 of the Act. All of them pleaded not guilty to the aforesaid charges.

4. In the course of trial, from the prosecution side, eleven witnesses turned up to testify in support of the charges. All the appellants in their respective statements under Section 313 Cr.P.C. on being confronted with the incriminating evidence adduced against them, termed the same incorrect and stated their false implication. Though each one of them stated that they would be producing evidence in their defense, three witnesses in all examined in defense deposed in favor of appellant Narender Kumar only.

5. Needless to state, the learned Additional Sessions Judge disbelieving the aforesaid defense evidence, concluded on examination of the prosecution evidence that the charge under Section 20 of the Act had been proved against all the appellants and accordingly after passing the impugned judgment of conviction proceeded to sentence each one of them as set out at the outset.

6. I have heard the arguments on either side. I have also perused the evidence on record.

7. Arguments advanced from appellants' side are manifold. Emphasis primarily lay on non-compliance of provisions contained under Section 42, 50, 55 & 57 of the NDPS Act (for short 'the Act'). Reference to Section 50 was made with added thrust. It was argued that search of bag/s allegedly carried by respective appellants amounted to personal search and it was thus obligatory on the part of Investigating Officer to have acted in due compliance of Section 50 of the Act. The contention was that the notice served on respective appellants was required to clearly state that he had a legal right to be searched before a Gazetted Officer or a Magistrate. Reference was made to notices individually served on the appellants to contend that offering to arrange for a search before a 'Gazette Police Officer' instead of before a 'Gazette Officer' was not in conformity with mandate of Section 50 and the trial in the circumstances stands vitiated.

8. Ext.PW-6/A, PW-6/B, PW-6/D, PW-6/G & PW-6/L are the notices under Section 50, which according to the prosecution were served on the appellants Bhim Singh, Narain Singh, NarinderKumar, Karam Chand and Lagan Singh respectively. The contents of all these notices are verbatim identical. Instead of informing the appellants of their legal right to be searched in the presence of a 'Gazette Officer', restricting such information of legal right by stating a 'Gazette Police Officer' is clearly not in keeping with mandate of Section 50 and to that extent, there would be breach of the provision rendering the search illegal and the conviction based thereon bad in law. (See 'State of Punjab v. Baldev Singh' : (1999)6SCC172 . An argument was raised on behalf of the prosecution that even though the Investigating Officer proceeded to serve individual notices under Section 50 on the appellants, no such notices were as a matter of fact required to be served on them

keeping in view that the recoveries were not effected from their person. Learned Additional Public Prosecutor pleaded that the search of the bags/blanket did not amount to search of the person of the appellants and in the given circumstances, aforesaid deficiency in the notices is inconsequential. He referred to a number of apex court decision in 'State of Punjab v. Makhan Chand' : (2004)92CTR(SC)564 ; 'Sarkon Jabbi v. State of Maharashtra', 2004 (1) UJ 559; 'Narayanaswami Ravishankar v. Asstt Director, Directorate of Revenue Intelligence' , 2002 IV AD SC 614; and 'Madan Lal and Anr. v. State of Himachal Pradesh', : 2003 CriLJ3868 ; in support of his contention. Reliance was, on the contrary placed on behalf of the appellants on a decision of the Supreme Court itself in 'Nandi Francis Niwazor v. Union of India and Anr.' 1998 SCC 1516.

9. In Nandi Francis (supra) where the petitioner was leaving India for Lagos and had booked a bag which had already been checked in and loaded in the aircraft by which he was to travel and the bag was called back to the place of search and one of the cartons kept therein was found to contain heroin, it was held that the search of the bag in the given situation being not a search of person did not attract application of Section 50 of the Act. While saying so, it was, however, added:

'However, if that person is carrying a hand bag or the like and the incriminating article as found there from, it would still be a search of the person of the accused requiring compliance with Section 50 of the Act....'

10. Clearly, the above quoted observations are simply in the nature of obiter dicta. In a series of decisions the Supreme Court has unequivocally laid down that where the search undertaken is not of the person of the accused but of something carried in his hand, Section 50 would have no application.(See 'State of Punjab v. Baber Singh', : 1994 CriLJ3702 ; 'Gurbux Singh v. State of Haryana' , (2001) 3 SCC 28; 'Kalema Tumba v. State of Maharashtra' , : 2000 CriLJ507 ; 'Khet Singh v. Union of India', (2002) 4 SCC 380; 'State of Punjab v. Baldev Singh' , : (1999)6SCC172 , 'State of Punjab v. Makhan Chand' : (2004)92CTR(SC)564 ; 'Sarkon Jabbi v. State of Maharashtra', 2004 (1) UJ 559; 'Narayanaswami Ravishankar v. Asstt. Director, Directorate of Revenue Intelligence' , 2002 IV AD SC 614 and 'Madan Lal and Anr. v. State of Himachal Pradesh' , : 2003 CriLJ3868 ; 'Smt. Krishna Kanwar @

Thakuraeen v. State of Rajasthan' : 2004(91)ECC545 . Viewed in the light of law so laid down, recoveries of contraband from the bags allegedly carried by the appellants Bhim Singh, Narain Singh, Narender Kumar and Karam Chand, being not from their person, the Investigating Officer was under no legal obligation to act in compliance with Section 50. Thus defect in notices under Section 50 as noticed earlier would make no difference. Similarly, recovery of 3 kgs. of contraband from the blanket of appellant Lagan Singh would also fall beyond the purview of Section 50. Anything inextricably connected with the body is treated as forming part of one's person. The blanket lying over the thighs of appellant Lagan Singh while sitting in the vehicle would not appear to be inextricably connected to his body and therefore recovery of contraband effected out of search of the same would not amount to search of his person necessitating a compliance with Section 50. To sum up, therefore, since Section 50 had no application in the given case, service of defective notices on the appellants or non-compliance therewith in any respect could not be held to have rendered the search of the appellants illegal and their conviction on the basis of recoveries of contraband out of such searches bad in law.

11. Another limb of argument advanced on behalf of the appellants concerns alleged contravention of Section 42 in relation to search of the Gypsy. It was submitted by learned counsel appearing for appellants, Karam Chand & Lagan Singh that though the information in the form of disclosure by appellant Karam Chand regarding alleged unlawful possession of the contraband by his co-appellant Lagan Singh and a further quantity of 10 kgs. of Charas lying in the dicky of his Gypsy was reduced to writing by the Investigating Officer, such information was not transmitted to the immediate superior officer forthwith. Further, it was contended that though alleged search of the appellant Lagan Singh, seated in the Gypsy as well as that of the dicky thereof was effected after sun set, the Investigating Officer did not record the grounds of his belief that the search warrant or authorisation could not be obtained without affording opportunity of concealment of evidence or facility for the escape of the offender and thereby acted in breach of Section 42(2) and proviso to Section 42(1) of the Act. The learned counsel for the appellants, to find support to his aforesaid contention, referred to a Supreme Court decision in 'The State of West Bengal and Ors. v.

Babu Chakraborty', : 2004(96)ECC121 . Babu Chakraborty's (supra) was a case where based on a secret information, a raid at the house of the respondent-accused was conducted by the police officers during night leading to recovery of contraband. The trial ended up in conviction and sentence but on appeal, the respondent-accused was acquitted of the charge by the High Court. In appeal on behalf of the State of West Bengal and Ors. before the Supreme Court, defending the acquittal, it was primarily argued on behalf of the respondent-accused that there was non-compliance of the provisions under Section 42(2) and proviso to Section 42(1). Taking note of its earlier decisions in 'State of Punjab v. Balbir Singh' (supra), 'Abdul Rashid Ibrahim Mansuri v. State of Gujarat', : 2000 CriLJ1384 ; 'Koluttumotill Razak v. State of Kerala', : (2000)4SCC465 ; 'Beckodan Abdul Rahman v. State of Kerala', : 2002 CriLJ2529 and 'Chhunna Alias Mehtab v. State of MP', : 2000 CriLJ4995a , the Supreme Court observed thus:

'Great significance has been attached to the mandatory nature of the provisions, keeping in mind the stringent punishment prescribed in the Act. This Court has attached great importance to the recording of the information and the ground of belief since that would be the earliest version that will be available to a court of law and the accused while defending his prosecution. This Court also held that failure to comply with Section 42(1), proviso to Section 42(1) and Section 42(2) would render the entire prosecution case suspect and cause prejudice to the accused.

In the case of Abdul Rashid Ibrahim Mansuri v. State of Gujarat, : 2000 CriLJ1384 , Koluttumotill Razak v. State of Kerala, : (2000)4SCC465 , Beckodan Abdul Rahman v. State of Kerala', : 2002 CriLJ2529 , and in the case of Chhunna alias Mehtab v. State of M.P., : (2002)9SCC363 , this Court has held that the noncompliance of the provisions of the proviso to Section 42 of the Act which is mandatory, the action was held illegal and the conviction of the accused was set aside. This Court also held that the onus to prove compliance lies on the prosecution and in the absence of any prosecution evidence about the compliance with the mandatory procedure, the presumption would be that the procedure was not complied with.'

12. Clearly, in view of a series of authoritative pronouncements of the apex court, no scope is left for any further discussion on the mandatory nature of the aforesaid provisions and resultant fallout on breach thereof.

13. The learned Additional Public Prosecutor appearing for the State instead of attempting to dwell on compliance with proviso to Section 42(1) and Section 42(2), contended that keeping in view the facts of the present case the aforesaid provisions were, as a matter of fact, not attracted. He argued that since the Gypsy, subject of search, was parked at a public place, the Investigating Officer was not required to act in compliance of these provisions before effecting search thereof. In support, he referred to a decision of the Supreme Court in Narayanaswami Ravishankar's case (supra). That was a case where 5940 gms. of heroin concealed in the bottom of a suitcase allegedly belonging to the appellant, which he was attempting to transport, was recovered at the International Airport, Chennai, a public place. It was held:

'5. In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the Airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant....'

14. According to the prosecution case and testimony of the witnesses examined on its behalf, the Gypsy was parked near Madhuban Chowk which happened to be a public place. Thus, in the present case, search of Gypsy leading to recovery of the contraband did not attract application of proviso to Section 42(1) or Section 42(2) as it was Section 43 which was applicable. Recording of reasons for belief, as mandated under proviso to Section 42(1) before effecting the search of the Gypsy, was in the circumstances, not required.(See Baldev Singh's case (supra).

15. On non-compliance of Section 57 of the Act, in terms of statement of HC Rajender Singh (PW-3), a report vide Ex.PW-3/A/PW-3/DA by Insp.J.S.Rana was received in the office of ACP B.C. Kalra on 12th of December, 1993, which was

placed before Shri Kalra and after he had seen the same, it was kept on record. Insp. J.S. Rana and ACP B.C. Kalra, however, in their respective depositions did not speak of any such report. All the same, such a report is there on record. As a matter of fact submission as such of a report to ACP B.C. Kalra was not seriously questioned by the learned counsel for the appellants. It was, however, argued that since ACP B.C. Kalra was himself a part of raiding party, submission of the report to him was merely a farce and could not be treated to satisfy the requirement of Section 57 of the Act.

16. In 'Sajan Abraham v. State of Kerala' , 2011 11 AD 765, the Supreme Court, taking note of the law laid down in its earlier decision in 'State of Punjab v. Baldev Singh', : 1994 CriLJ3702 , regarding non-mandatory nature of Section 57 of the Act held that even if there is no communication to the immediate superior in the form of a report, in regard to arrest or seizure, sending of copies of FIR along with other records regarding the arrest and seizure of the contraband constituted substantial compliance and mere absence of a report could not be said to have prejudiced the accused so as to vitiate the prosecution case. In 'Gurbux Singh v. State of Haryana', : 2001 CriLJ1166 , also it was held that violation of Section 57 would not ipso facto vitiate the trial and conviction. It was, however, added that these provisions could not be totally ignored and such failure would have a bearing on appreciation of evidence regarding arrest and seizure. In the present case, since the requirement of the provision was to send report to his immediate superior, submission of report Ex.PW-3/A/PW-3/DA to ACP B.C.Kalra could be treated in substantial compliance therewith particularly when no prejudice is shown to have been caused to the appellants. Thus, the prosecution case can not be held vitiated on this count.

17. Last limb of argument advanced on behalf of the appellants pertains to non-compliance with provisions of Section 55 of the Act. This is in addition to the challenge to the finding of conviction based on the evidence on record. A number of discrepancies in the statements of the prosecution witnesses were pointed out in the course of arguments, which according to learned counsel for the appellants strike at the very root of the prosecution case and render the conviction legally unsustainable. In the context of plea so raised, various facets of the prosecution

case with reference to the evidence produced by it thus need to be examined before adverting to the plea concerning non-compliance with Section 55 of the Act.

18. SI Rishal Singh(PW-4), SI Ravinder Kumar(PW-6), ACP B.C.Kalra(PW-7), SI Panna Lal(PW-9), Const.Anil Kumar(PW-10) and ACP J.S. Rana (PW-11) were from amongst the police officials constituting the raiding party who, it was claimed, were witnesses of the arrest of the appellants and recovery of the contraband from their possession. As far as receipt of alleged secret information is concerned, there is unanimity in their statements. Their statements, however, turn out to be at variance from the very moment the raiding party allegedly set out for the spot in two official vehicles. SI Rishal Singh (PW-4) affirmed that SI Ravinder Kumar, Lady HC Vedwati and ASI Dalip Kumar accompanied ACP B.C. Kalra in his vehicle and the remaining police officials, apart from the informer proceeded to the spot in the vehicle of Inspect.J.S. Rana(I.O.) being driven by ASI Birakha Ram. SI Ravinder Kumar (PW-6) contradicted SI Rishal Singh to the extent that, according to him, the informer was in the vehicle being driven by ACP B.C.Kalra himself and ASI Dalip Kumar was in the other vehicle. To the same effect is the statement of ACP B.C. Kalra(PW-7). On the contrary, Const.Anil Kumar(PW-10), testified that he, apart from Insp.J.S.Rana, SI Ravinder Kumar, SI Rishal Singh, Lady HC Vedwati travelled to the spot in the vehicle of ACP B.C.Kalra while remaining police officials and the informer proceeded in the other vehicle driven by ASI Barkha Ram.

19. The description of the scenario at the spot by the prosecution witnesses on alleged arrival of the raiding party there at 6.10 p.m. on 11,12 1993, would spell out more glaring inconsistencies in their statements. On reaching the spot, proceeds the prosecution case, the members of the raiding party accompanied by the informer held their positions at different points waiting for arrival of the appellants other than Lagan Singh. However, if the statement of SI Rishal Singh(PW-4) is to be believed, the members of the raiding party on reaching the spot at 6.10 p.m. did not have to wait for the arrival of the said four appellants. He affirmed:

'when we reached the spot the accused persons were coming on patri on the side of Madhuban Chowk. They were on the middle patri. When the secret informer pointed out they were about 15-20 feet away from us. We were not in our uniform at that time....'

20. This statement is clearly contrary to the prosecution case and the statements of the other prosecution witnesses. This part of statement of SI Rishal Singh finds no corroboration from any quarter.

21. Further, statements of the prosecution witnesses regarding their positioning before alleged apprehension of the four appellants, namely, Karam Chand, Narain Singh, Bhim Singh and Narender Kumar and recovery of the contraband from them are equally interesting. According to PW-11, ACP J.S.Rana (I.O.) the raiding party was divided into three groups. One group of police officials comprising SI Rishal Singh(PW-4), SI Panna Lal(PW-9) and some constables was standing at Ashiyana Apartments, across the road; another group was positioned in the bye-lane of Hotel Oasis while he himself along with ACP B.C.Kalra, SI Ravinder Singh and the informer was stationed at the bus stop in front of the Oasis Hotel. The statement of SI Rishal Singh(PW-4) on the other hand discloses that he along with SI Panna Lal (PW-9), HC Ram Bhau & Const.Kaptan Singh, was positioned in a Shamiana pitched in front of Oasis Hotel. Notably, no other prosecution witness spoke about existence of any shamiana and ACP J.S.Rana as well as ACP B.C.Kalra rather categorically contradicted SI Rishal Singh in this regard. SI Rishal Singh further stated that Insp.J.S.Rana, ACP B.C.Kalra, HC Vedwati and informer were standing at the bus stop and rest of the police officials were standing 10/15 yards away from the bus stop. Thus according to SI Rishal Singh(PW-4) no member of raiding party was stationed at Ashiyana Apartments across the road or in the bye-lane of Hotel Oasis. Contrary to the statement of ACP J.S.Rana that the official vehicles were parked at Ashiyana Apartments and were visible from the spot, SI Rishal Singh affirmed that the vehicles were parked at a hidden place near bushes and a wall and were not visible from the spot. SI Ravinder Kumar, of course, substantially corroborated the statement of ACP J.S.Rana(PW-11) in regard to points of positioning of various police officials preceding apprehension of the aforesaid appellants. His statement though reads at variance in as much as

position of SI Rishal Singh(PW-4) was concerned as according to him SI Rishal Singh was not there amongst the police officials standing at Ashiyana Appartments; ACP Kalra's statement also reads almost to the same effect except that like ACP J.S.Rana(PW-11) he too affirmed that SI Rishal Singh was heading the group of police officials standing at Ashiyana Apartments, opposite to Hotel Oasis.

22. On the manner in which the appellants Karam Chand, Narinder Kumar, Narain Singh and Bhim Singh were allegedly apprehended and also in regard to time of their apprehension, the statements of SI Rishal Singh(PW-4) and SI Panna Lal(PW-9) are not consistent with the prosecution case. As already pointed out according to SI Rishal Singh(PW-4) the arrival of the said appellants was noticed soon after the raiding party had reached the spot. He seemed to testify that they did not have to wait for the appellants' arrival at the spot. SI Panna Lal came up with an altogether different version. He stated that the raiding party had proceeded to the spot in two cars and a Gypsy. He further deposed that while the members of the raiding party were holding their positions, a white gypsy arrived there and two persons holding a bed-hold all alighted from it. He identified Karam Chand and Lagan Singh appellants being as those two persons and added that appellant Bhim Singh was found sitting on the backside of the Gypsy from whose possession 11 kgs. of Charas was recovered. He did not make mention of any further recovery of Charas from remaining appellants. In spite of his deposing quite contrary to the prosecution case as reflected in his purported statement under Section 161 Cr.P.C., he was surprisingly not subjected to any cross-examination by the Additional Public Prosecutor.

23. After alleged recoveries of the contraband from the aforesaid appellants, the entire writing work was, according to ACP J.S.Rana(PW-11), done at Ashiyana Apartments where their Gypsies had been parked. SI Rishal Singh, however, affirmed that it was done while sitting in the Shamiana, in front of Hotel Oasis. It is noticed that SI Rishal Singh's statement, in addition to that of SI Panna Lal(PW-9) is not quite consistent in regard to the manner of raiding party reaching the spot, the way the official vehicles were parked and Nakabandi was held and the time and place of apprehension of the appellants named above. Notably, SI Rishal

Singh and SI Panna Lal's testimony cannot be ignored in view of the fact that it was the former who is claimed to have had lent his seal at the spot to facilitate sealing of the parcels of the contraband while the latter had allegedly carried part of the case property including two sealed sample parcels to deposit the same with the MHC(M), PS Shalimar Bagh. The prosecution case would fall apart no sooner the testimony of these two witnesses are held unbelievable for being inconsistent with the depositions of other material prosecution witnesses. If the apprehension and recovery of the contraband from the possession of the aforementioned appellants is taken to have had been effected in the manner claimed by prosecution, there could be no reason for the aforesaid discrepancies occurring in the statements of SI Rishal Singh and SI Panna Lal.

24. Apart from recovery of contraband from appellants Karam Chand, Narain Singh, Bhim Singh and Nrinder Kumar in front of Oasis Hotel, further recoveries of Charas were allegedly effected from appellant Lagan Singh and dickey of Gypsy wherein he was found sitting and which was parked at a place near Madhuban Chowk. Search of a blanket lying over the thighs of appellant Lagan Singh allegedly yielded 3 kgs. of Charas. Another 10 kgs. of Charas was got recovered from the dickey of the Gypsy by appellant Karam Chand. The dickey of the Gypsy was opened by Karam Chand. SI Rishal Singh(PW-4) affirmed that Karam Chand had taken out the key out of his pocket. It is noteworthy that before Karam Chand allegedly led the police party to the place where his Gypsy was parked, his personal search had already been carried out. No key was found on his person at the time of his personal search. SI Ravinder Kumar(PW-6) came out with a novel Explanationn. He stated that Karam Chand appellant had handed over the key to them before his personal search was effected. There is no mention of this fact in any document prepared at the spot. ACP J.S.Rana affirmed that Karam Chand had taken out the key from inside the Gypsy to open the dickey. Like SI Ravinder Singh, ACP B.C.Kalra(PW-7) testified that the key of his Gypsy had been handed over by Karam Chand to ACP J.S.Rana at the time of his personal search. No witness supported the statement of ACP J.S.Rana(I.O.) that Karam Chand had taken out the key from inside the Gypsy. ACP B.C.Kalra even went on to state that it was Lagan Singh appellant who had opened the dickey. Apart from inconsistencies in regard to the manner in which alleged recovery of Charas was

effected from the dickey of the Gypsy discrepancies are noticeable in the statements also with respect to composition of the team of police officials who had proceeded to the place where the said Gypsy had allegedly been parked. According to ACP J.S.Rana(PW-11) he was accompanied by ACP B.C.Kalra, SI Rishal Singh, SI Ravinder Kumar, SI Panna Lal, Const.Anil Kumar and Const.Rudramani when he proceeded to the place near Madhuban Chowk. ACP B.C.Kalra, however, stated that only he, SI Ravinder Kumar and two constables had gone to Madhuban Chowk with ACP J.S.Rana implying thereby that SI Rishal Singh and SI Panna Lal were not present there when recoveries of Charas were effected from Lagan Singh and dickey of the Gypsy. If ACP B.C.Kalra's statement as aforesaid is to be accepted it would appear that SI Rishal Singh deposed in respect of recoveries from Lagan Singh and dickey of the Gypsy without actually being a witness to such recoveries. Even the presence of SI Panna Lal who was stated to have had been entrusted with the sealed parcels, seizure memos and CRCL forms to carry the same to deposit in the Malkhana of PS Shalimar Bagh would stand ruled out.

25. The discrepancies in the statements of the witnesses testifying in regard to alleged arrest and recovery of the contraband from the appellants are not restricted only to the ones pointed out heretofore. But since inconsistencies in other respects may not sound that material skipping over the same should not make much of a difference. Viewing in the light of discrepancies as discussed above, the prosecution evidence would certainly appear to be lacking in quality to sustain a finding of guilty against the appellants beyond reasonable doubt. It could well be argued from prosecution point of view that barring SI Rishal Singh(PW-4) and SI Panna Lal(PW-9) all other prosecution witnesses have substantially supported the prosecution version to sustain the conviction of the appellants. It is, however, the quality and not the quantity of evidence which is to be insisted upon. Is there any good reason to disregard the testimony of one set of witnesses unfavorable to the prosecution and prefer the statements of the ones who seem supportive to prosecution version? This may not appear to pass the test of a judicious approach. The evidence produced by the prosecution must be taken into account in its entirety without segregating and discarding the unfavorable part. Let the process of analytical examination decide which part of evidence is acceptable

to record a finding of proof of the charge/s beyond reasonable doubt. In the present context, I really find no good reason to discard particular parts of statements of SI Rishal Singh and SI Panna Lal, which read in contradiction to the affirmation of rest of witnesses of recovery. In view of two sets of prosecution witnesses testifying differently particularly on the aspects taken note of earlier, a reasonable doubt is created which certainly works as a handicap to the finding that the prosecution has proved its case beyond reasonable doubt.

26. Reverting to the requirement of Section 55 of the Act, the prosecution would appear to insist on the strength of testimony of its witnesses that it has established beyond reasonable doubt that from the moment of taking out the samples of Charas allegedly recovered from the respective appellants until Chemical analysis of the samples at the test laboratory, the same remained intact with no possibility of any tempering therewith. No doubt, there is evidence of forms CRCL having been filled up in duplicate but the problem area to be tackled concerns the deposit of the copies of those forms with the MHC(M) of the police station concerned and transmission thereof to CRCL, Pusa Road with the sealed samples. Contrary to the oral statement of the witnesses concerned including Shri Subhash Chander of MHC(M) of PS Shalimar Bagh, regarding deposit of duplicate CRCL forms along with sealed sample parcels, relevant documents related thereto do not bear testimony to this fact. HC Subhash Chander, MHC(M) - (PW-2) deposed that on 11th of December, 1993, Insp.P.S.Rana, SHO PS Shalimar Bagh handed him over six sealed parcels bearing seals of `RS' and `PSR' with forms CRCL which he deposited in the Malkhana vide entry at Sl. No. 1293 dated 11.12.1993. The said sealed parcels were according to him, handed over by Insp.P.S.Rana by calling him (HC Subhash Chander) to his room at about 11.30 p.m./11.45 p.m. HC Subhash Chander claims to have had even met ACP J.S.Rana(I.O.) in the room of the SHO when he had gone to collect the said sealed parcels from him. This part of statement of HC Subhash Chander gets no support from any witness. ACP J.S.Rana stated that on 11th of December, 1993, he remained at the spot only from 6.10 p.m. to 12 midnight and had not visited PS Shalimar Bagh. He denied having met the MHC(M) or SHO of PS Shalimar Bagh on 11th of December, 1993 at any point of time during the said period. ACP B.C.Kalra(PW-7) and SI Rishal Singh(PW-4) also testified to the same effect. Even Insp.P.S.Rana(PW-8), SHO

PS Shalimar Bagh did not support the claim of HC Subhash Chander having met ACP J.S.Rana at 11.30 p.m/11.45 p.m. in his room.

27. Apart from aforesaid six sealed parcels, added HC Subhash Chander(PW-2), on 12th of December, 1993, four more sealed parcels bearing seals of `RS' and `PSR' with CRCL forms were got deposited in the Malkhana by the SHO PS Shalimar Bagh. He admitted in the course of his cross-examination that but for reproducing the contents of seizure memos in the Malkhana register, he had not specifically mentioned therein that CRCL forms were also deposited in the Malkhana along with the sealed parcels.

28. On 17th of December, 1993, states HC Subhash Chander(PW-2) five sealed sample parcels, with CRCL forms were handed over by him to SI Rishal Singh(PW-4) for depositing the same with CRCL, Pusa Road. Here again he admits in his cross-examination that he did not make any specific entry in his register regarding handing over of CRCL forms to SI Rishal Singh along with the sealed parcels. Thus apart from his oral statement before the court regarding deposit of CRCL forms in the Malkhana and handing over of the same for being taken to CRCL, Pusa Road, there is no documentary evidence to prove the said facts. In the circumstances, it cannot be held with certainty that forms CRCL had actually been deposited in the Malkhana on 11/12th of December, 1993 along with sealed parcels and further that the same were handed over to SI Rishal Singh(PW-4) on 17th of December, 1993 for depositing the same with CRCL, Pusa Road along with sealed sample parcels. Ex.PW-11/C to PW-11/D are CRCL reports. It is noticed that a carbon copy of CRCL form bearing specimen seals of `RS' and `PRS' are attached to each report which appear to be ones that would have been kept inside the sealed sample parcels. What happened to the original CRCL forms? It is not known if the same had actually been delivered at CRCL, Pusa Road along with the sealed sample Parcels as these are not proved to have ever been received back from CRCL.

29. In 'Soni Parshad Soni v. State', 1997 (1) CCC 282; 'Lal Man v. State' : 75(1998)DLT224 ; 'Rajan Ali v. State(Delhi Administration)', 1999 III AD (Del) 457; and 'Sher Singh Walia v. State NCT Delhi', 87 (2000) DLT 585, it was held that

where it is not proved that CRCL form was deposited in the Malkhana/or delivered at CRCL with sealed sample parcels and where CFSL form allegedly delivered at the test laboratory is not received back, a vital link evidence would be missing and in the circumstances tampering with the samples could not be ruled out altogether.

30. In the present case it is not only that the prosecution could not prove beyond reasonable doubt that forms CRCL had been deposited in the Malkhana and further that the same were delivered at CRCL along with sealed sample parcels, vital variation in the net weight of the samples sent for analysis rather compound the problem for the prosecution to steer clear of lurking doubt against possible tampering with the samples.

31. The net weight of samples purportedly sent and actually found at CRCL are tabulated as under:

Net Wt of sample	Net Wt. actually	purportedly sent	found at CRCL
1 Kg. 961.1 gms.	200 gms.	183.7 gms.	200 gms.
1 Kg. 963.9 gms.	200 gms.	169.7 gms.	

32. Evidently, net weight of all the five samples was found much less than what sealed ample parcels purported to contain. The deficit is not insignificant. The prosecution has no Explanationn for such deficit. Suspicion regarding tampering with sealed sample parcels in the backdrop of prosecution failure to prove that CRCL forms were actually deposited in the Malkhana and that the same had been delivered at CRC Laboratory, Pusa Road, along with sealed sample parcels grows stronger.

33. In 'Rajesh Jagdamba Avasthi v. State of Goa', 2004 (4) Crimes 347 (SC), where the parcel which was said to contain 115 gms. of Charas was found to contain only 82.54 gms. of Charas, it was not considered to be a minor discrepancy and the Supreme Court proceeded to observe:

'...The charas recovered from him was packed and sealed in two envelopes. When the said envelopes were opened in the laboratory by the Junior Scientific Officer, PW 1, he found the quantity to be different. While in one envelope the difference

was only minimal, in the other the difference in weight was significant. The High Court itself found that it could not be described as a mere minor discrepancy. Learned counsel rightly submitted us that the High Court was not justified in upholding the conviction of the appellant on the basis of what was recovered only from envelope A ignoring the quantity of charas found in envelope B. This is because there was only one search and seizure, and whatever was recovered from the appellant was packed in two envelopes. The credibility of the recovery proceeding is considerably eroded if it is found that the quantity actually found by PW 1 was less than the quantity sealed and sent to him. As he rightly emphasised, the question was not how much was seized, but whether there was an actual seizure, and whether what was seized was really sent for Chemical analysis to PW 1. The prosecution has not been able to explain this discrepancy and, therefore, it renders the case of the prosecution doubtful.'

34. In the present case also, the discrepancy in the weight of the contents of the sample parcels sealed at the spot and that which was actually found at CRC Lab can by no means be reconciled. Consequently, the credibility of the alleged recovery proceedings stands considerably eroded. It is, in the circumstances, rendered difficult to find beyond reasonable doubt that the samples sent to CRCL actually represented the lot allegedly recovered from the respective appellants.

35. In view of the above, it is difficult to sustain the impugned judgment of conviction and order of sentence. I, therefore, allow the appeals and set aside the conviction and sentence of the appellants. Consequently, the appellants stand acquitted of the charge and they are directed to be set at liberty forthwith, if not required to be detained in connection with any other case.