

Deep Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-03-1995

Reported in : 1996CriLJ54; 1996(1)WLC572

Judge : Rajendra Saxena, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 8, 20, 41 to 44, 50 and 57; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 350 of 1994

Appellant : Deep Chand

Respondent : State of Rajasthan

Advocate for Def. : C.R. Jakhar, Public Prosecutor

Advocate for Pet/Ap. : G.L. Khatri, Adv.

Judgement :

Rajendra Saxena, J.

1. This appeal has been directed against the judgment dated 16-7-94 passed by the learned Special Judge, N.D.P.S. Act Cases cum Addl. Sessions Judge, Ratangarh, whereby he convicted the appellant for the offence under Section 8/20(b)(i) of the N.D.P.S. Act, 1985, in short, 'the Act' and sentenced him to

undergo rigorous imprisonment for five years a fine of Rs. 50,000/- and in default to further undergo rigorous imprisonment for one year.

2. In nutshell, the relevant facts are that on 11-1-1992 at 1.45 pm, PW 6 Balwant Rai, SHO, PS, Sujangarh, while he was on patrolling duty in Naya Bazar, Sujangarh, received a source information to the effect that appellant Deep Chand Bajaj had 'Ganja' in his possession, which he wanted to sell and that he had just then gone towards the Railway Station through the southern street having a plastic bag. The said S.H.O. recorded the source information vide memo Ex. P.9. Two motbirs namely PW 1 Ram Singh and PW 2 Hari Ram were intimated about the source information vide memo Ex. P. 1 and Ex. P.5 respectively and their signatures were procured thereon. Balwant Rai alongwith the said motbirs and members of the police party consisting of PW 2 Hari Ram, Head Constable, PW 4 Raghunath Singh A.S.I, and other police constables besides the driver of the police jeep on the same day at about 2 PM reached near the street of Rampuria Cottage Sujangarh, where they noticed appellant Deep Chand carrying a plastic 'Katta', who on seeing the police vehicle, started running. Thereupon he was chased and surrounded by the police party and apprehended. Balwant Rai intimated the appellant vide memo Ex. P. 10 whether he wanted his search to be taken in the presence of a Magistrate or a Gazetted Officer or he consented to give his search to him. It is the case of the prosecution that the appellant gave his consent to the said S.H.O. to take his search and thereupon a plastic bag was recovered from his possession, which contained 'Ganja' and for which he did not possess any licence. The said 'Ganja' was weighed in presence of the motbirs and the police party. The contraband weighed 2 kg 500 gms and therefrom a representative sample weighing 50 gms. was taken and separately sealed in a cloth packet and the remaining contraband material weighing 2.450 kg was sealed in the said 'Katta' and was marked B. The seizure memo Ex. P.3 was prepared on the spot and the appellant was arrested. Balwant Rai brought the appellant to the Police Station, where FIR Ex. P. 11 was drawn and a case under Section 8/20 of the Act was registered. The sealed packet of the sample marked 'A' and contraband packet were kept in the safe custody of Malkhana of the Police Station. On 6-2-92, the sealed packet of the sample was handed-over to PW 5 Sher Singh, Constable, who took the same alongwith the letter of the S.H.O. Ex.

P. 13 to the S.P., Churu, who in turn, issued a forwarding letter to the State F.S.L. and the same was deposited in the State F.S.L. vide receipt Ex. P.8 dt. 7-2-92. The Assistant Director, State F.S.L., Rajasthan, Jaipur, on chemical and microscopic examination vide report dated 25-4-92 Ex. P. 12 opined that the said sample contained in packet marked 'A' was found to be of 'Ganja'. After completion of the investigation, the police submitted a challan against the appellant on 27-6-92 in the court of learned M.J.M., Sujangarh, who took cognizance against the appellants and committed the case to the learned Sessions Judge, Churu, from where it was transferred to the court of learned Special Judge, N.D.P.S. Act Cases, Ratangarh, who framed the charge against the appellant for the offence under S.8/20 of the Act. The appellant denied the indictment and claimed trial. The prosecution examined as many as six witnesses. The appellant in his plea recorded Under Section 313 Cr PC denied the circumstances appearing against him in the prosecution evidence. However, he did not adduce any evidence in his defence. The learned Special Judge after trial convicted the appellant for the offence under Section 8/20(b) of the Act and sentenced him in the manner stated above. Hence this appeal.

3. I have heard Shri G.L. Khatri learned counsel for the appellant and Shri C.R. Jakhar learned Public Prosecutor at length and carefully perused the record of the learned lower court in extenso.

4. Mr. G.L. Khatri has strenuously canvassed that in this case, there was non-compliance of the mandatory provisions of Section 42(2) and 50 of the Act, because the S.H.O. did not send the memo of the source information Ex. P.9 to his immediate official superior and did not record the option of the appellant as to whether he wanted to get himself searched in the presence of a Magistrate or a Gazetted Officer. According to him, the non-compliance of the said mandatory provisions has vitiated the trial in this case. His another limb of argument is that admittedly, PW 6 Balwant Rai is alleged to have effected the recovery of the contraband 'Ganja'; but he himself lodged the F.I.R. and conducted the investigation in this case, which is against the basic principle of criminal trial and that on that count also, the trial of this case stands vitiated. He has asserted that in this case, the motbirs have not supported the prosecution case and the testimony

of PW 3 Hari Ram Head Constable and PW 4 Jagmal Singh ASI and PW 6 Balwant Rai, S.H.O. is replete with material discrepancies, contradictions and infirmities and, as such the offence under Section 8/20 of the Act has not been proved beyond reasonable doubt against the appellant. He has contended that in this case, the material link evidence is also missing because the prosecution miserably failed to prove that as to which seal was used for sealing the packets and the sample of contraband articles; that the forwarding letter sent to the State F.S.L has also not been produced in the court; that no memo having the details of the seal was sent to the State F.S.L. and, as such, the prosecution has miserably failed to establish beyond reasonable doubt that the seal on the packet of the sample remained intact and was not tampered-with. He has also asserted that the alleged recovery memo was not prepared on the spot but at the Police Station because the same bears the F.I.R. No. 5 thereon which makes the prosecution case highly suspicious. According to him, in this case, the learned M.J.M., Sujangarh took cognizance against the appellant for which he was not legally authorised and, therefore, the entire trial stands vitiated. In the alternative, Mr. Khatri has submitted that the appellant is an old man of 66 years and is not a previous convict; that he has been awarded the maximum sentence, which is excessive & exorbitant; that he has already suffered the sentence for a period of about ten months and in case, his conviction is affirmed, his sentence be reduced to the period already undergone by him.

5. On the other hand, Mr. Jakhar has claimed that since the appellant was found in the possession of contraband 'Ganja' near the street of Naya Bazar, which is a public place; it was not at all a case of search, seizure and arrest in a building. Therefore, provisions of Section 42 of the Act do not apply in this case but the provisions of Section 43 of the Act come into play and as such, it was not at all necessary for the S.H.O. to have sent the copy of the memo of source information to his immediate official superior and the question of violation of the provisions of Section 42(2) of the Act does not arise. According to him, the report of arrest and seizure was sent to the immediate official superior within forty eight hours under Section 57 of the Act. He submits that vide memo Ex. P. 10, the appellant was intimated in writing as to whether he wanted his search to be taken in presence of a Magistrate or a Gazetted Officer or by the S.H.O., Balwant Rai, to which the

appellant agreed for the search by the Investigating Officer. Thus, the provisions of Section 50 of the Act were not offended or violated. He has submitted that in view of the law laid down by the Apex Court in *State of Punjab v. Balbir Singh* (: 1994 CriLJ3702 , it is only the empowered officer, who can Conduct the investigation and if any empowered officer comes across a person being in possession of the narcotic drug or psychotropic substances and makes the search, seizure and arrest such person under the Act then he can proceed with the investigation and that such empowered person does not become disentitled to carry-on further investigation. Moreover there is no provision either under the Act or in the Criminal Procedure Code according to which any illegality or irregularity in the investigation would render the trial illegal.

6. Mr. Jakhar, learned Public Prosecutor has contended that it is true that the motbirs have turned hostile and not supported the prosecution case but the statement of PW 6 Balwant Rai, has been fully corroborated by the sworn testimony of PW 3 Hari Ram, Head Constable and PW Raghunath Singh, ASI. It stands well proved beyond reasonable doubt that the appellant was in possession of 2.5 kgms of Ganja for which he did not possess any licence; that a representative sample was taken from the said contraband and the same was seized and sealed on the spot vide seizure memo Ex. P.3. He has asserted that there is no evidence to infer that this recovery memo was prepared at the Police Station and not on the spot. According to him, in this case, no material link evidence is missing and that there is voluminous evidence to establish that the sealed packets were kept in safe custody of Malkhana of the Police station and that the sealed packet of the representative samples was handed over to PW 5 Sher Singh, who deposited the same in the State F.S.L. vide receipt Ex.P.8 and that in the F.S.L. report Ex.P.12 also, it has been specifically mentioned that the packet marked 'A' enclosed within white cloth cover was properly sealed and that seals were intact and that on chemical analysis, the said sample was found that of Ganja. Mr. Jakhar has submitted that it is true that initially, the learned MJM took cognizance against the appellants for which he did not possess any authority but since the case was committed to the court of learned Sessions Judge, Churu and thereafter to the court of Addl. Sessions Judge, Ratangarh, who have been invested with the powers of the Special Judge, N.D.P.S. Act Cases, the

cognizance was taken by the learned Special Judge and trial commenced. In such circumstances, the trial of the appellant does not suffer from any vice or inherent lack of jurisdiction. Lastly, he has argued that the quantum of sentence awarded to the appellant is neither excessive nor exorbitant and prayed that the appeal be dismissed.

7. I have given my thoughtful consideration to the rival submissions made. Before embark upon deciding the points of controversy raised in this appeal, I propose to closely scan, scrutinise and evaluate the evidence recorded in this case.

8. Motbirs PW 1 Ram Singh and PW 2 Hari Ram have denied that they were served with notice Ex. P.1 and Ex. P.5 respectively by PW 6 Balwant Rai, SHO, PS, Sujangarh. However, they have admitted signature thereon at portions 'A' to 'B'. They have further denied that appellant Deep Chand was searched in their presence that any Ganja was recovered from his possession and that he was arrested in their presence. However, again they have admitted their signatures on site plan Ex. P.2 and seizure memo Ex.P.3. They have been declared hostile. In cross examination, PW 1 Ram Singh has refuted the contents of portions A to B to M to N of his police statement Ex. P.4 while PW 2 Hari Ram has denied the contents of portions A to B to G to H of his police statement Ex. P.6. The testimony of these witnesses do not help the prosecution and to my mind, they are not reliable witnesses. PW 6 Balwant Rai, S.H.O., P.S., Sujangarh has deposed that on 11-1-92 at about 1.30 PM, he alongwith A.S.I. Raghunath Singh, Head Constable Hari Ram and other constables had gone on patrolling duty in the police jeep and that in Nayabazar, Sujangarh, he received a source information that appellant Deep Chand having a plastic bag of Ganja was going towards the Rly. station for selling the said contraband. Thereupon, he reduced in writing the said source information vide memo Ex. P.9 and intimated the motbirs PW1 Ram Singh and PW 2 Hari Ram about the source information vide notices Ex.P. 1 and Ex. P.5 respectively and procured their signatures thereon. He further stated that thereafter he alongwith the police party and the said motbirs went, in the police jeep in the street near Rampuria Cottage land saw the appellant carrying a plastic bag; that the flatter seeing them, tried to run away but he was surrounded. Balwant Rai has further deposed that he intimated the appellant that he had reasonable

belief that he (appellant Deepchand) was carrying Ganja; that he wanted to take his search that he also gave a written notice Ex. P. 10 as to whether he wanted his search to be conducted before a Magistrate or a Gazetted Officer or by him; that thereupon the appellant consented to give his search to him. Balwant Rai has proved the signatures of the appellant on Ex. P. 10. He has further stated that thereafter in the presence of the motbirs and the members of the police party, he took the search of the appellant and from his possession, a bag containing Ganja was recovered which weighed 2.5 kgms, and that a representative sample weighing 50 gms, was taken therefrom. He has deposed that on the spot, he seized and sealed the packet of representative sample and also sealed the remaining contraband Ganja. He has further deposed that an amount of Rs. twenty was also recovered from the appellant, that all those articles were seized vide seizure memo Ex. P.3, which were duly signed by the motbirs and the police party that he also prepared the site plan and its memo thereof Ex. P.2.and Ex. P.2-A and that the appellant was arrested. He has stated that thereafter he came to the Police Station and drew FIR Ex.P. 11. He has deposed that he deposited the two sealed packets in the Malkahana of the Police Station and informed the S.P. Chum about the said search, seizure and arrest on the same day. In his cross-examination, he has admitted that he had conducted the investigation in this case; that he conducted the search of the appellant after the latter gave his consent; that he arrested him after the recovery of the contraband and that he had sent the specimen of the seal impressions alongwith his letter Ex.P. 13, which he handed over to PW 5 Sher Singh alongwith the sealed packet of the representative sample. He has admitted that the memo of the specimen seal mark was not sealed and that entries thereof were made in the Rojnamcha. PW 5 Sher Singh, Constable, deposed that on 6-2-92 the Head Mohrir, Incharge, Malkhana had handed-over to him one sealed packet for depositing the same to the State F.S.L., which he deposited there on 7-2-92 and procured receipt Ex. P.8. In his cross examination, he has admitted that Hari Ram, Head Mohrir handed-over the said packet to him and that he did not know as to what was written in that sealed packet. He has admitted that no seal was given to him separately alongwith the said sealed packet. No question has been put to this witness about the memo of the seal impression, which was given by the I.O. to him. In the letter Ex. P.13

written by PW 6 Balwant Rai, SHO, through the Superintendent of Police, it has been specifically mentioned that alongwith the letter and the sealed packet, the copies of the FIR, seizure memo, arrest memo of the appellant and specimen seal impression were sent by him. Balwant Rai has also proved the forwarding letter of S.P. Ex. P. 14, a perusal whereof reveals that the said forwarding letter alongwith a sealed packet marked 'A' was sent to the State F.S.L. through Sher Singh, Constable No. 4592 of Police Station, Sujangarh. In letter Ex. P. 14, it has also been specifically mentioned that the seals of packet marked 'A' tallied with the specimen seal impression and that alongwith the said letter, a copy of the F.I.R., seizure memo and the specimen impression of the seal were also sent. In the F.S.L. receipt Ex.P.8, which has been duly proved by Sher Singh, it has been clearly mentioned that one sealed packet was received in the State F.S.L. A perusal of the report dt. 25-4-92 Ex. P. 12 sent by the Asstt. Director, State F.S.L. unmistakably establishes that packet marked 'A' enclosed within a white cloth cover, was properly sealed bearing impressions, which tallied with the specimen seal impression forwarded and that the seals were intact. PW 3 Hari 'Ram, Head Constable, has stated that he was Head Mohrir, Incharge of the Malkhana, P.S., Sujangarh; that the S.H.O. had deposited two sealed packets, which he entered in the Malkhana register on 11-1-1992 vide entry Ex. P.7; that those packets remained in his safe custody and that seals thereof were intact; ;that the sealed packet of representative sample was handed over by him to PW 5 Sher Singh, which the latter deposited in the State F.S.L. and submitted its receipt Ex.P.8. In his cross examination, he was stated that the seal by which the seized packets were sealed, was that of the police station and that the said seal was not sealed separately and that only the Specimen impression of that seal was sent to the State F.S.L. Thus, from the testimony of Balwant Rai, Hari Ram and Sher Singh it stands well proved that the seal on the representative sample of packet parked 'A' remained intact till the said packet was delivered to the State F.S.L. and, as such, no material Jink evidence is missing in this case.

9. Statement of PW 6 Balwant Rai regarding the search, seizure and arrest of the appellant stand well corroborated by the testimony of PW 3 Hari Ram, Head Constable, and PW 4 Raghunath Singh, A.S.I., Who have deposed that in their presence and in the presence of the motbirs, they had seen the appellant Peep

Chand carrying a plastic bag, who tried to run away seeing them; that the appellant was surrounded and stopped that the S.H.O. Intimated him that he had reasonable belief that he was in possession of Ganja and that if he liked, his search could be taken in the presence of a Magistrate or a Gazetted Officer; and that thereupon the appellant agreed to give his search to the S.H.O. They have further deposed that thereupon, Balwant Rai gave his search to motbirs and thereafter took search of the appellant which resulted in recovery of Ganja in the plastic bag; that the said contraband was shown to and smelt by them and the motbirs, which was found to be Ganja, that the same weighed 2.5 kgms. and that a representative sample weighing 50 gms. was taken therefrom and sealed in a packet, while the remaining contraband Ganja was also sealed in that plastic bag and that the seal was that of the Police Station. They have also deposed that the specimen impression of the seal was also affixed on seizure memo Ex. P.3. Not a single question has been put to PW 3 Hari Ram, Head Constable regarding the alleged search, seizure and arrest of the appellant. The testimony of PW 4 Raghunath Singh has also not been shaken despite searching cross examination. In my considered opinion, there is no material omission, improvement, inconsistency or contradiction in the statements of PWs Balwant Rai, Hari Ram and Raghunath Singh and that they are reliable witnesses. Simply because the motbirs have turned hostile and not supported the prosecution case, the testimony of these police officials, which is consistent and credible, cannot be ignored and brushed aside.

10. In *State of Punjab v. Balbir Singh* (1994 Cri LJ 3702) (supra) at para No. 8, the Apex Court has reiterated that it is well settled that the testimony of a witness is not to be doubted or discarded merely on the ground that he happens to be an official but as a rule of caution and depending upon the circumstances of the case, the courts look for independent corroboration and that this again depends on the question whether the official has deliberately failed to comply with the provisions of law or failure was due to lack of time and opportunity to associate some independent witnesses with the search and strictly comply with those provisions. In my considered opinion, the learned trial Judge has not committed any illegality either of fact or law in placing reliance on the testimony of PWs Balwant Rai, Hari Ram and Raghunath Singh and in holding that the contraband ganja weighing 2.5

kgms was recovered from the possession of the appellant for which he did not possess any licence.

11. Admittedly, the appellant's search was taken on the street, which is a public place and, as such, the provisions of Section 42(2) of the Act do not apply in this case and it was not incumbent on the S.H.O. to have sent the copy of the source information forthwith to the immediate official superior. The provisions of Section 43 of the Act, which deal with the powers of seizure and arrest by an empowered officer in public place, apply in this, which do not require that the copy of the source information should be immediately sent by the forwarding officer to his immediate official superior. However, as per Section 57 of the Act, whenever any person makes any arrest or seizure under the Act, he is required within forty eight hours next after such seizure to make a full report of all particulars of arrest and seizure to the immediate official superior. The object is to put a check on the officer of the lower rank as they can misuse their drastic powers.

12. In *Abdul Sattar v. State* (1988) 2 Crimes 812 : (1989 Cri LJ 430), it has been held by the Bombay High Court that omission to comply with the provisions of this section will not vitiate the conviction unless such omission has caused any prejudice to the accused.

13. In *Balbir Singh's Case* (1994 Cri LJ 3702) (SC) (supra), it has been held that the provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merit of the case.

14. In the case on hand, PW 4 Raghunath Singh, ASI has deposed that on 11-1-92 immediately after reaching the police station, the information regarding the incident was transmitted to the immediate official superior through wireless message. However, a copy of such message was not available, PW 6 Balwant Rai, SHO, has stated that he had sent the information to the S.P. on the same day, after the search, seizure of contraband and arrest of the appellant. A copy of

the F.I.R. Ex. P.I 1 was also sent to the Circle Officer, who is the immediate official superior and this FIR contains all the contents of the seizure memo Ex.P.3 and other relevant information about the incident. Hence in my considered opinion, there has been no violation of the provisions of Section 57 of the Act in this case.

15. The appellant was also given a written intimation vide memo Ex. P. 10 by the S.H.O. intimating his right to get his search conducted in presence of a Magistrate or a Gazetted Officer. The memo was duly signed by him. There is voluminous evidence on record, which firmly establishes that the appellant gave consent for his search by PW 6 Balwant Rai, S.H.O. It is true that it is obligatory on the part of the empowered officer to inform the person to be searched and failure to inform him and if such person so requires, failure to take him to a Gazetted Officer or a Magistrate would amount to non-compliance of Section 50, which is mandatory and in such contingency, it will affect the prosecution case and will vitiate the trial. But in Balbir Singh's case (1994 Cri LJ 3702) (supra), the Apex Court has specifically held that after being so informed Under Section 50 of the Act, whether such person opted for such a course or not, would be a question of fact. In the instant case, PWs 3,4 and 6 have proved the contents of the seizure memo Ex. P.3. From their sworn, testimony, it stands firmly established that the appellant was given written intimation vide memo Ex. P. 10 Under Section 50 of the Act about his right to be searched before a Magistrate or a Gazetted Officer and that he consented for his search by PW 6 Balwant Rai. In such circumstances, there was no violation of mandatory provisions of Section 50 of the Act and no prejudice has been caused to the appellant on this count.

16. In view of this, the cases (1) Jai Chand v. State of Rajasthan 1990 Cri LR (Raj) 54, (2) Nathiya v. State of Rajasthan 1991 WLN 62 and (3) Bhajan Ram v. State of Rajasthan, S.B. Cr. Appeal No. 48/94 decided on Oct. 25 1994, cited by Shri Khatri, wherein it has been reiterated that provisions of Section 42(2)/50 of the Act are mandatory and that violation thereof vitiates the trial, do not come to the rescue of the appellant because the facts of those cases are clearly distinguishable with the facts of the case on hand.

17. Mr. Khatri has laid great stress on the fact that PW 6 Balwant Rai, who effected the alleged recovery of the contraband Ganja and drew the FIR Ex. P.I 1 as the complainant, has also investigated the case and, therefore, the basic principle of criminal trial that a complainant cannot be the investigator has been brutally offended and that on this count alone, the trial stands vitiated and the appellant deserves to be acquitted. For this, he has placed reliance on the cases of (1) Nathia (1991 WLN 62) (supra), (2) Sariya v. State of Rajasthan (1992) 1 WLN 107), (3) Sahi Ram v. State of Rajasthan 1993 Cri LR (Raj) 281, (4) Gyan Chand v. State of Rajasthan 1993 Cri LR (Raj) 283:(1993 Cri LJ 283) (5) Shahjad v. State of Raj. 1994 Cri LR (Raj) 684 and (6) Jagannath v. State of Raj. 1994 Cri LR (Raj) 709, wherein it has been held that the basic principle of criminal trial is that the complainant cannot investigate the trial; that investigation should be carried out by an independent person, who is not in any way party to the proceedings and that it is a basic and serious infirmity which vitiates the trial as well as the conviction of the accused. It will suffice to mention that the Apex Court in recent judgement passed in State of Punjab v. Balbir Singh', : 1994 CriLJ3702 has clearly observed as under:

'When a police officer carrying on the investigation including search, seizure or arrest, empowered under the provisions of the Cr. P.C., comes across a person being in possession of the narcotic drug or psychotropic substances then two aspects will arise. If he happens to be one of those empowered officers under the Act, also, then he must follow thereafter the provisions of the NDPS Act and continue the investigation as provided thereunder. If, on the other hand, he is not empowered then the obvious thing he should do is that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act.'

18. Thus, it is abundantly apparent that it is only the empowered officer, who can conduct investigation and if any empowered officer comes across a person being in possession of narcotic drug or psychotropic substance and makes the search, seizure and arrest of the accused under the Act, then he is fully empowered to proceed with the investigation in that case. It is not at all necessary that in such a case some other officer should proceed with the investigation. Therefore, such an

empowered officer, who has made the search, seized the contraband article and arrested the accused or lodged the report, does not become disentitled to carry on the further investigation in the case.

19. In view of the aforementioned principle of law enunciated by the Apex Court in Balbir Singh's case (1994 Cri LJ 3702) (supra), the dictum of law propounded in the cases enumerated in para No. 17 and relied on by Shri G.L. Khatri, that if the empowered officer, who effects the recovery of the contraband under the Act, continues with the investigation of the case, vitiates the trial, can not now be held to be a good law. Therefore, on this count, the trial in this case can not be held to have vitiated.

20. Mr. Khatri relying on part of the statements of motbir witnesses PW 1 Ram Singh and PW 2 Hari Ram, who have been declared hostile, has tried to stress that the site plan and the recovery memo were not prepared on the spot but were prepared at the police station. He has pointed out that in those documents, FIR No. 5 in red ink was mentioned at the police station after registration of the case and, therefore, the said recovery does not inspire any confidence and the appellant deserve to be acquitted. He has placed reliance on the case of Arjun Singh v. State of Rajasthan 1991 Cri LR (Raj) 357. In that case, the SHO neither prepared the site plan nor made the recovery memo etc. at the place of the occurrence but he took the seized articles to the police station, where he prepared those memes. The SHO also invented a novel way to seal the recovered articles and instead of giving the description of the articles themselves, he affixed the description by way of affixing the paper by pins on the articles and he himself admitted in trial court that those paper pins could be removed. The recovery was also not made in the presence of independent motbirs and even the description was not given on the articles so seized. Further, there was total non-compliance of the provisions of Section 50 of the Act. In such circumstances, it was held that the trial was vitiated, but such are not the facts of the case on hand. From the statement of PW 6 Balwant Rai, PW 3 Hari Ram Head Constable and PW 4 Raghunath Singh ASI, it stands amply proved that the appellant was searched, the contraband was recovered from his possession, the representative sample was taken therefrom and that the packets of sample and seized contraband were

sealed on the spot; that the appellant was arrested and the seizure memo Ex. P.3, site plan Ex.P.2 and memo thereof Ex. P.2A were prepared then and there and that thereafter the appellant was brought to the police station. There is not a fringe of evidence from which it can be inferred that the aforementioned documents were not prepared on the spot but were prepared at the police station. The statements of hostile witnesses cannot be read in isolation. It is true that on seizure memo Ex.P.3, FIR number was mentioned later on after the registration of the case. This could only be done after registration of crime and not prior to it. Hence, there is no valid & sufficient grounds to show that the alleged recovery of contraband was concocted or that a false case has been foisted against the appellant or that by simply jotting down the FIR number on recovery memo Ex. P.3, site plan and its memo Ex.P.2 and 2A, the trial in this case has vitiated.

21. In *Ali Hussain Sayyed v. State of Maharashtra* 1993 Cri LJ 277, contraband articles were seized and sealed on the spot. Those articles were then brought to the police station and there, the crime register number was entered on the Panchanama and the labels in a case Under Section 20 of the Act. The D.B. of the Bombay High Court observed that if the crime register number on the Panchnama is required to be entered at the time of the drawing up of the Panchnama then in such cases, it will be practically impossible to prepare the Panchnama on the spot. If articles are seized and sealed and are required to be inspected and initialled by another officer at a specified place on the packing or labels, then such places would have to be kept blank. Even in the case of a document, it may require to pass through several stages and certain endorsements would be required to be made at that stage and if such seized and sealed articles and documents prepared on the spot, are taken at the police station and the crime number is entered thereon, it would not adversely reflect upon, the veracity of the prosecution story at all. Hence keeping in view all the facts and circumstances proved in this case, in my considered opinion, the trial of this case has not been vitiated at all and the offence Under Section 8 r/w 20(b)(i) of the Act has been successfully brought home beyond reasonable doubt against the appellant.

22. Lastly, Mr. Khatri has contended that the quantum of punishment inflicted to the appellant is excessive and the same be reduced to the period already

undergone by them. On the date of the incident, the petitioner was about 50 years of age. He was found in possession of 2-5 kgms of 'Ganja', for which he did not possess any licence. He was arrested on 11-1-92 and released on bail on 17-1-92. Thereafter, he has been under detention since 16-7-94. Thus, he has suffered a sentence of about eleven months by now. The offence Under Section 20(b)(i) of the Act is punishable with rigorous imprisonment for a term which may extend to five years and also fine, which may extend to Rs. 50,000/-. The Legislature has not provided a minimum sentence for such an offence. The learned Single Judge has, however, inflicted the maximum punishment to the appellant, which keeping in view the facts & circumstances of the case and the fact that the appellant is not a previous convict, appears to me, disproportionate to the nature of the offence and recovery of 2.5 kg of 'Ganja' quite excessive. To my mind, rigorous imprisonment for one year and fine of Rs. one thousand only would suffice to secure the ends of justice.

23. In the premise of the above discussion this appeal is partly allowed and while maintaining the conviction of the appellant for the offence Under Section 20(b)(i) of the Act, his sentence is reduced from R.I for five years to one year's rigorous imprisonment. His fine is also reduced from Rs. fifty thousand to Rs. one thousand only and in default of payment of fine, the appellant shall further undergo R.I for one month. The Superintendent, Central Jail, Bikaner be informed accordingly.