SUPREME COURT OF INDIA

Kishan Chand

Vs.

State of Haryana

Crl.A.No.1375 of 2008

(Swatanter Kumar and Madan B. Lokur JJ.)

13.12.2012

JUDGMENT

Swatanter Kumar, J.

1. The Judge, Special Court, Kaithal, Haryana vide his judgment dated 31st July, 2002 rendered the judgment of conviction and passed an order of sentence under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short "the Act") and awarded the punishment to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 1 lakh, and in default thereto and to further undergo rigorous imprisonment for a period of two years to accused Kishan Chand, while it acquitted the other accused Ramphal as the prosecution had failed to prove its charge against that accused. Upon appeal, the judgment of the Trial Court was affirmed by the High Court as it was of the opinion that the judgment of the Trial Court did not warrant any interference. Thus, by its judgment dated 22nd April, 2008, the High Court sustained the conviction and sentence of the accused. Aggrieved from the judgment of the Division Bench of the High Court, the accused filed the present appeal.

2. Before we dwell upon the merit or otherwise of the contentions raised before us, it will be appropriate for the Court to fully narrate the facts resulting in the conviction of the appellant. On 19th July, 2000, a secret information was received by Sub-Inspector Kaptan Singh, PW7 who at the relevant time was the Station House Officer of Police Station, Cheeka and was present near the bus stand Bhagal in relation to investigation of a crime. Assistant Sub-Inspector Mohinder Singh was also present there. According to the information received the accused/appellant Kishan Chand and Ramphal, the other accused, used to smuggle opium on their Scooter No. HR 31 B 1975. On that day, they were coming

on Kakrala-Kakrali Road and were on their way to Bhagal. It was further informed that upon nakabandi, they could be caught red handed and a large quantity of opium could be recovered from the scooter. Kaptan Singh, PW7, then reached T- Point, turning Theh Banehra and made the nakabandi. After 20-25 minutes, both the accused came on scooter from the side of Kakrala-Kakrali. Accused Kishan Chand was driving the scooter, whereas accused Ramphal was the pillion rider. Suspecting the presence of narcotic substance in the scooter of the accused, a notice under Section 50 of the Act, Ext. PC was given to both the accused and they were asked to get the scooter searched in the presence of a Gazetted Officer or a Magistrate. Ext. PC, was signed by both the accused which was also signed by Assistant Sub-Inspectors Manohar Lal (PW6) and Mohinder Singh. The accused vide their reply Ext. PD opted to give the search in the presence of a Gazetted Officer. Ext. PD was also signed by the witnesses in addition to the accused.

3. Thereafter, the investigating officer called for Subhash Seoran PW5, Tehsildar-cum-Executive Magistrate, Guhla on the spot, who then directed PW7 to conduct the search of the scooter. The scooter was having a Diggi (Tool box) and upon checking the same, opium was recovered which was wrapped in a polythene. From the recovered opium, 50 grams opium was separated for the purposes of sample and a separate parcel was made of the same. On weighing, the residue opium was found to be 3 kg and 750 grams. It was sealed in a separate parcel with the seals SS of Tehsildar, Subhash Seoran, PW5 and KS of the investigating officer, Kaptan Singh, PW7.

4. Kaptan Singh handed over his seal KS to ASI Manohar Lal, PW6 whereas PW5 retained his seal with him. The case property, sample parcel, specimen seal impressions were taken into custody by recovery memo Ext. PG, along with the scooter. It was attested by the Tehsildar and other witnesses. A rukka, Ext. PA was sent to the police station, where on the basis of the same, a formal First Information Report Ext. PA/1 was recorded. Rough site plan, Ext. PF was also prepared by the Investigating Officer. Thereafter, the accused were arrested. The statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short “CrPC”) were recorded. After completion of the investigation at the spot, the case property was deposited with the MHC along with the scooter and seal impressions on the same day. A report under Section 57 of the Act Ext. PG was also sent to the higher officer. After completing the investigation, a report under Section 173 CrPC was prepared by PW7 and submitted before the court of competent jurisdiction.

5. The prosecution examined eight witnesses including Shri S.K. Nagpal, Senior Scientific Officer, FSL, Madhuban. The accused in his statement under Section 313 CrPC refuted all allegations of the prosecution levelled against them and pleaded innocence. Accused Kishan Chand stated that ASI Balwan Singh was resident of his village and there was a dispute regarding land between the two families. The possession of the land had been taken by the

family of the accused from ASI Balwan Singh. Thereafter, he had gone to see Sarpanch Bansa Singh of Village Bhoosla in connection with some personal work and at about 4 p.m., he was going towards Village Kalar Majra and on the way, Joginder, son of Dewa Singh met him at the Buss Adda Bhagal and when they were taking tea in a shop, then two police officials came in a civil dress and asked them to go to police post Bhagal as he was required by ASI Mohinder Singh Incharge Police Post Bhagal and, thus, a false case was planted against him.

6. As already noticed, the Trial Court acquitted accused Ramphal, but convicted Kishan Chand and the conviction was upheld by the High Court giving rise to the filing of the present appeal.

7. At this stage itself, we would like to notice certain findings of the Trial Court which were recorded, while acquitting the accused Ramphal and convicting accused Kishan Chand.

> "33. The learned defence counsel further argued that in the present case inspite of secret information the information was not sent to the higher officer as required under Section 42(2) of the NDPS Act nor the case was registered. As such, on this sole ground, accused are entitled to acquittal. The reliance has been placed on Beckodan Abdul Rahiman Versus State of Kerala, 2002 (2) RCR (Criminal)-385, where in that case, police recovered opium from accused on receipt of secret information on telephone. Information was not reduced in writing as required under section 42 of the NDPS Act. The conviction was set aside. The reliance was also placed on Lamin Bojang versus State of Maharashtra, 1997 (2) RCR - 294. Admittedly in the present case, the secret information was received against the accused. The investigation officer did not reduce the secret information in writing nor send the same to the higher officer or to the police station for registration of the case. Non-compliance of section 42(2) is not fatal to the prosecution case in the present case, because had the investigating officer tried to take down the secret information in writing and send the same to the police officer in that eventuality, there was possibility of the accused to escape as they were to come on a scooter. The statement of investigating officer proves that after picketing within 20 minutes, the accused appeared on the scooter. Since, there was possibility of the accused to escape, so in such a situation, if the investigating officer did not reduce into writing the secret information and send the same to the superior officer, then it cannot be said that any prejudice has been used to the accused, particularly, when the recovery has been effected in the presence of Subhash Seoran Teshildar who is an Executive Magistrate. The Hon'ble Supreme Court in a case Sajjan Abraham versus State of Kerala [2001 (2) RCR (Criminal)-808], wherein it was observed as under:-

"In construing any facts to find, whether prosecution has complied with the mandate of any provision which is mandatory, one has to examine it with pragmatic approach. The law under the aforesaid act being stringent to the persons involved in the field of illicit drug abuse, the legislature time and again has made some of the provisions obligatory for the prosecution to comply, which the courts have interpreted it to be mandatory. This is in order to balance the stringency for an accused by casting an obligation on the prosecution for its strict compliance. The stringency is because of the type of crime involved under it, so that no such person escapes from the clutches of law. The court however, while construing such provisions strictly should not interpret it so, literally so as to render its compliance, impossible. However, before drawing such an inference, it should be examined with caution and circumspection. In other words, if in a case, the following of mandate strictly, results in delay in trapping an accused, which may lead the accused to escape, then prosecution case should not be thrown out."

8. The Division Bench of the High Court confirmed the finding recorded by the Trial Court. It also recorded that the accused was in motion at the time when the secret information was received. Since secret information was from a reliable source, PW7 acted swiftly and arrested the accused and under these circumstances, the secret information report was not recorded by the investigating officer immediately nor was it sent to the superior officer. Therefore, in these circumstances, it is to be seen whether any prejudice was caused to the accused or not. Relying upon the following paragraph of the judgment of this Court regarding 'substantial compliance' in Sajan Abraham v. State of Kerala [(2001) 6 SCC 692],the High Court sustained the order of the Trial Court. "6 In construing any facts to find, whether the prosecution has complied with the mandate of any provision which is mandatory, one has to examine it with a pragmatic approach. The law under the aforesaid Act being stringent to the persons involved in the field of illicit drug traffic and drug abuse, the legislature time and again has made some of its provisions obligatory for the prosecution to comply with, which the courts have interpreted it to be mandatory. This is in order to balance the stringency for an accused by casting an obligation on the prosecution for its strict compliance. The stringency is because of the type of crime involved under it, so that no such person escapes from the clutches of the law. The court however while construing such provisions strictly should not interpret them so literally so as to render their compliance, impossible. However, before drawing such an inference, it should be examined with caution and circumspection. In other words, if in a case, the following of a mandate strictly, results in delay in trapping an accused, which may lead the accused to escape, then the prosecution case should not be thrown out.

9. While challenging the above concurrent findings of the courts, the learned counsel appearing for the appellant has raised the following contentions for consideration by the court.

10. Apparently and, in fact, admittedly there is no compliance with the provisions of sub-sections (1) and (2) of Section 42 of the Act and they are mandatory and not directory. Once, there is non- compliance of these mandatory provisions, the appellant is entitled to acquittal. In this regard, the counsel for the appellant has relied upon the judgment of this court in the case of Rajinder Singh v. State of Haryana [(2011) 8 SCC 130] and the Constitution Bench judgment in the case of Karnail Singh v. State of Haryana [(2009) 8 SCC 539].

11. Once, on similar facts and evidence, and particularly for non- production of key of the diggy of the scooter, the accused Ramphal was acquitted, the appellant could not have been convicted by the courts, thus, there is inbuilt contradiction in the judgments and they suffer from error in appreciation of evidence as well as in application of law.

12. The entire recovery is vitiated as PW5, Subhash Seoran, Tehsildar- cum- Executive Magistrate, was never present at the site and there was no compliance to the provisions of Section 50 of the Act as stated. No independent witness had been associated which itself will show that the prosecution had not been able to establish its case beyond reasonable doubt and that the appellant had been falsely implicated in the case.

13. To the contra, the submission on behalf of the State of Haryana is that the prosecution has been able to establish its case beyond reasonable doubt. There had been substantial compliance to the provisions of Section 42 of the Act. The compliance with the provisions of Section 57 and the Report which was sent vide Ext. PG on 20th July, 2002, fully establishes the substantial compliance to the provisions of Section 42 of the Act. The provisions of Section 50 had also been complied with and, therefore, the contentions raised on behalf of the appellant have no merit. On the other hand the question of falsely implicating the appellant does not arise as the secret information was reliable and has so been established by the prosecution evidence. The judgment under appeal, according to the counsel for the State, does not call for any interference.

14. First and the foremost, we will deal with the question of non- compliance with Section 42(1) and (2) of the Act. It is necessary for us to examine whether factually there was a compliance or non-compliance of the said provisions and, if so, to what effect. In this regard, there can be no better evidence than the statement of Investigating Officer PW7 himself. PW7, Kaptan Singh in his statement while referring to the story of the prosecution as noticed above, does not state in examination-in-chief that he had made the report

immediately upon receiving the secret information and had informed his senior officers.

15. In his examination-in-chief, such statement is conspicuous by its very absence. On the contra, in his cross-examination by the defence, he clearly admits as under:-

> "....the distance between the place of secret information and the place of recovery is about 1½ kilometre. Secret information was not reduced into the writing so no copy of the same was sent to the higher officer. I did not ask any witness of the public in writing to join the raiding party"

16. The learned Trial Court in para 34 of its judgment clearly recorded that admittedly in the present case, the secret information was received against the accused. The Investigation Officer did not reduce the secret information in writing nor did he send the same to the higher officer or to the police station for registration of the case. However, stating that if this was done, there was possibility that the accused escaped, the trial court observed that if the Investigating Officer did not reduce into writing the secret information and sent the same to the superior officer, then in light of the given circumstances, it could not be said that any prejudice was caused to the accused.

17. We are unable to contribute to this interpretation and approach of the Trial Court and the High Court in relation to the provisions of sub- Section (1) and (2) of Section 42 of the Act. The language of Section 42 does not admit any ambiguity. These are penal provisions and prescribe very harsh punishments for the offender. The question of substantial compliance of these provisions would amount to misconstruction of these relevant provisions. It is a settled canon of interpretation that the penal provisions, particularly with harsher punishments and with clear intendment of the legislature for definite compliance, ought to be construed strictly. The doctrine of substantial compliance cannot be called in aid to answer such interpretations. The principle of substantial compliance would be applicable in the cases where the language of the provision strictly or by necessary implication admits of such compliance.

18. In our considered view, this controversy is no more res integra and stands answered by a Constitution Bench judgment of this Court in the case of Karnail Singh (supra). In that judgment, the Court in the very opening paragraph noticed that in the case of Abdul Rashid Ibrahim Mansuri v. State of Gujarat [(2000) 2 SCC 513], a three Judge Bench of the Court had held that compliance of Section 42 of the Act is mandatory and failure to take down the information in writing and sending the report forthwith to the immediate officer superior may cause prejudice to the accused. However, in the case of Sajan Abraham (supra), again a Bench of three Judges, held that this provision is not mandatory and substantial compliance was sufficient. The Court noticed, if there is total

non-compliance of the provisions of Section 42 of the Act, it would adversely affect the prosecution case and to that extent, it is mandatory. But, if there is delay, whether it was undue or whether the same was explained or not, will be a question of fact in each case. The Court in paragraph 35 of the judgment held as under:-

> "In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:
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> > "The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1). But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior. In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency. While total non-compliance with requirements of sub- sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non- sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior,

then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.

19. Following the above judgment, a Bench of this Court in the case of Rajinder Singh (supra) took the view that total non-compliance of the provisions of subSections (1) and (2) of Section 42 of the Act is impermissible but delayed compliance with a satisfactory explanation for delay can, however, be countenanced.

20. The provisions like Section 42 or 50 of the Act are the provisions which require exact and definite compliance as opposed to the principle of substantial compliance. The Constitution Bench in the case of Karnail Singh (supra) carved out an exception which is not founded on substantial compliance but is based upon delayed compliance duly explained by definite and reliable grounds.

21. While dealing with the requirement of complying with the provisions of Section 50 of the Act and keeping in mind its mandatory nature, a Bench of this Court held that there is need for exact compliance without any attribute to the element of prejudice, where there is an admitted or apparent non-compliance. The Court in the case of State of Delhi v. Ram Avtar alias Rama [(2011) 12 SCC 207], held as under:-

22. The High Court while relying upon the judgment of this Court in Baldev Singh and rejecting the theory of substantial compliance, which had been suggested in Joseph Fernandez, found that the intimation did not satisfy the provisions of Section 50 of the Act. The Court reasoned that the expression "duly" used in Section 50 of the Act connotes not "substantial" but "exact and definite compliance". Vide Ext. PW 6/A, the appellant was informed that a gazetted officer or a Magistrate could be arranged for taking his search, if he so required. This intimation could not be treated as communicating to the appellant that he had a right under law, to be searched before the said authorities. As the recovery itself was illegal, the conviction and sentence has to be set aside.

23. It is a settled canon of criminal jurisprudence that when a safeguard or a right is provided, favouring the accused, compliance therewith should be strictly construed. As already held by the Constitution Bench in Vijaysinh Chandubha Jadeja, the theory of "substantial compliance" would not be applicable to such situations, particularly where the

punishment provided is very harsh and is likely to cause serious prejudice against the suspect. The safeguard cannot be treated as a formality, but it must be construed in its proper perspective, compliance therewith must be ensured. The law has provided a right to the accused, and makes it obligatory upon the officer concerned to make the suspect aware of such right. The officer had prior information of the raid; thus, he was expected to be prepared for carrying out his duties of investigation in accordance with the provisions of Section 50 of the Act. While discharging the onus of Section 50 of the Act, the prosecution has to establish that information regarding the existence of such a right had been given to the suspect. If such information is incomplete and ambiguous, then it cannot be construed to satisfy the requirements of Section 50 of the Act. Non-compliance with the provisions of Section 50 of the Act would cause prejudice to the accused, and, therefore, amount to the denial of a fair trial.

24. When there is total and definite non-compliance of such statutory provisions, the question of prejudice loses its significance. It will per se amount to prejudice. These are indefeasible, protective rights vested in a suspect and are incapable of being shadowed on the strength of substantial compliance.

25. The purpose of these provisions is to provide due protection to a suspect against false implication and ensure that these provisions are strictly complied with to further the legislative mandate of fair investigation and trial. It will be opposed to the very essence of criminal jurisprudence, if upon apparent and admitted noncompliance of these provisions in their entirety, the Court has to examine the element of prejudice. The element of prejudice is of some significance where provisions are directory or are of the nature admitting substantial compliance. Where the duty is absolute, the element of prejudice would be of least relevancy. Absolute duty coupled with strict compliance would rule out the element of prejudice where there is total non-compliance of the provision.

26. Reverting to the facts of the present case, we have already noticed that both the Trial Court and the High Court have proceeded on the basis of substantial compliance and there being no prejudice to the accused, though clearly recording that it was an admitted case of total non-compliance. The statement of PW7 puts the matter beyond ambiguity that there was ‘total non-compliance of the statutory provisions of Section 42 of the Act’. Once, there is total non-compliance and these provisions being mandatory in nature, the prosecution case must fail.

27. Reliance placed by the learned counsel appearing for the State on the case of Sajan Abraham (supra) is entirely misplaced, firstly in view of the Constitution Bench judgment of this Court in the case of Karnail Singh (supra). Secondly, in that case the Court was also

dealing with the application of the provisions of

Section 57 of the Act which are worded differently and have different requirements, as opposed to Sections 42 and 50 of the Act. It is not a case where any reason has come in evidence as to why the secret information was not reduced to writing and sent to the higher officer, which is the requirement to be adhered to 'pre-search'. The question of sending it immediately thereafter does not arise in the present case, as it is an admitted position that there is total non-compliance of Section 42 of the Act. The sending of report as required under Section 57 of the Act on 20th July, 2000 will be no compliance, factually and/or in the eyes of law to the provisions of Section 42 of the Act. These are separate rights and protections available to an accused and their compliance has to be done in accordance with the provisions of Sections 42, 50 and 57 of the Act. They are neither inter-linked nor inter-dependent so as to dispense compliance of one with the compliance of another. In fact, they operate in different fields and at different stages. That distinction has to be kept in mind by the courts while deciding such cases.

28. Now, we will deal with a serious doubt that has been pointed out on behalf of the appellant in the recovery and the very presence of PW5, Subhash Seoran, at the time of recovery. The prosecution has not been able to establish this aspect of the case beyond reasonable doubt. According to PW7 after stopping the scooter of the accused at T-Point, Theh Banehra, he had sent for PW5 who had reached there and recovery was effected in his presence after giving option to the accused as required under Section 50 of the Act. We do not consider it necessary to deal with the other contentions including the plea taken with regard to compliance of Section 50 of the Act. We would only confine ourselves in regard to the doubt that has been created in recovery of the contraband from the custody of the accused.

29. PW5 in his statement had categorically stated that he had come to the site in his official jeep No. HR 09 7007 driven by DW1, Desraj and no other person was in the jeep. He claimed to have left the spot at about 11.15 a.m. on 19th July, 2000. The accused had contended that he was falsely implicated, no independent witness was associated in the recovery or in the entire investigation and lastly that no recovery was effected and even PW5 has falsely deposed before the court. To support this contention, the accused had examined DW-1 Desraj, the driver of the car along with log book of Jeep No. HR 09 7007. It will be interesting to note the examination in chief of this witness.

> "I have brought the Log Book of Jeep no. HR09-7007. I am working as driver in Tehsil Office, at Guhla. In this Log Book at sr. no. 422 dated 19.7.2K, the vehicle was used by Naib Tehsildar from 12.30 P.M. to 7 P.M. and it was used in the area of Kamehri, Baupur, Gagarpur, Harnoli,

Landaheri and the beginning of journey, the reading of speedometer was 85056 and closing of the journey was 85173. Total numbers covered 117 kilometers. The Naib Tehsildar was Sh. Batti Sahib, of Guhla. Except this journey, the said vehicle has not gone anywhere. I had not gone with Sh. Subhash Seoran, the then Tehsildar at the area of village Theh Banehra at its T-point or in that area. Copy of entry in the Log book is Ex. D1, nor I went in this vehicle with Tehsildar Sh. Subhash Seoran in the area of village Bhagal or at the turn of vill. Theh Banehra. The entry of the movement of the vehicle is definitely recorded in the Log book. It is correct that I had not gone anywhere with Tehsildar Guhla Sh. Subhash Seoran on 19.7.2000.

It is incorrect to suggest that the entries in the Log Book has not been made correctly and that every movements of the vehicles are not mentioned in this log book, rather it has been made later on as per convenience of the driver. It is incorrect to suggest that on the alleged day, i.e. 19.7.2000, the vehicle was used by the Tehsildar Sh. Subhash Seoran and I was also with him. It is further incorrect that on 19.7.2000, I had visited the area of village Bhagal at the turning of vill. Theh Banehra along with Tehsildar Subhash Seoran in the aforesaid jeep."

30. In his cross-examination, except the suggestion that every movement of the vehicles is not entered in the log book and that the vehicle was used by PW7 on that day, which suggestion he categorically denied, no other question was put to this witness. One has no reason to disbelieve the statement of DW1 particularly when he produced the log book maintained in normal course of business. The log book showed a clear entry at serial no. 422 dated 19th July, 2000 where the vehicle in question was stated to be used by Mr. Bhatti, Naib Tehsildar, from 12.30 p.m. to 7.00 p.m. and was driven for 117 kms. PW5, Tehsildar-cum-Executive Magistrate, in fact, did not use the official vehicle on that day as per the log book. The witness even gave the exact reading of the meter of the vehicle which showed that it was driven for 117 kilometers on that date by the Naib Tehsildar, not even anywhere near to the area where the accused is alleged to have been apprehended It was also stated that except that journey, the vehicle had gone nowhere. He specifically stated that he had never taken PW5 to the place in question. Once, the statement of this witness is examined with the statement of PW7, that he did not associate any private person, independent witness in the recovery or in the entire process of investigation and that he did not even record such a fact in this proceedings casts a shadow of doubt over the case of the prosecution. Total non-compliance of Section 42, non-involvement of any independent witness at any stage of the investigation and the presence of PW5 at the spot being so very doubtful, thus, compel this
Court to hold that the prosecution has failed to prove its case beyond reasonable doubt.

31. As already noticed, we do not propose to discuss other arguments raised on behalf of

the appellant. We may also notice here that both the High Court and the Trial Court have noticed the above evidence as well as its legal position. Thus, the Trial Court as well as the High Court has fallen in error of law as well as that of appreciation of evidence.

32. Resultantly, the present appeal is accepted. The accused is acquitted of the offence under Section 18 of the Act and is directed to be set at liberty forthwith. The case property be disposed of in accordance with the provisions of the Act.