

**IN THE HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

Case:-CRA No.35/2013 &  
IA Nos.58/2013, 01/2015, 01/2018 &  
02/2018

Reserved on:-02.05.2019  
Pronounced on:-30.05.2019

Nirmal Singh and another

.....Appellant(s)

Through:- Mr. Rajnesh Oswal, Advocate for appellant No.1  
Ms. Surinder Kour, Sr. Advocate with  
Ms. Manpreet Kour, Advocate for appellant No.2.

V/s

State through Advocate General J&K Govt.

.....Respondent(s)

Through:- Mr. Sudesh Magotra, Dy. AG.

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY KUMAR GUPTA**

**JUDGMENT**

1. Appellants, Nirmal Singh and Arif Amin Daing, who have been sentenced to suffer rigorous imprisonment of ten years with a fine of Rs.1.00 lac each for the offence under Sections 8/20 NDPS Act vide judgment dated 29.01.2013 by which the appellants have been convicted/sentenced by the learned Sessions Judge, Udhampur, have filed the present appeal. Feeling aggrieved of the impugned judgment, appellants have prayed for setting aside of the conviction and sentence so passed against them on the following grounds:

- a) That the judgment impugned is against the law and facts of the case and as such requires to be set aside.
- b) That the court below has not appreciated the evidence in its right perspective and as such, fallen into grave error of law

by holding the appellant guilty of committing aforementioned offence.

c) That the very search of the appellants and their truck was illegal and against mandate of law without adopting the mandatory procedure as prescribed under law.

d) That the mandatory procedure as prescribed under Section 42 of NDPS Act, has not been complied with, therefore, the judgment and order impugned is bad and deserve to be set aside.

e) That the sampling of the seized contraband and sending the same to the FSL are again contrary to procedure prescribed. This clearly shows that the whole case against the appellants has been manipulated as such appellants are required to be acquitted.

f) That there are inherent contradictions which goes to the root of the case thereby demolishing the prosecution story but the court below failed to take the same into account while passing the judgment impugned. Therefore, judgment impugned is required to be set aside.

g) That the recoveries of contraband are also doubtful which further demolishes the prosecution case.

2. Brief facts of the case are that on 08.03.2011 at 1510 hours a source information received by Station House Officer of Police Station, Rehmbal Udhampur, was telephonically passed on to Incharge Police Post Tikri, that a Truck bearing registration No.JK02W/0017, being driven by accused No.1 in association with accused No.2 loaded with apple boxes was on its way to Jammu and it was believed that in some boxes Charas was being transported to some unknown destination, SHO directed incharge police post Tikri that he should immediately arrange a naka on the National Highway Jammu Srinagar and take up the investigation of the case. To facilitate investigation copy of FIR was dispatched through selection grade constable Taj Din. On receiving this information from SHO Police Station Rehmbal incharge police post Tikri contacted Naib Tehsildar Tikri on cell No. 9469352427 and requested him to come on spot. A naka was laid by him and the checking of vehicles was started. A photographer PW-

Charanjeet Singh was also summoned on spot. In the meantime SGCT Taj Din also reached there alongwith FIR and handed over the same to Incharge police post Tikri. Executive Magistrate Romesh Singh also arrived there and at about 1610 hours the suspected truck No. JK02W/0017 reached the naka point. Both the accused were traveling in the truck. Accused No.1 was driver of the truck and accused No.2 was his associate driver. Both the accused were given option of search and they opted to offer their search in presence of a Magistrate. The truck in question was taken inside police post Tikri because there was not enough space available on National Highway which remains busy round the clock. In the first instance the documents found in the truck were seized. As per the challan the truck was loaded with 353 apple boxes which were unloaded and a thorough search of the apple boxes was conducted. In five boxes 37 packets of Charas were found and in rest of 348 boxes rotten apples were packed. The packets of charas so recovered were weighed in presence of the Magistrate and its weight was found to be 58 kg and 300 grams. The packing material was removed and from these 37 packets 365 balls of Charas were recovered. The balls of charas so recovered weighed **55 kgs and 100 grams** and the packing material weighed 3 kgs 200 grams. From all the 365 balls of Charas so recovered sample of 100 grams was extracted which was divided into 2 packets of 50 grams each and both the packets were sealed on spot and marked as A and A1. Remaining Charas weighing 55 kgs was also sealed and marked as B. The packing material was packed separately and marked as C. The packets were sealed by the Magistrate on spot and an authority letter in the

name of Director FSL was prepared by the Magistrate on spot. The statements of the witnesses were recorded. 348 apple boxes were given on superdnama of Zahoor Ahmed and the vehicle so seized was given to Hardeep Singh on interim custody as per the court order. After conclusion of the investigation, it came to the fore that accused had loaded the truck on 04.03.11 from Ali Mohammad and Sons Fruit Commission and Forwarding Agents, 83 New Fruit Market, Parimpora Srinagar-17, Kashmir and 353 apple boxes were loaded in the truck. The consignment of the apples was to be delivered at Mumbai to Danesh Chander Gupta, shop No. H653 H669 APMC. Since, the National Highway was closed for traffic so the consignment was temporarily to be delivered to Sanjay Fruit Company Shop No.17-A New Sabzi Mandi Jammu, The accused unloaded five apple boxes from the Truck at Pantha Chowk Srinagar and loaded it with five boxes containing Charas and the accused also managed another challan from the consignor and on 07.03.11 the truck left Srinagar towards Jammu which was ultimately intercepted at Tikri. After conclusion of investigation the accused were found to have committed offence u/s 8/20 of NDPS Act and so the investigation culminated in charge sheet.

3. Accordingly, accused were charged for offence under Sections 8/20 NDPS Act. The statements of the accused were recorded. They denied their guilt and claimed trial. The prosecution in support of its case examined PWs Tara Chand, Taj Din, Charanjeet Singh, Mohinder Singh, Rohit Koul, Mohd Altaf Khan, Zahoor Ahmed, Romesh Singh, Raj Kumar Sharma, Ashok Kumar and Padamdev Singh, as witnesses.

4. The court below after conclusion of trial, held that prosecution has proved its case beyond reasonable doubt and thus convicted and passed sentence of ten years with a fine of Rs.1.00 lac each for the offence under Sections 8/20 NDPS against appellants herein.
5. Counsel for appellants while arguing the matter, reiterated the stand, placed reliance on elaborate laws and pointed out various infirmities of procedural defects in investigation. As per counsel, the foremost defect is that there was no compliance of section 42 of NDPS Act, as prior information received was neither written nor copy of same was sent to higher officer by SHO. He has further argued that there was no compliance of section 52, 55 and 57 of Act. That there are various infirmities in the statements of prosecution witnesses. That sampling has not been done properly.
6. Before dealing with arguments of counsel for appellants, the brief resume of depositions of prosecution witnesses are as under:

**PW Tara Chand**:-He has stated that in the year 2011 he was posted in police post Tikri. On 08.03.11, an information was received by Sh. Padamdev Singh incharge police post Tikri that a truck No.JK02W/0017 was on its way from Srinagar to Jammu which was loaded with Charas. On receiving this information incharge police post Tikri along with him and other police officials laid a naka on Srinagar-Jammu National Highway just adjacent to police post Tikri at about 3.30 p.m. At about 4 p.m SHO police station Rehmbal along with some police men also reached on spot and PW Taj Din who was also with SHO, handed over FIR No.44/11 to incharge police post Tikri. Executive Magistrate Romesh Singh was telephonically requested to come on spot and so was photographer Charanjeet Singh called. At about 4.15 p.m. truck in question reached the naka point.

The vehicle was being driven by accused No.1 and accused No.2 was also in the truck. After the truck was stopped at the naka it was seized. It was found that 353 apple boxes were loaded as per the challan seized from the truck. The truck was searched after giving an option of search to the accused. Accused opted to be searched in presence of a Magistrate. The option memo Ext.P-1/I was prepared and both the accused signed the option memo. The apple boxes were unloaded from the truck in presence of the Magistrate. In 348 boxes apples were found but in five boxes 37 packets of Charas were loaded. The packets of Charas alongwith packing material were found to be 58 kgs 300 grams in weight. 365 balls of Charas were recovered from the packets which separately weighed 55 kgs 100 grams out of which 100 grams of sample was separated and divided into two packets for chemical analysis. The sample packets were marked as A and A1. Same were sealed by Magistrate on spot and he (witness) also signed these sample packets. (The packets were shown to the witness in the court and he identified the same). Thereafter seizure memo Ext.P-1-II was prepared. Remaining Charas was packed and the packet was marked as B which was also signed by him (the witness identified the same in court during his statement). Accused were arrested. Their personal search was conducted and so on.

In cross examination the witness says that he remained on spot upto 6.20 p.m and his statement was recorded on spot. The case was investigated by Sh. Padamdev Singh Incharge police post Tikri. The apple boxes were checked thoroughly by the Magistrate on spot. The signatures of accused were not obtained on the seizure memos. He cannot say who was the owner of the apples.

**PW Taj Din:-** He has stated that on 08.03.11 he was posted in the police station Rehmbal. On the said date he alongwith SHO and other police constables proceeded to Tikri for naka duty. They reached there at 4 p.m and he handed over the case FIR No.44/11 to incharge police post Tikri. Incharge police post Tikri alongwith his other officials were busy in checking vehicles at naka and at about 4.15 p.m truck No.JK02W/0017 reached there, which was being driven by accused

No.1 and accused No.2 was also present in the truck. There was no one other than accused inside the truck. The truck was taken inside police post Tikri. Executive Magistrate Romesh Singh was also there. Option of search was given to accused and they opted to be searched in presence of a Magistrate. The option memo was prepared and signed by both the accused. Thereafter the truck was searched. 353 apple boxes were loaded in the truck. The boxes were unloaded and checked in presence of Magistrate. Out of 353 boxes, five boxes were found to contain Charas. 35 packets of Charas were recovered from those five boxes which were weighed in presence of Magistrate and were found to be 58 kg 300 grams in weight. 365 Charas balls were recovered from these packets and the Charas balls without packing material weighed 55 kg 100 grams. Out of these balls 100 grams of sample was separated divided in two packets of 50 grams each and sealed by Magistrate on spot. The sample packets were marked as A, A1 and the rest of the Charas was marked as B. The packing material weighed 3 kgs 200 grams which too was packed separately and marked as C. The accused were transporting the Charas for sale at Jammu. His statement was recorded at 6.50 p.m.

In cross examination he says that some army men were also present on spot but they were not associated with the investigation. The apple boxes were unloaded and checked in presence of Magistrate. He cannot say who weighed the Charas on spot but I/O and Magistrate were present on spot. Out of 37 packets 365 balls of Charas were recovered and from every ball a bit of sample were extracted and the total sample weighed 100 grams. The packets were prepared on spot.

**PW-Charanjeet Singh:-** He has stated that on 08.03.11 he was summoned on spot by incharge police post Tikri. At about 4 p.m he reached National Highway Tikri and found incharge police post alongwith SHO Rembal and other police official on naka point. At about 4.15 p.m Truck No.JK02W/0017 on its way from Srinagar to Jammu was intercepted at naka. The truck was loaded with apple boxes which were checked and out of 365 boxes loaded in the truck

five boxes were found to contain Charas. 37 packets of Charas were recovered from the boxes and he took photographs CR1 to CR16.

In cross examination he says that army men were also present on spot. The apple boxes were opened by police men and checked by Magistrate.

**PW Mohinder Singh:-** He has stated that in March 2011 he was on special duty in police post Tikri. On 08.03.11 incharge police post Tikri arranged a naka on National Highway. At about 4 p.m SHO along with SGCT Taj Din came on spot, who handed over the FIR to Incharge Police post Tikri. Naib Tehsildar Tikri Romesh Singh and photographer Charanjeet Singh also came on spot. At about 4.15 p.m a truck No.JK02W/0017 on its way from Srinagar was intercepted at naka point. It was seized and taken inside the premises of police post because there was not enough space on the National Highway to check the vehicle. Accused were found inside the truck. Seizure memo Ext.P-I was prepared. Accused were given option of search and they opted to be searched in presence of Magistrate. Option memo Ext.P-1-I was prepared which was signed by accused and witnesses. Thereafter the apple boxes loaded in the truck were unloaded by the police officials. 353 apple boxes were found to be loaded in the truck. In five apple boxes 37 packets of Charas were found which weighed 58 kgs 300 gram and the packets were found to contain 365 balls of Charas of different size which were found to be 55 kgs 100 gram in weight. From all the balls a bit of sample was extracted and two packets of 50 grams of each were prepared on spot which were sealed by Magistrate and marked as A and A1. His statement was recorded on spot at 6.35 p.m.

In cross examination he says that he had no information about the truck. The information was probably received by incharge police post. During the proceedings on spot 5/6 army men from Road opening party also came on spot. The boxes were checked by Magistrate himself. 15/20 people were on spot who were busy in conducting the search.



**PW Rohit Koul** :- He has stated that on 16<sup>th</sup> March 2011 a packet was received from Addl. Superintendent of Police, Udhampur in connection with case FIR No.44/11 u/s 8/20 NDPS Act. The packet was having eight intact seals and was marked as Exhibit A. On opening the packet it was found to contain numerous pieces of greenish black colored material and the pieces were collectively given exhibit K-107/2011 by him. The exhibit weighed 50 gram, Seals were opened by him and the contents were examined. The contents were found to be containing Charas, Report Ext.P-12 contain a detail of his observations and same is correct in accordance with his observations. In cross examination he says that he has not mentioned the quantity of resin in the sample nor has he found the percentage of Charas in the sample. There was no neutral material in the sample and the whole sample belonged to cannabis plant. The packet was having eight seals of Executive Magistrate First Class Tikri.

**PW Mohd Altaf Khan** :- He has stated that on 04.03.11 accused No.1 came to him along with Truck No.0017/JK02W for loading apples. He sent him to Ali Mohd and sons which firm was having its trading centre at Parimpora Srinagar.

**PW Zahoor Ahmed**: He has stated that on 04.03.11 he was working as accountant of Ali Mohd and Sons Fruit Mandi Parimpora Kashmir. On the said date accused came to his shop along with his truck No. JK02W/0017 and he loaded 353 boxes of apple in the said truck. Each and every box was checked by driver and conductor of the vehicle. As per challan the consignment was to be delivered at Mumbai. On the request of accused No.1 he was given 2 challans while as for every consignment only one challan is issued but the accused No.1 insisted that he wanted another challan. After the loaded truck goes out of the premises then the driver and conductor of the vehicle are responsible for the loaded goods.

In cross examination he says that apple boxes were loaded in the truck in presence of driver and conductor. Each and every box was opened

in their presence and checked. The challan No.216 dated 05.03.12 was issued by him.

**PW Romesh Singh**:- He has stated that on 08.03.11 he was posted as Naib Tehsildar Executive Magistrate Tikri. On the said date incharge police post Tikri requested him telephonically at about 3.30 p.m that they suspected some objectionable material was being transported in vehicle No. 0017/JK02W. So he proceeded on spot at about 4 p.m and found Sh. Padamdev Singh on national highway. SHO Police Station Rehmbal and 10/15 police men were also on spot. The truck in question had already reached there. The truck was driven by Nirmal Singh but he cannot identify him. There was also a conductor in the truck who too cannot be identified by him but one of the accused was a “sardar”. The truck was seized in his presence and after giving the option of search to accused the search was started in presence of accused. 353 boxes of apple were found loaded in the truck and out of the loaded boxes five boxes were found to contain 37 packets of Charas and the packets were found to be 58.300 grams in weight. From 37 packets 365 Charas balls were recovered which weighed 55.100 grams. Samples were taken from all the 365 balls and a total sample of 100 grams was extracted, divided into two parts and same were sealed by him on spot. (The packets were shown to him in the court and he identified the packets). Seizure memo Ext.P-1/II was prepared. He prepared a letter of authority Ext.P-6. His statement was also recorded on spot. The photographs on record were taken on spot. In cross examination he says that he received phone call from in charge police post Tikri on 3.30 p.m and he was requested to come on spot urgently. Some army men were present there but the Charas was not seized by army. Every apple box was checked thoroughly.

**PW Raj Kumar Sharma**:- He has stated that on 08.03.11 he received an information from reliable source that truck No. JK02W/0017 was on its way to Jammu and there was some Charas being transported in the said truck being driven by accused No.1 in association with the accused No.2. He registered case FIR No.44/11 (Ext.P-14/1) and handed over the investigation to incharge police post Tikri. He

directed incharge police post Tikri to act promptly. He also prepared the special report and along with police party he proceeded to Tikri. He reached at naka point Tikri at 4 p.m. Naib Tehsildar Tikri was also there. At about 4.10 p.m the truck in question reached there. The truck was taken inside the police post. The apple boxes loaded in the truck were searched and from five boxes 37 packets of Charas were recovered which were found to be 558.300 grams in weight. From the 37 packets so recovered, 365 balls of Charas were recovered and pure Charas weighed 55 kgs 100 grams. A sample of 100 grams was extracted from the balls of Charas which was divided into two packets of 50 grams each and were sealed separately. Accused were given option of search and they had opted to be searched in presence of a Magistrate or a Gazetted Officer. Seizure memo Ext.P-1/III was prepared in his presence and was signed by him.

In cross examination he says that reliable information received by him was not taken down by him but he registered an FIR on that information and informed his superior officers on phone and also submitted a special report to S.P. There was no civilian present on spot. Some army men had come there to watch the proceedings.

**PW Ashok Kumar**- He has stated that on 08.03.2011 investigating officer handed over four packets marked A, A1, B and C and five empty boxes to him. He made an entry in register No.19 at S.No. 69. On 16.03.11 packet A, was handed over to Mohinder Singh ASI for delivery in FSL. Rest of the packets were handed over to prosecution wing on 27.05.11.

**PW Padamdev Singh** :- He has stated that in March 2011 he was posted in police post Tikri and at about 15.10 hours he received a message from SHO Rehmbal that he had received information about Truck No. JK02W/0017 was in process of transporting Charas towards Jammu. He had registered a case FIR No.44/11 and investigation was handed over to him. He arranged a naka on national highway. He requested Naib Tehsildar Tikri to come on spot. Official photographer was also summoned and in the meantime SHO along with SGCT Taj Din reached on spot. FIR was handover to him

(witness). After sometime, Naib Tehsildar also reached there along with Photographer. The truck in question was stopped at naka point. Both the accused were present in the truck. The truck along with the loaded apple boxes was seized. The option of search was given to accused and they opted to be searched in presence of Gazzeted Officer or a Magistrate. The option memo was prepared and accused signed the option memo. The truck was searched in presence of Magistrate. All the apple boxes were unloaded and checked. As per challan 353 apple boxes were loaded in the truck. In five boxes, 37 packets of Charas were packed which were found to be 58 kgs 300 grams in weight. Pure Charas was found to weigh 55 kgs and 100 grams. Samples were recovered from all the balls of Charas and a total sample of 100 grams was extracted, which was divided into two parts of 50 grams each which were packed and marked as A and A1. Remaining Charas was marked as B. The Magistrate present on spot sealed the packets on spot. The Magistrate also issued authority letter for chemical examination of the sample. Statements of witnesses were recorded and after conclusion of investigation accused were found to have committed offence u/s 8/20 NDPS Act. Sketch map of the place of recovery of Charas Ext. P-13/1 was prepared by him.

7. This is all about oral evidence. There is a lot of documentary evidence also on record which also has so many facts to offer. As already said accused have not led any defence but have casually stated that they have not committed any crime whatsoever muchless the one in which they are facing trial. Court below after appreciating the evidence on record, convicted the appellants and passed sentences accordingly.
8. First and foremost argument of counsel for appellants is that there was no compliance of section 42 of NDPS Act, which renders whole trial vitiated and thus conviction of appellants is illegal. Whereas counsel for respondent has stated that in present case, section 43 of Act is applicable as per findings of the court below. Counsel for appellants

has relied upon **2013 (1) Law Herald (SC) 561** in case titled **Sukhdev Singh v State of Haryana; 2013 (2) JKJ 452 (HC)** in case titled **Imtiyaz Ahmed Tanga v State of J&K and ors.**, wherein it is held that on receipt of secret information compliance of section 42 of Act is mandatory.

9. The finding of court below in this regard reads as under:-

“20.....Another point raised by learned defense counsel was about non compliance of mandatory provisions of Section 42 (2) of NDPS Act. He has contended that the information received at police station was not transmitted to the superior officer and so the entire investigation as well as trial is vitiated. In this regard he has made a reference to 2011(3) Crimes 210 (S.C) wherein the Hon’ble apex court was of the view that non compliance with the provisions of Section 42 (2) of NDPS Act vitiates prosecution case. There cannot be any doubt about the significance of section 42 (2) of NDPS Act. The requirement contained in the provision is that once the information is received, the officer receiving the information has to take down the information in writing, record his reasons for belief and then to forward the same to his immediate officer superior within 72 hours. Here in this particular case the facts are somewhat peculiar. The information was received by SHO. He immediately took down the information in the form of an FIR Ext. P-14/1 and then nominated an investigating officer and handed over the FIR to him where-after investigation proceeded. In his statement before the court he has stated that a special report was also prepared by him and same was forwarded to S.P of the District and the information was also given telephonically to different officers. So section 42 Clause (2) of NDPS Act appears to have been complete in this case. That apart search in this case was made in presence of a Magistrate. The statement of Magistrate is on record. The photographs on record reveal his presence on spot. The Magistrate says that each and everything was done in his presence and if there is a slight deviation from the requirement of Section 42 (2) of NDPS Act it must not result in rejection of the entire prosecution case which is otherwise established beyond doubt. Again I would like to point out that section 42 of NDPS Act does not have any application in this case. It is intact section 43 of NDPS Act which is applicable because

**the contraband has been recovered during transit from the vehicle occupied by both the accused. Incase titled State of Haryana Vs Jarnail Singh and others 2004 Drugs Cases (Narcotics) 177, the apex court has observed in para Nos. 7 and 8 as follows:**

‘7. Section 43 of the NDPS Act provides that any officer of any of the departments mentioned in Section 42 may seize in any public place or in transit any narcotic drug or psychotropic substance etc. in respect of which he has reason to believe that an offence punishable under the Act has been committed. He is also authorized to detain and search any person whom he has reason to believe to have committed an offence punishable under the Act. Explanation to Section 43 lays down that for the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public.

8. Sections 42 and 43, therefore, contemplates two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such proviso in Section 43 of the Act and, **therefore, it is obvious that if a public conveyance is searched in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and the sunrise.**’

(Emphasis supplied)

**21. So the judgment referred to by learned counsel for accused, in my respectful submission would not be applicable to this case in view of the peculiarity of the facts of this case.”**

10. I have considered the findings of the court below as well as law on the subject. There is no doubt about the law that compliance of section 42 of Act, on receipt of secret information is mandatory, but before applying this section, it has to be seen whether this section is applicable to the facts of particular case or not. Section 42 of the Act deals with the power of entry, search, seizure and arrest without warrant or authorization. It reads thus:

**“42. Power of entry, search, seizure and arrest without warrant or authorization.— (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or**

special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act: Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector: Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief. (2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

11. Section 43 of the Act confers powers on the empowered officer to seize a substance and arrest a suspect in a public place. It provides thus:

**“43. Power of seizure and arrest in public place.—** Any officer of any of the departments mentioned in section 42 may— (a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance

or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; (b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company. Explanation.— For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.” [Emphasis supplied] We are unable to accept the submission made by the learned counsel for the appellant that Section 42 is attracted to the facts of the present case.”

12. The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure. Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any Narcotic Drug or Psychotropic Substances in a public place where such possession appears to him to be unlawful. Further section 42 (2) mandates the officer who takes down the information has to send the same to higher officer within 72 hours.
13. In present case, admittedly as per prosecution story, on 08.03.2011 at 1510 hours a source information was received by Station House Officer of Police Station, Rehmbal Udhampur, that a Truck bearing



registration No.JK02W/0017, being driven by accused No.1 in association with accused No.2 (appellants herein) loaded with apple boxes was on its way to Jammu and it was believed that in some boxes Charas was being transported to some unknown destination. SHO directed incharge police post Tikri on telephone that he should immediately arrange a naka on the National Highway Jammu-Srinagar and take up the investigation of the case. To facilitate investigation copy of FIR was dispatched through selection grade constable Taj Din. On receiving this information from SHO police station Rehmbal, incharge police post Tikri contacted Naib Tehsildar Tikri on cell No. 9469352427 and requested him to come on spot. A naka was laid by him and the checking of vehicles was started. A photographer PW-Charanjeet Singh was also summoned on spot. In the meantime SGCT Taj Din also reached there alongwith FIR and handed over the same to Incharge police post Tikri. Executive Magistrate Romesh Singh also arrived there and at about 1610 hours the suspected truck No. JK02W/0017 reached the naka point. Both the accused were traveling in the truck. Accused No.1 was driver of the truck and accused No.2 was his associate driver. Both the accused were given option of search and they opted to offer their search in presence of a Magistrate. The truck in question was taken inside police post Tikri because there was not enough space available on National Highway which remains busy round the clock. In the first instance the documents found in the truck were seized. As per the challan, the truck was loaded with 353 apple boxes which were unloaded and a thorough search of the apple boxes was conducted. In five boxes 37 packets of Charas were found and in

rest of 348 boxes rotten apples were packed. The packets of charas so recovered were weighed in presence of the Magistrate and its weight was found to be 58 kg and 300 grams. The packing material was removed and from these 37 packets 365 balls of Charas were recovered. The balls of charas so recovered weighed **55 kgs and 100 grams** and the packing material weighed 3 kgs 200 grams. From all the 365 balls of Charas so recovered sample of 100 grams was extracted which was divided into 2 packets of 50 grams each and both the packets were sealed on spot and marked as A, and A1. Remaining Charas weighing 55 kgs was also sealed and marked as B. The packing material was packed separately and marked as C.

14. In **Labh Singh vs. Union of India, 2002 Cri.LJ 28**, the Court held as under:-

“16. There is no dispute on the point that provisions of [Section 42](#) of the NDPS Act, if they are applicable in any case, are mandatory. For that the decisions of the Hon'ble Supreme Court in [State of Punjab v. Balbir Singh](#) (1), [Mohinder Kumar v. The State Panaji, Goa](#) (2), [State of Punjab v. Baldev Singh](#) (3), and [Abdul Rashid Ibrahim Mansuri v. State of Gujarat](#) (4), may be seen.

17. The next question that arises for consideration is in what cases provisions of [Section 42](#) of the NDPS Act would apply.

18. The provisions of [Section 42](#) of the NDPS Act are applicable in the case in which a building, conveyance or enclosed place is to be entered into and searched. If such places are not to be entered into and searched, the provisions of [Section 42](#) of the NDPS Act will not be applicable. The powers which have been conferred are to enter, search, seize and arrest without warrant or authorization. Under proviso to sub-section (1) [Section 42](#) of the NDPS Act if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between the sunset and sunrise after recording the grounds of his belief.

19. Thus, it is clear that the provisions of [Section 42](#) of the NDPS Act would be only applicable when search, seizure and arrest have to be effected without warrant or authorisation in any building,

conveyance or enclosed place. if such places are not be entered into and searched, the provisions of [Section 42](#) of the NDPS Act will not be applicable. [Section 41](#) & [42](#) of the NDPS Act apply when there is a prior information about the presence of the contraband article in any building, conveyance or enclosed place, while [Section 43](#) applies when information as such is not about the presence of a contraband article at any of such place, but such article is likely to be brought in any public place.

20. On purpose, it may be stated here that the provisions of [Section 42](#) of the NDPS Act requiring the information received to be reduced into writing under [Section 42\(1\)](#) has a definite purpose. The purpose is that story of secret information may not be connected to support any version that is put in the Court. it is intended that the accused must know that information has been given to enable him or his counsel to cross-examine with reference to it. it cannot be a defence to the violation of this mandatory requirement that information was received while on patrol duty or while being away from police station. Even in such a case, the information can be reduced in writing.

21. in the present case, the alleged heroin was recovered from the Truck in which three persons, namely, accused appellants Labh Singh, Major Singh and Mangal Singh were there and the learned Special Judge came to the conclusion since the Truck in question is a public vehicle, therefore, search from the Truck in question would amount to search in public place and the said Truck would also amount to public conveyance and, therefore, provisions of [Section 42](#) of the NDPS Act would not be applicable and, rather, provisions of [Section 43](#) of the NDPS Act would apply.

22. Now it is to be seen whether above findings of the learned Special Judge are correct one or not.

23. in this respect, it would be worthwhile to quote here the Explanation attached to [Section 43](#) of the NDPS:-

"Explanation-For the purposes of this section, the expression 'public place' includes any public conveyance, hotel, shop or other place intended for use by, or accessible to the public."

24. Explanation to [Section 43](#) of the NDPS Act says that for the purposes of this section, public place includes any public conveyance, hotel, shop or other place which is intended for use by, or which is accessible to, the public. Thus, in order to be covered by the expression 'public place', the place should be such where public may go as of right. Mere fact that entry in any such place is regulated one will not change that place into a place other than a public place.

25. in [Section 42](#) as well as [Section 43](#), the word conveyance' in there. The difficulty that arises when conveyance is there, in what manner it should be interpreted.

26. in my view, in [Section 43](#), the word 'conveyance' is qualified by the word 'public' but in [Section 42](#), it is not qualified by any such word. Thus, it is only public conveyance which is covered by [section 43](#), but conveyance other than public conveyance will be covered by [Section 42](#) of the NDPS Act.

27. The Hon'ble Supreme Court in [State of Punjab v. Balbir Singh](#) (supra) has held as under:-

"We may mention here that [Section 43](#) which deals with the power of seizure and arrest in public places is slightly different from [Section 42](#) in certain respects. The empowered officer while acting under [Section 43](#)\* need not record any reasons of his belief. This Section also does not mention anything about the empowered officer having prior information given by any person or about recording the same, as compared to [Section 42](#)."

28. Thus, clear position emerging out of the above mentioned decision is that an empowered officer while effecting search, seizure or arrest in any public place under [Section 42](#) of the NDPS Act need not record reasons of his belief nor is he required to reduce to writing any information received by him before effecting search, seizure or arrest, etc. in any public place under this [Section 43](#).

29. As already stated above, search in the present case has been effected from the truck. In India, the Truck, which carries goods from one place to another on public demand and on consideration, in all circumstances would be regarded as public conveyance. Therefore, the Truck in question from which contraband heroin was recovered would be treated as public conveyance and when it is treated as public conveyance, no question of application of [Section 42](#) of the NDPS Act arises and the provisions of [Section 43](#) of the NDPS Act would apply in the present case.

30. In these circumstances, the findings of the learned Special Judge that provisions of [Section 42](#) of the NDPS Act are not applicable in the present case, but provisions of [Section 43](#) of the NDPS Act would apply, are liable to be confirmed as they are based on correct appreciation of facts and law."

15. In *Smt. Krishna Kanwar alias Dhakuraeen vs. State of Rajasthan*, reported in 2004 (2) SCC 608, the Court held as follows:

"15. [Section 42](#) enables certain officers duly empowered in this behalf by the Central or State Government, as the case may be, to enter into search any building, conveyance or enclosed place for the purpose mentioned therein without any warrant or authorization. [Section 42](#) deals with "building, conveyance or enclosed place" whereas [Section 43](#) deals with the power of seizure and arrest in public place."

16. On applying ratio of above decisions to the present case, I find that though the search operation was conducted on information that some persons carrying illegal goods are coming from Kashmir in a truck bearing registration No. JK02W/0017 and may be apprehended after

proper checking, but the above information was neither in respect of the appellants nor any particular person. Till the disclosure of the appellants that they were carrying the charas, the police personnel were fully unaware about the fact that the appellants were committing any offence under the Act. Admittedly, the search was conducted in public place i.e. at Tikri NHW and not in any building, conveyance or enclosed building. In above view of the matter, provision of [Section 42](#) are not attracted in the matter rather provision of [Section 43](#) are applicable in the present case. In these circumstances, neither reducing the information in writing and nor communicating the same to immediate official superior within 72 hours are in no way fatal for the prosecution case. The law cited by counsel for appellants, thus, is not applicable.

17. Next point taken is that truck was stopped outside police post, but it was taken inside the post and then search was affected and no site plan of place of seizure has been made. This argument is not tenable, because there is site plan in file EXP-13/J showing NHW from where truck was stopped and taken inside premises of P/P Tikri, where it was searched. Further, in any case, if after stopping of truck the same was taken inside police post, I am of the view that no illegality has been committed.
18. Next argument of counsel for appellants is that in photographs, there has been shown army personnel holding the contraband; even PWs Taj Din and Charanjeet Singh have also stated that army personnel were there; as per counsel the truck and recovery was affected by army personnel, but police has made a false story that they seized the

truck and contraband was recovered. Further, no army personnel has been cited in case as witness.

19. I have carefully considered these aspects of the matter. There is evidence that these army personnel were members of road opening party, who used to clear the road on each day from any dangerous materials. PW Romesh Singh EMIC has categorically stated that army did not recover the charas. Further, appellants did not produce any defence in this regard.
20. Prosecution is required to produce quality of witnesses and not quantity of witnesses as per section 134 of Evidence Act, which says:

‘In any case, no particular number of witnesses shall be required for proof of any fact in the case’ .This section of Evidence Act clearly laid down that no particular number of witnesses required to proof or disproof the facts of the case.. This section is based on the popular maxim that evidence is to be weighed and not counted.. For ascertaining the truth by the court, the number of witnesses is not considered, but the quality of evidence is taken into a note. It is not necessary to examine all persons who were present at the scene of the crime committed for proving the guilt of accused. Any rule that a particular number of witnesses are required to prove guilt would hamper the justice delivery system as in many cases it is not practicable to bring more witnesses due some peculiar facts as in present case ,even if it is considered that army personals were present, it would have become to bring them to court due to fact that are usually transferred.”

21. Another argument of counsel for appellants is that, sample has not been taken and sent to FSL in proper manner and no CFSL form was filed on spot. He has relied upon **2019 Legal Eagle 129** case titled **Mohd. Maqbool Raina Vs. Intelligence Officer, Narcotic Control Bureau, Jammu Zonal Unit, Jammu;** and **2018 (1) JKJ 230 (HC)** case titled **Jamal Din Vs. State of J&K**, wherein it is held that preparation of CFSL form is mandatory. It has further been argued that no Malkhana receipt has been produced from where, it can be

inferred that after seizure, the seized contraband was kept in safe place.

22. From the perusal of prosecution story as projected during trial, it is evident that on receiving this information from SHO police station Rehmbal, incharge police post Tikri contacted Naib Tehsildar Tikri on cell No.9469352427 and requested him to come on spot. A naka was laid by him and the checking of vehicles was started. A photographer PW-Charanjeet Singh was also summoned on spot. In the meantime SGCT Taj Din also reached there alongwith FIR and handed over the same to Incharge police post Tikri. Executive Magistrate Romesh Singh also arrived there and at about 1610 hours the suspected truck No.JK02W/0017 reached the naka point. Both the accused were traveling in the truck. Accused No.1 was driver of the truck and accused No.2 was his associate driver. Both the accused were given option of search and they opted to offer their search in presence of a Magistrate. The truck in question was taken inside police post Tikri because there was not enough space available on National Highway which remains busy round the clock; the truck was loaded with 353 apple boxes which were unloaded and a thorough search of the apple boxes was conducted. In five boxes 37 packets of Charas were found and in rest of 348 boxes rotten apples were packed. The packets of charas so recovered were weighed in presence of the Magistrate and its weight was found to be 58 kg and 300 grams. The packing material was removed and from these 37 packets 365 balls of Charas were recovered. The balls of charas so recovered weighed **55 kgs and**

100 grams and the packing material weighed 3 kgs 200 grams. From all the 365 balls of Charas so recovered sample of 100 grams was extracted which was divided into 2 packets of 50 grams each and both the packets were sealed on spot and marked as A, and A1. Remaining Charas weighing 55 kgs was also sealed and marked as B. The packing material was packed separately and marked as C. The packets were sealed by the Magistrate on spot and an authority letter in the name of Director FSL was prepared by the Magistrate on spot.

23. **PW Padam Dev Singh I/O** has stated that at about 15.10 hours he received a message from SHO Rehmbal that he had received information about Truck No. JK02W/0017 which was in process of transporting Charas towards Jammu. He had registered a case FIR No.44/11 and investigation was handed over to him. He arranged a naka on national highway. He requested Naib Tehsildar Tikri to come on spot. Official photographer was also summoned and in the meantime SHO along with SGCT Taj Din reached on spot. FIR was handover to him (witness). After sometime, Naib Tehsildar also reached there along with Photographer. The truck in question was stopped at naka point. Both the accused were present in the truck. The truck along with the loaded apple boxes was seized. The option of search was given to accused and they opted to be searched in presence of Gazetted Officer or a Magistrate. The option memo was prepared and accused signed the option memo. The truck was searched in presence of Magistrate. All the apple boxes were unloaded and checked. As per challan, 353 apple boxes were loaded in the truck. In five boxes, 37 packets of Charas were packed which were found to be



58 kgs 300 grams in weight. Pure Charas was found to weigh 55 kgs and 100 grams. Samples were recovered from all the balls of Charas and a total sample of 100 grams was extracted, which was divided into two parts of 50 grams each which were packed and marked as A and A1. Remaining Charas was marked as B. The Magistrate present on spot sealed the packets on spot. The Magistrate also issued authority letter for chemical examination of the sample.

24. **PW Ramesh Singh EMIC** has stated that on 08.03.11 in charge police post Tikri requested him telephonically at about 3.30 p.m that they suspected some objectionable material was being transported in vehicle No. 0017/JK02W. So he proceeded on spot at about 4 p.m and found Sh. Padamdev Singh on national highway. SHO Police Station Rehmbal and 10/15 policemen were also on spot. The truck in question had already reached there. The truck was driven by Nirmal Singh but he cannot identify him. There was also a conductor in the truck, who, too cannot be identified by him but one of the accused was a “sardar”. The truck was seized in his presence and after giving the option of search to accused the search was started in presence of accused. 353 boxes of apple were found loaded in the truck and out of the loaded boxes, five boxes were found to contain 37 packets of Charas and the packets were found to be 58.300 grams in weight. From 37 packets 365 Charas balls were recovered which weighed 55.100 grams. Samples were taken from all the 365 balls and a total sample of 100 grams was extracted, divided into two parts and same were sealed by him on spot. He prepared a letter of authority Ext.P-6.

25. There are also other witnesses in this regard the details of which have been narrated above in brief resumes. From bare perusal of these statements, it is evident that proper sampling was done; it was sealed in presence of Magistrate and authority letter EXT-P-6 was obtained from EMIC on same day.
26. Law of investigation in criminal case especially in NDPS case, is clear that wherever incriminating articles are seized during investigation which are required to be sent to FSL, they are immediately sealed and deposited in Malkhana at police station till they are taken out there from to be sent to FSL for examination. Contemporaneously, with seizure and sealing of such article, impression of seal used on sealed articles, is put on the form commonly known as CFSL Form. This is so done because at the time of analysis of sealed packet in laboratory, analyst concerned may be able to tally seal impression on the sealed packet with those appearing on CFSL Form in order to rule out any possibility of tampering of seals on sealed packet after seizure anywhere or in transit till receipt in laboratory. Although, CFSL form is not a requirement under provisions of NDPS Act or Code of Criminal Procedure but it is rule of prudence having ripened into a Rule of Law lending assurance to the fact that sealed sample packet has not been tampered with by anybody.
27. But in present case, as is evident from admitted facts, the seizure and sampling were done on spot; samples were sealed on spot. The authority letter was obtained on spot on same day on 8.3.2011; the authority letter issued by EMIC dated 8.3.2011 would reveal that, it bears impression of seal used by EMIC for sealing the samples of

contraband on spot. Thereafter these were deposited in Malkhana on same day. **PW Ashok Kumar** has stated that on 08.03.2011 investigating officer handed over four packets marked A, A1, B and C and five empty boxes to him. He made an entry in register No. 19 at S.No. 69. On 16.03.11 packet A, was handed over to Mohinder Singh ASI for delivery in FSL. **PW Rohit Koul, who examined the sample** has stated that on 16<sup>th</sup> March 2011 a packet was received from Addl. Superintendent of Police, Udhampur in connection with case FIR No.44/11 u/s 8/20 NDPS Act. The packet was having eight intact seals of EMIC. On opening the packet it was found to contain numerous pieces of greenish black colored material and the pieces were collectively given exhibit K-107/2011 by him. The exhibit weighed 50 gram. Seals were opened by him and the contents were examined. The contents were found to be containing Charas, he has proved Report Ext.P-12.

28. From perusal of certificate EXT-P-12, it is evident that, FSL has found all eight seals intact which were tallied with the specimen seal impression forwarded.
29. So it is evident that there was no question of tampering and even if CFSL form was not prepared and filled, it has not caused any prejudice to appellants/accused. It can be termed as mere irregularity, which does not go into root of prosecution case. The law cited by appellants' counsel is distinguished by facts. In those cases, despite non filling of CFSL Form, there were other infirmities in the cases. Merely non filling of CFSL Form is not fatal for prosecution, when

there is sufficient material produced by the prosecution with regard to guilt of the accused, because as already held that it is only a note of caution that CFSL Form should be filled by I.O. during investigation.

30. Next argument of counsel for appellants is that sections 52, 55 and 57 of Act have not been complied. **Section 52** of the **NDPS Act** provides that any officer arresting a person under **section** 41, [42](#), [43](#) or 44 of the Act shall inform the accused about grounds of his arrest and every such person arrested shall be forwarded without unnecessary delay to the officer-In-charge of the nearest police station. Section 55 of NDPS Act lays down that officer incharge of Police station shall take charge of and keep in safe custody of the articles under this act. Section 57 of the NDPS Act requires that whenever any person makes arrest or seizure under the NDPS Act, he shall within 48 hours make a full report of all particulars of such arrest or seizure to his immediate superior official.

31. The finding of court below in this regard is as under:-

**“22. ....Section 52, 55 and 57 of NDPS Act and the non compliance of these provisions renders the prosecution case doubtful. Section 52 of the Act makes it necessary for an officer arresting a person to inform him about the grounds of his arrest and the arrested person shall be forwarded without unnecessary delay to officer incharge of police station. Here in our case accused were given the option of search on spot. Their search was conducted in presence of officer incharge of Police station as well as Magistrate and after the contraband was recovered from their possession and they were taken in custody and information was also given to their close relatives. Their signatures were taken on the arrest memos. It is as such sufficient compliance of Section 52 of NDPS Act. Section 55 of NDPS Act lays down that officer incharge of Police station shall take charge of and keep in safe custody of the articles under this act. I have pointed out above that the contraband was sealed on spot by the Magistrate and thereafter kept in Malkhana till the sample was dispatched to the FSL. Provisions of Section 55 though directory in nature have been fully complied by the investigating officer. Same is the case so far as Section 57 of the Act is concerned. The SHO has in his statement deposed that a special report was prepared and forwarded to District SP and the information was**

telephonically given to the superior officers. So the argument of learned defence counsel is devoid of any merit.”

32. The above finding of court below is neither perverse nor suffers from infirmity of law.

33. In **Madan Lal and Anr. v. State of Himachal Pradesh 2003 CriLJ 3868**, it is held as under:-

“16. Coming to the question of alleged non-compliance of the requirement of [Sections 55](#) and [57](#), we find the trial Court has referred to the evidence of the witnesses and held that articles were kept in Malkhana in safe custody and were sent for chemical examination after necessary orders by the Magistrate and, therefore, the requirement of [Section 55](#) were complied with. [Section 57](#) relates to reporting of arrest and seizure to immediate superior officer. The evidence shows that same has been done. We find no infirmity in the conclusions of the trial Court and the High court regarding compliance of [Sections 55](#) and [57](#) to warrant interference.”

34. Further, in **Sajan Abraham vs. State of Kerala (2001) 6 SCC 692**, it is held as under:-

“12. The last submission for the appellant is, there is non-compliance of [Section 57](#) of the Act. He submits under it, an obligation is cast on the prosecution while making an arrest or seizure, the officer should make full report of all particulars of such arrest or seizure and send it to his immediate superior officer within 48 hours of such arrest or seizure. The submission is, this has not been done. Hence the entire case vitiates. It is true that the communication to the immediate superior has not been made in the form of a report, but we find, which is also recorded by the High Court that PW5 has sent copies of FIR and other documents to his superior officer which is not in dispute. Ex.P9 shows that the copies of the FIR along with other records regarding the arrest of appellant and seizure of the contraband articles were sent by PW5 to his superior officer immediately after registering the said case. So, all the necessary information to be submitted in a report was sent. This constitutes substantial compliance and mere absence of any such report cannot be said it has prejudiced the accused. This section is not mandatory in nature. When substantial compliance has been made, as in the present case it would not vitiate the prosecution case. In the present case, we find PW5 has sent all the relevant material to his superior officer immediately. Thus we do not find any violation of [Section 57](#) of the Act.

13. In **State of Punjab vs. Balbir Singh (1994) 3 SCC 299**, this Court held:

"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.."

35. Lastly, it has been argued that, there are inherent contradictions in the statements of prosecution witnesses. I have carefully scanned the record and sequence of events narrated by prosecution witnesses. The story of prosecution is that accused got loaded 353 boxes of apples from Srinagar for taking it to Mumbai, but on the way from Srinagar to Jammu, accused sold five boxes of apples and loaded contraband – charas wrapped in the shape of 37 packets consisting of 365 balls of charas weighing **58 kg and 300 grams;** after removal of packing materials, these 37 packets 365 balls of Charas weighed **55 kgs and 100 grams** and the packing material weighed 3 kgs 200 grams. **PW Mohd Altaf Khan** stated that on 04.03.11 accused No.1 came to him along with Truck No.0017/JK02W for loading apples. He sent him to Ali Mohd and Sons, which firm was having its trading centre at Parimpora Srinagar. **PW Zahoor Ahmed** has stated that on 04.03.11 he was working as accountant of Ali Mohd and Sons Fruit Mandi Parimpora Kashmir. On the said date accused came to his shop along with his truck No. JK02W/0017 and he loaded 353 boxes of apple in the said truck. Each and every box was checked by driver and conductor of the vehicle. As per challan, the consignment was to be delivered at Mumbai. On the request of accused No.1, he was given 2 challans while as for every consignment only one challan is issued but the accused No.1 insisted that he wanted another challan.

36. In this way, first relevant fact has been proved by prosecution. In cross examination nothing in favour of accused was extracted by defence.
37. Next relevant fact is stopping of truck at NHW by Naka party at Tikkri. **PW Tara Chand**, has stated that on 08.03.11, information was received by Sh. Padamdev Singh incharge police post Tikri that a truck No.JK02W/0017 was on its way from Srinagar to Jammu which was loaded with Charas. On receiving this information incharge police post Tikri along with him and other police officials laid a naka on Srinagar Jammu National Highway just adjacent to police post Tikri at about 3.30 p.m. At about 4 p.m SHO police station Rehmbal along with some policemen also reached on spot and PW Taj Din who was also with SHO, handed over FIR No.44/11 to in charge police post Tikri. Executive Magistrate Romesh Singh was telephonically requested to come on spot and so was photographer Charanjeet Singh called. At about 4.15 p.m truck in question reached the naka point. The vehicle was being driven by accused No.1 and accused No.2 was also in the truck. After the truck was stopped at the naka it was seized. It was found that 353 apple boxes were loaded in the truck as per the challan seized from the truck. The truck was searched after giving an option of search to the accused. Accused opted to be searched in presence of a Magistrate. The option memo Ext.P-1/I was prepared and both the accused signed the option memo. The apple boxes were unloaded from the truck in presence of the Magistrate. In 348 boxes apples were found but in five boxes 37 packets of Charas were loaded. The packets of Charas alongwith packing material were found to be

58 kgs 300 grams in weight. 365 balls of Charas were recovered from the packets which separately weighed 55 kgs 100 grams out of which 100 grams of sample was separated and divided into two packets for chemical analysis. The sample packets were marked as A and A1. Same were sealed by Magistrate on spot and he (witness) also signed these sample packets. (The packets were shown to the witness in the court and he identified the same). He is also witness to seizure of contraband memo Ext. P-1-II . All other PWs Taj Din, Charanjeet Singh, PW Mohinder Singh, Romesh Singh EMIC and Raj Kumar Sharma have corroborated these facts of matter in clear terms. PW I/O PW Padamdev Singh has also corroborated these facts. PW Raj Kumar Sharma SHO has lodged FIR No. 44/11 (Ext. P-14/1) after receiving of information from reliable source about contraband being smuggled in offending truck. He is also witness to occurrence and investigation conducted by I/O; he is also witness to Seizure memo Ext.P-1/III. Further, FIR has been lodged on 8.3.2011; it has been sent to magistrate on 9.3.2011 on next day; site plan dated 8.3.2011 EXT-P/13 /J has been proved; consent memo EXT-P1/1, Seizure memo of Truck EXT-P-1, Seizure memo of documents of truck EXT-P1/III, recovery cum seizure memo of contraband charas EXP-T-1/II and memo of personal search of accused persons EXT-P-1/IV and EXT-P-1/V have been proved by witnesses.

38. Accused /appellants have failed to point out any animosity of police or other witnesses for their false involvement in huge quantity of contraband charas weighing **55 kgs and 100 grams**. No one can imagine that police would have involved the accused/appellant in



39. In view of what has been discussed above, I am of the considered opinion that judgment of conviction and sentences passed by court below does not suffer from any infirmity of facts or law. It is **upheld** accordingly. This appeal is **dismissed**.

**( Sanjay Kumar Gupta )**  
**Judge**