

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Miscellaneous Jurisdiction**  
**Appellate Side**

Present:

**The Hon'ble Justice Debangsu Basak**

And

**The Hon'ble Justice Md. Shabbar Rashidi**

**CRA 35 of 2021**

**Jara Ram @ Jora Ram**

**Vs.**

**The State of West Bengal**

**With**

**CRA 164 of 2021**

**With**

**CRAN 2 of 2021**

**Ratan Rajak**

**Vs.**

**The State of West Bengal**

For the Appellant	: Mr. Dipanjan Dutt, Adv.
In CRA 35 of 2021	Mr. Surojit Saha, Adv.

For the Appellant	: Mr. Dipanjan Chatterjee, Adv.
In CRA 164 of 2021	Ms. Sonali Das, Adv.

For the State	: Mr. Antarikshya Basu, Adv.
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Hearing Concluded on	: February 17, 2023
Judgement on	: February 28, 2023

**DEBANGSU BASAK, J.:-**

1. Two appeals have been heard analogously as they have emanated from the same impugned judgement of conviction dated December 14, 2020 and order of sentence dated

December 15, 2020 passed by the learned 3rd Special Court at Burdwan (NDPS) in Special (NDPS) Case No. 06/2017.

**2.** By the impugned judgement of conviction dated December 14, 2020 the learned judge has convicted the appellants under Section 15 (c)/29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and by the impugned order of sentence dated December 15, 2020, the learned judge has imposed a sentence of rigorous imprisonment for 10 years each and to pay a fine of Rs. 1 lakh each and in default of payment of the fine, to suffer further rigorous imprisonment for 2 months against each of the appellants.

**3.** CRA No. 35 of 2021 has been filed by Jara Ram alias Jora Ram and for the sake of convenience, he is referred to as the first appellant. CRA No. 164 of 2021 has been filed by Ratan Rajak and for the sake of convenience he is referred to as the second appellant.

**4.** A First Information Report bearing No. 32/17 dated January 31, 2017 had been registered by the Kanksa Police Station under Sections 8 (c) read with Section 15 (c) of the Act of 1985 on the basis of a suo moto complaint lodged by a sub-inspector of police on January 31, 2017. The police had conducted an investigation with regard to such First

Information Report and submitted a charge sheet. Charges under Section 8 (c) read with Section 15 (c) of the Act of 1985 had been framed as against the appellants on October 26, 2017.

**5.** The appellants had pleaded not guilty to the charges and claimed to be tried. At the trial, the prosecution had examined 6 witnesses and produced various documentary and material evidences which were marked as exhibits. On the conclusion of the evidence of the prosecution, the appellants had been examined under Section 313 of the Criminal Procedure Code.

**6.** The prosecution at the trial had claimed that, acting on a source information, police intercepted a vehicle on January 31, 2017. On physical verification of the vehicle, the police had found the 2 appellants therein. On searching the vehicle, police had seized commercial quantity of narcotics. The search and seizure had been carried out in accordance with the provisions of the Act of 1985. A suo moto police complaint had been lodged which was registered as the First Information Report. Samples of the seized narcotics had been sent for forensic examination whereupon the test results that confirmed that the seized goods were narcotics.

**7.** A sub- inspector of police had deposed as PW 1. He had stated that, he was on mobile duty on January 31, 2017 with other constable forces, when, PW 6 called them to join PW 6 in working out an information received by PW 6 that a vehicle carrying poppy straw was coming to Illambazar side along with Panagarh Moregram Road. Accordingly, they had gone to the Dhobaru jungle on Panagarh Moregram Road to accompany PW 6 at 5 PM. After arrival at the place, PW 6 had disclosed to him about the information and the purpose of the interception of the vehicle. They had laid an ambush. After some time, they had found a trailer vehicle matching the information to be coming from Illambazar side. They had intercepted such vehicle and found the two appellants herein as the occupants of such vehicle. They had removed the tarpaulin on the trailer and found that the trailer was loaded with iron bar and some sacks kept concealed from which pungent smell of poppy straw was coming out. PW 6 had informed the matter to the authorities for their presence on the spot for the purpose of search and seizure. Thereafter, at about 7 PM, Circle Inspector, Kanksa and Block Development Officer, Kanksa had arrived. Circle Inspector, Kanksa had issued a notice upon the appellants for conducting manual

search of the police personnel and the search of their personal property in presence of a Magistrate or a Gazetted Officer. The appellants had declined to have manual search of police personnel. On search, 5 sacks had been recovered out of which 4 sacks had the mark of advertisement of Sunlight Detergent which were opened and poppy straw like substance found therein. Thereafter, Circle Inspector, Kanksa had called a local businessman to come to the place of occurrence along with his weighing machine. All the 5 sacks had been measured by the electronic weighing machine brought by the local businessman. Thereafter, PW 6 had seized the same under a seizure list. PW 6 had taken sample from each sack. Both the mother Alamat and the samples had been duly sealed and labelled on the spot. PW 6 had also seized the weighing machine under a seizure list. He had put his signature on the seizure list of alamat and the weighing machine which he identified in evidence and was tendered and marked as Exhibit 1 and Exhibit 2. He had stated that, PW 6 prepared an inventory list which he had signed. Such inventory list had been tendered in evidence and marked as Exhibit 3. The appellants could not produce any valid document for carrying the contraband poppy straw in the

vehicle. After the search and seizure procedure was over, the 2 appellants being arrested had been taken to the police station along with the seized contraband alamat and vehicle. He had identified both the appellants in Court.

**8.** In cross-examination, PW 1 had stated that, he cannot say the exact distance from the place of occurrence and the Kanksa Police Station. He had stated that, Panagarh Moregram Road is a busy highway having free flow of vehicles round the clock. He had stated that, the police vehicles had been subjected to manual search by the appellants. However we could not say whether any seizure list had been prepared for the same.

**9.** The investigating officer had deposed as PW 2. He had stated that, the officer in charge of Kanksa police station on receipt of the written complaint from PW 6 started the instant police case. Officer in charge had endorsed the case to him for investigation. He had tendered the written complaint and the formal First Information Report in evidence which were marked as Exhibit 4 and 5 respectively. He had stated about the course of investigation. He had stated that, he sent the sample of alamat to the State Drug Control and Research Laboratory for chemical analysis report. He had produced the

seized alamats, before the judicial Magistrate, 2nd Court, Durgapur along with Inventory List with a prayer for certification in compliance with Section 52A of the Act of 1985. The Inventory List had been tendered in evidence and marked as Exhibit 7. Report of certification done by the learned judicial Magistrate had been marked as Exhibit 8. During the certification process, representative samples had been collected from the seized alamats. He had identified them in Court which was marked as Material Exhibit I. He had collected the Chemical Analysis Report which was tendered in evidence and marked as Exhibit 9. After collection of the chemical analysis report he had made a prayer before the Drug Disposal Committee for the destruction of the seized contraband. Accordingly, all the seized contraband articles in connection of the case had been destroyed by the Drug Disposal Committee. He had submitted the charge sheet against the two appellants and by showing two persons as absconders. He had identified the appellants in Court.

**10.** In cross-examination, he had stated that, except the Block Development Officer and police personnel, he did not examine any independent public witness.

**11.** The Block Development Officer had deposed as PW 3. He had stated that, on January 31, 2017, he received a written requisition from the officer in charge, Kanksa Police Station requesting him to go to Dhabaru to remain present there and act as a Gazetted Officer during search and seizure procedure as police had intercepted one trailer vehicle loaded with huge quantity of suspected poppy straw. He had tendered the written requisition in evidence which was marked as Exhibit 11. He had stated that, he had gone to the place of occurrence at 7:15 PM and found that the police detained a trailer vehicle and that some police personal was present encircling such vehicle. He had found 5 polythene sacks on the trailer vehicle. In his presence, on opening those sacks, poppy straw like substance had been found. All those 5 packets had been weighed and found to be between 30 to 45 kg each. Samples of 150 gms each had been drawn from each sack. Both, the mother alamats and the samples had been seized under a seizure list, duly sealed and labelled in his presence at the spot. He had identified the signatures on the seizure list of the alamats and the weighing machine. He had stated that some other articles like TMT bars including the trailer vehicle had also been seized under the seizure list.



**12.** In cross-examination, he had stated that, he did not personally serve any notice upon any person at the spot. He did not make any endorsement on any notice about the place and time of receipt. He had stated that the seizure list does not bear any endorsement that the search and seizure procedures had been conducted under his supervision.

**13.** The businessman from whom the weighing machine had been requisitioned by the police deposed as PW 4. He had stated that, police had asked him to go to Dhabaru along with the weighing machine for taking weight of some articles intercepted by the police. At the spot, he had found 5 sacks from a trailer vehicle. Weighing of those sacks had been done by his weighing machine and at that time, he was present there. His weighing machine had been seized by the police under the seizure list and returned to him under a Jimmanama. He had identified his signature on the seizure list of the weighing machine.

**14.** A constable of police had deposed as PW 5. He had stated that on January 31, 2017, he had accompanied PW 6 and other police personnel and went to a place in Dhabaru Jungle on Panagarh Moregram Road. PW 6 had source information that a trailer vehicle would pass through the

place, carrying contraband narcotic drugs. They had laid ambush there and at the time of passing of the trailer through that place, they intercepted the vehicle and apprehended the two appellants. Thereafter, PW 6 had conveyed the matter to the Block Development Officer, Kanksa and the officer in charge and Circle Inspector, Kanksa. After their arrival at the spot, search had been conducted on the vehicle from where they had recovered 5 sacks suspected to have contained narcotic drugs. Some iron rods had also been found loaded in the trailer vehicle. All the 5 sacks containing poppy straw like substance had been measured by a weighing machine. He could not recollect the exact weight. PW 6 had seized the alat and the vehicle under a seizure list and prepared some documents on the spot. He had identified his signatures. He had stated that, due to passage of time, he could not identify the arrested accused persons.

**15.** A sub- inspector of police had deposed as PW 6. He had stated that, on January 31, 2017 at about 4:30 PM in the evening, he received information that a truck with a particular registration number was coming towards Panagarh from Illambazar side, carrying poppy straw. Immediately, he had conveyed such information to the officer in charge, Kanksa

police station and PW 1. He had recorded such information in the police station by a general diary. Officer in charge, Kanksa police station had instructed him to work out the information. Accordingly, he along with 2 constables had left the police station and proceeded towards the Illambazar side. According to the instructions of the officer in charge, he had asked PW 1 to join him for working out the information. They had gone to Dhabaru Jungle on Illambazar Panagarh Road. At about 5 PM, they had noticed the subject vehicle and intercepted the same. They had found 2 occupants in the said vehicle namely a driver and one helper. They had found the truck to be loaded with iron rods of about 30 metric tons and 5 big size nylon sacks on the iron rods. Out of suspicion regarding the contents of the nylon sacks suspecting it to be contraband poppy straw, they had detained the driver and helper of the truck and informed the matter to the Circle Inspector, Kanksa and the Block Development Officer, Kanksa requesting them to come over to the place of occurrence to act as Magistrate or a Gazetted Officer during the search and seizure procedures to be conducted at the spot. He had tendered the requisitions which were marked as Exhibit 13 collectively.

**16.** PW 6 had stated that, after interrogation of the appellants, he prepared an inventory list in respect of the detained vehicle. At about 7 PM, Circle Inspector, Kanksa and Block Development Officer Kanksa had arrived at the spot. He had called PW 4 with his weighing machine by a requisition which was tendered in evidence and marked as Exhibit 14. Thereafter, Circle Inspector had issued notices upon the appellants disclosing their right to have a mutual search of the police personnel which had been tendered in evidence and marked as Exhibit 15. The appellants had declined to have mutual search of the police personnel. Thereafter, Circle Inspector, Kanksa had conducted search of the 5 nylon sacks by opening the same with the help of PW 4 and found poppy straw like substance therein. The 5 sacks had been weighed on the machine of PW 4 and found that the total weight was about 203 kg from which 5 samples of 150 gms each had been drawn. On demand, the appellants could not produce any valid documents regarding the sacks of poppy straw, iron rod and the vehicle. He had seized the alamats, and the weighing machine. All the alamat and the samples had been duly sealed and labelled on the spot. The appellants had disclosed the names of 2 persons. Thereafter, the appellants had been

arrested and taken to the police station along with the seized alat including the vehicle. He had lodged the written complaint with the Officer in Charge, Kanksa police station. He had identified the 2 appellants in Court.

**17.** In cross-examination, PW 6 had stated that, after the search, seizure and arrest procedures were over, he did not send any special report to any superior officer within the statutory period under the Act of 1985. He had admitted that, after getting the source information, he had conveyed the same orally to his superior officer but did not convey the same in writing.

**18.** On conclusion of the evidence of the prosecution, both the appellants had been examined under Section 313 of the Criminal Procedure Code when, they had claimed that, the charges against them were false, they were innocent and that they had been falsely implicated. They had declined to adduced any defence witness.

**19.** Learned advocate appearing for the first appellant has submitted that, despite independent witnesses being available, the prosecution had failed to examine any independent witness. He has submitted that, according to the version of the prosecution, the vehicle had been intercepted on

a busy highway. Despite such a place of occurrence, there were no independent witnesses to the alleged seizure of the contraband articles. PW 4 had his role limited to the supply of the weighing machine. PW 4 had disclaimed any participation in the alleged recovery of the contraband and is not a signatory to the seizure list. The prosecution has not explained as to why PW 4 was not an independent witness to the alleged recovery of the contraband. According to him, such facts suggest that the recovery had been staged and the appellants falsely implicated.

**20.** Learned advocate appearing for the first appellant has submitted that, mandatory provision of Section 42 of the Act of 1985 has not been complied with. He has referred to the oral testimonies of the prosecution witnesses. He has submitted that, PW 6 had admitted in cross-examination that, he did not convey the source information to his superior in writing. He did not send any special report to his superior officer within the statutory period under the Act of 1985. The general diary has not been produced by the prosecution. The sub- inspector who had allegedly recorded the information in the general diary had not been examined as a witness. According to him, the law required that a person receiving the

information, to write it down and communicate with superior and not to any other officer. Thus even if there existed a general diary to such an effect, the same would be of no avail as it was neither a recording of the PW 6 claiming to have received the source information nor does it constitute a communication by PW 6 to his immediate official superior. PW 6 had enough time to reduce the information in writing.

**21.** Learned advocate appearing for the first appellant has drawn the attention of the court to the examination of the appellants under Section 313 of the Criminal Procedure Code. He has submitted that, the exercise had been an empty formality given the contents of the questions which were incapable of being understood particularly by a person of the economic and educational background as that of the appellants. Moreover, answer to one of the question has not been written down.

**22.** In support of his contentions, learned advocate appearing for the first appellant has relied upon **2021 SCC online SC 324 (Boota Singh and others versus State of Haryana)** and **2016 volume 11 Supreme Court Cases 687 (State of Rajasthan versus Jagraj Singh alias Hansa).**

**23.** Learned advocate appearing for the second appellant has submitted that, the alleged recovery was claimed to be made from a private vehicle. Therefore, according to him, the provisions of the Act of 1985 relating to search and seizure of a private vehicle has not been adhered to rendering the entire search and seizure vitiated.

**24.** Learned advocate appearing for the second appellant has submitted that, the police had acted in violation of the mandatory provisions of Section 42 of the Act of 1985. He has contended that, the search and seizure was not made in presence of a Gazetted Officer. According to him, the chain between the seizure and the ultimate report of the forensic laboratory being produced at the trial has not been completed by the prosecution.

**25.** Learned advocate appearing for the second appellant has relied upon the judgement and order dated March 1, 2019 passed in **CRA 433 of 2012 (Prasoon Chakravarty versus narcotics control bureau)** and submitted that, since the search and seizure was vitiated due to absence of proof of compliance of Section 42 of the Act of 1985 the appellants should be acquitted.



**26.** Learned advocate appearing for the State has contended that, the incident took place on January 31, 2017. He has referred to provisions of Section 57 of the Act of 1985 and contended that, Exhibit 13 well established that Section 57 of the Act of 1985 had been complied with. He has relied upon **2013 Volume 2 Supreme Court Cases 212 (Sukdev Singh versus State of Haryana).**

**27.** Learned advocate appearing for the State has submitted that, the vehicle from where the recovery was made was a public transport. He has referred to the definitions of public place, trailer and public transport vehicle appearing in the Motor Vehicles Act. He has contended that, when a public place is involved, Section 43 of the Act of 1985 applies. In support of such contention, he has relied upon **All India Reporter 1999 Supreme Court 2378 (State of Punjab versus Baldev Singh)** and **2004 volume 5 Supreme Court Cases 188 (State of Haryana Vs. Jarnail Singh and Others).**

**28.** Learned advocate appearing for the State has submitted that, absence of so-called independent witnesses is not fatal to the case of the prosecution and in support of such

contention, he has relied upon **2020 volume 2 Supreme Court Cases 563 (Surinder Kumar Vs. State of Punjab)**.

**29.** Relying upon **2013 volume 14 Supreme Court Cases 420 (Gian Chand and Others Vs. State of Haryana)**

learned advocate appearing for the State has submitted that, non-compliance of provisions of Section 313 of the Criminal Procedure Code does not vitiate the trial. According to him, in the facts and circumstances of the present case, it cannot be said that the provisions of Section 313 of the Criminal Procedure Code have not been complied with. According to him, all materials implicating the appellants had been put forward by the court to both the appellants.

**30.** At the trial, the prosecution has established as follows:-

(i) PW 6 had received source information with regard to movement of the contraband by a vehicle to a particular place. PW 6 had acted on such source information. He had conveyed such information to the Officer in Charge, Kanksa who instructed him to take the assistance of PW 1 and his team for working out the information.

(ii) at about 5 PM the police team had noticed the vehicle under information and intercepted the same. The police team

had found 2 occupants being the appellants herein in such vehicle. The police team had found the vehicle to be loaded with iron rods and 5 big size nylon sacks.

(iii) PW 6 had sent requisitions to Circle Inspector, Kanksa and Block Development Officer, Kanksa to act as a Magistrate or a Gazetted Officer (Exhibit 13).

(iv) An inventory had been made in respect of the detained vehicle (Exhibit 3).

(v) A requisition had been issued to PW 4 for his weighing machine (Exhibit 14).

(vi) Circle Inspector had issued notices upon the appellants disclosing their right to have a mutual search of the police personnel (Exhibit 15 collectively). Appellants had declined to have mutual search of the police personnel.

(vii) Circle Inspector, Kanksa had conducted search of the 5 nylon sacks by opening the same with the help of PW 4 and found poppy straw -like substance therein.

(viii) The 5 sacks had been weighed and found to be 203 kg. 5 samples of 150 gms each had been drawn.

(ix) PW 6 had seized the alamats under a seizure list in presence of the appellants, Circle Inspector and Block

development Officer and independent public witness (Exhibit 1).

(x) Weighing machine had been seized by seizure list (Exhibit 2).

(xi) The appellants had been arrested and taken to the police station along with the seized alat and the vehicle.

(xii) PW 6 had lodged a written complaint with the Officer in Charge, Kanksa Police Station (Exhibit 4).

(xiii) PW 2 had prepared a rough sketch map of the place of occurrence with index which had been marked as Exhibit 6.

(xiv) PW 2 had forwarded the appellants to the court with a prayer for police custody and took the appellants into police custody.

(xv) PW 2 had sent the sample of alat to the State Drug Control and Research Laboratory for its chemical analysis report.

(xvi) PW 2 had produced the seized alat before the Learned Judicial Magistrate, 2<sup>nd</sup> Court, Durgapur along with the inventory list (Exhibit 7) with a prayer for certification in compliance with Section 52A of the Act of 1985.

(xvii) During the certification process, representative samples had been collected from the seized alamats being Material Exhibit I (collectively).

(xviii) PW 2 had collected the chemical analysis report of the sample (Exhibit 9).

(xix) Exhibit 9 had established that the seized alamats were narcotics.

**31.** At the trial, prosecution had examined 6 witnesses out of which, only one being PW 4 was a nonofficial witness. The prosecution had examined PW 1, 2, 5 and 6 who were police personnel and PW 3 who was the Joint Block Development Officer. The contention raised on behalf of the first appellant as to the quality of the evidence due to lack of 'independent witnesses' has to be assessed in the light of the evidence adduced at the trial and the authorities cited at the bar.

**32.** *Surinder Kumar (supra)* has dealt with the issue of non-examination of independent witness in the context of the proceedings under the Act of 1985. It has held that, the mere fact that the case of the prosecution is based on the evidence of official witnesses, does not mean that the same should not be believed. It has noted two previous authorities of the Supreme Court where the Supreme Court has observed that,

merely because prosecution did not examine any independent witness, would not necessarily lead to a conclusion that the accused was falsely implicated or that the evidence of official witnesses cannot be trusted or believed mainly on account of their official status. The Supreme Court has also observed that, official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature.

**33.** In the facts of the present case, apart from police personnel, an official of the rank of Joint Block Development Officer had been present during the search and seizure process. The prosecution witnesses had corroborated each other. The documentary evidence tendered at the trial had established the presence of the official personnel at the place of occurrence. PW 4 who is a nonofficial had corroborated the oral testimonies of the other prosecution witnesses. We have not found any material to disbelieve or distrust any of the prosecution witnesses far less the officials who had deposed as prosecution witnesses.

**34.** On behalf of the first appellant, it has been contended that, since the narcotics had been seized from a trailer on a highway, provisions of Section 42 of the Act of 1985 would

apply. Reliance has been placed on ***Boota Singh and others (supra)*** in this context.

**35.** In ***Boota Singh and others (supra)*** the seizure of the contraband had been made from a vehicle which was not for public use. In such context, it has been held that, since the evidence clearly showed that the vehicle was not a public conveyance but a vehicle belonging to an individual, and since, the registration certificate of the vehicle which had been placed on record also does not indicate it to be a Public Transport Vehicle, the explanation to Section 43 would not come into operation and that, the search and seizure would be governed by Section 42 and not Section 43 of the Act of 1985.

**36.** ***Baldev Singh (supra)*** has dealt with the divergences of opinion between different benches of the Supreme Court with regard to the ambit and scope of Section 50 of the Act of 1985 and in particular with regard to the admissibility of evidence collected by an investigating officer during search and seizure conducted in violation of the provisions of Section 50 of the Act of 1985.

**37.** ***Jarnail Singh (supra)*** has dealt with the applicability of Section 50 of the Act of 1985 in respect of search of a vehicle (tanker). It has observed the difference between

Sections 42 and 43 of the Act of 1985. It has held that, Sections 42 and 43 contemplate two different situations. Section 42 has contemplated entry into and search of any building, conveyance or enclosed place, while Section 43 has contemplated the seizure made in any public place or in transit. It has also held 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 for the searching of the vehicle between sunset and sunrise.

**38. *Prasoon Chakravarty (supra)*** has noted the differences between Sections 42 and 43 of the Act of 1985. It has observed that, Section 43 of the Act of 1985 envisages seizure of narcotics in a public place includes public conveyance. In the facts of that case, the seizure had been effected from a private vehicle and it had been found that provisions of Section 42 of the Act of 1985 had not been complied with.

**39.** Section 42 of the Act of 1985 regulates the power of an officer of the prescribed rank to enter, search, seize and arrest without warrant or authorisation, between sunrise and sunset, in respect of any contraband kept or concealed in any



building, conveyance or enclosed place. Section 43 of the Act of 1985 regulates the power of search and arrest in a public place by such officer as prescribed under Section 42. An officer operating under the purview of Section 42 of the Act of 1985 is required to discharge prescribed obligations which can be labelled as more onerous than while operation under Section 43.

**40.** While defining a public place Section 43 of the Act of 1985 has explained that a public conveyance amongst others would be considered as a public place. A motor vehicle which has a requisite permission in accordance with the Motor Vehicles Act, 1988 for transporting passengers or goods can be classified as public conveyance within the meaning of Section 43 of the Act of 1985.

**41.** In the facts of the present case, the search and seizure had been made from a Public Transport Vehicle and that the vehicle registration number of the same would establish it to be a public transport vehicle. The vehicle had been intercepted and detained on a highway. Search and seizure had been carried out on a highway. Therefore, on the strength of **Boota Singh and others (supra)**, **Baldev Singh (supra)** and **Jarnail Singh (supra)** it can be said that, the provisions of

Section 43 of the Act of 1985 would apply in the facts and circumstances of the present case. Therefore, the search and seizure cannot be said to be vitiated due to non-compliance of Section 42 of the Act of 1985.

**42.** In *Gian Chand and others (supra)*, the Supreme Court while dealing with the issue relating to non-compliance with the provisions of Section 313 of the Criminal Procedure Code raised in a proceedings under the Act of 1985, has held that, the accused has to point out the prejudice that was caused to him if a certain incriminating fact has not been put to him during his examination. In the facts of that case, the accused had been found to be in a vehicle containing the contraband material. The Supreme Court has held that, the burden was on the accused to show how the contraband material came to be found in the vehicle which was driven by one of the accused and the other two travelling in the vehicle.

**43.** In the facts and circumstances of the present case, all incriminating materials had been placed before the two appellants in their respective examinations under Section 313 of the Criminal Procedure Code, albeit questions which were long. Nothing has been placed before us to suggest that, the appellants had been prejudiced by the nature of questions put

or that they did not understand the questions. In fact, they had replied to the questions. Answer to one of the question by one of the appellants had not been recorded by the learned judge examining such appellant. At this stage also, learned counsel for the first appellant has not stated the nature of answer that the first appellant had allegedly given to such question which the learned judge had omitted to record. Such omission cannot be said to be fatal to the case of the prosecution.

**44.** In view of the discussions above, we have not found any merit in the appeal. The judgement of conviction and the order of sentence impugned in the appeal are affirmed.

**45.** Sentences imposed shall run concurrently. Period of detention suffered by the appellants during their custody, trial, and during the pendency of the present appeal shall be set off against the sentences imposed.

**46.** Trial court records along with a copy of this judgement and order be transmitted to the appropriate court expeditiously for necessary action.

**47.** CRA 35 of 2021 and CRA 164 of 2021 are dismissed. In view of the dismissal of the 2 appeals, CRAN 2 of 2021 filed in CRA 164 of 2021 is also dismissed.

**48.** Urgent Photostat certified copy of this judgement and order be made available to the applying parties expeditiously, subject to compliance with all formalities.

**[DEBANGSU BASAK, J.]**

**49.** I agree.

**[MD. SHABBAR RASHIDI, J]**