MUKESH SINGH

v.

STATE (NARCOTIC BRANCH OF DELHI)

(Special Leave Petition (Criminal) Diary No. 39528 of 2018)

AUGUST 31, 2020

[ARUN MISHRA, INDIRA BANERJEE,VINEET SARAN, M. R. SHAH AND S. RAVINDRA BHAT, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 – Informant-police officer who is the complainant himself conducts investigation – Trial, if vitiated; and the accused if entitled to acquittal – Conflicting opinions – Matter initially referred to three Judge Bench – Further referred to five Judge Bench – Held: Under the scheme of CrPC, there is no bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it – On the contrary, ss.154, 156 and 157, CrPC permits the officer in charge of a police station to reduce such information in writing and thereafter to investigate the same – As per s.51, NDPS Act, the provisions of CrPC shall apply, insofar as they are not inconsistent with its provisions, to all warrants issued and arrests, searches and seizures made under the Act – NDPS Act being a special Act with special procedure to be followed under Chapter V, does not specifically bar the informant/complainant to be an investigator and officer in charge of a police station for investigation of offences under the NDPS Act – On the contrary, it permits – In view of the safeguard provided under the Act itself in s.58, there cannot be any general proposition of law that in every case where the informant is the investigator, the trial is vitiated and the accused is entitled to acquittal – Further, whether the investigation by the concerned informant was fair or not is always to be decided at the time of trial – Merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness/bias – Matter has to be decided on a case to case basis – Contrary decision in Mohan Lal v. State of Punjab (2018) 17 SCC 627 and any other decision taking a contrary view are not good law and are overruled – Code of Criminal Procedure,1973 – ss.2(o), 100, 154, 156, 157, 173, 465 –

A *Constitution of India – Art.21– Evidence Act,1872 – Illustration(e) to s.114.*

Code of Criminal Procedure, 1973 – ss.2(o), 154, 156, 157 – Held: Officer in charge of a police station defined u/s.2(o) has to reduce an information alleging commission of a cognizable offence B *in writing which may be termed as FIR and he is required to further investigate the information, which is reduced in writing.*

Words & Expressions –"information" in s.154, CrPC – Held: Use of expression "information" without any qualification denotes that police has to record information despite it being unsatisfied by C *its reasonableness or credibility – Code of Criminal Procedure, 1973 – s.154.*

Narcotic Drugs and Psychotropic Substances Act, 1985 – ss.41, 42, 43, 49, 50, 51, 52, 53, 54, 55, 57, 57A, 67, 68 – Procedure to issue warrant; seizure and arrest in public place; entry; stop and D *search conveyance, persons – Scheme of the Act – Discussed.*

Narcotic Drugs and Psychotropic Substances Act, 1985 – ss.41, 42, 43, 44, 53 – Held: s.53 authorises the Central Government or the State Government, as the case may be, to invest any officer of the department of drugs control, revenue or excise or any other E *department or any class of such officers with the powers of an officer in charge of a police station for investigation of offences under the NDPS Act – It does not speak that all such officers shall be other than those officers authorised u/ss.41, 42, 43, and 44 – Code of Criminal Procedure, 1973.*

F *Narcotic Drugs and Psychotropic Substances Act, 1985 – ss.50, 52, 58 – Inbuilt safeguards under the Act – Discussed.*

Narcotic Drugs and Psychotropic Substances Act, 1985 – ss.35, 54 – Reverse burden of proof – Held: Presumption under the Act is against the accused as per ss.35 and 54 – In the cases of G *reverse burden of proof, the presumption can operate only after the initial burden existing on the prosecution is satisfied – Prevention of Corruption Act, 1988 – Penal Code, 1860 – s.304B – Code of Criminal Procedure, 1973 – s.157– Constitution of India – Art.21.*

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Answering the reference, the Court

HELD: 1.1 In the case of *Mohan Lal*, after having noted the conflicting opinions expressed by different two Judge Benches of this Court, one in the cases of *Bhagwan Singh and Megha Singh* and other in the cases of *State of Punjab v. Baldev Singh (1999) 6 SCC 172; Bhaskar Ramappa Madar; and Surender*, this Court observed and held that in a case where the informant/ complainant and the investigator is the same, the trial is vitiated and the accused is entitled to acquittal. However, thereafter the very decision of this Court in the case of *Mohan Lal* fell for consideration before another three Judges Bench of this Court in the case of *Varinder Kumar*, to which two Hon'ble Judges were also there in the case of *Mohan Lal* and it is observed that the facts in *Mohan Lal* were indeed extremely telling insofar as the defaults on part of the prosecution was concerned and in that background it was held that the issue could not be left to be decided on the facts of a case, impinging on the right of a fair trial to an accused under Article 21 of the Constitution of India. In light of the observations made by this Court in the case of *Varinder Kumar* that the law laid down by this Court in the case of *Mohan Lal* shall be applicable prospectively and shall not affect the pending criminal prosecutions, trials and the appeals, prior to the law laid down in *Mohan Lal*, meaning thereby that the same shall be applicable prospectively, still this Court has to consider the issue referred to this Court on its own merits. It appears that in *Mohan Lal* also the Court did not consider in detail the relevant provisions of the Cr.P.C. under which the investigation can be undertaken by the investigating officer, more particularly Sections 154, 156 and 157 and the other provisions, namely, Section 465 Cr.P.C. and Section 114 of the Indian Evidence Act. Even in the said decision, this Court did not consider the aspect of prejudice to be established and proved by the accused in case the investigation has been carried out by the informant/complainant, who will be one of the witnesses to be examined on behalf of the prosecution to prove the case against the accused. This Court also did not consider in detail and/or misconstrued both the scheme of the NDPS Act and the principle of reverse burden. [Para 8.1.4][279-E-H; 280-A-E]

A **1.2 Section 154 Cr.P.C. provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction. Section 156 Cr.P.C. provides that any officer in charge of a police station may investigate any cognizable offence without the order of a Magistrate. It further provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. Therefore, as such, a duty is cast on an officer in charge of a police station to reduce the information in writing relating to commission of a cognizable offence and thereafter to investigate the same. Section 157 Cr.P.C. specifically provides that if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. Therefore, considering Section 157 Cr.P.C., either on receiving the information or otherwise (may be from other sources like secret information, from the hospital, or telephonic message), it is an obligation cast upon such police officer, in charge of a police station, to take cognizance of the information and to reduce into writing by himself and thereafter to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender. Take an example, if an officer in charge of a police station passes on a road and he finds a dead body and/or a person being beaten who ultimately died and there is no body to give a formal complaint in writing, in such a situation, and when the said officer in charge of a police station has reason to suspect the commission of an offence, he has to reduce the same in writing in the form of an information/ complaint. In such a situation, he is not precluded from further investigating the case. He is not debarred to conduct the investigation in such a situation. It may also happen that an officer in charge of a police station is in the police station and he receives**

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a telephonic message, may be from a hospital, and there is no body to give a formal complaint in writing, such a police officer is required to reduce the same in writing which subsequently may be converted into an FIR/complaint and thereafter he will rush to the spot and further investigate the matter. There may be so many circumstances like such. That is why, Sections 154, 156 and 157 Cr.P.C. come into play. Under Section 173 Cr.P.C., the officer in charge of a police station after completing the investigation is required to file the final report/chargesheet before the Magistrate. Thus, under the scheme of Cr.P.C., it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same. Officer in charge of a police station has been defined under Section 2(o) of the Cr. P.C. and it includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present. As observed and held by this Court in the case of *Lalita Kumari v. Government of Uttar Pradesh,* the word "shall" used in Section 154 leaves no discretion in police officer to hold preliminary enquiry before recording FIR. Use of expression "information" without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to further investigate the information, which is reduced in writing. [Paras 9-9.2][287-B-H; 288-A-H]

Lalita Kumari v. Government of Uttar Pradesh **(2014) 2 SCC 1 : [2013] 14 SCR 713 – relied on.**

1.3 Section 67 of the NDPS Act authorises/permits any officer referred to in section 42 to call for information from any

person for the purpose of satisfying himself whether there has been any contravention of the provisions of the NDPS Act or any rule or order made thereunder, during the course of any enquiry. Section 68 of the NDPS Act provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence. From the aforesaid scheme and provisions of the NDPS Act, it appears that the NDPS Act is a complete Code in itself. Section 41(1) authorises a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under the NDPS Act, or for the search, whether by day or by night……Sub-section 2 of Section 41 authorises any such officer of gazetted rank of the Departments of Central Excise…… as is empowered in this behalf by general or special order by the Central Government, or any such officer of the Revenue…….police or any other department of a State Government as is empowered in this behalf by general or special order, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under the NDPS Act, authorising any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place. As per Section 42, any officer of the Department of Central Excise…. as is empowered in this behalf by general or special order by the Central Government or any such officer…..of the revenue, drugs control…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 the NDPS Act has been committed, enter into and search any such building, conveyance or place; in case of resistance,

break open any door and remove any obstacle to such entry; seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or 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. As per sub-section 2 of Section 42, such an officer has to send a copy of the information taken down in writing under sub-section 1 or his grounds for belief, to his immediate official superior within 72 hours. [Paras 9.3.1-9.3.4][295-E-H; 296-A-G]

1.4 There are inbuilt safeguards provided under the NDPS Act itself, such as, Sections 50 and 52. Section 50 of the NDPS Act provides that when any officer duly authorised under section 42 is about to search any person under the provisions of section 41, 42 or 43, he shall inform the person to be searched in the presence of a Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such person so desires, he shall take such person without unnecessary delay to the nearest Gazetted Officer as mentioned in sub-section 1 of Section 50. As per sub-section 5 of Section 50, when an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973. Sub-section 6 of Section 50 provides that after a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior. Section 52 of the NDPS Act mandates that any officer

arresting a person under Sections 41, 42, 43 or 44 to inform the person arrested of the grounds for such arrest. Sub-section 2 of Section 52 further provides that every person arrested and article seized under warrant issued under sub-section 1 of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued. As per sub-section 3 of Section 52, every person arrested and article seized under sub-section 2 of Section 41, 42, 43, or 44 shall be forwarded without unnecessary delay to the officer in charge of the nearest police station, or the officer empowered under section 53. That thereafter the investigation is to be conducted by the officer in charge of a police station. As per Section 51 of the NDPS Act, the provisions of the Cr.P.C. shall apply, insofar as they are not inconsistent with the provisions of the NDPS Act, to all warrants issued and arrests, searches and seizures made under the NDPS Act. Therefore, up to Section 52, the powers are vested with the officers duly authorised under Sections 41, 42, or 43 and thereafter so far as the investigation is concerned, it is to be conducted by an officer in charge of a police station. [Paras 9.3.5-9.3.7][296-H; 297-A-G]

1.5 Section 53 of the NDPS Act does not speak that all those officers to be authorised to exercise the powers of an officer in charge of a police station for the investigation of the offences under the NDPS Act shall be other than those officers authorised under Sections 41, 42, 43, and 44 of the NDPS Act. It appears that the legislature in its wisdom has never thought that the officers authorised to exercise the powers under Sections 41, 42, 43 and 44 cannot be the officer in charge of a police station for the investigation of the offences under the NDPS Act. Investigation includes even search and seizure. As the investigation is to be carried out by the officer in charge of a police station and none other and therefore purposely Section 53 authorises the Central Government or the State Government, as the case may be, invest any officer of the department of drugs control, revenue or excise or any other department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under the NDPS Act. Section 42 confers power of entry, search, seizure and arrest without warrant or authorisation to any such officer as mentioned

in Section 42 including any such officer of the revenue, drugs control, excise, police or any other department of a State Government or the Central Government, as the case may be, and as observed hereinabove, Section 53 authorises the Central Government to invest any officer of the department of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government….or any class of such officers with the powers of an officer in charge of a police station for the investigation. Similar powers are with the State Government. The only change in Sections 42 and 53 is that in Section 42 the word "police" is there, however in Section 53 the word "police" is not there. There is an obvious reason as for police such requirement is not warranted as he always can be the officer in charge of a police station as per the definition of an "officer in charge of a police station" as defined under the Cr. P.C. Therefore, as such, the NDPS Act does not specifically bar the informant/complainant to be an investigator and officer in charge of a police station for the investigation of the offences under the NDPS Act. On the contrary, it permits, as observed hereinabove. To take a contrary view would be amending Section 53 and the relevant provisions of the NDPS Act and/or adding something which is not there, which is not permissible. [Paras 9.3.8-9.5][298-D-H; 299-A-C]

1.6 Now so far as the submission on behalf of the accused that NDPS Act carries a reverse burden of proof under Sections 35 and 54 and therefore if the informant who himself has seized the offending material from the accused and he himself thereafter investigates the case, there shall be all possibilities of apprehension in the mind of the accused that there shall not be fair investigation and that the concerned officer shall try to prove his own version/seizure and therefore there shall be denial of the "fair investigation" enshrined under Article 21 of the Constitution of India is concerned, it is required to be noted that whether the investigation conducted by the concerned informant was fair investigation or not is always to be decided at the time of trial. The concerned informant/investigator will be cited as a witness and he is always subject to cross-examination. There may be cases in which even the case of the prosecution is not solely based upon the deposition of the informant/informant-cum-investigator

A **but there may be some independent witnesses and/or even the other police witnesses. The testimony of police personnel will be treated in the same manner as testimony of any other witness and there is no principal of law that without corroboration by independent witnesses his testimony cannot be relied upon. As per illustration (e) to Section 114 of the Indian Evidence Act, in law if an official act has been proved to have been done, it shall be presumed to be regularly done. Credit has to be given to public officers in the absence of any proof to the contrary of their not acting with honesty or within limits of their authority. In cases where any person empowered under Sections 42, 43 or 44 of the NDPS Act acts vexatiously or maliciously, the statute itself has provided the punishment as per section 58 and it is an offence under section 58 which is a cognizable offence and such an offence is required to be investigated by the "officer in charge of a police station" other than the officer who exercised the power of entry, search, seizure or arrest under Sections 42, 43, or 44 as naturally in such a case he would be a proposed accused and therefore he cannot be permitted to investigate and to be a judge in his own cause. However, so far as the investigation against the accused for the offence under the NDPS Act is concerned, the same analogy may not apply. Now so far as the observations made by this Court in para 13 in *Mohan Lal* that in the nature of reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstance that may raise doubt about its veracity, it is to be noted that the presumption under the Act is against the accused as per Sections 35 and 54 of the NDPS Act. Thus, in the cases of reverse burden of proof, the presumption can operate only after the initial burden which exists on the prosecution is satisfied. The reverse burden does not merely exist in special enactments like the NDPS Act and the Prevention of Corruption Act, but is also a part of the IPC – Section 304B and all such offences under the Penal Code are to be investigated in accordance with the provisions of the Cr.P.C. and consequently the informant can himself investigate the said offences under Section 157 Cr.P.C. [Paras 10-10.3][299-D-H; 300-A-G]**

Karamjit Singh v. State (Delhi Administration) **(2003) 5**

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SCC 291 : [2003] 3 SCR 25; *Devender Pal Singh v. State (NCT of Delhi)* **(2002) 5 SCC 234 : [2002] 2 SCR 767 – relied on.**

1.7 Therefore, as such, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightway acquitted unless and until the accused is able to establish and prove the bias and the prejudice. The question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case. NDPS Act is a Special Act with the special purpose and with special provisions including Section 68 which provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence. Therefore, considering the NDPS Act being a special Act with special procedure to be followed under Chapter V, there is no specific bar against conducting the investigation by the informant himself and in view of the safeguard provided under the Act itself, namely, Section 58, there cannot be any general proposition of law to be laid down that in every case where the informant is the investigator, the trial is vitiated and the accused is entitled to acquittal. Similarly, even with respect to offences under the IPC, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record. [Para 11][300-H; 301-A-F]

State of Rajasthan v. Ram Chandra **(2005) 5 SCC 151**

: [2005] 3 SCR 496; *Union of India v. Vipan Kumar Jain* **(2005) 9 SCC 579;** *State v. V. Jayapaul* **(2004) 5 SCC 223 : [2004] SCR 330;** *Bhaskar Ramappa Madar v. State of Karnataka* **(2009) 11 SCC 690 : [2009] 5 SCR 256 – relied on.**

1.8 The reference is answered as under:

I. The observations of this Court in the cases of *Bhagwan Singh v. State of Rajasthan; Megha Singh v. State of Haryana; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam* and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of *Mohan Lal v. State of Punjab (2018) 17 SCC 627* and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled. [Para 12][302-B-G]

Mohan Lal v. State of Punjab **(2018) 17 SCC 627 : [2018] 9 SCR 1006 – overruled.**

Bhagwan Singh v. State of Rajasthan **(1976) 1 SCC**

15; *Megha Singh v. State of Haryana* **(1996) 11 SCC 709;** *State by Inspector of Police, NIB, Tamil Nadu v. Rajangam* **(2010) 15 SCC 369;** *Varinder Kumar v. State of Himachal Pradesh* **(2020) 3 SCC 321 : [2019] 2 SCR 707;** *Menaka Gandhi v. Union of India* **(1978) 1 SCC 248 : [1978] 2 SCR 621;** *H.N. Rishbud v. State of Delhi* **AIR 1955 SC 196 : [1955] 1 SCR 1150;** *Manu Sharma v. State (NCT of Delhi)* **(2010) 6 SCC 1 : [2010] 4 SCR 103;** *Romila Thapar v. Union of India* **(2018) 10 SCC 753 : [2018] 11 SCR 951;** *Hema v. State* **(2013) 10 SCC 192 : [2013] 3 SCR 1;** *Babubhai v. State of Gujarat* **(2010) 12 SCC 254 : [2010] 10 SCR 651;** *Rafiq Ahmad v. State of U.P* **(2011) 8 SCC 300 : [2011] 11 SCR 907;** *Willie (William) Staney v. The State of Madhya Pradesh* **[1955] SCR 1140;** *Sunil Kumar Banerjee v. State of West Bengal* **(1980) 3 SCC 304 : [1980] 3 SCR 179;** *S. Jeevantham v. State* **(2004) 5 SCC 230 : [2004] 1 Suppl. SCR 607;** *Vinod Kumar v. State of Punjab* **(2015) 3 SCC 220 : [2015] 1 SCR 504;** *Surender v. State of Haryana* **(2016) 4 SCC 617 : [2016] 1 SCR 174;** *Jamuna Chaudhary v. State of Bihar* **(1974) 3 SCC 774 : [1974] 2 SCR 609;** *Kashmeri Devi v. Delhi Admn.,* **(1988) Suppl. SCC 482 : [1988] SCR 700;** *Vinay Tyagi v. Irshad Ali* **(2013) 5 SCC 762 : [2012] 13 SCR 1005;** *Niranjan Singh v. State of U.P.* **[1956] SCR 734;** *Paramjit Singh v. State of Punjab* **(2007) 13 SCC 530 : [2007] 11 SCR 776;** *Rekha v. State of Maharashtra* **(2010) 15 SCC 725;** *Union of India v. T. Nathamuni* **(2014) 16 SCC 285 : [2014] 12 SCR 297;** *Hardip Singh v. State of Punjab* **(2008) 8 SCC 557 : [2008] 12 SCR 311;** *State of Punjab v. Noor Aga* **(2008) 16 SCC 417 : [2008] 10 SCR 379;** *State of Punjab v. Baldev Singh* **(1999) 6 SCC 172 : [1999] 3 SCR 977;** *State of U.P. v. Bhagwant Kishore Joshi,* **AIR 1964 SC 221 : [1964] 3 SCR 71 – referred to.**

Emperor v. Khwaja Nazir Ahmad, **AIR 1945 PC 18 – referred to.**

Case Law Reference

[2018] 9 SCR 1006	**overruled**	**Para 1**
[2019] 2 SCR 707	**referred to**	**Para 2**
(1976) 1 SCC 15	**referred to**	**Para 3.1**
(1996) 11 SCC 709	**referred to**	**Para 3.1**
(2010) 15 SCC 369	**referred to**	**Para 3.1**
[1978] 2 SCR 621	**referred to**	**Para 3.3**
[1955] 1 SCR 1150	**referred to**	**Para 3.7**
[2010] 4 SCR 103	**referred to**	**Para 3.7**
[2018] 11 SCR 951	**referred to**	**Para 3.12**
[2013] 3 SCR 1	**referred to**	**Para 3.12**
[2010] 10 SCR 651	**referred to**	**Para 3.12**
[2011] 11 SCR 907	**referred to**	**Para 3.16**
[1955] SCR 1140	**referred to**	**Para 3.17**
[1980] 3 SCR 179	**referred to**	**Para 5.9**
[2004] SCR 330	**relied on**	**Para 5.9**
[2004] 1 Suppl. SCR 607	**referred to**	**Para 5.9**
[2009] 5 SCR 256	**relied on**	**Para 5.9**
[2015] 1 SCR 504	**referred to**	**Para 5.9**
[2016] 1 SCR 174	**referred to**	**Para 5.9**
[1974] 2 SCR 609	**referred to**	**Para 5.10**
[1988] SCR 700	**referred to**	**Para 5.10**
[2012] 13 SCR 1005	**referred to**	**Para 5.10**
[1956] SCR 734	**referred to**	**Para 5.10.2**
[2007] 11 SCR 776	**referred to**	**Para 5.10.2**
(2010) 15 SCC 725	**referred to**	**Para 5.10.2**
[2014] 12 SCR 297	**referred to**	**Para 5.10.2**
[2008] 12 SCR 311	**referred to**	**Para 6.6.2**

[2005] 3 SCR 496	**relied on**	**Para 6.6.3**	A
(2005) 9 SCC 579	**relied on**	**Para 6.6.3**	
[2008] 10 SCR 379	**referred to**	**Para 6.7**	
[1999] 3 SCR 977	**referred to**	**Para 8.1.4**	
[1964] 3 SCR 71	**referred to**	**Para 8.2.1**	B
[2013] 14 SCR 713	**relied on**	**Para 9.2**	
[2003] 3 SCR 25	**relied on**	**Para 10**	
[2002] 2 SCR 767	**relied on**	**Para 10**	

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Criminal) Diary No. 39528 of 2018. C

From the Judgment and Order dated 08.04.2016 of the High Court of Delhi at New Delhi in Criminal Appeal No. 1598 of 2013.

With

Special Leave Petition (Criminal) Nos. 5648, 5894 and 8499 of 2019. D

Tushar Mehta, S.G., Aman Lekhi, ASG, A.K. Srivastava, Sr. Adv., Kanu Agrawal, A.K. Shrivastav, Ms. Shradha Deshmukh, Shivani Misra, Ritwiz Rishabh, Shantanu Sharma, Manan Popli, Saurabh Mishra, Rajat Nair, B.V. Balram Das, Udit Atul Kumar, Ujjwal Sinha, Mehak Huria, Adnan Siddiqui, Ms. Lakshika Sachdeva, B.Krishna Prasad, Puneet Jain, Ms. Christi Jain, Harsh Jain, Harshit Khanduja, Abhinav Deshwal, Ms. Sugam Gupta, Pankaj Sharma (for Ms. Pratibha Jain) Ajay Garg, Manish Shankar, Ashwani K Sood, Ms. Vanika Bajaj, Ms. Tirpti Gola, Syed Imtiyaz Ali, Rajiv Shankar Dvivedi, Advs. for the appearing parties. E

The Judgment of the Court was delivered by F

M. R. SHAH, J.

1. Having doubted the correctness of the decision of this Court in the case of *Mohan Lal v. State of Punjab reported in (2018) 17 SCC 627* taking the view that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal, initially by order dated 17.01.2019 the matter was referred to a larger Bench consisting of three Judges.A three Judge Bench vide order dated 12.09.2019 has referred to a larger Bench of five Judges to consider the matter. That is why, the present matter is placed before the Bench consisting of five Judges. G H

A 2. At the outset, it is required to be noted that the decision of this Court in the case of *Mohan Lal (supra)* taking the view that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal, came up for consideration subsequently before this Court in the case of *Varinder Kumar v. State of Himachal Pradesh 2019 (3) SCALE 50 = (2020) 3 SCC 321* and a three Judge Bench of this Court [out of which two Hon'ble Judges were also in the Bench in the case of *Mohan Lal (supra)]* held that the decision of this Court in the case of *Mohan Lal (supra)* shall be applicable prospectively, meaning thereby, all pending criminal prosecutions, trials and appeals prior to the law laid down in C *Mohan Lal (supra)* shall continue to be governed by individual facts of the case. The relevant observations in the case of *Varinder Kumar (supra)*to be referred and considered hereinbelow.

3. Shri Sushil Kumar Jain, learned Senior Advocate appearing on behalf of the accused – Devendra Singh has made the following D submissions in support of his submission that as rightly held by this Court in the case of *Mohan Lal (supra)* in a given case where the complainant himself has conducted the investigation the entire trial would be vitiated and the accused would be entitled to acquittal:

3.1 The decision in *Mohan Lal (supra)* rests and is based upon E substantive constitutional foundation and principles of criminal jurisprudence. In the said decision in para 5, this Court specifically dealt with and considered the question whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person and in such a case, is it necessary for the accused to F demonstrate prejudice, especially under laws such as the NDPS Act, carrying a reverse burden of proof. In the said decision, this Court considered in detail the reverse burden of proof under Sections 35 and 54 of the NDPS Act. That thereafter, this Court had considered in detail the constitutional guarantee of fair trial to an accused under Article 21 G which takes within its fold "Fair Investigation". Thereafter it is observed by this Court that in the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. It is further observed that if the investigation itself is unfair, to require the accused to demonstrate prejudice will be H

fraught with danger vesting arbitrary powers in the police which may well lead to false implication also.Thereafter this Court considered in paragraphs 17 and 29 the role and obligations of the investigator and the investigation itself. Thereafter after having placed reliance on the decisions of this Court in the cases of *Bhagwan Singh v. State of Rajasthan (1976) 1 SCC 15; Megha Singh v. State of Haryana (1996) 11 SCC 709; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369*, this Court specifically observed and held that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal. In the said decision, it is specifically observed that to leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. Thereafter it is held that a fair investigation which is but the very foundation of a fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a pre-determined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof;

3.2 The reasons which found favour in *Mohan Lal (supra)* are inherent and inbuilt by the legislature in Chapter V – "Procedure", which would be the "…procedure established by law" for the purpose of Article 21;

3.3 As is now settled after the decision in the case of *Menaka Gandhi v. Union of India (1978) 1 SCC 248* that the procedure established by law under Article 21 cannot be "any procedure" but has to be a just and a reasonable procedure and hence right of the accused to have a fair and independent investigation and trial, being inherent has been "read into" into the statutes not confirming to fair procedure to make them constitutionally compatible;

3.4 Learned Senior Advocate appearing on behalf of the accused has thereafter taken us to the "Scheme" of the NDPS Act, more particularly Section 8(c) and Sections 15 to 22. He submitted that Section 54 gives rise to a presumption that the accused has committed an offence under the Act and places a reverse burden of proof upon an accused "found" to be in possession and which he fails to account for satisfactorily.

A Section 35 mandates the Court to culpable mental state unless contrary is proved. It is submitted that thus "recovery" and "possession" becomes an important and vital aspect of investigation under the NDPS Act. If the accused is "found" to be in possession of the prohibited substance, Section 54 gives rise to a presumption of commission of offence and Section 35 gives rise to a presumption of culpable mental state. The B officer or the raiding party which effects recovery are witnesses to the said fact which would constitute an offence and therefore investigation of the said aspect has to be carried out by an independent agency. Investigation being a systemic process and not a forgone conclusion making the FIR itself lodged by the informant who himself effects C recoveries to be treated as a gospel truth;

3.5 In order to safeguard the interest of the accused, the legislation has provided inbuilt safeguards under the NDPS Act. That the Act requires recovery and investigation to be made by different officers, i.e., by officers empowered under Section 42 and 53. The role of an officer D under Section 42 being limited to effect "entry", "search", "seizure" and "arrest". It is submitted that an officer under Section 42 has no power of investigation;

3.6 That Section 52(3) requires an officer under Section 42 to handover every person arrested or article seized to an officer empowered E under Section 53 (who has been conferred with power of investigation under the Act) or an officer in charge of a police station who has power of investigation under the Cr.P.C. At the stage when the officer under Section 42 is required to handover the person arrested or the articles seized by him to the officer in charge of a police station or the officer under Section 53 of the NDPS Act, the information given by him to such F officers would then be categorised as the first information report. As the investigation starts on information relating to commission of an offence given to an officer in charge of a police station and recorded under Section 154 Cr.P.C.

3.7. A cryptic message on telephone etc. which under the NDPS G Act is similar to the information provided by a secret informer etc. cannot therefore constitutean FIR. It is only after recoveries are effected and/ or arrests made, information regarding commission of a cognizable offence crystallises. After such handing over, the Role of a Section 42 officer comes to an end, except he has to make a report of his action to his superior officer within 48 hours under Section 57 of the NDPS Act. H For all practical purposes, the time when Section 42 officer hands over

the person arrested or the goods seized, is the first-time information is received by the "investigating officer" and that is the time of commencement of investigation. Heavy reliance is placed upon the decisions of this Court in the cases of *H.N. Rishbud v. State of Delhi AIR 1955 SC 196; and Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1*;

3.8 If the officer under Section 41(2) or Section 42 receives some secret information, he is statutorily required to inform the same under Section 42(2) of the Act to his superior officer after 72 hours. The officer is not obliged and cannot be compelled to give the source of his information in view of the bar contained in Section 68 of the Act. Thus, there is no mechanism to verify, except the oral testimony of Section 42 officer himself or his subordinate officers who are part of his raiding party, that he has acted on some prior secret information or that the recovery etc. was a chance recovery or that the officer was acting maliciously for extraneously. Even after effecting arrests or seizures, while the officer under Section 42 is required to forward the articles seized and persons arrested "without unnecessary delay" to the investigation officers, he is required to report to his immediate superior officer in 48 hours. Thus, there is no person other than the officer under Section 42 who is the "complainant", i.e., the one who alleges commission of a cognizable offence based on the arrests and the recoveries effected by himself or his raiding party. He is the witness who "claims" seizures/recovery of prohibited substances from possession of the accused. These claims are required to be verified and substantiated during investigation by the investigating officer.Once the person arrested and the articles seized come in the control of the "Investigating Officer", he is required under Section 52(4) of the Act to take measures for their disposal. The person arrested is produced before the magistrate under Section 167 Cr.P.C. and the narcotic substance seized is then required to be dealt with by the officer under Section 53 of the NDPS Act or the SHO in accordance with Section 52A. In the process of investigation, the conduct of the officer under Sections 42, 43 and 44 is also required to be investigated. If after investigation it is found that the claim made by the complainant/ informant is justified, he would file a police report against the accused for offences under the Act, however, in case he finds that the officer under Section 42 has acted vexatiously or maliciously, he can also be punished under Section 58 and therefore he would file a police report against such officer for offence under Section 58. The offence under

A Section 58 is also a cognizable offence and hence on an allegation made the "officer incharge of police station" is under an obligation to take cognizance of that and investigate. An independent investigation by a separate agency lends credibility and fairness to both the sides. If the officer under Section 42 is to be proceeded against, his trial would also be based upon "investigated" material. It would also exclude possibility B of abuse and source of corruption due to the wide powers under the NDPS Act;

3.9 Handing over or continuation of investigation by the officer who has acted under Section 42 to effect search, seizure or arrest is not therefore be comprehended under the scheme. It would render Section C 58 completely redundant and otiose as he would not investigate against himself and file a chargesheet against himself. If the accused is not found to be in possession, the Investigating Officer would have to explain his source or else "possession" of a contraband in his possession would also attract Section 8. The scheme of making two separate sections i.e. D Sections 42 and 53 empowering officers for different purposes would have been unnecessary. If the legislative intent was such, officer under Section 42 would have been given an additional power of investigation and then Section 53 was unnecessary;

3.10 There was no need for a provision like Section 52(3) which E mandates handover of articles seized and persons arrested to a SHO or an officer under Section 53;

3.11 NDPS Act does not contemplate "Joint Authorisations", for if that were the case, Section 42 would have conferred power of both "entry, search, seizure or arrest" as well as "investigation" on the same F officer. The very fact that two separate sections, namely, Section 42 and Section 53 have been provided and Section 52(3) contemplates "handing over" by Section 42 officer to either Section 53 officer or to SHO, meaning thereby that there ought to be two separate officers;

3.12 The object of "fair and independent investigation" is to unearth G the truth. The "fair and independent investigation" is a right of an accused flowing from Article 21 of the Constitution. Reliance is placed upon the decisions of this Court in the case of *Romila Thapar v. Union of India (2018) 10 SCC 753 (para 67); Manu Sharma (supra)(paras 200 to 202); Hema v. State (2013) 10 SCC 192 (para 10); and Babubhai v. State of Gujarat (2010) 12 SCC 254 (para 32)*;

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3.13 "Liberty" of a person would be at serious peril if the scheme of the NDPS Act is interpreted and left over in the hands of a single person without any checks and safeguards to protect the rights of the accused. It is impermissible and beyond comprehension to allow a person to (i) make an accusation; (ii) the fact that he accuses is "sufficient ingredient" to make a penal offence; (iii) "investigate" that accusation which he himself makes; and (iv) become a "witness" to prove the accusation and then based on his testimony a person is convicted and punished;

3.14 In order to bring home a conviction under the provisions of the NDPS Act, prosecution is required to establish ingredients of an offence "beyond reasonable doubt";

3.15 If the defence of the accused is not properly investigated to rule out all other possibilities, it cannot ever be said that the prosecution has established the guilt "beyond reasonable doubt". A tainted investigation by a complaint who is a "witness" himself to a substantial ingredient of an offence, would in fact give rise to a "doubt" and it is impossible that the case can be established on the parameter of "beyond reasonable doubt";

3.16 A person accused of criminal offence punishable with a peril to his life or liberty, enjoys certain rights under the Constitution or through long standing development of criminal jurisprudence. Any action which impinges or affects those rights would be said to cause "prejudice to an accused". That in the case of *Rafiq Ahmad v. State of U.P (2011) 8 SCC 300*, it is observed and held that prejudice to an accused or failure of justice has to be examined with reference to (i) right to fair trial (ii) presumption of innocence until pronouncement of guilt and (iii) the standards of proof. It is observed in the said decision that whenever a plea of prejudice is raised by the accused, it must be examined with reference to the above rights and safeguards, as it is the violation of these rights alone that may result in the weakening of the case of the prosecution and benefit to the accused in accordance with law;

3.17 Section 457 Cr.P.C. in effect saves an order of conviction and sentence despite there being an error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under Cr.P.C., or in any sanction for the prosecution unless in the opinion

A of the Court "failure of justice" has been occasioned thereby. According to the prosecution therefore before an order ofconviction and sentence is set aside the Court must be satisfied that there is a "actual prejudice" caused to the accused. However, Section 457 Cr.P.C. does not include within its fold the term "investigation" which has been specifically defined under Section 2(h) separate from inquiry defined under Section 2(g). Section 457 contemplates errors committed in judicial proceedings before or during the commencement of trial and not "investigation" by the officers of the police etc. Heavy reliance is placed upon the decision of this Court in the case of *Willie (William) Staney v. The State of Madhya Pradesh 1955 SCR 1140* on the test for "failure of justice".Therefore allowing the informant/complainant to be the investigator in which he could himself faced prosecution if independently investigated would not only violate the fundamental principles of fair trial which includes fair investigation, but would be a denial of an opportunity of getting the defence investigated and hence would also be abhorrent to the well-established notion of natural justice rendering the trial a mockery.

3.18 Making the above submissions and relying upon the aforesaid decisions, it is submitted that the law laid down by this Court in the case of *Mohan Lal (supra)* taking the view that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal is a correct law.

4. Shri Ajay Garg, learned Advocate appearing on behalf of Mukesh Singh has made the following additional submissions other than the submissions made by Shri Sushil Kumar Jain, learned counsel appearing on behalf of the accused;

4.1 Right from *Bhagwan Singh (supra)* till the recent judgment in the case of *Varinder Kumar (supra)*, this Court is of the firm view that the complainant/informant and the investigator must not be the same person. The same is in consonance with the age-old principles of law that "*Nemo debetessejudex in causa proporiasua" (*no person can be a judge in his own cause) and that "justice should not only be done but appears to have been done";

4.2 The aforesaid principles of law are touchstone of the principles of natural justice and is a useful tool to maintain free, fair and unbiased investigation and adjudication across legal systems;

4.3 Considering the scheme of the NDPS Act, more particularly Sections 41, 42, 43, 52(3) and 53 of the Act require that the officer empowered to raid, seize and arrest who may be the complainant shall be different from the investigator of the case;

4.4 The criminal proceedings stand vitiated if the complainant/informant and the investigator of the case is the same person in view of the following reasons:

a) If the complainant/informer and the Investigator are same persons, it will violate the principle of Rule against Bias which is a part of Principles of Natural Justice and included in Fundamental Right enshrined in Article 14 and 21 of the Constitution of India. In this regard he is relying upon para 14, 18 and 31 of *Mohan Lal (Supra)*.

b) In such case like NDPS where there is reverse burden of proof in sections 35, 54, 66 and 68, the burden shall be on the prosecution to prove that no prejudice is caused to the accused in the investigation conducted by the complainant/Informer. In this regard he is relying upon para 14 and 18 of *Mohan Lal (Supra)*.

c) In such case, the complainant will always be interested in filing charge sheet against the accused (which is normal human behavior). He will have personal bias against the accused and there will be no objectivity in the Investigation. He is relying upon *Megha Singh (Supra)*, *Bhagwan Singh (supra)*, *Mohan Lal (supra)*.

d) This Hon'ble Court has consistently considered this as a serious infraction to the guaranteed constitutional rights of accused and declared it to be the grave infirmity which reflects on the credibility of the prosecution case.

e) Giving due weightage as observed in *Mukeshsingh (supra)* will have same result because if the evidence of the Complainant/Investigating officer is discarded, nothing remains in the prosecution case and the entire Criminal proceedings stands vitiated.

f) The Accused will be deprived of his valuable rights of cross examining the complainant/informer and the Investigation officer separately if both are same. Further, the accused will also be

A deprived of his valuable right of contradicting the previous information recorded under section 154 or 155 Cr.P.C. and previous statements of the witnesses, being a police officer, complaint recorded under section 151 Cr.P.C. enjoined in section 145 and 157 of Indian Evidence Act and proviso to section 152 Cr.P.C.

B g) The meaningful reading of the scheme of NDPS Act as discussed above also indicate that the Informer/complainant/raiding officer cannot Investigate the said case.

h) There is no compulsion for the Police/any other agency to get the Investigation conducted by the complainant/informer and on
C the other hand it can be an easy tool of false implication.

i) Investigating Officer could not be placed on any pedestal higher than of a complainant and the complainant himself cannot be the sole agency of investigation. The whole bedrock of the investigation on the basis of which the appellant has been prosecuted is found
D be unfair and against the basic tenets of criminal jurisprudence, the conviction and sentence based on such a highly infirm investigation as aforesaid cannot be sustained in the eye of law and accordingly the whole proceedings based on such investigation as aforesaid deserve to be quashed and set aside.

E 5. Shri Tushar Mehta, learned Solicitor General of India has made the following submissions:

5.1 Section 2(h) defines "investigation". "Investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person other than a magistrate
F who is authorised by a magistrate in this behalf. Section 2(o) defines "officer in charge of a police station" and it includes when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of a constable or, when the State Government so directs, any other
G police officer so present. It is submitted that under Cr.P.C., the criminal law is set into motion either under Chapter XII which relates to information to police officers; or Chapter XV which relates to complaints to magistrates. The present case relates to Chapter XII, Cr.P.C. where the informant of the offence is a police officer;

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5.2 As per Section 154 Cr.P.C., every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station shall be reduced in writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced in writing shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. As per sub-section 3 of Section 154 Cr.P.C., any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section 1 may send the substance of such information, in writing and by post to the Superintendent of Police concerned, who if satisfied that such information discloses the commission of a cognizable offence shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him and such officer shall have all the powers of an officer in charge of the police station in relation to that offence;

5.3 Section 156 Cr.P.C. provides that any officer in charge of a police station may investigate a cognizable offence without an order of the magistrate. Thus, even where the FIR under Section 154 Cr.P.C. is registered at the instance of a police officer, there is no bar under Section 156 Cr.P.C. to an officer in charge of a police station to investigate the same. Further, the competence of such investigating officer cannot be called in question in any proceedings;

5.4 Section 157 Cr.P.C. provides that if some information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, he shall proceed in person to the spot to investigate and if necessary to take measures for the discovery and arrest of the offender. Thus, an officer in charge of a police station who himself receives information of commission of cognizable offence is empowered to investigate the case. It is submitted that thus, under the scheme of Cr.P.C., there is no bar on a police officer receiving information of commission of a cognizable offence, recording the same and then investigate it;

5.5 Cr.P.C. itself has provisions for vitiation and non-vitiation of trial if there is illegality committed by the magistrate. Section 460 of the Code enumerates that if a magistrate does any of the acts specified in the said section, which he is not empowered to, then his proceedings

A would not be set aside only on this ground. Section 461 of the Code enumerates that if a magistrate does any of the acts specified in the said section, which he is not empowered to, then his proceedings would be void. However, the illegalities under both these provisions are by the magistrate and not by the investigating officer;

B 5.6 Section 462 of the Code provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice. Section 463 of the Code provides that even if there is non-compliance in recording the C confession under Section 164 of the Code, even then the same may be admissible if such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement. Section 465 of the Code provides that no finding, sentence or order passed by a court of competent jurisdiction shall be D reversed or altered by a Court of Appeal on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, or any error or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. Thus, under Section 465, E irregularity in other proceedings under the Code shall not lead to reversal of conviction unless it led to failure of justice. Irregularity in investigation would not lead to acquittal unless failure of justice is shown;

5.7 Further, illustration (e) to Section 114 of the Indian Evidence Act which permits the Court to raise a presumption that official acts F have been regularly performed;

5.8 The decisions of this Court in the cases of *Bhagwan Singh (supra); Megha Singh (supra); Rajangam (supra) and Mohan Lal (supra)* were, as such, can be said to be on facts;

G 5.8.1 In the case of *Bhagwan Singh (supra)*, the head constable who caught the accused for smuggling of grains lodged an FIR under Section 161 IPC for offering Rs.510/- as bribe to the head constable. The head constable himself was the complainant and the IO. There were no independent witnesses in the case. Even, this Court also commented that no effort was made by the IO to have independent H

witnesses. That thereafter, it was held by this Court that the complainant himself cannot be an investigator. Therefore, the said decision can be said to be on the facts and circumstances of that case and cannot be said to be an absolute general proposition of law that in any case the complainant cannot be the investigator and in such a case the accused is entitled to acquittal.

5.8.2 In the case of *Megha Singh (supra)* also, no independent witnesses were examined. Head constable who arrested the accused with a country made pistol and cartridges lodged the complaint and he only proceeded with the investigation. In the said case, it was found that there were discrepancies in depositions of public witnesses. Therefore, this Court held that PW3 – Head Constable himself being a complainant ought not to have proceeded with the investigation;

5.8.3 In the case of *Rajangam (supra)*, this Court followed its earlier judgment in the case of *Megha Singh (supra);*

5.8.4 Now so far as the decision of this Court in the case of *Mohan Lal (supra)* is concerned, the same again came to be considered by this Court in the case of *Varinder Kumar (supra)* and it is specifically observed that the facts in *Mohan Lal (supra)* were indeed extremely telling insofar as the defaults on the part of the prosecution were concerned. It is further observed that in that background it was held that the issue could not be left to be decided on the facts of a case, impinging on the right of a fair trial to an accused under Article 21 of the Constitution of India. It is further observed in the said decision in para 11 that the paramount consideration being to interpret the law so that it operates fairly, the facts of that case did not show any need to visualise what all exceptions must be carved out and provided for. The attention of the Court was also not invited to the need for considering the carving out of exceptions. It is further observed that individual rights of the accused are undoubtedly important, but equally important is the social interest for bringing the offender to book and for the system to send the right message to all in the society – be it the law-abiding citizen or the potential offender. It is further observed that the social interest mandates that the law laid down in *Mohan Lal (supra)* cannot be allowed to become a spring board by an accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous. Therefore, even as observed by this Court in the case of *Varinder Kumar (supra)*, the facts in the case

of *Mohan Lal (supra)* were glaring and on facts it was held that the accused was entitled to acquittal;

5.9 On the contrary there is a line of judgments wherein this Court held that the investigating officer and the complainant being the same person, does not vitiate the investigation. Reliance is placed upon the decisions of this Court in the cases of *Sunil Kumar Banerjee v. State of West Bengal (1980) 3 SCC 304; State v. V. Jayapaul (2004) 5 SCC 223; S. Jeevantham v. State (2004) 5 SCC 230; Bhaskar RamappaMadar v. State of Karnataka (2009) 11 SCC 690;Vinod Kumar v. State of Punjab (2015) 3 SCC 220; and Surender v. State of Haryana (2016) 4 SCC 617*.

Therefore, it may be seen that this Court declined to lay down a hard and fast rule with regard to the said question despite taking note of the judgments, which in peculiar facts, had held that the investigating officer and the complainant cannot be the same person;

5.10 Relying upon the decisions of this Court in the cases of *Jamuna Chaudhary v. State of Bihar (1974) 3 SCC 774; Kashmeri Devi v. Delhi Admn., 1988 Supp. SCC 482; and Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762*, it is submitted that the duty of the investigating officers is not merely to bolster up a prosecution casewith such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth;

5.10.1 As held by this Court in the case of *Vinay Tyagi (supra)*, what ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisprudence? It has a twin purpose, firstly, the investigation must be unbiased, honest, just and in accordance with law, secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons. Therefore, failure of justice – defect in

investigation does not vitiate the trial unless prejudice is caused to the accused;

5.10.2 The second concept is with regard to failure of justice and prejudice to the accused. This involves the shifting of the burden on the accused to illustrate how the procedure and the factual circumstances/ countervailing factors, have resulted in grave prejudice to the investigation and to him/her in particular. Reliance is placed upon the decisions of this Court in the cases of *H.N. Rishbud v. State of Delhi 1955 (1) SCR 1150; Niranjan Singh v. State of U.P. 1956 SCR 734; Paramjit Singh v. State of Punjab (2007) 13 SCC 530; Rekha v. State of Maharashtra (2010) 15 SCC 725; and Union of India v. T. Nathamuni (2014) 16 SCC 285*;

5.10.3 In light of the aforesaid twin tests, it is prayed to lay down a flexible rule wherein the right to fair investigation does not become a spring board for acquittal in cases wherein investigations are proper and as per the statutory principles.

6. Shri Aman Lekhi, learned Additional Solicitor General of India has made the following submissions:

6.1 This Court in *Mohan Lal (supra)* proceeded sub-silentio Section 157 of the Code of Criminal Procedure under which investigation can be undertaken by the investigating officer on the basis of his own knowledge of the commission of a cognizable offence; ignored Illustration (e) to Section 114 of the Indian Evidence Act which permits the Court to raise a presumption that official acts have been regularly performed; disregarded the principle enunciated in the case of *H.N. Rishbud* (*supra)* that illegality in investigation has no direct bearing on cognizance and a valid police report is not necessarily the foundation for the Court to take cognizance; did not deal with Section 465 of the Cr.P.C. under which any illegality, whether before or during trial or in any other proceeding, will not justify reversal of any finding, sentence or order unless a failure of justice is occasioned thereby; overlooked the rule that an objection to an illegality if not raised at the right stage will be deemed to have been waived; did not consider the principle that mala fides have to be established and not inferred and that mala fides are of secondary importance if the trial otherwise discloses impeccable evidence; and misconstrued both the scheme of the NDPS Act and the principle of reverse burden; and failed to take notice of the principle that investigation is exclusively

A reserved for the investigating agency under the Act, functions of the investigating agency and the judiciary are complementary and not overlapping and interference is warranted only is a clear case of abuse of power which will be decided in the facts of each case;

6.2 In the case of *Varinder Kumar (supra)*, this Court specifically
B held that in *Mohan Lal (supra)*, the attention of the Court was also not invited to the "need for considering the carving out of exceptions" and that "human rights are not only of the accused but, extent apart, also of the victim, the symbolic member of society as the potential victim and the society as a whole". The Court therefore held that the law in *Mohan*
C *Lal (supra)* "cannot be allowed to become a spring board by an accused to be catapulted to an acquittal, irrespective of all other considerations pursuant to an investigation". The Court however, yet held that only trials and appeals prior to the law laid down in *Mohan Lal (supra)* shall continue to be governed by the individual facts of the case. It is submitted that this distinction is artificial and unjustified in law;

D 6.3 The order of Reference dated 17.01.2019 correctly records that in a given case, where the complainant himself had conducted investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record but it would be completely a different thing to say that the trial itself would be vitiated
E for such infraction. But *Mohan Lal (Supra)* has ruled that the trial itself would stand vitiated on that count;

6.4 The decision of this Court in *Mohan Lal (supra)* has not considered Section 157 of the Cr.P.C. The interference with the exercise of power under Section 157 would be warranted only if the peculiar
F facts of each case require. This is more so because there are safeguards in the statute itself and Section 157 has to be read with Sections 158 and 159 of the Cr.P.C.;

6.5 An information report is not a condition precedent for setting criminal investigation to motion and an officer in charge of a police station
G can undertake the same even "otherwise". Thus, investigation can commence if an officer in charge of the police station is in possession through his own knowledge or credible informal intelligence of the commission of a cognizable offence. Reliance is placed on the decision of the Privy Council in the case of E*mperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18;*

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6.6 In the case of *V. Jayapaul (supra)*, wherein the inspector of police prepared the FIR upon receiving information himself about the respondent indulging in corrupt practices and proceeded to take up the investigation himself, eventually filed a chargesheet. This Court set aside the order of the High Court which had quashed the proceedings on the ground that investigation was by the same police officer who registered the case. In the case of *V. Jayapaul (supra),* this Court distinguished the cases of *Bhagwan Singh (supra)* and *Megha Singh (supra)*, wherein the Court had held that the complainant cannot be the investigating officer;

6.6.1 In the case of *Bhaskar Ramappa Madar (supra)*, this Court also held that the judgments of *Bhagwan Singh (supra)* and *Megha Singh (supra)* were to be confined to their own facts;

6.6.2 the decision of this Court in the case of *V. Jayapaul (supra)*was approved in the case of *Hardip Singh v. State of Punjab (2008) 8 SCC 557* wherein the investigating officer was the one who had seized the opium for the possession of which the appellant had been convicted;

6.6.3 It is held by this Court in the case of *State of Rajasthan v. Ram Chandra (2005) 5 SCC 151,* the question of prejudice or bias has to be established and not inferred. Reliance is also placed on the decision of this Court in the case of *Union of India v. Vipan Kumar Jain (2005) 9 SCC 579*;

6.7 Even in cases of reverse burden, the presumption can operate only after the initial burden which exists on the prosecution is satisfied and even thereafter, the standard of proof on the accused is only that of preponderance of probability. Without the foundational facts being established, provisions raising presumptions against the accused cannot operate. Reliance is placed on the decision of this Court in the case of *State of Punjab v. Noor Aga (2008) 16 SCC 417;*

6.8 Reverse burden does not merely exist in special enactments like the NDPS Act and Prevention of Corruption Act, but is also a part of the IPC, namely Section 304B and all offences under the IPC are to be investigated in accordance with the provisions of the Cr.P.C. and consequently the informant himself can investigate the said offences under Section 157 Cr.P.C. Law, in other words, does not disapprove of nor frowns upon this practice. These protections will remain even when the complainant is the investigating officer;

A 6.9 That this Courtin the case of *Mohan Lal (supra)* also did not consider the scheme of the NDPS Act;

6.10 Investigation of an offence is a field exclusively reserved for the police whose powers remain unfettered as long as they remain complaint with the provisions of the Code of Criminal Procedure. It is
B only in extraordinary circumstances of abuse of authority that the Court may interfere. The rule as laid down in *Mohan Lal (supra)* imposed a restriction on the procedure of investigation which is not contemplated by the Code and disregards the principle that the functions of the judiciary and the investigating agency are complementary and not overlapping and each should be left to exercise its function in the area demarcated
C for it subject to intervention in an appropriate case. In other words, unless the facts of a particular case show prejudice, no rule can be judicially enacted that in no case can a complainant be the investigating officer;

6.11 Abuse of power cannot be presumed. Fairness of investigation would always be a question of fact. In the absence of an express
D prohibition in the code barring investigation by a complainant himself, the statutory incorporation of the rule that credit should be given to public officers who have acted in the limits of their authority. The law is that invalidity of investigation has no relation to the competence of the Court. And the object of the Code that matters of failure of justice should be
E left to the discretion and vigilance of the Courts; hence, the formulation of a general rule as contained in paragraph 25 of *Mohan Lal (supra)* is wrong;

7. In rejoinder, Shri Sushil Kumar Jain, learned Senior Advocate appearing on behalf of the accused has submitted that reliance placed
F upon Section 157 Cr.P.C. for the offence under the NDPS Act is misplaced. NDPS Act is a special statute and all provisions of Cr.P.C. have not been made applicable to the proceedings under the NDPS Act. That the scheme of NDPS Act, being a special Act, overrides Section 157 Cr.P.C. to the extent of enabling taking of cognizance on personal information and proceeding on that basis, more particularly the provisions
G of Section 42 of the NDPS Act.

8. The question which is referred to the larger Bench is, whether in case the investigation is conducted by the informant/police officer who himself is the complainant, the trial is vitiated and in such a situation, the accused is entitled to acquittal?

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8.1 While deciding the question referred, few earlier decisions of this Court on one side taking the view that in case the investigating officer in the complaint being the same person, trial is vitiated and the accused is entitled to acquittal, and on the other side taking contrary view are required to be referred to and considered in detail.

8.1.1 The first decision relied upon on behalf of the accused is the decision in the case of *Bhagwan Singh (supra)*, which has been subsequently followed and even considered in the subsequent decisions. It is true that in the case of *Bhagwan Singh (supra)*, this Court acquitted the accused by observing and holding that the complainant himself cannot be an investigator. However, it is required to be noted that in that case the investigation was conducted by a Head Constable who himself was the person to whom the bribe was alleged to have been offered and who lodged the first information report as informant or the complainant. It was noted that the entire case of the prosecution rests solely on the testimony of the Head Constable – Ram Singh and four other police constables. It was found that there was not a single independent witness to depose to the offer of bribe by the accused. It was noticed that the Head Constable – Ram Singh did not make any effort to get independent respectable witnesses in whose presence the seizure could be made. This Court also noticed that the Head Constable could have easily sent one of the four police constables accompanying him to a nereby village in order to get some independent respectable witnesses, if for any reason that was not possible, he could have taken the accused and one another together with the cart to the police station and then made a seizure memo in the presence of independent respectable Panch witnesses. This Court also noticed from the statement made by the accused under Section 342 Cr.P.C. that some other independent witnesses were present when the incident took place and therefore this Court noticed that any of them could have been asked to witness the seizure memo. Thereafter, on appreciation of evidence, this Court found inherent improbability in the story of offer of bribe by the accused to the Head Constable. Thereafter, this Court observed that the trial Court and the High Court failed to notice the circumstances mentioned in para 7 which throw considerable doubt on the prosecution case against the accused. This Court further observed that the Court is not at all satisfied that the evidence led on behalf of the prosecution excludes reasonable doubt in regard to the guilt of the accused. It was further observed that since the prosecution case against the accused cannot be said to be free from reasonable

A doubt, the accused is entitled to acquittal. Therefore, on facts and considering the entire evidence on record having doubted the prosecution case against the accused and more particularly in the absence of any independent witnesses, though the independent witnesses were available, this Court acquitted the accused by giving him benefit of doubt. Therefore, as such, the decision of this Court in the case of *Bhagwan* B *Singh (supra)* can be said to be a decision on its own facts and cannot be said to be laying an absolute proposition of law that in no case the informant/complainant can be the investigator and that in all the cases where the complainant/informant and the investigating officer is the same, the entire trial is vitiated and the accused is entitled to acquittal.

C 8.1.2 The next decision which is relied upon on behalf of the accused is the decision in the case of *Megha Singh (supra)*. On facts and on appreciation of evidence on record, this Court held that the investigation by the very police officer who lodged the complaint was not conducive to fair and impartial investigation. In this case, the accused D was apprehended by Constables PW2 and PW3 and a pistol and live cartridges without any licence were recorded from the accused. On the complaint of PW3 that a formal FIR was lodged. On facts, and on appreciation of evidence on record, a discrepancy was found in the evidence of PW2 and PW3 regarding number of cartridges recovered and as to the place from where the pistol was recovered. No other E independent witnesses were examined. In paragraph 4, it is observed and held as under:

> "4. After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of PWs 2 and 3 and in the absence of any independent corroboration such F discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal G first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be H any occasion to suspect fair and impartial investigation."

Therefore, the decision of this Court in the case of *Megha Singh (supra)* also can be said to be on the peculiar facts of that case and after appreciation of evidence having doubted the reliability of the prosecution case and thereafter having noted that in such a case the Head Constable who himself was the complainant ought not to have carried on with the investigation. Therefore, it cannot be said that in this decision also, there is an absolute proposition of law laid down by this Court that in each and every case where the complainant himself is the investigating officer, the trial is vitiated and the accused is entitled to acquittal.

At this stage, it is required to be noted that in neither of the cases this Court considered in detail the relevant provisions of the Cr.P.C. with respect to the investigation which shall be referred to and dealt with hereinbelow.

8.1.3 The next decision which has been relied upon on behalf of the accused is the decision in the case of *rajangam (supra)*. In this case, this Court acquitted the accused solely following the decision in the case of *Megha Singh (supra)*. There is no further discussion on the point in the said decision by this Court.

8.1.4 In the case of *Mohan Lal (supra)*, after having noted the conflicting opinions expressed by different two Judge Benches of this Court, one in the cases of *Bhagwan Singh (supra) and Megha Singh (supra)* and other in the cases of *State of Punjab v. Baldev Singh (1999) 6 SCC 172; Bhaskar Ramappa Madar (supra); and Surender (supra)*, thereafter this Court observed and held that in a case where the informant/complainant and the investigator is the same, the trial is vitiated and the accused is entitled to acquittal. However, it is required to be noted that thereafter the very decision of this Court in the case of *Mohan Lal (supra)* fell for consideration before another three Judges Bench of this Court in the case of *Varinder Kumar (supra)*, to which two Hon'ble Judges were also there in the case of *Mohan Lal (supra)* and it is observed that the facts in *Mohan Lal (supra)* were indeed extremely telling insofar as the defaults on part of the prosecution was concerned and in that background it was held that the issue could not be left to be decided on the facts of a case, impinging on the right of a fair trial to an accused under Article 21 of the Constitution of India. That thereafter in the case of *Varinder Kumar (supra)*, it is held that the decision in the case of *Mohan Lal (supra)* shall be applicable

A prospectively and shall not affect the cases, pending criminal prosecutions, trials and appeals and they shall be governed by the individual facts of the case. That thereafter on merits and despite the fact that in that case also the informant/complainant and the investigator was the same, this Court has confirmed the conviction.

B Therefore, in light of the observations made by this Court in the case of *Varinder Kumar (supra)* that the law laid down by this Court in the case of *Mohan Lal (supra)* shall be applicable prospectively and shall not affect the pending criminal prosecutions, trials and the appeals, prior to the law laid down in *Mohan Lal (supra)*, meaning thereby that the same shall be applicable prospectively, still this Court has to consider
C the issue referred to this Court on its own merits. On considering the entire decision of this Court in the case of *Mohan Lal (supra)*, it appears that in this case also the Court did not consider in detail the relevant provisions of the Cr.P.C. under which the investigation can be undertaken by the investigating officer, more particularly Sections 154, 156 and 157
D and the other provisions, namely, Section 465 Cr.P.C. and Section 114 of the Indian Evidence Act. Even in the said decision, this Court did not consider the aspect of prejudice to be established and proved by the accused in case the investigation has been carried out by the informant/ complainant, who will be one of the witnesses to be examined on behalf
E of the prosecution to prove the case against the accused. This Court also did not consider in detail and/or misconstrued both the scheme of the NDPS Act and the principle of reverse burden.

8.2 Now let us consider the decisions taking the contrary view holding that even in a case where the complainant himself had conducted the investigation, the trial is not vitiated.

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8.2.1 In the case of *V. Jayapaul (supra)*, after considering the entire scheme of investigation under the Cr.P.C., it is held that investigation by the same police officer who lodged the FIR is not barred by law. It is further observed that such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating
G officer and the question of bias would depend on the facts and circumstances of each case. It is further observed that it is not proper to law down a broad and unqualified proposition that such investigation would necessarily be unfair or biased. In this decision, the decisions of this Court in the cases of *Bhagwan Singh (supra)* and M*egha Singh*
H *(supra)* were pressed into service on behalf of the accused, however

this Court observed that both the decisions are on their own facts and circumstances and do not lay down a proposition that a police officer in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of the information furnished by him. In this decision, this Court also considered the scheme of Sections 154, 156 and 157 Cr.P.C. and another decision of this Court in the case of *State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221(para 8)*. That thereafter this Court did not agree with the submission on behalf of the accused that as the investigation was carried out by the informant who himself submitted the final report, the trial is vitiated. This Court confirmed the conviction by setting aside the order passed by the High Court acquitting the accused solely on the ground that the very same police officer who registered the case by lodging the first information ought not to have investigated the case and that itself had caused prejudice to the accused. The relevant observations of this Court in the case of *V. Jayapaul (supra)* are as under:

> **"4.** We have no hesitation in holding that the approach of the High Court is erroneous and its conclusion legally unsustainable. There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognisable offence. A *suo motu* move on the part of the police officer to investigate a cognisable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. The scheme of Sections 154, 156 and 157 was clarified thus by Subba Rao, J. speaking for the Court in *State of U.P.* v. *Bhagwant Kishore Joshi*: (AIR p. 223, para 8).
>
> "Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognisable offence. Section 156 thereof authorises such an officer to investigate any cognisable offence prescribed therein. Though ordinarily investigation is undertaken on information received by

a police officer, the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise."

6. Though there is no such statutory bar, the premise on which the High Court quashed the proceedings was that the investigation by the same officer who "lodged" the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack.

7. There are two decisions of this Court from which support was drawn in this case and in some other cases referred to by the High Court. We would like to refer to these two decisions in some detail. The first one is the case of *Bhagwan Singh* v. *State of*

Rajasthan. There, the Head Constable to whom the offer of bribe was allegedly made, seized the currency notes and gave the first information report. Thereafter, he himself took up the investigation. But, later on, when it came to his notice that he was not authorised to do so, he forwarded the papers to the Deputy Superintendent of Police. The DSP then reinvestigated the case and filed the charge-sheet against the accused. The Head Constable and the accompanying constables were the only witnesses in that case. This Court found several circumstances which cast a doubt on the veracity of the version of the Head Constable and his colleagues. This Court observed that "the entire story sounds unnatural". While so holding, this Court referred to "a rather disturbing feature of the case" and it was pointed out that: (SCC p. 18, para 5)

"Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances, Head Constable Ram Singh could undertake investigation…. This is an infirmity which is bound to reflect on the credibility of the prosecution case."

8. It is not clear as to why the Court was called upon to make the comments against the propriety of the Head Constable, informant investigating the case when the reinvestigation was done by the Deputy Superintendent of Police. Be that as it may, it is possible to hold on the basis of the facts noted above, that the so-called investigation by the Head Constable himself would be a mere ritual. The crime itself was directed towards the Head Constable which made him lodge the FIR. It is well-nigh impossible to expect an objective and undetached investigation from the Head Constable who is called upon to check his own version on which the prosecution case solely rests. It was under those circumstances the Court observed that the said infirmity "is bound to reflect on the credibility of the prosecution case". There can be no doubt that the facts of the present case are entirely different and the dicta laid down therein does not fit into the facts of this case.

10. In *Megha Singh case* PW 3, the Head Constable, found a country-made pistol and live cartridges on search of the person of

A the accused. Then, he seized the articles, prepared a recovery memo and a "*rukka*" on the basis of which an FIR was recorded by the SI of Police. However, PW 3, the Head Constable himself, for reasons unexplained, proceeded to investigate and record the statements of witnesses under Section 161 CrPC. The substratum of the prosecution case was sought to be proved by the Head Constable. In the appeal against conviction under Section 25 of the Arms Act and Section 6(1) of the TADA Act, this Court found that the evidence of PWs 2 and 3 was discrepant and unreliable and in the absence of independent corroboration, the prosecution case cannot be believed. Towards the end, the Court noted "another disturbing feature in the case". The Court then observed: (SCC p. 711, para 4)

"PW 3 Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

12. At first blush, the observations quoted above might convey the impression that the Court laid down a proposition that a police officer who in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of the information furnished by him. On closer analysis of the decision, we do not think that any such broad proposition was laid down in that case. While appreciating the evidence of the main witness i.e. the Head Constable (PW 3), this Court referred to this additional factor, namely, the Head Constable turning out to be the investigator. In fact, there was no apparent reason why the Head Constable proceeded to investigate the case bypassing the Sub-Inspector who recorded the FIR. The fact situation in the present case is entirely different. The appellant Inspector of Police, after receiving information from some sources, proceeded to

investigate and unearth the crime. Before he did so, he did not have personal knowledge of the suspected offences nor did he participate in any operations connected with the offences. His role was that of an investigator — pure and simple. That is the obvious distinction in this case. That apart, the question of testing the veracity of the evidence of any witness, as was done in *Megha Singh case* does not arise in the instant case as the trial is yet to take place. The High Court has quashed the proceedings even before the trial commenced.

13. Viewed from any angle, we see no illegality in the process of investigation set in motion by the Inspector of Police (appellant) and his action in submitting the final report to the Court of Special Judge."

(emphasis supplied)

8.2.2 In the case of *S. Jeevanantham (supra)*, though the investigation was carried out by the complainant – police officer himself and it was submitted relying upon the decision of this Court in the case of *Megha Singh (supra),* that in case the informant/complainant and the investigator is the same, the trial is vitiated, this Court refused to set aside the conviction and acquit the accused on the aforesaid ground by observing that the accused failed to show that the investigation by the complainant – police officer himself has caused prejudice or was biased against the accused. It is required to be noted that it was also a case under the NDPS Act. The relevant observations are as under:

"2. We heard the learned counsel for the appellants. The counsel for the appellants contended that PW 8, the Inspector after conducting search prepared the FIR and it was on the basis of the statement of PW 8 the case was registered against the appellants and it is argued that PW 8 was the complainant and he himself conducted the investigation of the case and this is illegal and the entire investigation of the case is vitiated. Reliance was placed on the decision in *Megha Singh* v. *State of Haryana* wherein this Court observed that the constable, who was the de facto complainant had himself investigated the case and this affects impartial investigation. This Court said that the Head Constable who arrested the accused, conducted the search, recovered the pistol and on his complaint FIR was lodged and the case was

A initiated and later he himself recorded the statement of the witnesses under Section 161 CrPC as part of the investigation and such practice may not be resorted to as it may affect fair and impartial investigation. This decision was later referred to by this Court in *State* v. *V. Jayapaul* wherein it was observed that: (SCC p. 227, para 6)

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> "We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done…."

C

D **3.** In the instant case, PW 8 conducted the search and recovered the contraband article and registered the case and the article seized from the appellants was narcotic drug and the counsel for the appellants could not point out any circumstances by which the investigation caused prejudice or was biased against the appellants. PW 8 in his official capacity gave the information, registered the case and as part of his official duty later investigated the case and filed a charge-sheet. He was not in any way personally interested in the case. We are unable to find any sort of bias in the process of investigation."

E

F (emphasis supplied)

8.2.3 In the case of *Bhaskar RamappaMadar (supra)*, again this Court considered the very submissions and after considering the entire scheme for investigation under the Cr.P.C., more particularly Sections 154, 156 of the Cr.P.C. and after considering the decisions in the cases of *Bhagwan Singh (supra), Megha Singh (supra)* and other decisions, it is observed and held that there is no legal bar against conducting/undertaking the investigation by the complainant. It is observed and held that the decisions of this Court in the cases of *Bhagwan Singh (supra) and Megha Singh(supra)* are to be confined to the facts of those cases. It is further observed and held that merely because the

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complainant conducted the investigation, that would not be sufficient to cast doubt on the prosecution version to hold that the same makes the prosecution version vulnerable. The matter has to be decided on a case to case basis without any universal generalisation.

9. Now we consider the relevant provisions of the Cr. P. C. with respect to the investigation.

Section 154 Cr.P.C. provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction.

Section 156 Cr.P.C. provides that any officer in charge of a police station may investigate any cognizable offence without the order of a Magistrate. It further provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. Therefore, as such, a duty is cast on an officer in charge of a police station to reduce the information in writing relating to commission of a cognizable offence and thereafter to investigate the same.

Section 157 Cr.P.C. specifically provides that if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender.

Therefore, considering Section 157 Cr.P.C., either on receiving the information or otherwise (may be from other sources like secret information, from the hospital, or telephonic message), it is an obligation cast upon such police officer, in charge of a police station, to take cognizance of the information and to reduce into writing by himself and thereafter to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender. Take an example, if an officer in charge of a police station passes on a road and he finds a dead body and/or a person being beaten who ultimately died and there is no body to give a formal complaint in writing, in such a

A situation, and when the said officer in charge of a police station has reason to suspect the commission of an offence, he has to reduce the same in writing in the form of an information/complaint. In such a situation, he is not precluded from further investigating the case. He is not debarred to conduct the investigation in such a situation. It may also happen that an officer in charge of a police station is in the police station and he B receives a telephonic message, may be from a hospital, and there is no body to give a formal complaint in writing, such a police officer is required to reduce the same in writing which subsequently may be converted into an FIR/complaint and thereafter he will rush to the spot and further investigate the matter. There may be so many circumstances like such. C That is why, Sections 154, 156 and 157 Cr.P.C. come into play.

9.1 Under Section 173 Cr.P.C., the officer in charge of a police station after completing the investigation is required to file the final report/ chargesheet before the Magistrate. Thus, under the scheme of Cr.P.C., it cannot be said that there is a bar to a police officer receiving D information for commission of a cognizable offence, recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same.

E Officer in charge of a police station has been defined under Section 2(o) of the Cr. P.C. and it includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so F present.

9.2 As observed and held by this Court in the case of *Lalita Kumari v. Government of Uttar Pradesh AIR 2014 SC 187 = (2014) 2 SCC 1*, the word "shall" used in Section 154 leaves no discretion in police officer to hold preliminary enquiry before recording FIR. Use of G expression "information" without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to H further investigate the information, which is reduced in writing.

9.3 Now let us consider the relevant provisions under the NDPS Act with respect to the procedure to be followed to issue warrant, authorisation of entry, search, seizure and arrest without warrant or authorisation; seizure and arrest in public place; entry; stop and search conveyance and the conditions under which search of persons shall be conducted. The relevant provisions are Sections 41, 42, 43, 49, 50, 51, 52, 53, 54, 55, 57, 57A, which are as under:

> **"41. Power to issue warrant and authorisation**.—(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe 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 article which may furnish evidence of the commission of such offence or any illegally acquired property 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 is kept or concealed.
>
> (2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer 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 in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally

A acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

42. Power of entry, search, seizure and arrest without warrant or authorisation.—(l) 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 article which may furnish evidence of the commission of such offence or any illegally acquired property 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 is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or 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

(d) 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:

1 [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.

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;

A (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.

B

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.]

49. Power to stop and search conveyance.—Any officer C authorised under section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance 2 [or controlled substance], in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, D compel it to land and—

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

E (c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.

50. Conditions under which search of persons shall be conducted.—

F (1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest G Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any H such person is brought shall, if he sees no reasonable ground for

search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]

51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

52. Disposal of persons arrested and articles seized.—

(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to—

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station.—(1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence [or any other department of the Central Government including para-military forces or armed forces] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise 3 [or any other department] or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

54. Presumption from possession of illicit articles.—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily].

55. Police to take charge of articles seized and delivered.— An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.

57. Report of arrest and seizure.—Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

57A. Report of seizure of property of the person arrested by the notified officer.—Whenever any officer notified under section 53 makes an arrest or seizure under this Act, and the provisions of Chapter VA apply to any person involved in the case of such arrest or seizure, the officer shall make a report of the illegally acquired properties of such person to the jurisdictional competent authority within ninety days of the arrest or seizure."

9.3.1 Section 67 of the NDPS Act authorises/permits any officer referred to in section 42 to call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of the NDPS Act or any rule or order made thereunder, during the course of any enquiry. Section 68 of the NDPS Act provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence.

9.3.2 From the aforesaid scheme and provisions of the NDPS Act, it appears that the NDPS Act is a complete Code in itself. Section 41(1) authorises a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under the NDPS Act, or for the search, whether by day or by

night……Sub-section 2 of Section 41 authorises any such officer of gazetted rank of the Departments of Central Excise…… as is empowered in this behalf by general or special order by the Central Government, or any such officer of the Revenue…….police or any other department of a State Government as is empowered in this behalf by general or special order, if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under the NDPS Act, authorising any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

9.3.3 As per Section 42, any officer of the Department of Central Excise…. as is empowered in this behalf by general or special order by the Central Government or any such officer…..of the revenue, drugs control…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 the NDPS Act has been committed, enter into and search any such building, conveyance or place; in case of resistance, break open any door and remove any obstacle to such entry; seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or 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.

9.3.4 As per sub-section 2 of Section 42, such an officer has to send a copy of the information taken down in writing under sub-section 1 or his grounds for belief, to his immediate official superior within 72 hours.

9.3.5 There are inbuilt safeguards provided under the NDPS Act itself, such as, Sections 50 and 52. Section 50 of the NDPS Act provides

that when any officer duly authorised under section 42 is about to search any person under the provisions of section 41, 42 or 43, he shall inform the person to be searched in the presence of a Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate and if such person so desires, he shall take such person without unnecessary delay to the nearest Gazetted Officer as mentioned in sub-section 1 of Section 50. As per sub-section 5 of Section 50, when an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973. Sub-section 6 of Section 50 provides that after a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

9.3.6 Section 52 of the NDPS Act mandates that any officer arresting a person under Sections 41, 42, 43 or 44 to inform the person arrested of the grounds for such arrest. Sub-section 2 of Section 52 further provides that every person arrested and article seized under warrant issued under sub-section 1 of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued. As per sub-section 3 of Section 52, every person arrested and article seized under sub-section 2 of Section 41, 42, 43, or 44 shall be forwarded without unnecessary delay to the officer in charge of the nearest police station, or the officer empowered under section 53.

That thereafter the investigation is to be conducted by the officer in charge of a police station.

9.3.7 As per Section 51 of the NDPS Act, the provisions of the Cr.P.C. shall apply, insofar as they are not inconsistent with the provisions of the NDPS Act, to all warrants issued and arrests, searches and seizures made under the NDPS Act. Therefore, up to Section 52, the powers are vested with the officers duly authorised under Sections 41, 42, or 43 and thereafter so far as the investigation is concerned, it is to be conducted by an officer in charge of a police station.

9.3.8 Section 53 of the NDPS Act provides that the Central Government, after consultation with the State Government, may, by

A notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces or any class of such officers with the powers of an officer in charge of a police station for the investigation of the offences under the NDPS Act. Sub-section 2 of Section 53 further provides that
B the State Government, may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise or any other department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under the NDPS Act. Therefore, other persons authorised by
C the Central Government or the State Government can be the officer in charge of a police station for the investigation of the offences.

Section 53 does not speak that all those officers to be authorised to exercise the powers of an officer in charge of a police station for the investigation of the offences under the NDPS Act shall be other than
D those officers authorised under Sections 41, 42, 43, and 44 of the NDPS Act. It appears that the legislature in its wisdom has never thought that the officers authorised to exercise the powers under Sections 41, 42, 43 and 44 cannot be the officer in charge of a police station for the investigation of the offences under the NDPS Act.

E 9.4 Investigation includes even search and seizure. As the investigation is to be carried out by the officer in charge of a police station and none other and therefore purposely Section 53 authorises the Central Government or the State Government, as the case may be, invest any officer of the department of drugs control, revenue or excise or any other department or any class of such officers with the powers of an
F officer in charge of a police station for the investigation of offences under the NDPS Act.

Section 42 confers power of entry, search, seizure and arrest without warrant or authorisation to any such officer as mentioned in Section 42 including any such officer of the revenue, drugs control, excise,
G police or any other department of a State Government or the Central Government, as the case may be, and as observed hereinabove, Section 53 authorises the Central Government to invest any officer of the department of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government….or any class of
H such officers with the powers of an officer in charge of a police station for the investigation. Similar powers are with the State Government.

The only change in Sections 42 and 53 is that in Section 42 the word "police" is there, however in Section 53 the word "police" is not there. There is an obvious reason as for police such requirement is not warranted as he always can be the officer in charge of a police station as per the definition of an "officer in charge of a police station" as defined under the Cr. P.C.

9.5 Therefore, as such, the NDPS Act does not specifically bar the informant/complainant to be an investigator and officer in charge of a police station for the investigation of the offences under the NDPS Act. On the contrary, it permits, as observed hereinabove. To take a contrary view would be amending Section 53 and the relevant provisions of the NDPS Act and/or adding something which is not there, which is not permissible.

10. Now so far as the submission on behalf of the accused that so far as the NDPS Act is concerned, it carries a reverse burden of proof under Sections 35 and 54 and therefore if the informant who himself has seized the offending material from the accused and he himself thereafter investigates the case, there shall be all possibilities of apprehension in the mind of the accused that there shall not be fair investigation and that the concerned officer shall try to prove his own version/seizure and therefore there shall be denial of the "fair investigation" enshrined under Article 21 of the Constitution of India is concerned, it is required to be noted that whether the investigation conducted by the concerned informant was fair investigation or not is always to be decided at the time of trial. The concerned informant/investigator will be cited as a witness and he is always subject to cross-examination. There may be cases in which even the case of the prosecution is not solely based upon the deposition of the informant/informant-cum-investigator but there may be some independent witnesses and/or even the other police witnesses. As held by this Court in catena of decisions, the testimony of police personnel will be treated in the same manner as testimony of any other witness and there is no principal of law that without corroboration by independent witnesses his testimony cannot be relied upon. [See *Karamjit Singh v. State (Delhi Administration) (2003) 5 SCC 291]*. As observed and held by this Court in the case of *Devender Pal Singh v. State (NCT of Delhi) (2002) 5 SCC 234*, the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.

A 10.1 At this stage, reference may be made to illustration (e) to Section 114 of the Indian Evidence Act. As per the said provision, in law if an official act has been proved to have been done, it shall be presumed to be regularly done. Credit has to be given to public officers in the absence of any proof to the contrary of their not acting with honesty or within limits of their authority. Therefore, merely because the complainant B conducted the investigation that would not be sufficient to cast doubt on the entire prosecution version and to hold that the same makes the prosecution version vulnerable. The matter has to be left to be decided on a case to case basis without any universal generalisation.

C 10.2 At this stage, it is required to be noted that in cases where any person empowered under Sections 42, 43 or 44 of the NDPS Act acts vexatiously or maliciously, the statute itself has provided the punishment as per section 58 and it is an offence under section 58 which is a cognizable offence and such an offence is required to be investigated by the "officer in charge of a police station" other than the officer who D exercised the power of entry, search, seizure or arrest under Sections 42, 43, or 44 as naturally in such a case he would be a proposed accused and therefore he cannot be permitted to investigate and to be a judge in his own cause. However, so far as the investigation against the accused for the offence under the NDPS Act is concerned, the same analogy may not apply for the reasons stated hereinabove.

E 10.3 Now so far as the observations made by this Court in para 13 in *Mohan Lal (supra)* that in the nature of reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstance that may raise doubt about its veracity, it is to be noted that the presumption under the F Act is against the accused as per Sections 35 and 54 of the NDPS Act. Thus, in the cases of reverse burden of proof, the presumption can operate only after the initial burden which exists on the prosecution is satisfied. At this stage, it is required to be noted that the reverse burden does not merely exist in special enactments like the NDPS Act and the Prevention G of Corruption Act, but is also a part of the IPC – Section 304B and all such offences under the Penal Code are to be investigated in accordance with the provisions of the Cr.P.C. and consequently the informant can himself investigate the said offences under Section 157 Cr.P.C.

11. Therefore, as such, there is no reason to doubt the credibility H of the informant and doubt the entire case of the prosecution solely on

the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightway acquitted unless and until the accused is able to establish and prove the bias and the prejudice. As held by this Court in the case of *Ram Chandra (supra)* the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case [See *Vipan Kumar Jain (supra)]*. At this stage, it is required to be noted and as observed hereinabove, NDPS Act is a Special Act with the special purpose and with special provisions including Section 68 which provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence. Therefore, considering the NDPS Act being a special Act with special procedure to be followed under Chapter V, and as observed hereinabove, there is no specific bar against conducting the investigation by the informant himself and in view of the safeguard provided under the Act itself, namely, Section 58, we are of the opinion that there cannot be any general proposition of law to be laid down that in every case where the informant is the investigator, the trial is vitiated and the accused is entitled to acquittal.Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record. Therefore, as rightly observed by this Court in the case of *Bhaskar Ramappa Madar (supra)*, the matter has to be decided on a case to case basis without any universal generalisation. As rightly held by this Court in the case of *V. Jayapaul (supra)*, there is no bar against the informant police officer to investigate the case. As rightly observed, if at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer the question of bias would depend on the facts and circumstances of each case and therefore it is not proper to lay down a

A broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information, conducts the investigation that itself had caused prejudice to the accused and thereby it vitiates the entire prosecution case and the accused is entitled to acquittal.

B 12. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

I. That the observations of this Court in the cases of *Bhagwan Singh v. State of Rajasthan (1976) 1 SCC 15; Megha Singh v. State of Haryana (1996) 11 SCC 709; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369* and the acquittal C of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the D informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of E bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary F decision of this Court in the case of *Mohan Lal v. State of Punjab (2018) 17 SCC 627* and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.

13. The Reference is answered accordingly.

G 14. Now, respective petitions be placed before the appropriate Court taking up such matters for deciding the petitions in accordance with law and on merits and in light of the observations made hereinabove and our answer to the Reference, as above.

Divya Pandey Reference answered.