N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., D. S. Tewatia and K. S. Tiwana, JJ.

PIARA SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 969 of 1979.

February 16, 1982.

Punjab Excise Act (I of 1914)—*Section* 61(1) (*a*)—*Punjab Police Rules* 1934 *Volume III—Rules* 22.19(2) *and* 24.10—*Code of Criminal*

Held, that the relevant provisions of para 22.16(2) of the Rules are indicative that the whole purpose thereof is that the sealed property should bear the imprint of the seal of a responsible police officer who is enjoined with the safe custody thereof and disposal in accordance with law. In a way, therefore, responsibility is cast on the police officer whose seal has been used that the parcel or the seal does not pass into irresponsible hands. The whole thrust of the provisions seems to be to cast the burden on the responsible police officer for the safe custody of the parcel and case property. To direct on the contrary that such a seal should be handed over during the material period to any non-official is something which may absolve the concerned officer of further responsibility without resting the same in law on any other. Such a view would provide no guarantee that the person to whom the seal is entrusted would necessarily be of a higher calibre and integrity. Any third person entrusted with such a seal is under no legal obligation or discipline to keep it under safe custody or not allow it to be passed on into unworthy hands bent upon tampering with the case property. Nor can it be ensured that such a person would not himself become a party to any design or attempt to do so at some stage. Further, it cannot be presumed that the the responsible police officials would act criminally in breaking open the sealed parcel and resealing the same in order to forge or tamper with crucial evidence. Again, how can it be assumed that any and every non-official necessarily would be of greater integrity than these public officials. However, what is significant is that if it were to be once presumed that the responsible police officer is determined to tamper with the case property then how can this be prevented by the mere subterfuge of handing over the seal to a third person. The enigmatic question that who will guard the guards thus arises. If the responsible police official were to be so criminally minded he could easily hand over the seal to a convenient or a subservient person. In fact doing so would absolve him from further responsibility whilst he can always take the seal back from such a person and after misusing it return the same to him. What guarantee can there be that such a third person himself may not be liable to subversion by anyone determined or intent on forging and tampering with the case property. It is indeed unfortunate that occasions have arisen where police officials entrusted with the enforcement and custodianship of the law and order have deviated from their duty yet it is a far cry therefrom to infer an inveterate and inbuilt suspicion that every responsible police official entrusted with case property would forge, fabricate and tamper therewith. In this connection it cannot be said that the provision in para 24.19(13) of the Rules providing for award of commendation certificates and rewards for crime detection converts all Excise and Police officials into interested and partisan witnesses which renders their evidence akin to accomplice evidence. (Paras 14, 16, 20 and 21).

Procedure (II of 1974)—Section 102—Criminal trial—Contraband articles seized and sealed during investigation—Seal—Whether necessary to be handed over to a non-official thereafter—Non-official entrusted with the seal not produced as a witness—Non-production of such a witness—Whether necessarily raises an inference that the articles have been tampered with.

Held, that in the absence of any mandatory or even a directory provision in the whole of the Code of Criminal Procedure, 1973 and the Punjab Police Rules, 1934, it cannot be said that it is mandatory for the Investigating Police Officer to hand over the seal used by him for sealing the incriminating articles and the samples to a non-official immediately or soon thereafter and that in cases where it might at all have been so done the non-appearance or non-production as a witness of such a non-official who was entrusted with the seal would by itself be fatal to the prosecution case. The substantial issues of a criminal trial like the proof and punishment of serious crime ought not to be converted into a plaything of technicality. The canvas of the criminal law is a bigger and a broader one where matters of substance and truth have pre-eminence. Even a single witness whose testimony is of a nature warranting such implicit reliance that no corroboration or further assurance may be needed. There is then the opposite category of the prosecution witness who is so inherently unacceptable that perhaps no amount of sealing wax or production of seal will add to its credibility in any substantial sense. Criminal trials ordinarily turn and must continue to do so on the credibility and acceptability of the evidence on record. A criminal trial would not succeed or fail merely on the technicality of the delivery of an investgating seal to a third person or the latter's refusal or inability to appear as a witness about the same. It must, therefore, be held that there is neither a statutory requirement nor a precedential mandate for handing over the seal used by the police officer in the course of an investigation to a third person forthwith. It necessarily follows therefrom that even where it has been so done, the non-production of such a witness cannot by itself affect the merits of the trial.

(Paras 7, 25 and 26).

Hans Raj *vs.* The State of Punjab
1980 Ch. L. R. 74

State of Punjab *vs.* Bur Singh
1978 Ch. L. R. 152

Gurcharan Singh *vs.* The State of Punjab
1974 Ch. L.R. 171

Anokh Singh *vs.* State of Punjab
1976 Ch. L. R. 282 *Over-ruled.*

Held, that the relevant provisions of para 22.16(2) of the Rules are indicative that the whole purpose thereof is that the sealed property should bear the imprint of the seal of a responsible police officer who is enjoined with the safe custody thereof and disposal in accordance with law. In a way, therefore, responsibility is cast on the police officer whose seal has been used that the parcel or the seal does not pass into irresponsible hands. The whole thrust of the provisions seems to be to cast the burden on the responsible police officer for the safe custody of the parcel and case property. To direct on the contrary that such a seal should be handed over during the material period to any non-official is something which may absolve the concerned officer of further responsibility without resting the same in law on any other. Such a view would provide no guarantee that the person to whom the seal is entrusted would necessarily be of a higher calibre and integrity. Any third person entrusted with such a seal is under no legal obligation or discipline to keep it under safe custody or not allow it to be passed on into unworthy hands bent upon tampering with the case property. Nor can it be ensured that such a person would not himself become a party to any design or attempt to do so at some stage. Further, it cannot be presumed that the the responsible police officials would act criminally in breaking open the sealed parcel and resealing the same in order to forge or tamper with crucial evidence. Again, how can it be assumed that any and every non-official necessarily would be of greater integrity than these public officials. However, what is significant is that if it were to be once presumed that the responsible police officer is determined to tamper with the case property then how can this be prevented by the mere subterfuge of handing over the seal to a third person. The enigmatic question that who will guard the guards thus arises. If the responsible police official were to be so criminally minded he could easily hand over the seal to a convenient or a subservient person. In fact doing so would absolve him from further responsibility whilst he can always take the seal back from such a person and after misusing it return the same to him. What guarantee can there be that such a third person himself may not be liable to subversion by anyone determined or intent on forging and tampering with the case property. It is indeed unfortunate that occasions have arisen where police officials entrusted with the enforcement and custodianship of the law and order have deviated from their duty yet it is a far cry therefrom to infer an inveterate and inbuilt suspicion that every responsible police official entrusted with case property would forge, fabricate and tamper therewith. In this connection it cannot be said that the provision in para 24.19(13) of the Rules providing for award of commendation certificates and rewards for crime detection converts all Excise and Police officials into interested and partisan witnesses which renders their evidence akin to accomplice evidence. (Paras 14, 16, 20 and 21).

Case referred by Single Judge Hon'ble Mr. Justice D. S. Tewatia, to a larger Bench on 26th May, 1981 for decision of an important question of law involved in this case. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice D. S. Tewatia again referred the case to the Full Bench on 11th September, 1981. The Full Bench consisting of Hon'ble the Chief Justice S. S. Sandhawalia, Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Kulwant Singh Tiwana again referred the case to a Single Judge for decision on merits on 16th February, 1982.

Petition under Section 401 Cr. P. C. for revision of the order of the court of Shri J. S. Chatha, Sessions Judge, Jullundur, dated the 5th June, 1979 affirming that of Shri G. K. Rai, Judicial Magistrate 1st Class, Nakodar, dated the 24th April, 1965 convicting the petitioner.

H. S. Brar, Advocate with R. S. Hunda, Advocate, *for the Petitioner.*

Bachittar Singh, Advocate, for A.G., Punjab.

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the fate of a criminal case would be sealed by the mere handing over or otherwise of the seal used by the police officer (for sealing the samples, or the contraband property in the course of investigation) to a non-official witness is the pointed question which has necessitated these two references to the larger Bench.

2. For the purposes of the legal issue aforesaid a brief reference to the facts in Criminal Revision No. 969 of 1979—*Piara Singh* v. *The State of Punjab*, suffices. The petitioner on seeing the police party surreptitiously attempted to escape and having been apprehended, his personal search led to the recovery of 30,000 mls. of illicit liquor in a tube. A sample of 180 ml. was taken out and the remaining liquor was put into 40 bottles. The sample and the bottles were sealed with the seal by the name of the Investigating Inspector and the same was handed over to the public witness Inder Singh. Before the trial Court it was sought to be argued that the aforesaid Inder Singh having been given up as won over, the prosecution case suffered from a fatal infirmity and should, therefore, be rejected

on that score. The learned trial Court, however, rejected this contention and accepting the official testimony convicted the petitioner under section 61(1)(a) of the Excise Act and sentenced him to six month's rigorous imprisonment and a fine of Rs. 1,000.

3. On appeal, the learned Sessions Judge again categorically rejected the argument on behalf of the petitioner that the non-production of the non-official witness Inder Singh would be fatal to the prosecution case and observed that there was nothing particular about the handing over of the seals to a non-official, if the official witnesses can be accepted without corroboration.

4. This case first came up before my learned brother Tewatia, J. and before him also the aforesaid contention was strenuously pressed on behalf of the petitioner. Noticing that the point was of some significance and frequent occurrence, the matter was referred to a larger Bench. Before the D. B. reliance on behalf of the petitioner was placed on *Hans Raj* v. *The State of Punjab*. (1) which lent considerable support to the stand taken on behalf of the petitioner. Entertaining some doubt as to the correctness of the view taken therein a reference to the Full Bench was necessitated.

5. In Criminal Revision No. 1401 of 1979—*Harbhajan Singh* v. *The State of Punjab*, when it came up before me sitting singly, basic reliance was placed on the *State of Punjab* v. *Bur Singh* (2) to contend that there being no satisfactory evidence that the seal used by the Investigating Officer had been entrusted to an independent person, the petitioner was, therefore entitled to an acquittal on that score alone. Because of the identity or similarity of the question raised with that in *Pira Singh's case*, the matter was referred to be heard along with the same and that is how the issue is now before us.

6. It would be manifest from the above and was otherwise the common stand that a twin issue arises herein,—firstly, whether it is mandatory for the Investigating Police Officer to hand over the seal used by him for sealing the incriminating articles and the samples to a non-official immediately or soon thereafter, and

(1) 1980 Ch. L.R. (Pb. & Haryana) 74.
(2) 1978 Ch. L.R. 152.

secondly whether the non-appearance or non-production of such a non-official, who was entrusted with the seal, would by itself be fatal to the prosecution case.

7. At the outset it deserves highligting that the learned counsel for the petitioner could not point out to any direct or inherential statutory provision or even an instruction worth the name which mandates the handing over of the seal used by the Investigating Officer to a non-official forthwith. Further no provision or instruction having statutory force could even remotely be referred to which spells out a binding requirement that the person to whom such a seal might have been entrusted must be produced by the prosecution and its failure to do so would be *ipso facto* fatal to its case. Despite being pointedly pressed the only provision of some remote relevance brought to our notice is para 22.16(2) of the Punjab Police Rules, Vol. III, which is in the following terms :—

> "22.16(2) Each weapon, or article of property not being cattle, seized under the above rule, shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and a reference to the case diary or other report submitted from the police station.
>
> If articles are made up into a parcel, the parcel shall be secured with sealing wax bearing the seal impression of the responsible officer, and shall be similarly marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule.
>
> * * * *".

8. What perhaps catches the eye in the first instance here is the fact that it is only in cases where the articles are made into a parcel that this rule mandates the sealing thereof. Learned counsel for the petitioner could not point out to us any specific provision laying down as to what property must necessarily be made into a parcel. Apparently, it is discretionary for the Investigating Officer to convert the seized property into a parcel for special protection thereof or not. In cases where the article is not made into a parcel no requirement of sealing the same with wax bearing the seal impression of a responsible officer is spelled out. In such cases all that is specified is that such a property may be marked or labelled for proper identification. Obviously in these cases no use of a seal would at all arise.

9. Even the requirement of sealing the case property, when made into a parcel, far from in any way advancing the stand of the petitioner that the Investigating Officer must be immediately divested of the seal used therefore appears to be clear pointer to the contrary. Though these rules expressly visualise and provide in detail for the taking into possession and custody of case property and the marking, labelling and sealing thereof in order to fix their identity and prevent any mixing up or tampering with the same, yet it is not even remotely hinted anywhere in the statutory provision that after sealing the parcel the seal with which the wax is imprinted should immediately be handed over to anyone else for any prescribed period of time. Therefore, the absence of any mandate in this context would show that it is not the requirement of the law that the seal used for imprinting the wax on the parcel must be ousted from the possession of the Investigating Officer. The statutory provisions do not seem to presume any inherent or inveterate suspicion of the responsible Investigating Officers upon whose efficiency and integrity the investigation into the cognizable crime inevitably rests.

10. Nor is there any indication in the whole gamut of the provisions of the Criminal Procedure Code, and the Punjab Police Rules as also in any executive instructions issued in this context that in those cases where such a seal might have been entrusted to a non-official, the latter must necessarily be produced as a witness. Similarly, I find no basis in the aforesaid provisions for the elongated stance that unless such a witness is produced the whole case of the prosecution even though resting otherwise on cast-iron foundation must crumble to the ground because of this infirmity alone. Without further enlarging on this aspect, it deserves notice that the learned counsel for the petitioner was compelled to concede that there is neither any mandatory nor even a directory provision requiring that the seal used by the Investigating Officer must be handed over to a third person forthwith and further that in cases where it might at all have been so done then the non-official must be put into the witness-box and any failure to do so would vitiate the whole proceedings.

11. In the aforesaid context the analogy of both the statutory provisions under the Prevenion of Food Adulteration Act and the view taken thereof by binding precedent seems to be amply instructive. There is no gainsaying the fact that under the aforesaid

statute the very core of the offences sometimes rests on the adulteration of the recovered food-stuff as evidenced by the report of the Public Analyst with regard to the samples taken therefrom. Consequently this Act and the rules framed thereunder ensure to the highest extent that the identity of the sample of the food-stuff should remain completely distinct and it should be conclusively established that the sample opined to be adulterated by the Public Analyst is taken precisely from the adulterated food-stuff recovered from the accused. Part V of the Prevention of Food Adulteration Rules, 1955 (Rules 14 to 22-A) therefore, deals exhaustively with the sealing, fastening and despatch of samples. In particular, rule 16 provides for the manner of packing and sealing the samples. What is, however, significant herein is that the meticulous provisions of these rules do not even remotely prescribe that the seal used for imprinting the sealing wax should thereafter be entrusted to any non-official. It is thus plain that even here wherein essence the very offence is the adulteration of the food-stuff and the samples drawn therefrom and the corner-stone whereof is the analysis of the sealed sample, the statutory provisions do not require that the Food Inspector should forthwith part with such a seal. Nor could counsel for the petitioner bring to our notice any provision or precedent under the Prevention of Food Adulteration Act, 1954, or the rules thereunder that the non-production of a non-official to whom such a seal might have been handed over, if at all, would vitiate the whole proceedings. Rule 18 of the aforesaid Rules provided as follows :—

> R. 18. *Memorandum and impression of seal to be sent separately* : A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the public analyst separately by registered post or delivered to him or to any person authorised by him."

Construing the aforesaid provisions, the Full Bench in *State of Punjab* v. *Bhagwan Dass Jain* (3), has observed as follows :—

> "* * *. The Court has to presume that all officials acts are carried out and done in a regular and lawful manner. In spite of that the legislature and the law-making body, in the cases governed by the Act and other similar laws.

(3) 1981 P.L.R. 115.

where the report of the Public Analyst, Chemical Examiner and other experts is *per se* tendered in evidence has provided safeguards, like the manner of sealing and despatch of the incriminating articles and also for cross-checking the identity of the articles seized and sealed. So long as the acts performed by the Food Inspector and other officials are not shown to be motivated, nothing can be presumed in favour of the accused regarding the tampering or interference with the sample without any basis. If the accused wanted an inference to be drawn in his favour, then he has to create circumstances in support of that as interference with the sample or its substitution is a question of fact. Unless there is a basis for such an inference, the Court, simply on the argument on behalf of the accused, cannot go to unreasonable limits to imagine imaginary possibilities of interference in the sample during transit to the Public Analyst after it leaves the hand of the Food Inspector."

Further whilst rejecting an over technical view of the aforesaid Rule 18, it was held as follows :—

"* * *. The word 'separately' does not demand that these two packages are to be sent at different times or through different persons. What it means is that the sample and the memorandum in form VII are to be kept separate from the specimen impression of the seal. It is immaterial if both these packets are handed over to one and the same person or sent to the Public Analyst at one and the same time through one agency. The literal meanings of the word "separately" used in the context also do not give any other indication."

It seems to follow the above that within this jurisdiction there is high authority for the proposition that the success or failure of criminal prosecution should not turn wholly on the technicalities of the handing over or non-handing over of the investigative seal or the production or the non-production only of a witness with regard thereto.

12. That the law does not visualise a plethora of seals with every Investigating Officer to be handed over to non-officials after

their use and to remain in their custody for an unlimited or unspecified period is otherwise manifest when viewed from another angle as well. It was conceded by the learned counsel for the petitioner that in the varied gamut of the statute and the Rules in this context there is no specific provision that each investigating Officer must be officially provided with a large number of individual and personal seals which alone would make it possible for them to comply with the stand taken by the learned counsel. In fact the admitted stand before us was that even though the relevant instructions do provide for the articles in the investigating kit of the police officials but herein also there is no requirement of any official seal. It is plain that there is no provision of either providing a large number of personal official seals to the Investigating Officers or further that these should be handed over to private persons for an unspecified period of time. Therefore, the statutory provisions seems to be a clear pointer to the contrary to what is sought to be advocated on behalf of the petitioners by their learned counsel.

13. Now apart from the absence and indeed the contra-indications from the statutory provisions themselves I am impelled by the undermentioned four-fold reason (to be elaborated hereinafter) to take the view that the stand taken on behalf of the petitioners is not only counter productive but for ought one knows might well be fraught with public mischief—

(i) The basis of the whole argument stems from an inveterate and ingrained suspicion and assumption that responsible police officers would tamper with the seals and forge and fabricate evidence with regard to the case property in their custody.

(ii) There can be no guarantee that the non-official to whom such a seal is entrusted would be one of unimpeachable integrity far above a responsible police official amenable to administrative discipline. Consequently even the handing over of such a seal in no way ensures its being misused.

(iii) There can be no warranty that the seal so entrusted to a third person cannot be duplicated.

(iv) If the police officers are to be entrusted with a plethora of official seals there can be no guarantee or possibility

that all of them would be beyond duplication and substantially and materially different from each other.

14. What first calls for notice in this context is the fact that the seal used in the course of investigation by responsible police officials would obviously be governmental property and there is neither a mandate nor any inference for passing them on to private persons. The relevant povisions of para 22.16(2) of the Rules are indicative that the whole purpose thereof is that the sealed property should bear the imprint of the seal of a responsible police officer who is enjoined with the safe custody thereof and disposal in accordance with law. In a way, therefore, responsibility is cast on the police officer whose seal has been used that the parcel or the seal does not pass into irresponsible hands. The whole thrust of the provisions seems to be to cast the burden on the responsible police officer for the safe custody of the parcel and case property. To direct on the contrary that such a seal should be handed over during the material period to any non-official is something which may absolve the concerned officer of further responsibility without resting the same in law on any other. Such a view would provide no guarantee that the person to whom the seal is entrusted would necessarily be of a higher calibre and integrity. It had to be conceded before us that any third person entrusted with such a seal is under no legal obligation or discipline to keep it under safe custody or not allow it to be passed on into unworthy hands bent upon tampering with the case property. Nor can it be ensured that such a person would not himself become a party to any design or attempt to do so at some stage. In essence the argument on behalf of the petitioner seems to lead to anamolous results in the sense that the handing over of the seal to a third person would absolve the responsible police official who is within the bounds of discipline and administrative control, and pass it into the hands which are not amenable to any legal or administrative liability and about whose conduct there can be neiher any guarantee nor the sanction of punitive action.

15. Again the argument *ab inconvenienti* in this context also calls for pointed notice. It was not disputed before us that in a busy police station, worth the name, occasions may arise for sealing property or parcels etc., to the extent of a hundred times or more within a month. Can it be made the requirement of the law that every time a seal is used for the sealing of a parcel or property the same should

be handed over to a non-official and a fresh or new seal be manufacturned for sealing the next parcel or in any case the property in the succeeding cases. Is a police official who has once used the seal and handed it over to the third person then barred to proceed with the investigation and sealing the case property or the samples thereof till he gets manufactured another seal for the said purpose? Where is the guarantee that the new seal made would not be identical or similar and thus totally distinguishable from the first one. By what method can it possibly be ensured that the hundreds of seals that may become necessary in this context would be so individually distinguishable from each other in order to prevent any similarity in the imprints on the sealing wax for detecting any alleged tampering with the sealed samples. It appears to me that accepting the stance taken on behalf of the petitioner may well hamstring the responsible police officer from continuing with the investigation and official functions and in the ultimate analysis lead to no meaningful results worth the name for ensuring the purity of investigation.

16. Equally then I am unable to see how the mere handing over of a seal to a third person by the Investigating Officer would in any way ensure or guarantee against the tampering. It appears to me that the whole argument herein stems from an inveterate and deeply ingrained mistrust of public officials which is sought to be elengated to the length of criminality. This approach has been repeatedly disapproved and dispelled by the final Court. In *Ahar Raja Khima* v. *State of Saurashtra* (4), Chandrasekhara Aiyar, J., has observed as follows :—

> "The presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration."

In the light of the aforesaid observations, speaking for the Court in *Nathusingh v. The State* of *Madhya Pradesh* (5), held as follows:—

> "* * *. The fact that the two witnesses called from amongst the members of the public, namely, Raghunathsingh

(4) A.I.R. 1956 S.C. 217.

(5) A.I.R. 1973 S.C. 2783.

(P.W. 1) and Gambhirsingh Tomar (P.W. 2), had turned hostile was considered by the High Court and the Courts below. They had held that the two prosecution witnesses who had turned hostile could not be relied upon. Their evidence could not destroy the prosecution case is fully supported by Mahadevsingh (P.W. 5), and Umashankar (P.W. 6), who are police officers. The mere fact that they are police officers was not enough to discard their evidence. No reason was shown for their hostility to the appellant."

In view of the aforesaid authoritative enunciation how can one presume that the responsible police officials would act criminally in breaking open the sealed parcel and resealing the same in order to forge or tamper with crucial evidence. Again how can it be assumed that any and every non-official necessarily would be of greater integrity than these public officials. However, what is significant is that if it were to be once presumed that the responsible police officer is determined to tamper with the case property then how can this be prevented by the mere subterfuge of handing over the seal to a third person. The enigmatic question that who will guard the guards thus arises. If the responsible police official were to be so criminally minded he could easily hand over the seal to a convenient or a subservient person. In fact doing so would absolve him from further responsibility whilst he can always take the seal back from such a person and after misusing it return the same to him. What guarantee can there be that such a third person himself may not be liable to subversion by anyone determined or intent on forging and tampering with the case property. It is indeed unfortunate that occasions have arisen where police officials entrusted with the enforcement and custodianship of the law and order have deviated from their duty. I am second to none in condemning such a serious and grievous default. Yet it is a far cry therefrom to infer an inveterate and inbuilt suspicion that every responsible police official entrusted with case property would forge, fabricate and tamper therewith.

17. The stand that not only must the seal be handed over to a third person but the mere failure to produce such a third person in the witness-box would vitiate the criminal prosecution seems to be a view so extreme that I find myself wholly unable to subscribe thereto. If the detection and the punishment of crime were to be

made dependent on such isloated technicality then it can hardly advance the cause of public justice. As I said earlier there is neither any statutory requirement that the seal be handed over to a third person nor any inferential mandate that such a third person must be put in the witness-box by the prosecution at its peril. What if such a person dies or is untraceable or goes abroad and for reasons beyond control cannot be placed into the witness-box ? Would these accidental circumstances by themselves wipe off the prosecution and the punishment of the criminals. As has been noticed earlier there is no provision or legal obligation which binds such a third person to keep the seal in safe custody etc. What if such a seal is lost or deliberately destroyed ? Then would this also result in fatal consequences to the prosecution case ? Again as it may often happen that a prosecution witness is subverted and either refuses to appear or refuses to support the prosecution case. Then should the end-result be necessarily an acquittal ? It is unnecessary to be prolix in this context and the answer seems to be plainly in the negative.

18. Another slippery ground upon which the contention on behalf of the petitioner was sought to be rested was that the entrustment of the seal to a non-official and his production in the witness-box was a crucial link in the chain of prosecution evidence and in the absence thereof the whole case must snap. I am frankly unable to see how the mere seal, once used in the course of investigation, becomes the vital link in the chain of prosecution evidence even in a case where the sealed parcel remains wholly untampered with. It seems to be plain that the basic links which the prosecution is bound to establish in such like cases is the recovery of the case property and the establishment of its identity and safety by sealing the parcels if necessary. The next step is that it has to be kept in proper and safe custody in accordance with law, like the police *Malkhana*, where the possibilities of the same being tampered with are ruled out. Where so enjoined or necessary a sample therefrom or the property itself has to be taken from the place of its safe custody to the Public Analyst or the Chemical Examiner etc., in order to ensure that the report of the Expert is related specifically to the contraband property or samples thereof. These are the major links in the chain of evidence in such like cases. Without pretending to be exhaustive, I am unable to see how the seal which may

have been used for making an imprint on the wax when sealing the sample which may remain wholly untampered with would become the vital and crucial link evidence in cases of this nature. So doctrinaire a view can tend to be fatal not merely in smaller matters of investigation in excise, opium or food adulteration cases but also in major crimes where the very life and liberty of the citizens are involved. The sealing and despatch of bloodstained articles in murder cases and the opinion of the Chemical Examiner and the Serologists are sometimes material pieces of evidence on a charge of murder. The same may well be said about taking into the custody by the police of empty cartridges or weapons of offence and forwarding the same to the Ballistic Experts for their opinions thereon. Can the punishment for murder and serious crime be made to depend on the technicalities or the accident of the delivery of a seal to a third person or his failure or refusal to appear in the witness-box ? I do not think that matters of substance like the punishment of heinous crime can be made so utterly dependent on these freakish considerations.

19. On behalf of the petitioner, much stress was sought to be laid on the observations of their Lordships in *The State of Rajasthan* v. *Daulat Ram* (6) That case, however, turned on its exceptional and peculiar circumstances. Therein it was expressly found that even the office of the Superintendent of Police refused to accept the samples as the labels thereon were not in order. Their Lordships further found that the prosecution had failed to prove that the seals on the samples had remained intact throughout. It was noticed in terms that the samples remained in the custody of Sub-Inspector Ajidanram, Nathu Singh, Gairaj Singh, Jawan Singh and the Assistant Public Analyst and yet not one of these witnesses was examined by the prosecution to prove that whilst in their custody they were not tampered with. On such peculiar findings of fact where the police officials themselves refused to accept the samples as being not in order where the seals thereon were not held to have remained intact and out of a host of five witnesses not one was put in the witness-box, their Lordships of the Supreme Court saw no reason to upset the acquittal by the High Court below on an appeal preferred by the State of Rajasthan. In the said case, in fact, the prosecution had itself realised the serious lacuna and had attempted to produce

(6) A.I.R. 1980 S.C. 1314.

additional evidence both before the trial Court, appellate and revisional courts, but were denied such an opportunity by the courts in view of the peculiar circumstances. It was on the totality of the aforesaid factors that their Lordships observed that they did not find any error of law in the view taken by the High Court. It is well to recall the hallowed dictum that if two views are possible then a judgment of acquittal is not to be disturbed and only when it can be said that no reasonable person could come to that conclusion, the same is ordinarily to be upset. Therefore, the observations made in *Daulat Ram's* case (supra), in the context of a refusal to interfere with an acquittal can hardly be twisted to mean that their Lordships have laid down any inflexible rule that the absence of a non-official witness must lead to fatal consequences or even remotely that the investigative seals must be handed to a third person and such a non-official must become the crucial witness. I am firmly of the view that *Daulat Ram's* case (supra) is plainly distinguishable and indeed wholly irrelevant.

20. In fairness to Mr. Chopra I must notice that he clutched at a straw in attempting to rely on para 24.19(13) of the Punjab Police Rules 1934 which provides for liberal awards as under :—

> "R. 24.19(13). The Financial Commissioner has impressed upon all Deputy Commissioners the necessity of granting liberal rewards both to informers and to arresting officers in all excise cases. Rewards to sub-inspectors and officers of lower rank may be sanctioned by Deputy Commissioners upto Rs.. 200, but the sanction of the Financial Commissioner is required for larger rewards and for rewards to officers of higher rank."

Counsel contended that this Rule converted all excise officials into interested and partisan witnesses which render their evidence akin to accomplice evidence. In line therewith it was submitted that because the police officials are to co-operate with the Excise officers in the detection of crimes under the Punjab Excise Act, the police officials, therefore, equally are reduced to the same evidential footing.

21. I am unable to accept the tenuous stand that the afore quoted provisions go to the root of acceptability of the testimony of police and excise witnesses in these cases. It is not easy to subscribe to the theory that an innocuous provision for recognising and

rewarding efficient and diligent work can downgrade all the excise and police officials to the level of accomplices whose evidence cannot be accepted without independent corroboration. It could not be disputed before us that certificates of commendation for good work and monetary rewards are awarded to police officials in deserving cases. All these provisions are no more than a statutory recognition of the well-known and salutary administrative practice to give incentives for outstanding, efficient and diligent work. It would be going to extreme and unwarranted lengths to hold that such a provision turns the whole body of such officials into unacceptable partisan witnesses. These general provisions, therefore, of certificates and awards for crime detection cannot be myopically viewed as an incentive to forgery and fabrication of case property in the custody of responsible officials. I am, therefore, unable to hold that because of para 24.19 (13) of the Punjab Police Rules, the evidence of the police and excise officials would become unacceptable by itself and topple down to the level of accomplice evidence.

22. Coming now to the judgments of this Court it is undoubtedly true that in some of them, there are certain observations isolated or otherwise around which the superstructure of the argument on behalf of the petitioners was sought to be raised. While evaluating them, one has to hearken to the salutary rule laid down by Earl of Helsbury L.C. in *Quinn* v. *Leathem*, (7), that a decision is only an authority for what is actually decided and what is of essence in a decision is its ratio and not every observation found therein nor one that may logically flow from the various observations made in it This was approvingly affirmed by their Lordships in *State of Orissa* v. *Sudhansu Sekhar Misra and others*, (8), with the following added observation :—

> "——— it is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

Nevertheless, for clarity of precedent, it becomes neecssary to advert to the decisions relied upon by the petitioner and which trend to lend a handle to their stand and consequently have necessitated this reference to the Full Bench. In *Hans Raj* v. *The State of Punjab*, (supra), two person — Gurcharan Singh and Hans Raj were intercepted by the police in a car containing illicit opium. Apparently (the facts have hardly been delineated in the short judgment),

(7) 1901 A.C. 495.

(8) A.I.R. 1968 S.C. 647.

Gurcharan Singh accused was acquitted in the trial Court whilst Hans Raj was convicted of the offence and his conviction was upheld by the Sessions Judge, on appeal. The State appealed (Crl. A. No. 736 of 1978) against the acquittal of Gurcharan Singh whilst Hans Raj petitioner came up in revision against his conviction and sentence. Apparently, both matters were heard together and whilst declining to interfere with the acquittal of Gurcharan Singh, the Division Bench also acquitted Hans Raj petitioner, as well. In the brief order of the Division Bench, it stands noticed that the trial Court itself found that the police was inimically disposed towards Gurcharan Singh, the acquitted accused. The Division Bench, however, observed further that because one Des Raj who had been handed over the seal for safe custody by the investigating officer had not been produced, therefore, a finding in favour of the prosecution could not be given.

22. Now a bare look at the order of the Division Bench consisting hardly of one paragraph on the merits, makes it plain that the issue was neither pointedly raised nor adequately debated before their Lordships on the anvil of principle or precedent. No authority seems to have been cited before the Bench nor any statutory provisions even were referred to. It would appear that whilst refusing to interfere with the acquittal of Gurcharan Singh, their Lordships gave the benefit also to Hans Raj petitioner who had been apprehended in virtually identical circumstances. For the very detailed reasons recorded in the earlier part of the judgment and with the greatest respect to the learned Judges, we are unable to subscribe to the view that it is either mandatory to hand over the seal for the safe custody to a non-official or on his non-production, a finding in favour of the prosecution cannot be given. Consequently, we are constrained to overrule the aforesaid view of the learned Judges in *Hans Raj's case* (supra).

23. *The State of Punjab* v. *Bur Singh* (supra), was again an appeal against the acquittal of the accused under the Punjab Excise Act. In declining to interfere with the acquittal, the Division Bench, in a brief order, consisting of a single paragraph, whist not entirely agreeing with the reasoning of the trial Court, sustained the acquittal on the ground that Sub-Inspector Gurdial Singh had stated that he had handed over the seal to Kashmir Singh, P.W. 1, but the said witness even though examined did not (There is an apparent typographical error in this context in the report) state that he had

been so entrusted with the seal and that he had kept the same with him till the sample had been despatched to the Chemical Examiner. Consequently holding that there being no satisfactory evidence of the seal having been handed over to the disinterested outsider, they were unable to interfere in the acquittal. With great humility, we are again unable to endorse the extreme view that even though Kashmir Singh, P.W. had been examined, yet an omission on his part to depose with regard to the seal, was a fatal infirmity. For the detailed reasons already recorded above, this judgment has also to be necessarily overruled.

24. In view of the above, it is unnecessary to meticulously examine the Single Bench judgments in which observations of this nature have been made in line with the rationale above. *Gurcharan Singh* v. *The State of Punjab* (9), and *Anokh Singh* v. *The State of Punjab* (10), are hereby overruled. It is elementary that any other Single Bench judgment taking a similar view or following the aforementioned Division Benches, now overruled by us, are equally no longer good law.

25. Ere I close, it perhaps deserves highlighting that the substantial issues of a criminal trial like the proof and punishment of serious crime ought not to be converted into a play thing of technicalities. The canvas of the criminal law is a bigger and a broader one, where matters of substance and truth have pre-eminence. As their Lordships said in *Vedivelu Thevar* v. *The State of Madras* (11), there may be a single witness whose testimony is of a nature warranting such implicit reliance that no corroboration or further assurance may be needed. There is then the opposite category of the prosecution witness who is so inherently unacceptable that perhaps no amount of sealing wax or production of seals will add to its credibility in any substantial sense. Equally well it is to recall the words of Lords Porter in *Maluk Khan* v. *Emperor* (12), as follows:—

> ". . . . It is no doubt very important that, as a general rule, all Crown witnesses should be called to testify at the hearing of a prosecution, but important as it is, there is

(9) 1974 Ch. L.R. 171.
(10) 1976 Ch. L.R. 282.
(11) A.I.R. 1957 S.C. 614.
(12) A.I.R. (33) 1946 P.C. 16.

> no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desire to prove. Ultimately it is a matter for the discretion of counsel for the prosecution and though a Court ought, and no doubt will, take into consideration the absence of witnesses whose testimony would be expected, it must judge the evidence as a whole and arrive at its conclusion accordingly taking into consideration the persuasiveness of the testimony given in the light of such criticism as may be levelled at the absence of possible witnesses."

Therefore, in the *ultima ratio* criminal trials ordinarily turn and must continue to do so on the credibility and acceptability of the evidence on record. I am unable to hold that a criminal trial would succeed or fail merely on the technicality of the delivery of an investigating seal to a third person or the latter's refusal or inability to appear as a witness about the same. It is more so in the admitted position that there is no statutory requirement whatsoever to this effect. It has been authoritatively said though in the realm of contracts under seal that there is no magic in a wafer. Perhaps it may be said in the present context also that there is no magic in the wax for sealing samples or the custody.

26. To conclude, it must be held that there is neither a statutory requirement nor a precedential mandate for handing over the seal used by the police officer in the course of an investigation to a third person forthwith. It necessarily follows therefrom that even where it has been so done, the non-production of such a witness cannot by itself affect the merits of the trial.

27. The twin legal issues having been answered in the above terms, both the criminal revisions would go back for decision on merits, before a Single Bench.

D. S. Tewatia, J.—I agree.

Kulwant Singh Tiwana, J.—I agree.

N.K.S.

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