

# The Indian Law Reports

Before Hon'ble Dr. Sarojnei Saksena, J.

SHAUKAT ALI,—Appellant

*versus*

THE STATE OF HARYANA,—Respondent,

Crl. A. No. 100/SB of 1987,

18th January, 1996

*Code of Criminal Procedure, 1973—S. 297—High Court Rules and Orders, Vol.-IV—Chapter 12-B—Affidavit—Verification required to be either on knowledge or information—It should show specifically which part of affidavit is verified on deponent's knowledge and which is verified on deponent's information—If whole affidavit is verified on knowledge and information such affidavit is not proper—Affidavit tendered in evidence not proper.*

*Held, that under section 297 of the Code of Criminal Procedure read with Chapter 12-B of the High Court Rules and orders. Volume IV, the verification of an affidavit is required to be either on knowledge or on information and it should show specifically which part of the affidavit is verified on deponent's knowledge and which part is verified on deponent's information. If whole of the affidavit is verified on the basis of knowledge and information, such affidavit is not proper and could not be taken into consideration.*

(Para 7)

*Code of Criminal Procedure, 1973—S. 313—Power to examine accused—Questions posed not numbered by lower Court—Purpose of S. 313 is to give accused opportunity to explain—Questions to be posed in simple language—Violative of S. 313 amounts to denial of justice.*

*Held, that purpose of recording the statement of the accused under Section 313 of the Code is to give him an opportunity to explain the circumstances that have been proved against him by the prosecution in its evidence.*

(Para 8)

*Further held, that in 4th question, many facts are clubbed together in one question and they are put to the accused. This question is also defective because each question should be put in simple language about one circumstance which is proved against the*

accused so that he may understand the question properly and answer it as per his intelligence. Putting many facts in one question is a very much defective and deprecated way of questioning the accused under section 313 of the Code.

(Para 8)

R. S. Cheema, Senior Advocate, Devinder Pal Singh, Advocate,  
*for the Appellant.*

Vijay Pal Singh, AAG, Haryana, *for the Respondent.*

### JUDGMENT

*Dr. (Mrs.) Sarojnei Saksena, J.*

(1) Appellant-accused has assailed his conviction awarded to him by Shri K. C. Dang, Additional Sessions Judge, Karnal under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'Act') and sentence of 10 years R.I. with a fine of Rs. one lac and in default to further undergo R.I. for five years.

(2) Brief resume of the facts is that on the intervening night of 1st/2nd February, 1986 Assistant Sub Inspector Bachan Singh of Police Station City Panipat along with Assistant Sub Inspector Satbir Singh, Head Constables Manohar Lal, Virsa Singh and Gulab Singh and Constable Shiv Kumar left the police station for patrolling. They reached at Ganda nala pul on Sanoli road, Panipat. At about 4 A.M., they saw the appellant-accused coming from the village Sanoli on foot wrapped in a blanket. On seeing the police party present at the spot, he tried to slip away, which arose suspicion. Assistant Sub Inspector Bachan Singh nabbed him, offered himself for personal search and immediately took personal search of the accused appellant. Assistant Sub Inspector Bachan Singh found one kg. of opium wrapped in a wax paper under the right arm pit of the accused. 30 grams of opium were separated as sample, seized opium was weighed and two parcels were prepared as per the law. They were sealed with the seal bearing the inscription of 'BS'. Ruqa Exhibit PB was sent to the concerned police station. Assistant Sub Inspector Bachan Singh seized the contraband,—*vide* seizure memo Exhibit PA. He prepared the site map Exhibit PC. F.I.R. Exhibit PD was recorded on the basis of the ruqa Exhibit PB. On that very day at the time of preparing the arrest memo when person of the accused was again searched, Assistant Sub Inspector Bachan Singh found that he was also carrying .12 bore country made pistol in the right dub of his pyjama, which was also seized and a separate charge-sheet under section 25 of the Arms Act was filed against the appellant. The case property was deposited with the Head Constable.

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Moharrir of the police station on that very day. On 3rd February, 1986 the case property was sent to the Chemical Examiner, Karnal, who on analysis, opined,—*vide* Annexure PD that the contraband contained 3.0 per cent morphin and hence, it was opium. During trial, affidavits of Bhalley Ram, Annexure PE and that of Sunder Lal, Annexure PF, were also submitted as link evidence. Prosecution examined Assistant Sub Inspector Satbir Singh as PW-1 and Assistant Sub Inspector Bachan Singh as PW-2. No other evidence was adduced by the prosecution.

(3) Accused was examined under Section 313 of the Code of Criminal Procedure. His defence plea was of false implication and he declined to adduce any evidence in defence. Relying on prosecution evidence, the learned lower Court held the accused-appellant guilty of the said offence, convicted and sentenced him, as stated above.

(4) Appellant's learned counsel contended that in this case as soon as on suspicion, the appellant-accused was apprehended by Assistant Sub Inspector Bachan Singh, at that point of time, he was duty bound to invoke the provisions of Section 50 of the Act. He further drew my attention to the cross-examinations of Assistant Sub Inspector Satbir Singh and Assistant Sub Inspector Bachan Singh, wherein they have admitted that no such offer was given to the accused at the time of making his search and seizure. Respondent's learned counsel contended that as it was a case of chance recovery, it was not necessary for the Assistant Sub Inspector Bachan Singh to adopt the procedure as laid down in Section 50 of the Act.

(5) In *State of Punjab v. Balbir Singh* (1), the Supreme Court has held that provisions of Section 50 are mandatory, but section 50 is not attracted in case of chance recovery of narcotir drugs. This view is further reaffirmed in *Mohinder Kumar v. State of Panji* (2). In Mohinder Kumar's judgment, the Apex Court has further clarified that as soon as the police officials suspect that the accused is carrying

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(1) 1994 (1) R.C.R. 736.

(2) A.I.R. 1995 S.C. 1157.

a contraband under the Act from that point of time, when the personal search of the accused is taken, he is required to follow the mandatory provisions of Section 50 of the Act. In this case, there is no evidence that Assistant Sub Inspector Bachan Singh, before taking the search, suspected that the accused is carrying contraband under the Act. Bachan Singh PW 2 has categorically stated that on seeing the police standing on the spot when the accused retraced his steps, that aroused his suspicion and immediately, he took his personal search after offering himself for personal search. He found 1 kg. of opium under the arm pit of the accused. Thus, it is obvious that it is a case of chance recovery. On that very day when Bachan Singh prepared the arrest memo, complete personal search of the accused was taken and 12 bore country made pistol was also found in the right dub of his pyjama which was also seized and on that basis, charge-sheet under Section 25 of the Arms Act was filed against the accused-appellant. Assistant Sub Inspector Bachan Singh has categorically stated that in that case accused was convicted. Appellant's learned counsel could not controvert this statement of fact. Thus, it is obvious that it was a case of pure and simple chance recovery and in view of the above decision of the Apex Court, it was not necessary for the Assistant Sub Inspector Bachan Singh to take recourse to the procedure laid down in Section 50 of the Act.

(6) Appellant's learned counsel further contended that while taking search of the appellant, no independent witness was joined and thus, mandatory provisions of Section 100 sub clause (4) Cr. P.C. were violated. Provisions of Section 100 sub clause (4) of the Code are not mandatory as there are only directory and independent witness is required to be joined by the police party at the time of making search and seizure of any contraband with a view to lend support to the testimony of the police officials. No doubt, it is also settled principle of appreciation of evidence that a police official's statement cannot be discarded only on the ground of his official mantle, if otherwise his statement is reliable. In this case, both the prosecution witnesses have testified that personal search of the accused was taken at 4.00 AM. on 2nd February, 1986. Obviously, it was a winter night and both these witnesses have categorically stated that at that time there was no body on the road, who could have been associated at the time of this search. This is a plausible and reliable explanation. There is no reason to doubt the veracity of the statements of these witnesses. It is not even suggested to these witnesses that any independent witness was present at that time on the spot. Hence, this contention has no substance.

It is also contended by the appellant's learned counsel that affidavits of Bhalley Ram Exhibit PE and that of Sunder Lal, Exhibit PF, are not in accordance with provisions of Section 297 of the Code of Criminal Procedure. He further pointed out that these affidavits were not filed in the presence of the accused-appellant. No opportunity was given to the accused to cross-examine these witnesses. From the lower Court's record, it is apparent that these affidavits were submitted before the Court on 29th October, 1986. On that date, Head Constables Bhalley Ram and Sunder Lal were not kept present. He further submits that even the alleged link evidence was not put to the accused in his statement recorded under Section 313 of the Code of Criminal Procedure. Thus, according to him since this link evidence is not reliable, the Chemical Examiner's report, Exhibit PD, cannot be relied on by the prosecution for indicting the accused-appellant.

(7) These contentions are foreful. Under Section 297 of the Code of Criminal Procedure read with Chapter 12-B of the High Court Rules and orders, Volume IV, the verification of an affidavit is required to be either on knowledge or on information and it should show specifically which part of the affidavit is verified on deponent's knowledge and which part is verified on deponent's information. If whole of the affidavit is verified on the basis of knowledge and information, such affidavit is not proper and could not be taken into consideration. A plain perusal of the above mentioned affidavits Exhibits PE and PF reveals that both these deponents have verified that the contents of the affidavits are true to their knowledge and belief. Hence, both these affidavits are not in accordance with the provisions of law, and thus, cannot be relied on. Further on 29th October, 1986 statement of S. K. Chhabra, Public Prosecutor was recorded by the trial Court at that time he tendered these affidavits Exhibits PE and PF in evidence. It is specifically mentioned that the deponents are not present. On that very day, two zimni orders were written by the trial Judge. In the first order, only this much is mentioned that "two PWs recorded. Prosecution evidence over. Case is adjourned for the statement of the accused." Below that another zimni order of the same date is recorded mentioning that "the statement of the accused under Section 313 of the Code of Criminal Procedure is recorded. He seeks time to adduce defence evidence." I fail to understand how these two zimni orders are recorded on the same date. Order-sheet is a concise statement of the proceedings taken in a particular case on a particular day. If on a particular day prosecution witnesses

are examined and thereafter accused is also examined under Section 313 of the Code, only one order is required to be written. The lower Court should have mentioned the duration of time when the evidence of prosecution was recorded and when the accused was examined under the Code. Writing of two orders on the same day is not desirable and is not required under the law. In these orders, he has not mentioned that these two affidavits are also tendered in evidence. Thus, it cannot be made out that the accused knew that on this date these two affidavits were also tendered in evidence. So, the question of his moving an application before the lower Court for cross-examining these witnesses did not arise. So, on this count also, both these affidavits cannot be considered. Lastly, surprisingly enough, this link evidence is not put to the accused-appellant when he was examined under Section 313 of the Code. Questions are not numbered by the lower Court so that they can be referred to in the appellate judgment conveniently. 6th question runs as under :—

“It is in evidence against you that upon a charge under section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 you have pleaded not guilty and claimed trial on which the entire evidence was recorded in your presence and within your hearing. What have you to say about it ?”

(8) Purpose of recording the statement of the accused under Section 313 of the Code is to give him an opportunity to explain the circumstances that have been proved against him by the prosecution in its evidence. In the above question, no such circumstances is put to the accused. Accused is not supposed to remember the entire evidence adduced by the prosecution against him. Thus, in my considered view this question was redundant. Further in 4th question, many facts are clubbed together in one question and they are put to the accused. This question is also defective because each question should be put in simple language about one circumstance which is proved against the accused so that he may understand the question properly and answer it as per his intelligence. Putting many facts in one question is a very much defective and deprecated way of questioning the accused under section 313 of the Code. To support these submissions, the appellant's learned counsel has rightly placed reliance on *Darshan Singh v State of Punjab* (3), *State of Punjab v. Nachhatro*, (4), *Harjeet Singh v.*

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(3) 1995 (3) R.C.R. 365.

(4) 1994 (2) R.C.R. 442.

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*The State of Haryana* (5), and *Gurnam Singh v. The State of Punjab* (6). Thus when this link evidence is not as per law and further it is not put to the accused under Section 313 of the Code of Criminal Procedure, this evidence cannot be considered at all for convicting the accused. Though it is called link evidence, but it is very material piece of evidence to prove the facts that the sample was not tampered with, after the seizure it was duly sealed, it was kept intact in the police Malkhana and in the same condition it was sent to the Chemical Examiner for analysis. Since this link evidence cannot be considered, the report of the Chemical Examiner, Exhibit PD can also not be read in evidence against the accused. This has caused a dent in the whole of the prosecution case and accused is entitled to get benefit of doubt on this count. The burden of proof is always on the prosecution and it has to prove its case beyond any shadow of doubt.

(9) Accordingly, this appeal is allowed. Accused is acquitted, as he is given benefit of doubt. If he is in jail and is not required in any other case, he be set at liberty forthwith. Fine, if deposited be returned to him.

*J.S.T.*

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(5) 1987 (2) R.C.R. 217.

(6) 1992 (i) R.C.R. 39.

*Before Hon'ble N. K. Sodhi, J.*

**THE PUNJAB STATE CO-OPERATIVE SUPPLY & MARKETING  
FEDERATION LIMITED (MARKFED),—Petitioner.**

**versus**

**STATE OF PUNJAB & OTHERS,—Respondents.**

**C.W.P. No. 11936 of 1992**

**14th September, 1995.**

*Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 2(k)—Industrial dispute—Meaning thereof any dispute between employer & workman in connection with terms of employment and conditions of labour—Definition wide enough to include dispute raised by Union regarding change in pay scale and designation of Field Officers—Definition includes demand for House rent & field allowances as well.*