(2024) 11 SHI CK 0056

High Court Of Himachal Pradesh

Case No: Criminal Revision No. 4085 of 2013

Kapil Dev		APPELLANT
	Vs	
State Of H.P.		RESPONDENT

Date of Decision: Nov. 29, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313, 397
- Punjab Excise Act, 1914 - Section 61(1)(a)
- Evidence Act, 1872 - Section 138

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Karan Singh Kanwar, Lokender Kutlehria

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 1.8.2013, passed by learned Sessions Judge, Sirmour District at Nahan (learned

Appellate Court), vide which the judgment and order dated 27.8.2012, passed by learned Chief Judicial Magistrate, Sirmour District at Nahan (learned

Trial Court) were upheld. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for

convenience).

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan against the accused before the learned Trial Court

for the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.). It was asserted that

HC Subhash Chand (PW6), Constable Mukesh Kumar (PW7), Constable Kailash Panwar and Constable Sunil Kumar (PW1) were present at Do-

Sarka on 15.9.2009 at 1:45 AM. A vehicle bearing registration No. HP-17B-0363 came from Kala Amb. Police stopped the vehicle for checking. The

driver revealed his name as Kapil Dev (the accused). The police checked the vehicle and found 135 boxes of country liquor â€˜Bara Maltaâ€™, 50

boxes of Santra No. 1 and 90 boxes of Rasila Santra in it. Each box contained 12 bottles of country liquor in it. In this manner, police recovered 3300

bottles of country liquor. The police demanded a permit/licence for keeping and transporting the liquor, but accused, Kapil Dev, could not produce any

permit/licence. ASI Subhash Chand (PW6) took three bottles each from a box of Bara Malta, a box of Santra No.1 and a box of Rasila Santra for

chemical analysis. He sealed the bottles and opened boxes with the seal â€˜Hâ€™. He obtained seal impression (Ex.PW6/B) on a separate piece of

cloth and handed over the seal to Mukesh Kumar (PW7) after its use. He seized the cardboard boxes, documents, and the vehicle vide seizure memo

(Ex.PW2/A). He prepared a rukka (Ex.PW1/B) and sent it to the Police Station through Constable Sushil Kumar (PW1) for registration of FIR. FIR

(Ex.PW1/A) was registered in the police station. ASI Subhash Chand (PW6) conducted the investigation. He prepared the site plan (Ex.PW6/A) and

recorded the statements of witnesses as per their version. He deposited the case property with MHC Kunwar Singh (PW4), who deposited it in

Malkhana and handed over the samples to HHC Ram Kumar (PW5) with the direction to carry them to CTL Kandaghat vide RC No. 211/9. Ram

Kumar (PW5) deposited all the samples in CTL, Kandaghat and handed over the receipt to MHC on his return. The results of analysis (Ex. PX to Ex.

PZ) were issued stating that the samples of Bara Malta contained 49.1%, the samples of Santra No.1 contained 49.6%, and the samples of Rasila

Santra contained 49.6% proof alcohol each. Statements of prosecution witnesses were recorded as per their version and after completion of the

investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court charged the accused with the commission of an offence punishable under Section 61(1)(a) of the Punjab Excise Act (as

applicable to the State of H.P.), to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined seven witnesses to prove its case. Constable Sushil Kumar (PW1) and Constable Mukesh Kumar (PW7) are the official

witnesses to recovery. Kuldeep Singh (PW2) is the independent witness to recovery who did not support the prosecution case. Constable Mohammad

Khalid (PW3) proved the entry in the daily diary. MHC Kunwar Singh (PW4) was working as MHC with whom the case property was deposited.

HHC Ram Kumar (PW5) carried the samples to CTL Kandaghat. ASI Subhash Chand (PW6) effected the recovery and conducted the investigation.

5. Accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he was driving the vehicle bearing registration No. HP-17B-0363

and his vehicle was stopped by the police. He admitted that he revealed his name as Kapil Dev. He denied that he was transporting the liquor. He

stated that the witnesses deposed against him falsely. He claimed that he was innocent. The statement of Surat Singh (DW1) was recorded in

defence.

6. The learned Trial Court held that the accused did not dispute his presence on the spot. The search was conducted without any prior information and

the prosecution case cannot be doubted due to the non-association of independent persons. Kuldeep Singh (PW2) admitted his presence on the spot

and his signatures on various documents; hence, his statement that nothing had happened in his presence was not believable. The statement of Surat

Singh (DW1) could not be relied upon because his presence was not suggested to any of the witnesses. The accused had also not stated anything

about his presence in his statement recorded under Section 313 of Cr.P.C. The statements of official witnesses were consistent, and there was no

reason to disbelieve them. The link evidence was duly proved; therefore, the accused was convicted of the commission of an offence punishable

under Section 61(1)(a) of the Punjab Excise Act (as applicable to the State of H.P.), and he was sentenced to undergo simple imprisonment for six

months, pay a fine of ₹2,000/- and in default of payment of fine to undergo further simple imprisonment for one month.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned

Sessions Judge (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the

statement of Kuldeep Singh (PW2) was not sufficient to discard the prosecution case. The police officials corroborated each other in material

particulars. The integrity of the case property was duly proved. The learned Trial Court had rightly convicted and sentenced the accused; hence, the

appeal was dismissed.

8. Being aggrieved from the judgments and order passed by learned Courts below, the accused has filed the present revision asserting that the learned

Courts below erred in appreciating the evidence. The independent witness did not support the recovery. The statements of official witnesses had

major contradictions, which were ignored by the learned Trial Court. Therefore, it was prayed that the present revision be allowed and the judgments

and order passed by learned Courts below be set aside.

9. I have heard Mr. Karan Singh Kanwar, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General, for

the respondent-State.

10. Mr Karan Singh Kanwar, learned counsel for the petitioner, submitted that the learned Courts below failed to appreciate the evidence placed

before them. There were major contradictions in the testimonies of official witnesses. Kuldeep Singh (PW2) did not support the prosecution case. The

testimony of Surat Singh (DW1) was wrongly ignored. Two versions appeared on record, and the version in favour of the accused should have been

preferred to the version in favour of the prosecution. Therefore, he prayed that the revision be allowed and the judgments and order passed by the

learned Trial Court be set aside.

11. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State, supported the judgments and order passed by the learned

Courts below and submitted that no interference is required with them. Learned Courts below have rightly held that the testimonies of official

witnesses were consistent. There was no major contradiction in their testimonies and the learned Courts below had rightly accepted them. Therefore,

he prayed that the present revision be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Honâ€™ble Supreme Court in Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204: (2022) 3 SCC (Cri)

348: 2022 SCC OnLine SC 786 that the revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the

law. It was observed at page 207: -

â€œ10. Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts

after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the

jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short â€œCrPCâ€)

vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity

of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded

error, which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length

upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294, wherein it was observed:

â€œ13. The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior

court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a

patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in

Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460, where the scope of Section 397 has been considered and succinctly explained as under:

â€œ12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the

legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There

has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and

appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the

decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is

ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined

on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the

inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself

should not lead to injustice ex-facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a

given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even

framing of charge is a much-advanced stage in the proceedings under the CrPC.â€

15. The present revision has to be decided as per the parameters laid down by the Honâ€™ble Supreme Court.

16. The learned Trial Court rejected the statement of Surat Singh (DW1) on the ground that his name was not suggested to any person, and the

accused did not state in his statement recorded under Section 313 of Cr.P.C. that the witness Surat Singh was present with him in the vehicle. There

is no error in the reasoning of the learned Trial Court. It was laid down by the Honâ€™ble Supreme Court inR avinder Kumar Sharma Vs. State of

Assam (1999) 7 SCC 435 that generally speaking, while cross-examining a witness, so much of the case as concerns the witness should be put to

him. It was observed: -

29. The High Court was, in our opinion, wrong in concluding that there was the absence of reasonable and probable cause because the action, in view of the

notification of the Central Government, was unauthorised or illegal. Illegality does not by itself lead to such a conclusion. Further, there is no truth in the appellant's

case that on 1-10-1977, at the time of seizure, he informed Defendants 2 and 3 about the gazette notification. The point is that such an assertion was not made even in

the bail application moved after arrest. As to the contention that the appellant and the owners of paddy showed permits to Defendants 2 and 3, we do not find

sufficient pleading on this aspect. In any case, we find that no question was put when the 2nd defendant was cross-examined. As pointed out by Sarkar on Evidence

(15th Edn., 1999, Vol. 2, p. 2179) in the context of Section 138 of the Evidence Act, â€œGenerally speaking, when cross-examining, a party's counsel should put to each

of his opponent's witnesses, in turn, so much of his own case as concerns that particular witness or in which he had a share.â€

17. This position was reiterated in Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268: 2016

SCC OnLine SC 435, wherein it was observed at page 294: -

Â â€œ15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed, PW 1 and

PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure one is required

to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed.

The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR

1963 SC 1906]. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. The party is

required to put his version to the witness. If no such questions are put, the Court will presume that the witness account has been accepted as held in Chuni Lal

Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440]

16. In Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60], it has been laid down that the matters sworn

to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of

Calcutta in A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359] has laid down that the party is

obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and

not merely a technical one. A Division Bench of the Nagpur High Court in Kuwarlal Amritlal v. Rekhlal Koduram [Kuwarlal Amritlal v. Rekhlal Koduram, 1949

SCC OnLine MP 35: AIR 1950 Nag 83] has laid down that when attestation is not specifically challenged, and witness is not cross-examined regarding details of

attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it

in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan

Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683] has laid down that it cannot be too strongly emphasised that the system of

administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the

witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing

the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.

18. Therefore, the accused was bound to put to the prosecutionâ€™s witnesses that Surat Singh (DW1) was present with him in the vehicle or at

least to mention this fact in his statement recorded under Section 313 of Cr.P.C. and failure to do so can lead to only one inference that Surat Singh

was not present on the spot and his testimony to this effect was not reliable.

19. Even otherwise, Surat Singh (DW1) claimed that his daughter was admitted in PGI, Chandigarh. Kapil Dev had gone to PGI, Chandigarh, and he

asked him (Surat Singh) to return. He (Surat Singh) returned with Kapil Dev, and the vehicle was intercepted by the police. He stated in his cross-

examination that he could not produce any record of his daughterâ€™s admission. The accused is not related to him and is residing at a distance of

15-20 kilometres. Kapil Dev and another person had visited his daughter at PGI.

20. The cross-examination of this witness shows that the accused is residing at a distance of 15-20 kilometres from his house, and they are not related

to each other. It is not explained by him as to why the accused would visit his daughter when he was not even related to him (Surat Singh). Further,

the accused did not state that he had gone to PGI to visit Surat Singhâ€™s daughter or to Chandigarh to sell apple crops, as claimed by Surat Singh.

All these circumstances make it difficult to rely upon the testimony of Surat Singh that Kapil had visited his daughter and he had accompanied Kapil in

the vehicle. Thus, the learned Trial Court had rightly rejected his testimony.

21. Kuldeep Singh (PW2) stated that he was on duty at Do-Sarka Barrier. The police had set up a naka at 1.45 AM. The police stopped the vehicle

and took it to Nahan. The police subsequently said that liquor was recovered from the vehicle and obtained his signatures. He was permitted to be

cross-examined. He denied that the accused revealed his name as Kapil Dev. He denied that the vehicle was searched by the police, and 275 boxes

of different brands of liquor were recovered. He denied that police obtained the samples and sealed the samples and the open boxes. He admitted his

signatures on the seizure memo. He denied his previous statement recorded by the police.

22. The learned Trial Court had rightly discarded his testimony. He denied that the accused revealed his name as Kapil Dev. However, the accused

admitted this fact in his statement recorded under Section 313 of Cr.P.C. He admitted the signatures on various documents but did not give any reason

for putting his signatures. He denied his previous statement recorded by the police, which was duly proved by ASI Subhash Chand. Therefore, he was

shown to have made two inconsistent statements on two different occasions. His credit has been impeached, and the learned Trial Court had rightly

discarded his testimony. (Please see Dilo Begum Vs. State of H.P. 2024 HHC 1519 paras 24 to 34).

23. Sushil Kumar (PW1) supported the prosecution case. He stated that a Naka was set up on 15.9.2009 at Do-Sarka. Constable Mukesh Kumar,

Constable Kailash and HC Subhash were present in the Naka. A vehicle bearing registration No. HP17B-0363 came from Kala Amb at about 1.45

AM. The police stopped the vehicle. The driver revealed his name as Kapil Dev. Kuldeep Singh (PW2) was present at Do-Sarka. The vehicle was

searched in his presence and different brands of liquor were found in the vehicle. 135 boxes of Bara Malta, 50 boxes of Santra No. 1 and 90 boxes of

Rasila Santra, a total of 275 boxes were recovered. The accused could not produce any permit to transport the liquor. Three bottles each were taken

out as samples. The remaining bottles were put in the boxes. The sample bottles and the boxes were sealed with seal â€˜Hâ€™. The boxes, vehicle

and documents were seized vide memo (Ex.PW2/A). HC Subhash Chand prepared rukka and handed it over to him. He handed over the rukka in the

Police Station. He stated in his cross-examination that he could not tell the time of starting from the Police Station. He admitted that an entry was

recorded in the Police Station regarding his departure. The police had checked many vehicles on the date of the incident and had interrogated many

persons. The Investigating Officer recorded the proceedings in his daily diary, which was not attached to the case file. He denied that no vehicle was

intercepted on the spot.

24. Constable Mukesh Kumar (PW7) also made a similar statement in his examination in chief. He stated in his cross-examination that they started

from the Police Station at 10.00 PM and reached the spot at 10.15 PM. Many vehicles crossed Do-Sarka. He admitted that there was an office of the

Marketing Committee. One person was present in the office. He denied that no recovery was effected in his presence.

25. ASI Subhash Chand (PW6) also made a similar statement as was made by Constable Sushil Kumar (PW1) in his examination in chief. He stated

in his cross-examination that he reached Do-Sarka at 10.00 PM. He could not tell the number of the vehicles checked by the police. He admitted that

Nahan Do-Sarka road fell on the National Highway, and many vehicles moved on the road. A tea stall and office of the Marketing Committee existed

on the spot. He had not associated any person from the tea stall or the drivers of the vehicles. He denied that no vehicle was intercepted, and a false

case was made out.

26. There is nothing in the cross-examination of the prosecution witnesses to show that they were making false statements. Learned Courts below had

rightly held that the testimonies of official witnesses cannot be discarded simply on the ground that they are police officials. It was laid down by this

Court in Budh Ram Versus State of H.P. 2020 Cri.L.J.4254 that the testimonies of the police officials cannot be discarded on the ground that they

belong to the police force. It was observed:

â€œ11. It is a settled proposition of law that the sole testimony of the police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other

admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. There is also no rule of law

which lays down that no conviction can be recorded on the testimony of a police officer, even if such evidence is otherwise trustworthy. Rule of prudence may

require more scrutiny of their evidence. Wherever the evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and

reliable, it can form the basis of conviction, and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the

prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force.â€

27. Similar is the judgment in Karamjit Singh versus State AIR 2003 S.C 3011, wherein it was held:

â€œThe testimony of police personnel should be treated in the same manner as a testimony of any other witness, and there is no principle of law that without

corroboration by independent witnesses, their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police

personnel as of other persons, and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and

circumstances of each case, and no principle of general application can be laid down.â€ (Emphasis supplied)

28. This position was reiterated in Sathyan v. State of Kerala, 2023 SCC OnLine SC 986, wherein it was observed:

22. Conviction being based solely on the evidence of police officials is no longer an issue on which the jury is out. In other words, the law is well settled that if the

evidence of such a police officer is found to be reliable and trustworthy, then basing the conviction thereupon cannot be questioned, and the same shall stand on

firm ground. This Court in Pramod Kumar v. State (Govt. of NCT of Delhi) 2013 (6) SCC 588

13. This Court, after referring to State of U.P. v. Anil Singh [1988 Supp SCC 686: 1989 SCC (Cri) 48], State (Govt. of NCT of Delhi) v. Sunil [(2001) 1 SCC 652:

2001 SCC (Cri) 248] and Ramjee Rai v. State of Bihar [(2006) 13 SCC 229 : (2007) 2 SCC (Cri) 626] has laid down recently in Kashmiri Lal v. State of Haryana

[(2013) 6 SCC 595: AIR 2013 SCW 3102] that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should

always be treated with suspicion. Ordinarily, the public at large shows their disinclination to come forward to become witnesses. If the testimony of the police officer

is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the

police officer unreliable and untrustworthy, the court may disbelieve him, but it should not do so solely on the presumption that a witness from the Department of

Police should be viewed with distrust. This is also based on the principle that the quality of the evidence weighs over the quantity of evidence.

23. Referring to State (Govt. of NCT of Delhi) v. Sunil 2001 (1) SCC 652, in Kulwinder Singh v. State of Punjab (2015) 6 SCC 674, this court held that: â€

â€œ23. â€¦ That apart, the case of the prosecution cannot be rejected solely on the ground that independent witnesses have not been examined when, on the perusal of the evidence on

record, the Court finds that the case put forth by the prosecution is trustworthy. When the evidence of the official witnesses is trustworthy and credible, there is no reason not to rest

the conviction on the basis of their evidence.â€

24. We must note that in the former, it was observed: â€

â€œ21â€¦ At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the

other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislatureâ€¦ If the

court has any good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent

person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison

such

action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.â€

25. Recently, this Court in Mohd. Naushad v. State (NCT of Delhi) 2023 SCC OnLine 784 had observed that the testimonies of police witnesses, as well as pointing

out memos, do not stand vitiated due to the absence of independent witnesses.

26. It is clear from the above propositions of law, as reproduced and referred to, that the testimonies of official witnesses can nay be discarded simply because

independent witnesses were not examined. The correctness or authenticity is only to be doubted on â€œany good reasonâ€, which, quite apparently, is missing from

the present case. No reason is forthcoming on behalf of the Appellant to challenge the veracity of the testimonies of PW - 1 and PW - 2, which the courts below have

found absolutely to be inspiring in confidence. Therefore, basing the conviction on the basis of the testimony of the police witnesses as undertaken by the trial court

and is confirmed by the High Court vide the impugned judgment, cannot be faulted with.â€

29. It was suggested to the witness that the entries in the daily diary were not produced; however, this will not make any difference. It was laid down

by the Hon'ble Supreme Court in Kalpnath Versus State AIR 1998 SC 201t hat the prosecution is not expected to produce the diaries as a matter of

course, and the defence can move the court to bring the daily diary. It was observed:

Â â€œNo doubt Daily Diary is a document which is in constant use in the police station. But no prosecution is expected to produce such diaries as a matter of course

in every prosecution case for supporting the police version. If such diaries are to be produced by the prosecution as a matter of course in every case, the function of

the police station would be greatly impaired. It is neither desirable nor feasible for the prosecution to produce such diaries in all cases. Of course, it is open to the

defence to move the Court for getting down such diaries if the defence wants to make use of it.â€

30. It was suggested that independent witnesses were not associated; however, this will not make any difference. It is apparent that the police

inspected the vehicle without any prior information, and it was a case of chance recovery. While dealing with a similar case of a chance recovery, it

was laid down by the Hon'ble Supreme Court in Kashmira Singh Versus State of Punjab 1999 (1) SCC 130 that the police party is under no

obligation to join independent witnesses while going on patrolling duty and the association of any person after effecting the recovery would be

meaningless. It was observed:

â€œ3. Learned counsel for the appellant has taken us through the evidence recorded by the prosecution as also the judgment under appeal. Except for the comment

that the prosecution is supported by two police officials and not by any independent witness, no other comment against the prosecution is otherwise offered. This

comment is not of any value since the police party was on patrolling duty, and they were not required to take along independent witnesses to support recovery if and

when made. It has come in the evidence of ASI Jangir Singh that after the recovery had been effected, some people had passed by. Even so, obtaining their counter-

signatures on the documents already prepared would not have lent any further credence to the prosecution version.â€

31. In similar circumstances, it was laid down by this Court in Chet Ram Vs State Criminal Appeal No. 151/2006 decided on 25.7.2018 that when

the accused was apprehended after he tried to flee on seeing the police, there was no necessity to associate any person from the nearby village. It

was observed:-

â€œ(A)appellant was intercepted, and search of his bag was conducted on suspicion, when he turned back and tried to flee, on seeing the police. Police officials did

not have any prior information, nor did they have any reason to believe that he was carrying any contraband. They overpowered him when he tried to run away and

suspected that he might be carrying some contraband in his bag. Therefore, the bag was searched, and Charas was recovered. After the recovery of Charas, there

was hardly any need to associate any person from the nearby village because there remained nothing to be witnessed.

It is by now well settled that non-association of independent witnesses or non-supporting of the prosecution version by independent witnesses where they are

associated, by itself, is not a ground to acquit an accused. It is also well-settled that the testimony of official witnesses, including police officials, carries the same

evidentiary value as the testimony of any other person. The only difference is that Courts have to be more circumspect while appreciating the evidence of official

witnesses to rule out the possibility of false implication of the accused, especially when such a plea is specifically raised by the defence. Therefore, while scrutinising

the evidence of official witnesses, in a case where independent witnesses are not associated, contradictions and inconsistencies in the testimony of such witnesses

are required to be taken into account and given due weightage unless satisfactorily explained. Of course, it is only the material contradictions and not the trivial ones,

which assume significance.â€ (Emphasis supplied)

32. It was laid down by the Honâ€™ble Supreme Court of India inR aveen Kumar v. State of H.P. (2021) 12 SCC 557 that non-association of

independent witnesses will not be fatal to the prosecution case. However, the Court will have to scrutinise the statements of prosecution witnesses

carefully. It was observed:

â€œ19. It would be gainsaid that the lack of independent witnesses is not fatal to the prosecution case. [Kalpnath Rai vs. State, (1998) AIR SC 201] However, such

omissions cast an added duty on Courts to adopt a greater degree of care while scrutinising the testimonies of the police officers, which, if found reliable can form the

basis of a successful conviction.â€

33. This position was reiterated in Rizwan Khan Versus State of Chhattisgarh (2020) 9 SCC 627, wherein it was observed:

â€œ8.2 Having gone through the entire evidence on record and the findings recorded by the courts below, we are of the opinion that in the present case, the

prosecution has been successful in proving the case against the accused by examining the witnesses PW3, PW4, PW5, PW7 and PW8. It is true that all the aforesaid

witnesses are police officials, and two independent witnesses who were panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are

found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police

witnesses and the accused. No such defence has been taken in the statement under Section 313, Cr.P.C. There is no law that the evidence of police officials, unless

supported by independent evidence, is to be discarded and/or unworthy of acceptance.

It is settled law that the testimony of the official witnesses cannot be rejected on the grounds of non-corroboration by an independent witness. As observed and

held by this Court in a catena of decisions, examination of independent witnesses is not an indispensable requirement, and such non-examination is not necessarily

fatal to the prosecution case [see Pardeep Kumar (supra)].

In the recent decision in the case of Surinder Kumar vs. State of Punjab (2020) 2 SCC 563, while considering a somewhat similar submission of non-examination of

independent witnesses while dealing with the offence under the NDPS Act, in paragraphs 15 and 16, this Court observed and held as under:

15. The judgment in Jarnail Singh vs. State of Punjab (2011) 3 SCC 521, relied on by the counsel for the respondent-State also supports the case of the

prosecution. In the aforesaid judgment, this Court has held that merely because the prosecution did not examine any independent witness would not necessarily lead

to a conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved merely on account of their official

status.

16. In State (NCT of Delhi) vs. Sunil, (2011) 1 SCC 652, it was held as under (SCC p. 655)

It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust in the actions and

the documents made by the police.

Â At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other

way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature.

Applying the law laid down by this Court on the evidence of police officials/police witnesses to the facts of the case in hand, referred to hereinabove, we are of the

opinion as the police witnesses are found to be reliable and trustworthy, no error has been committed by both the courts below in convicting the accused relying

upon the deposition of the police officials.â€

34. Similar is the judgment of this Court in Balwinder Singh &Anr. Vs State of H.P., 2020 Criminal L.J. 1684, wherein it was held: -

â€œ3. (iii) Learned defence counsel contended that in the instant case, no independent witness was associated by the Investigating Officer; therefore, the

prosecution case cannot be said to have been proved by it in accordance with provisions of the Act. Learned defence counsel, in support of his contention, relied

upon titled Krishan Chand versus State of H.P.,2017 4 CriCC 531

3(iii)(d). It is by now well settled that prosecution case cannot be disbelieved only because the independent witnesses were not associated.â€

35. This position was reiterated in Kallu Khan Vs State of Rajasthan, AIR 2022 SC 50, wherein it was held: -

Â â€œ16. The issue raised regarding conviction solely relying upon the testimony of police witnesses, without procuring any independent witness, recorded by the

two courts, has also been dealt with by this Court in the case of Surinder Kumar (supra), holding that merely because independent witnesses were not examined, the

conclusion could not be drawn that accused was falsely implicated. Therefore, the said issue is also well-settled and, in particular, looking to the facts of the present

case, when the conduct of the accused was found suspicious, and a chance recovery from the vehicle used by him is made from a public place and proved beyond a

reasonable doubt, the appellant cannot avail any benefit on this issue. In our view, the concurrent findings of the courts do not call for interference.â€

36. A similar view was taken in Kehar Singh v. State of H.P., 2024 SCC OnLine HP 2825, wherein it was observed:

â€œ16. As regards non-association of the independent witnesses, it is now well settled that non-association of the independent witnesses or non-supporting of the

prosecution version by independent witnesses itself is not a ground for acquittal of Appellants/accused. It is also well-settled that the testimonies of the official

witnesses, including police officials, carry the same evidentiary value as the testimony of any other person. The only difference is that the Court has to be most

circumspect while appreciating the evidence of the official witnesses to rule out the possibility of false implication of the accused, especially when such a plea is

specifically raised by the defence. Therefore, while scrutinising the evidence of the official witnesses, in cases where independent witnesses are not associated,

contradictions and inconsistencies in the testimonies of such witnesses are required to be taken into account and given due weightage unless satisfactorily

explained. However, the contradiction must be material and not trivial one, that alone would assume significance.

17. Evidently, this is a case of chance recovery; therefore, the police party was under no obligation to join independent witnesses while going on patrolling duty, and

the association of any person after effecting the recovery would be meaningless.

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19. A similar reiteration of law can be found in the judgment rendered by the learned Single Judge of this Court in Avtar @ Tarri v. State of H.P., (2022) Supreme HP

345, wherein it was observed as under: â€

â€œ24. As regards the second leg of the argument raised by learned counsel for the appellant, it cannot be said to be of much relevance in the given facts of the case.

The fact situation was that the police party had laid the â€˜nakkaâ€™ and immediately thereafter had spotted the appellant at some distance, who got perplexed and

started walking back. The conduct of the appellant was sufficient to raise suspicion in the minds of police officials. At that stage, had the appellant not been

apprehended immediately, police could have lost the opportunity to recover the contraband. Looking from another angle, the relevance of independent witnesses

could be there when such witnesses were immediately available or had already been associated at the place of â€˜nakkaâ€™. These, however, are not mandatory

conditions and will always depend on the fact situation of each and every case. The reason is that once the person is apprehended and is with the police, a

subsequent association of independent witnesses may not be of much help. In such events, the manipulation, if any, cannot be ruled out.â€

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22. A similar reiteration of law can be found in a very recent judgment of the Coordinate Bench of this Court in Cr. A. No. 202 of 2020, titled Dillo Begum v. State of

H.P., decided on 27.03.2024.â€

37. Thus, in view of the binding precedents of this Court and Honâ€™ble Supreme Court, the non-association of independent witnesses is not fatal,

and the prosecution case cannot be discarded due to the non-association of independent witnesses.

38. Therefore, both the learned Courts below had rightly held that the vehicle being driven by the accused was intercepted, and 275 boxes of Country

Liquor were recovered from it.

39. MHC Kunwar Singh (PW4) stated that the case property was deposited with him, and he sent it to CTL Kandaghat through HHC Ram Kumar

(PW5) vide RC No.211/09. HHC Ram Kumar (PW5) corroborated this version. He stated that he took the samples to CTL Kandaghat and deposited

them at CTL Kandaghat. This is duly corroborated by the reports of analysis (Ex. PX to Ex. PZ), wherein it has been mentioned that samples were

received through HHC Ram Kumar (PW5). The samples were found intact and unbroken, and the seal impression was tallied with specimen seal

impressions sent separately.

40. It was held in Baljit Sharma vs. State of H.P 2007 HLJ 707 that where the report of analysis shows that the seals were intact, the case of the

prosecution that the case property remained intact is to be accepted as correct. It was observed:

â€œA perusal of the report of the expert Ex.PW8/A shows that the samples were received by the expert safely, and the sample seal was separately sent and tallied

with the specimen impression of a seal taken separately. Thus, there was no tampering with the seal, and the seal impressions were separately taken and sent to the

expert also.â€

41. Similar is the judgment in Hardeep Singh vs. State of Punjab 2008(8) SCC 557, wherein it was held:

â€œIt has also come on evidence that till the date the parcels of the sample were received by the Chemical Examiner, the seal put on the said parcels was intact. That

itself proves and establishes that there was no tampering with the previously mentioned seal in the sample at any stage, and the sample received by the analyst for

chemical examination contained the same opium, which was recovered from the possession of the appellant. In that view of the matter, a delay of about 40 days in

sending the samples did not and could not have caused any prejudice to the appellant.â€

42. In State of Punjab vs. Lakhwinder Singh 2010 (4) SCC 402, the High Court had concluded that there could have been tampering with the case

property since there was a delay of seven days in sending the report to FSL. It was laid down by the Honâ€™ble Supreme Court that the case

property was produced in the Court, and there was no evidence of tampering. Seals were found to be intact, which would rule out the possibility of

tampering. It was observed:

Â â€œThe prosecution has been able to establish and prove that the aforesaid bags, which were 35 in number, contained poppy husk, and accordingly, the same

were seized after taking samples therefrom which were properly sealed. The defence has not been able to prove that the aforesaid seizure and seal put in the samples

were in any manner tampered with before it was examined by the Chemical Examiner. There was merely a delay of about seven days in sending the samples to the

Forensic Examiner, and it is not proved as to how the aforesaid delay of seven days has affected the said examination when it could not be proved that the seal of the

sample was in any manner tampered with. The seal having been found intact at the time of the examination by the Chemical Examiner and the said fact having been

recorded in his report, a mere observation by the High Court that the case property might have been tampered with, in our opinion, is based on surmises and

conjectures and cannot take the place of proof.

17. We may at this stage refer to a decision of this Court in Hardip Singh v. State of Punjab reported in (2008) 8 SCC 557 in which there was a delay of about 40

days in sending the sample to the laboratory after the same was seized. In the said decision, it was held that in view of cogent and reliable evidence that the opium

was seized and sealed and that the samples were intact till they were handed over to the Chemical Examiner, the delay itself was held to be not fatal to the prosecution

case. In our considered opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case in this regard.

18. The case property was produced in the Court, and there is no evidence to show that the same was ever tampered with.â€

43. Similar is the judgment of the Hon'ble Supreme Court in Surinder Kumar vs. State of Punjab (2020) 2 SCC 563, wherein it was held:-

10. According to learned senior counsel for the appellant, Joginder Singh, ASI, to whom Yogi Raj, SHO (PW-3) handed over the case property for producing the same

before the Illaqa Magistrate and who returned the same to him after such production was not examined, as such, link evidence was incomplete. In this regard, it is to

be noticed that Yogi Raj SHO handed over the case property to Joginder Singh, ASI, for production before the Court. After producing the case property before the

Court, he returned the case property to Yogi Raj, SHO (PW-3), with the seals intact. It is also to be noticed that Joginder Singh, ASI, was not in possession of the

seals of either the investigating officer or Yogi Raj, SHO. He produced the case property before the Court on 13.09.1996 vide application Ex.P-13, the concerned

Judicial Magistrate of First Class, after verifying the seals on the case property, passed the order Ex.P-14 to the effect that since there was no judicial malkhana at

Abohar, the case property was ordered to be kept in safe custody, in Police Station Khuian Sarwar till further orders. Since Joginder Singh, ASI, was not in

possession of the seals of either the SHO or the Investigating Officer, the question of tampering with the case property did not arise at all.

11. Further, he has returned the case property, after production of the same, before the Illaqa Magistrate, with the seals intact, to Yogi Raj, SHO. In that view of the

matter, the Trial Court and the High Court have rightly held that the non-examination of Joginder Singh did not, in any way, affect the case of the prosecution.

Further, it is evident from the report of the Chemical Examiner, Ex.P-10, that the sample was received with seals intact and that the seals on the sample were tallied with

the sample seals. In that view of the matter, the chain of evidence was complete.â€ (Emphasis supplied)

44. The report of analysis shows that nine bottles were found to be of Country Liquor. The samples were taken at random. It was laid down by the

Honâ€™ble Supreme Court in Vijendrajit Ayodhya Prasad Goel v. State of Bombay, (1953) 1 SCC 434: 1953 SCC OnLine SC 5 0that when

one bottle was examined and was found to be containing rectified spirit, it was sufficient, and the prosecution was not supposed to examine all the

bottles. It was observed at page 437:

â€œ5. Mr Umrigar next contended that only one bottle out of the articles recovered at the raid was sent for analysis and that it was not proved that all the bottles and

the drums that were recovered from the godown contained rectified spirit. He said these might well have contained phenyl, the manufacture of which the company

admittedly was carrying on in that godown. This argument cannot be seriously considered. It was wholly unnecessary to send all the bottles recovered by the police

in the presence of panches and which contained the same stuff for the purpose of analysis. This argument is therefore rejected.â€

45. Therefore, all the bottles have to be treated as containing country liquor in them.

46. Therefore, learned Courts below had rightly held that the petitioner/accused was found in possession of the country liquor.

47. The learned Trial Court had sentenced the accused to undergo simple imprisonment for a period of six months. The period of six months is not

excessive, keeping in view the huge quantity of liquor recovered from the possession of the petitioner/accused, and no interference is required with it.

48. Therefore, there is no reason to interfere with the judgments and order passed by the learned Courts below. Hence, the present petition fails, and

the same is dismissed.

49. The pending applications, if any, are also disposed of.

50. The Registry is directed to transmit the records of the case to the learned Trial Court forthwith.