

(2017) 07 MP CK 0004

MADHYA PRADESH HIGH COURT

Case No: 816 of 2010

IFFCO-Tokio General
Insurance Co. Ltd.

APPELLANT

Vs

Smt. Imarti Bai & Ors..

RESPONDENT

Date of Decision: July 6, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 313, Section 374(2) - Power to examine the accused - Appeals from convictions
- Narcotic Drugs and Psychotropic Substances Act, 1985

Hon'ble Judges: Rajendra Mahajan

Bench: Single Bench

Advocate: S.K. Nema, Vijay Kumar Pandey

Judgement

1. These appeals are preferred by the accused- appellants against the judgment and order dated 27.04.2010 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act 1985 (for short "the Act") at Chhatarpur in Special Case No.05/2008, whereby and whereunder each of the appellants stands convicted under Section 8(c) r/w 20 (b)(ii)(c) of the Act and sentenced to undergo RI for ten years and to pay fine of Rs.1,00,000/- (one lac) in default of payment of fine to suffer further RI for two years. As common questions of law and facts are involved in both the appeals, therefore, they are being disposed by this common judgment.

2. The Prosecution case unfolded at the trial, in brief, is as under:-

(2.1). On 26.09.2008 at about 5.10 a.m. Assistant Sub-Inspector R.R. Bansal (PW- 14), the In-charge of Police out-post Lugasi of police station Nowgaon,

got a Mukhbir Suchna from a Mukhbir (informer) to the effect that a huge quantity of Ganja is being transported illegally keeping in the boot of Tata Indica Car bearing Registration No.JH-1-T-4554 (for short ""the car"") from Mahoba to Jhansi for sale via police barrier Beriya. The car is being driven by one Nagendra accompanied by one male and one female persons. He recorded the information in Roznamcha Sana Ex. P/54-C. He also prepared Mukhbir Suchna Panchnama Ex. P/15 in the presence of witnesses namely, Prahlad (PW-2) and Amar Singh (PW-6) informing them about Mukhbir Suchna. He had an apprehension that if he sought a search warrant in terms of Section 41 of the Act then the car would have crossed the said barrier. In this regard, he prepared Panchnama Ex.P/6 in the presence of Head Constable Narayan Das Yadav (PW-1) and Constable Hanumandin (PW-3). Thereafter, he sent the copies of Panchnamas Ex.P/15 and P/6 with a letter Ex.P/49 to the office of the City Superintendent of Police, (for short ""C.S.P."") Chhatarpur through Constable Rajendra (not examined). Thereafter, he proceeded to the aforesaid place with the police party, Panch witnesses namely Prahlad and Amar Singh weigher Devi Prasad (PW-13) and photographer Akhilesh Tiwari (not examined) having taken with him the official seal of police station Nowgaon, a scale/balance, weights and measure for weighing and packing materials. Before proceedings to the place he recorded his departure entry with the Police Party and aforesaid persons in Roznamcha Sana Ex. P/57-C. After waiting for some time at the spot, he saw the car coming from the end of Mahoba. He and the police party stop the car. Nagendra, Smt. Manju and Dinesh @ Vinod alighted from the car, who are accused-appellants herein. He apprised them of the Mukhbir Suchna. He told them that they may give the search of the car to him or before a Gazetted Officer/Magistrate. In this regard, he prepared Panchnama Ex.P/25. They got ready to give the search of the car to him. Thereafter, he prepared panchnama Ex.P/26. In search, he found ten packets in the dicky of car. He opened all the packets and took the commodity out of the packets. He and panch witnesses identified the commodity as Ganja by smelling, rubbing and burning.

Thereupon, he prepared identification Panchnama Ex.P/29 and seized the packets vide seizure memo Ex.P/28.

Thereafter, Devi Prasad (PW-13) weighed each packet, noted the weight of Ganja of each packet and upon weighment a total of 72 Kgs. Ganja was found in the ten packets. From each packet 100 gms. of Ganja was taken out and prepared two samples of Ganja weighing 50 gms. each.

In this respect, weight Panchnama Ex.P/31 was prepared. Sample packets and other packets were packed and sealed on the spot. Upon each packet, the

seal of police station Nowgaon was affixed and a slip bearing signatures/thump impressions of the panch witnesses, weigher Devi Prasad, the accused- appellants and R.R. Bansal was tagged. In this respect Panchnama Ex.P/32 was drawn. In the end, he seized the car vide Panchnama Ex.P/33, arrested accused- appellants vide arrest memo Ex. P/37 and prepared site plan Ex.P/36.

(2.2). Having completed all the procedural requirements at the spot, R.R. Bansal came to police chowki Lugasi with the accused-appellants and the car. He lodged the FIR Ex.P/48 and registered a case against the accused-appellants under Section 8(c) r/w 20 (b)(ii)(c). He also deposited sample packets and other packets in the Malkhana of police chowki Lugasi vide Ex.P/38. He also recorded his returned entry with the police party, the accused-appellants and others in Roznamcha Ex.P/60-C. He sent a detail report Ex. P/52 to the Superintendent of Police Chhatarpur and City Superintendent of Police Chhatarpur of the offence. He sent the FIR to police station Nowgaon for registration of the crime. Thereupon, Head Constable Ram Gopal (PW-5) registered the FIR at Crime No.351/08 being Ex.P/20.

(2.3). Inspector Mubarak Ali (PW-11) of police station Nowgaon took over the investigation. He recorded the case diary statements of the witnesses who are conversant of the facts of the case. He sent all the sample packets for chemical examinations to the F.S.L. Sagar with a letter Ex.P/46 through the Head Constable Nandlal (PW-12) on 02.10.2008. The F.S.L. Sagar sent the report Ex.P/47. According to the report, each sample packets contained Ganja.

(2.4). Upon completion of investigation, the police charge-sheeted the accused- appellants for the offence punishable under Section 8 r/w 20 of the Act.

3. Learned trial Judge framed the charge against the accused-appellants under Section 8 (C) r/w 20 (b) (ii). They denied the charge. In the examination under Section 313 of the Cr.P.C., they denied all the incriminating evidence and circumstances appearing against them in the prosecution evidence. Accused- appellants Nagendra and Manju took the defence that they are the husband and wife, and they were going to Khajuraho, a tourist destination. At the barrier, R.R. Bansal stopped their car and demanded papers of it. They could not produce all the relevant papers of the car. Thereupon, he and the policemen took them to police chowki Lugasi, where the police registered a false case of seizure of Ganja against them. Accused-appellant Dinesh @ Vinod took the defence that the police had taken him into unauthorized custody some two days prior to the alleged incident and later police falsely implicated him in the case. However, none of the accused-appellants produced any evidence either oral or documentary to substantiate their defence.

4. The learned trial Judge, having analyzed and appreciated the facts and evidence adduced by the prosecution, has held the accused-appellants guilty for illegally transporting 72 Kgs. Ganja in the dicky of the car on 26.09.2008, the date of incident. Thereupon, learned trial Judge convicted the accused-appellants under Section 8 (C) r/w 20 (b) (ii). of the Act and sentenced them thereunder as noted in para-1 of this judgment.

5. Feeling aggrieved by and dissatisfied with the impugned judgment of conviction and order of the sentence, accused-appellants filed these appeals under Section 374(2) of the Cr.P.C.

6. Learned counsel for the accused-appellants submitted that independent witnesses of all the Panchnamas (memorandums) turned hostile. As such, the learned trial Judge convicted the accused- appellants placing reliance upon the evidence of police personnel. In their evidence there are material inconsistencies and contradictions making their evidence unreliable. He also submitted that Seizing Police Officer R.R. Bansal had not complied with the mandatory provisions of Sections 41, 42, 55, and 57 of the Act. Thus, the trial is vitiated against the accused-appellants. He also submitted that Head Constable Bharat Singh (PW-9) has admitted in para-7 of his cross-examination that accused-appellant Dinesh @ Vinod was not arrested on 26.09.2008, the date of alleged incident. His admission proves the defence taken by him. He also submitted, in alternative, that accused-appellant Manju is the wife of accused- appellant Nagendra, and she was traveling in the car without knowing that Ganja was kept in the boot of the car, therefore, she is wrongly convicted and sentenced. On the basis of the said submissions, he claimed that the convictions of the accused-appellants are bad in law. Therefore, the impugned judgment is liable to be set aside by allowing these appeals.

7. Per contra, learned Panel Lawyer submitted that the Seizing Officer R.R. Bansal has complied with all the mandatory provisions of the Act applicable in the instant case. He submitted that even independent hostile witness Amar Singh (PW-6) has admitted in para-6 of his cross-examination that all the three accused-appellants arrested before him at the place of offence. Thus, Head Constable Bharat Singh (PW-9) has admitted the said fact on being flummoxed by the defence in the cross-examination. He submitted that the accused-appellants won over the independent witnesses, which is why they have turned hostile. He submitted that it has come in the prosecution evidence that accused-appellant Manju is not the wife of accused-appellant Nagendra. Therefore, she has taken a false defence that she was traveling with accused- appellant Nagendra as his wife at the time of alleged seizure of Ganja. He submitted that it is not a rule of law that an accused cannot be convicted on the basis of evidence of police officials. Upon these submissions, he justified the convictions and sentences as recorded by the learned trial Judge against the accused- appellants on the basis of evidence of police witnesses.

8. I have considered the submissions made by the learned counsel for the parties at the Bar and perused the material on record as also the impugned judgment.

9. Prahlad (PW-2), Amar Singh (PW-6), Savitri (PW- 7), Prabha (PW-8), Deshraj (PW-10) and Devi Prasad (PW-13) are the independent witnesses of various Panchnamas. From a perusal of their evidence, it appears that they have not supported the prosecution case in their examinations-in-chief. The prosecution has declared them hostile and subjected them to cross-examinations. The Panch witness being confronted by the prosecution to the Panchnamas which are prepared in their presence, they have stated that the police had obtained their signatures/thumb impression on Panchnamas either at the police chowki Lugasi or at the place of occurrence. However, the prosecution has been successful in eliciting some evidence in its favour in the cross-examination of Amar Singh, which will be discussed at the relevant stage in this judgment. From a reading of the impugned judgment, it is found that the learned trial Judge has convicted the accused-appellants placing reliance on the evidence of the police witnesses after holding that Seizing Officer R.R. Bansal (PW-14) has complied with the mandatory provisions of the Act applicable in the case. In such a factual scenario of the case, first point for consideration is whether the evidence of police personnel can be acted upon or the same should be discarded on the ground that they are police personnel. For deciding the said point, following rulings mentioned in the next paras are worth noticing.

10. In the case of *Govindaraju alias Govinda v. State*, AIR, 2012 SC 1292, the Supreme Court has observed thus:-

""It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness.""

11. In the case of *Girja Prasad (Dead) by L.Rs. v. State of M.P .*, AIR, 2007 SC 3106, the Supreme Court while particularly referring to the evidence of the police officer has said that:-

"" It is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars

by other independent evidence. The presumption applies as much in favour of a police officer as any other person. 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 reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.""

12. In the case of State Govt. of NCT of Delhi v. Sunil and another, (2001) 1 SCC 652, the Supreme Court has observed that:-

"" It is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post- independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. 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 recognized even by the legislature. Hence, when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable.""

13. The Supreme Court in the case of P.P. Beeran v. State of Kerala, AIR 2001 SC 2420 and this court in the cases of Ram Bilas Baba S/o Babulal Vs. State of M.P., 2003 (1) MPL J 559, and Gangaram S/o Late Bhagchand Vs. State of M.P., 2006 (4) MPL J 25, have upheld the convictions and sentences of accused- appellants under penal Sections of the Act recorded by the trial courts on the basis of the evidence of police witnesses after having found their evidence reliable and having complied with the mandatory provisions of the Act applicable in the particular case.

14. The gist of the aforesaid rulings is that the conviction of an accused can be based on the evidence of police witnesses, if their testimonies are fully reliable and they have complied with the mandatory provisions of the concerned Act applicable in a given case. On the said premises, the evidence of police witnesses of the instant

case shall be closely scrutinized by me.

15. R.R. Bansal (PW-14) has stated in his evidence that on 26.09.2008, he was the In-charge of Police out-post Lugasi of Police Station Naugaon. On that day at about 5:10 a.m., he received a secret information orally from an informer that a light yellow Tata Indica Car bearing registration No.JH-1-T-4554 is going from Mahoba to Jhansi via police barrier Beriya. A huge quantity of Ganja keeping in the dicky of the car in packets is being transported by three persons including driver. One of them is a woman. Thereafter, he summoned at the police out-post panch witnesses Prahlad (PW-2) and Amar Singh (PW-6). He apprised them with the information of the informer. In this regard, he prepared the Mukhbir Suchna Panchnama Ex.P/15. Upon which, he obtained their signatures. He transmitted the information to the C.S.P., Chhatarpur vide letter Ex.P/49 along with a copy of Mukhbir Panchnama through Constable Rajendra (not examined). In this regard, he prepared Panchnama Ex.P/3 in the presence of Head Constables namely Narayan Das (PW-1) and Bharat Singh (PW-9). He also made an entry thereabout in Roznamcha Sana Ex.P/54- C. The Panch witnesses have admitted their signatures on Mukhbir Suchna Panchnama Ex.P/15. But, they have expressed ignorance about the contents of it. However, Narayan Das and Bharat Singh have corroborated the evidence of R.R. Bansal regarding the preparation of Panchnama Ex.P/3. Brijpati Yadav (PW-4), who was posted on 26.09.2008 in the office of C.S.P. Chhatarpur as a constable, has corroborated the evidence of R.R. Bansal to have received a copy of Mukhbir Panchnama Ex.P/15. R.R. Bansal, Narayan Das and Brijpati Yadav are subjected to gruelling cross-examinations on behalf of the accused-appellants but the defence has failed to elicit any evidence to cast a doubt upon the veracity of their evidence. On the basis of their evidence, it is, therefore, held that R.R. Bansal has complied with the provisions of sub-Sections (1) and (2) of Section 42 of the Act.

16. R.R. Bansal has further deposed that at the relevant time when he received the secret information from the informer, the court concerned was not open. If he had awaited the opening of the court for taking the search warrant, then the accused-appellants would have crossed the police barrier Bariya. In this connection, he prepared Panchnama Ex. P/6 in the presence of Head Constable Narayan Das and Constable Hanumandin. Both the witnesses have corroborated the evidence of R.R. Bansal. As per Mukhbir Suchna Panchnama Ex.P/15, R.R. Bansal received the source information at about 5:10 a.m. and this court can take notice that the law courts in the State of M.P. open at 10:30 a.m. Keeping in view this fact, it is held that R.R. Bansal has satisfactorily explained as to why he had not obtained the search warrant in terms of Section 42 of the Act.

17. R.R. Bansal has further deposed that he prepared Panchnamas namely Ex.P/16, P/18 and P/19 in the presence of Prahlad and Amar Singh for summoning a photographer and collecting a scale, weights for measurements of Ganja to be seized and packing materials for sealing it. However, both the witnesses have not

corroborated the preparation of the said Panchnamas in their presence. But, Constable Hanumandin has corroborated his evidence. There is nothing in the cross-examinations of R.R. Bansal and Hanumandin to disbelieve their said evidence.

18. R.R. Bansal has further deposed that he along with Head Constable Narayan Das (PW-1), Bharat Singh (PW-9), one home-guard Sainik (not examined), the Panch witnesses Prahlad (PW-2), Amar Singh (PW- 6) and Devi Prasad (PW-13) proceeded on three motorcycles to police barrier Bariya. Before departure, he made an entry in this regard in Roznamcha Sana Ex.P/58-C and Ex.P/59-C. Narayan Das and Bharat Singh have supported the said evidence given by R.R. Bansal. However, Prahlad, Amar Singh and Devi Prasad have not supported his evidence. But, there is nothing in the cross-examinations of R.R. Bansal, Narayan Das and Bharat Singh to disbelieve their evidence. Hence, it is held that they have reached the place of offence with a scales, weights for weighing and packing materials etc.

19. R.R. Bansal has further deposed that after reaching the police barrier Bariya, he closed the road by putting stoppers. After some time, seeing the car he gave a signal to its driver to pull over it. From the car, two male and one female persons had alighted. On being interrogated by him, they have disclosed their names as Nagendra, Dinesh @ Vinod and Smt. Manju Yadav, who are the accused-appellants herein. Accused-appellant Nagendra was on the driver seat, accused-appellant Dinesh was on the front seat, and accused-appellant Smt. Manju Yadav was on the rear seat of the car at the time when he stopped the car. He apprised them that as per the tip-off they are transporting Ganja in the car. He gave them option for the search of car before him or in the presence of Gazetted Officer/Magistrate. They agreed to give the search of the car to him. Thereupon, he prepared Sahmati Panchnama Ex.P/31. Later, he took the search of the car in the presence of Amar Singh and Deshraj, and he found ten packets in the boot of the car. He took out a small quantity of stuff from each packet. He and the panch witnesses found on smelling, rubbing and burning the stuff as Ganja. Thereupon, he prepared Identification Panchnama Ex.P/29 and seized all the ten packets vide seizure memo Ex.P/28. Upon his request and directions Devi Prasad (PW-13) weighed Ganja of each packet separately and recorded the weight of Ganja being found in each packet. The total weight of Ganja kept in ten packets was found 72 kgs. which is more than treble of minimum commercial quantity of Ganja. He took out 100 grams of Ganja from each packet out of the ten packets for chemical examinations. He divided 100 grams Ganja in two parts, each weighing 50 grams. He got the sample packets and the remaining packets properly packed and sealed. Upon each packet, he affixed the official seal of the police station Nowgoan and tagged a slip bearing signatures of witnesses namely, Amar Singh, Deshraj, Prahlad, Savitri, Devi Prasad, the accused-appellants and his own. In this regard, he prepared search Panchnama Ex.P/8, Sahmati Panchnama Ex.P/25, seizure memo Ex.P/28, Identification Panchnama Ex.P/29, weight Panchnama Ex.P/31, sample Panchnama Ex.P/3 and sample seal and

signatures Panchnama Ex.P/35. He also marked the sample packets A-1 to A-10. Later, he arrested the accused-appellants and seized their car vide arrest memo Ex.P/37 and seizure memo Ex.P/33 respectively. He also prepared spot map Ex.P/36. Panch witness Amar Singh has supported the prosecution case in the course of cross-examination by the prosecution to the extent that police searched the car and arrested the accused-appellants on the spot. He also admitted that the police told him that 72 kgs. Ganja was seized from the car of the accused-appellant. However, Savitri (PW-7), Deshraj (PW-10) and Devi Prasad (PW-13) have not supported the prosecution case in their court statements. But Narayan Das (PW-1) and Bharat Singh (PW-9) have corroborated the evidence of R.R. Bansal in their court statements. The defence has extensively cross-examined R.R. Bansal, Narayan Das and Bharat Singh but it has failed to elicit any evidence in their cross-examinations in its favour. Thus, it is held that R.R. Bansal has seized 72 kgs. Ganja from the possession of the accused-appellants on the spot, which was being transported by them in the car.

20. R.R. Bansal has also deposed that he brought the accused-appellants, the car and the seized Ganja with sample packets to police out-post Lugasi. He handed over all the Ganja packets to the Malkhana In-charge of police out-post Lugasi. In this regard, Panchnama Ex.P/38 was prepared. He gave him letter Ex.P/44 instructing him to keep Ganja in the Malkhana in the safe custody until the sample packets are sent to the F.S.L. Sagar. Later, he made return entry in detail in Roznamcha Sana Ex.P/60-C. Thereafter, he informed the S.P. and C.S.P. Chhatarpur vide letter Ex.P/52 in detail about the offence. Though, Amar Singh and Deshraj have not corroborated the evidence of R.R. Bansal to the effect that he had deposited the Ganja packets in the Malkhana of police out-post Lugasi in their presence. But Bharat Singh (PW-9), who is also the In-charge of Malkhana, has corroborated the evidence and drawing of Panchnama Ex.P/38. There is nothing in the cross-examinations of R.R. Bansal and Bharat Singh to disbelieve their evidence. Therefore, it is held that R.R. Bansal had immediately deposited the packets of Ganja in the Malkhana of police out-post Lugasi. Consequently, there is no question of tampering with the packets of Ganja. It is also held that he had complied with the provisions of Sections 55 and 57 of the Act.

21. Head Constable Ram Vilas Shukla (PW-15) has proved the aforesaid copies of Roznamcha Sana by producing original Roznamcha Sana Register before the trial court. There is nothing in his cross-examination to draw an inference that Roznamcha entries are manipulated or tampered with. Therefore, Roznamcha entries also prove the veracity of the evidence of R.R. Bansal, the Seizing Officer, and other police officials.

22. The investigating Officer Mubarak Ali (PW-11) has stated that he investigated the case. In the course of which, he recorded the case diary statements of the prosecution witnesses and withdrew sample packets from the Malkhana and sent

them to F.S.L. Sagar through Head Constable Nandlal (PW-12) vide letter Ex. P/46, on 02.10.2008. The F.S.L. Sagar sent the report Ex.P/47. Nandlal has corroborated the evidence of Mubarak Ali to the extent that he had gone to Sagar to deposit the sample packets. There is nothing in their cross-examinations to disbelieve the evidence of Mukhbar Ali and Nandlal.

23. As per the record, Seizing Officer, R.R. Bansal seized the Ganja from the possession of accused- appellants on 26.09.2008 and Nandlal delivered the sample packets to F.S.L. Sagar on 02.10.2008. Thus, sample packets of seized Ganja were sent to F.S.L. Sagar within a reasonable time. Thus, there is no possibility of tampering with the sample packets. As per F.S.L. report Ex.P/47, each sample packet is found intact and the seal and signatures thereon tally with the sample seal Panchnama. The report further states that upon the chemical examinations each packet has contained Ganja. Thus, the report supports the evidence of R.R. Bansal and other police witnesses.

24. Now, I will deal with the defence taken by the accused-appellants.

25. Accused-appellant Dinesh has taken the defence that the police had arrested him before the seizure of Ganja and falsely implicated him in the case. In this regard, his learned counsel has drawn my attention towards the admission made by Bharat Singh in para-7 of his cross-examination, wherein he has admitted that accused-appellant Dinesh was not arrested on 26.09.2008. Seizing officer R.R. Bansal has stated in his evidence that he arrested accused-appellant Dinesh at the place of offence vide arrest memo Ex.P/37 on 26.09.2008. Independent hostile witness Amar Singh (PW-6), has also admitted in para-6 of his evidence that the police arrested all the accused-appellants at the place of offence vide arrest memo Ex.P/37. In view of the evidence of R.R. Bansal and Amar Singh, it appears that Bharat Singh has made aforesaid admission on being flummoxed by the defence counsel. Thus, his aforesaid admission is not enough to hold that he was not arrested on 26.09.2008.

26. Accused-appellants Nagendra and Smt. Manu Yadav have taken the defence that they are the husband and wife. While they were going to Khajuraho for sight seeing, the police seized their car at the time of mobile checking on the ground that they could not produce the relevant papers of the car. Later, the police had implicated them in the case. Head Constable Narayan Das (PW-1) in paras 8 and 10 has deposed that accused-appellant Nagendra was a resident of village Hadwasa under Police Station Gopalganj the State of Bihar. In order to know about his criminal antecedents, he visited his said native village. There, he met the legally married wife of accused-appellant Nagendra. Just by coincidence, her name is also Manju Yadav, which is also the name of accused-appellant Manju Yadav. In this regard, he prepared Panchnama Ex.P/14 in the presence of Sarpanch Asmeena Khatoon of the said village. There is no ground to disbelieve his evidence. Thus, accused-appellant Nagendra and Smt. Manu Yadav have falsely stated in their statements under Section 313 Cr.P.C. that they are the husband and wife. Moreover, there is no

evidence on record to draw a conclusion that the police seized their car on the road which goes to Khajuraho. Thus, it is held that their defence is absolutely false.

27. In the case of Madan Lal and another Vs. State of Himachal Pradesh , 2003 Cr.L.J. 3868, the accused persons of the case were travelling in a private car and as per the evidence on record they knew each other. From the car, the police seized charas. On this evidence, the Supreme Court held that provisions of Sections 35 and 54 of the Act apply to the facts of the case, therefore, conscious possession has been established. In the present case, all the three accused- appellants were travelling together in the private car, they know each other and 72 Kgs. Ganja was seized in the boot of their car. From this uncontradicted evidence, it is held that the conscious possession of the accused-appellants has been established.

28. Having carefully considered the evidence of police witnesses of the prosecution in the case and the reasoning of the learned trial Judge, I do not find any ground to differ from the same. Therefore, I reject the challenge of the accused-appellants made in these appeals as to their convictions and sentences under Section 8(c) r/w 20 (b)(ii)(c) of the Act. Consequently, I dismiss these appeals, upholding the impugned judgment.

29. Vide order dated 24.08.2016 passed in Criminal Appeal No.816/2010, the jail sentence of accused- appellant Dinesh @ Vinod has been suspended. He is directed to surrender his bail-bonds within a month from the date of this judgment, failing which the trial court will take steps to secure his presence to send him in jail for undergoing the remaining jail sentence.