



2. The brief facts of the case of the prosecution are that on 16.9.2006, the police party headed by A.S.I. Gurdev Singh, comprising H.C. Jora Singh No. 368 along with other police officials of Police Station Phul, was proceeding from Phul to Mehraj on patrol duty in government vehicle bearing registration No. PB-12G/7563. When the police party reached the bridge of canal in the area of Mehraj, one Jit Singh son of Gajjan Singh, resident of Phul, met the police party there and joined it. At that time, H.C. Jora Singh No. 368 informed A.S.I. Gurdev Singh separately that he had received a secret information that Major Singh son of Jit Singh, resident of Sidhana, was habitual in selling poppy husk and, if a raid was conducted, the same could be recovered from him in large quantity. Taking the information to be credible, a raid was conducted by A.S.I. Gurdev Singh at the cattle shed house of the accused at about 4.30 p.m. at village Sidhana. The accused was found placing the bags in order in his cattle house behind the bales of straw. On seeing the police party, the accused became nervous and sat down on the bags. He was apprehended and his whereabouts were ascertained. A.S.I. Gurdev Singh suspected that some contraband articles had been placed by the accused in both the bags behind the bales of straw in his cattle house. A.S.I. Gurdev Singh apprised the accused about his statutory right of search before a Gazetted Officer or a Magistrate. The accused insisted upon his search before a Gazetted Officer and a memo to this effect was prepared, which was thumb-marked by the accused and attested by the witnesses. D.S.P. Gurmeet Singh was called to the spot and reached there. D.S.P. Gurmeet Singh informed the accused of his right of search before another Gazetted Officer or a Magistrate, but the accused reposed confidence in him



with regard to the search of the gunny bags and a consent memo of the accused to this effect was prepared. A.S.I. Gurdev Singh thereafter searched the gunny bags under the supervision of D.S.P. Gurmeet Singh and poppy husk was recovered from each of the gunny bags from the possession of the accused. Separate numbers were allotted to both the gunny bags. A.S.I. Gurdev Singh took out a sample of 100 grams from each of the gunny bags and the samples were numbered separately. The poppy husk in each of the gunny bags, on weighment, was found to be 34 kilograms 900 grams. Separate sealed parcels thereof were prepared by sealing them with seal impression “GS” by A.S.I. Gurdev Singh at the spot. He also prepared a specimen sample seal at the spot and, after use, the seal was handed over to H.C. Jora Singh. The entire case property was taken into police possession vide separate recovery memo, which was attested by the witnesses. From the further personal search of the accused, nothing else was recovered and a memo in this respect was prepared. Ruqa was sent to Police Station Phul, whereupon the FIR of the case was registered against the accused by A.S.I. Jugraj Singh. The Investigating Officer completed the usual investigation at the spot and, on return to Police Station Phul on the same day, A.S.I. Gurdev Singh produced the entire case property, in sealed parcels, before S.H.O. Sukhdev Singh along with the sample seal. S.H.O. Sukhdev Singh verified the facts of the case and put his seal impression “SS” on the entire case property and sample seal and kept the same in his custody. S.H.O. Sukhdev Singh thereafter produced the case property and sample seal before the Magistrate and moved an application for inventory report and another application under Section 52-A of the Act and obtained the orders of the



Magistrate thereupon. Photographs of the case property were also taken in the presence of the Magistrate. One sample of 100 grams of poppy husk was also drawn from each of the gunny bags in the presence of the Magistrate, which were sealed with seal “BK”. The sample seal was also prepared in this regard in the presence of the Magistrate. On receipt of the report of the Chemical Examiner regarding the contents of the samples to be chura poppy heads and on completion of the investigation of the case, challan was presented against the accused by the S.H.O. of Police Station Phul.

3. Charge in this case was framed against the accused for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, to which the accused pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined P.W.1 Constable Kewal Singh, who is a formal witness and deposed regarding the affidavit pertaining to the deposit and handling of the case property. P.W.2 S.I. Sukhdev Singh was the S.H.O., before whom the case property was produced by the Investigating Officer after its recovery from the accused and after completing the necessary formalities of sealing the same. P.W.3 A.S.I. Gurdev Singh is the Investigating Officer, who deposed in detail regarding the recovery of the case property from the accused. P.W.4 Gurmeet Singh, D.S.P., is the Gazetted Officer who was called to the spot as the accused had stated that he wanted to get the search conducted before a Gazetted Officer. Thereafter, P.W. Jit Singh was given up as having been won over by the accused, whereupon the prosecution closed its evidence.

5. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied the allegations of the prosecution



case and pleaded false implication. In his defence, the accused examined D.W.1 Mohinder Singh and thereafter closed his evidence.

6. The learned Special Court heard the arguments advanced by the learned A.P.P. for the State and the learned defence counsel and, thereafter, convicted the accused in the manner as detailed in paragraph No. 1 of this judgment.

7. Feeling aggrieved by the above-said judgment passed by the learned Special Judge, the present appeal has been preferred by the accused-appellant, as detailed in paragraph No. 1 of this judgment.

8. Notice of the appeal was given to the State, which has opposed and contested the same.

9. During the pendency of the instant appeal, the sentence of the accused-appellant was suspended vide order dated 19.05.2011.

10. Initially, the appellant was represented by a counsel, however, thereafter, none appeared on behalf of the appellant. Accordingly, Mr. Ram Kumar Singla, Advocate, was appointed as *Amicus Curiae* to assist the Court in the matter.

11. Learned *Amicus Curiae* for the appellant, at the very outset, argued that in the present case, a perusal of the consent memos, Ex.PC and Ex.PD, would reveal that while giving the option to the accused-appellant, prior to the recovery of the contraband, for getting the search of the gunny bags conducted, it has been specifically mentioned in the consent memo, Ex.PC, that the accused-appellant could get his search conducted by himself, i.e. the Investigating Officer/police officer, or by some other Gazetted Officer, or by a Magistrate. It is submitted that the accused-appellant,



however, did not repose confidence in the Investigating Officer and stated that he wanted his search to be conducted through some other Gazetted Officer, whereupon D.S.P. Gurmeet Singh was called to the spot. Learned *Amicus Curiae* further submitted that a perusal of the subsequent consent memo, Ex.PD, would reveal that even therein, the accused-appellant was given the option of getting the search conducted by himself, i.e. the D.S.P., or by any other Gazetted Officer, or by any Magistrate. Learned *Amicus Curiae* for the appellant contended that the aforesaid manner of giving the option is in clear violation of the mandatory provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985, inasmuch as the statute contemplates an option to the person to be searched as to whether he would like to be searched in the presence of a Magistrate or a Gazetted Officer, whereas the Investigating Officer, as well as the D.S.P., while apprising the accused-appellant of his right, additionally offered him the third option of getting the search conducted by the officer himself. It was argued that the inclusion of such an impermissible third option renders the consent memos, Ex.PC and Ex.PD, legally defective and amounts to non-compliance with the mandatory requirement of Section 50 of the Act. Learned *Amicus Curiae* submitted that the fact that the appellant ultimately opted to be searched in the presence of a Gazetted Officer would not cure the defect in the manner in which the statutory right was conveyed to him, as the offer itself was not in conformity with the mandate of Section 50 of the Act. Relying upon the judgment of the Hon'ble Supreme Court, "***State of Rajasthan v. Parmanand***", (2014) 5 SCC 345, it was contended that the addition of the third option of being searched by the police officer himself is



impermissible in law and, consequently, the recovery based upon such defective consent cannot be sustained.

12. Learned State counsel, on the other hand, argued that the provisions of Section 50 of the Act are not applicable in the present case, as no personal search of the accused-appellant was conducted for effecting the recovery of the contraband. Rather, it was the search of the gunny bags which was conducted. It was specifically mentioned in the consent memos, Ex.PC and Ex.PD, that the IO and D.S.P respectively, suspected some intoxicating substance to be concealed in the cattle shed of the accused behind the door of the room and, accordingly, the accused consented to the search of both the jute bags lying therein. It was, therefore, contended that the judgment relied upon by learned *Amicus Curiae* for the appellant are not applicable to the facts of the present case. It was further argued that even if the third option was given to the accused, the same would not be fatal to the case of the prosecution.

13. I have considered the rival submissions and have carefully gone through the evidence available on record, particularly the consent memos Ex.PC and Ex.PD. The submission advanced on behalf of the appellant cannot be accepted in the facts and circumstances of the present case. There can be no dispute with the proposition of law that where a personal search of an accused is to be conducted and the provisions of Section 50 of the Act are attracted, the accused has to be apprised of his statutory right to be searched in the presence of a Gazetted Officer or a Magistrate. It is equally well settled that the police officer cannot, while apprising the accused of such right, introduce a third option of being searched by the police officer



himself. Thus, if the search in the present case were a search of the person of the accused to which Section 50 was applicable, the contention raised by learned *Amicus Curiae* for the appellant would undoubtedly merit acceptance. However, the question which arises for consideration is whether the search which resulted in the recovery of the contraband from the accused-appellant was a personal search within the meaning of Section 50 of the Act.

14. In this regard, the distinction between a search of the person and a search of a bag, container or other article in the possession of an accused assumes significance. Section 50 of the Act is attracted only when the person of the accused is proposed to be searched. The Hon'ble Supreme Court in *Parmanand' case (supra)*, itself drew a clear distinction between the two situations and held that if merely a bag carried by a person is searched, without there being any search of his person, Section 50 has no application, it is only where the bag is searched and the person is also searched that the provisions of Section 50 become applicable.

15. The aforesaid principle has subsequently been considered and reiterated in detail by the Hon'ble Supreme Court in "*Ranjan Kumar Chadha v. State of Himachal Pradesh*" 2023 INSC 878, wherein the Court explained that the safeguards contained in Section 50 relate to the search of the physical body of the person and do not extend to the search of a bag, briefcase, container or other article. The Court specifically considered the argument that an accused had been given a third option of being searched before a police officer and held that the question of compliance with Section 50 arises only where the search of the person is involved. Where the



recovery is from a bag and there is no search of the person, Section 50 is not attracted.

16. Tested on the touchstone of the aforesaid principles, the facts of the present case make it clear that the search pursuant to which the recovery was effected was not a personal search of the accused-appellant. The prosecution case, right from the stage of the secret information, was that the accused was suspected of keeping poppy husk concealed in his cattle shed. When the police party reached the cattle shed, two gunny bags were found lying there. The consent memo Ex.PC prepared by the Investigating Officer itself makes it clear that the suspected intoxicating substance was lying concealed in the cattle shed and that the consent sought from the accused related to the search of the two gunny bags. Since the accused did not repose confidence in the Investigating Officer and expressed his desire that the search be conducted through some other Gazetted Officer, D.S.P. Gurmeet Singh was called to the spot. Thereafter, the consent memo Ex.PD was prepared by the D.S.P. Even this memo relates to the proposed search of the gunny bags lying in the cattle shed. It is pursuant to this exercise that the two gunny bags were searched and the contraband was recovered therefrom.

17. It is true that in the present case, after the recovery, a personal search of the accused was also conducted and nothing incriminating was recovered therefrom. However, such subsequent personal search, from which admittedly nothing was recovered, cannot be equated with the search which resulted in the recovery of the contraband. The recovery in the present case was complete upon the search of the two gunny bags. The personal search was a separate and subsequent formality and the contraband forming



the subject matter of the present prosecution was not recovered as a result thereof. The appellant cannot, therefore, seek to invalidate the recovery of the contraband from the gunny bags by relying upon the language of the consent memos pertaining to the search of those bags, when the statutory requirement of Section 50 was not attracted to such search.

18. Consequently, even assuming that the Investigating Officer, while preparing Ex.PC, and thereafter the D.S.P., while preparing Ex.PD, incorporated an additional option by stating that the search could be conducted by the officer himself, such inclusion cannot be held to constitute a violation of Section 50 in the present case, because the search to which the said consent memos related was the search of the two gunny bags and not the personal search of the accused. The third-option principle laid down in *Parmanand's case (supra)* operates where Section 50 is attracted, it cannot be applied in a case where the statutory provision itself has no application to the search in question.

19. Accordingly, the first contention raised by learned *Amicus Curiae* for the appellant is found to be devoid of merit and is rejected. The recovery of the contraband from the two gunny bags cannot be held to be vitiated on the ground of alleged non-compliance with Section 50 of the Act.

20. Learned *Amicus Curiae* for the appellant argued that P.W.1 Constable Kewal Singh, while appearing in the witness box, tendered his affidavit, Ex.PA. It was, however, argued by learned *Amicus Curiae* for the appellant that although, in his examination-in-chief, P.W.1 tendered his affidavit, Ex.PA, into evidence, in his cross-examination he admitted that he was also a member of the police party on the date when the recovery was



effected. Learned *Amicus Curiae* submitted that the answers given by him in cross-examination are vague and demonstrate that he was not aware of the material proceedings allegedly conducted at the spot. He stated that he did not know who had brought the weighing material, how many memos had been prepared, or who the Gazetted Officer was on that day. He further stated that all the writing work was done while sitting in the police station and that he did not know how many days were taken to complete the writing work. He also deposed that he did not know who had joined the police party as a private witness on that day, whether any respectable person had been called near the place of recovery by the Investigating Officer, or even the shape of the seal of the Investigating Officer. It was, therefore, argued by learned *Amicus Curiae* for the appellant that the aforesaid replies of P.W.1 show that although he was admittedly a member of the police party, he was unaware of the proceedings allegedly conducted at the spot, which creates a serious doubt regarding the prosecution version. Learned *Amicus Curiae* submitted that his testimony indicates that nothing was actually done in his presence at the place of recovery and that the entire writing work was subsequently carried out at the police station, thereby casting doubt upon the alleged recovery and suggesting that a false case was foisted upon the accused.

21. Learned State counsel, on the other hand, argued that P.W.1 is merely a witness with regard to the handling and deposit of the case property and has categorically deposed in his affidavit regarding the same, including that there was no tampering with the case property during the period it remained in his custody. It was submitted that even if P.W.1 stated in his



cross-examination that he was not aware of various proceedings conducted at the spot, the same is not fatal to the case of the prosecution, particularly when the recovery has been proved through the testimony of the Investigating Officer, P.W.3 A.S.I. Gurdev Singh, and the Gazetted Officer, P.W.4 D.S.P. Gurmeet Singh. It was, therefore, contended that the testimony of P.W.1 cannot, by itself, create any doubt regarding the recovery effected from the accused.

22. I have considered the aforesaid submission advanced by learned *Amicus Curiae* for the appellant and have carefully examined the testimony of P.W.1 Constable Kewal Singh. In my considered opinion, the criticism levelled against the prosecution on the basis of his cross-examination does not create any dent in the otherwise consistent prosecution case. The status and role of P.W.1 in the present case have to be appreciated in their proper perspective. He is not a witness of recovery in the sense that the prosecution does not rely upon his testimony for proving the actual recovery of the contraband from the accused. His role was confined to the subsequent handling and transmission of the case property. He has tendered his affidavit Ex.PA, wherein he has specifically stated that the case property was handed over to him by S.I. Sukhdev Singh on 20.09.2006, that he took the same to the office of the S.S.P., Patiala, and thereafter deposited it with the Chemical Examiner on 21.09.2006, and, on his return, handed over the receipt to S.I. Sukhdev Singh on 22.09.2006. He has further stated that the seals on the case property remained intact during the period the same remained in his custody. Thus, so far as his particular role in the chain of custody is concerned, his evidence is clear and categorical.



23. Merely because P.W.1 happened to be a member of the police party which proceeded to the spot does not necessarily mean that he must have personal knowledge of every minute detail of the proceedings conducted there. The fact that he was present with the police party and the fact that he was subsequently entrusted with the case property are two distinct aspects. The prosecution is not required to establish its entire case through each and every member of the police party. What is required is that the evidence, taken as a whole, should establish the recovery and the safe custody and transmission of the case property beyond reasonable doubt. In the present case, the actual recovery has been deposed to by P.W.3 A.S.I. Gurdev Singh, the Investigating Officer, and his version finds material corroboration from P.W.4 D.S.P. Gurmeet Singh, the Gazetted Officer who was present at the spot and in whose presence the gunny bags were searched. P.W.1 has a different and limited role in the prosecution evidence.

24. The answers elicited from P.W.1 in cross-examination, that he did not know who had brought the weighing material, how many memos had been prepared, who the Gazetted Officer was, whether any respectable person had been called at the spot, or what was the shape of the seal of the Investigating Officer, therefore, cannot be read in isolation so as to demolish the prosecution case. At the highest, these answers demonstrate that P.W.1 was not conversant with the details of the investigation and the writing work undertaken by the Investigating Officer. They do not constitute an admission that no recovery was effected from the accused, nor do they constitute an admission that the case property was fabricated at the police station. Most importantly, P.W.1 has nowhere stated that he had seen the Investigating



Officer preparing a false case or that the case property handed over to him was different from the property which had been seized.

25. The chain relating to the case property also stands materially established. After the recovery, the case property was produced before S.I. Sukhdev Singh, the S.H.O., who has been examined as P.W.2. The case property was thereafter handled and transmitted in the manner stated by P.W.1. The latter has specifically deposed that the seals remained intact while the case property remained in his custody. The fact that the sample ultimately reached the Chemical Examiner with the seals intact and the seals were found to correspond with the specimen seal is a material circumstance supporting the continuity and sanctity of the case property. Thus, where the evidence establishes that the sample remained duly sealed and the Chemical Examiner received it with the seals intact and tallying with the specimen seal, the chain of custody is duly established.

26. Learned *Amicus Curiae* for the appellant further argued that though an independent witness, namely Jit Singh, was allegedly joined by the police party at the time of recovery, he was not examined by the prosecution and was given up on the ground of having been won over by the accused. It was contended that non-examination of the independent witness casts a doubt upon the prosecution version, particularly when the recovery rests upon the testimony of official witnesses.

27. Learned State counsel, on the other hand, argued that non-examination of the independent witness is not fatal to the prosecution case. Jit Singh had duly been joined in the proceedings, but was subsequently given up by the prosecution as having been won over by the accused. It was



further submitted that the seal after use was not entrusted to Jit Singh and, therefore, his non-examination does not affect the link evidence or the sanctity of the case property.

28. I have considered the rival submissions. Mere non-examination of an independent witness, by itself, is not sufficient to discard an otherwise reliable and trustworthy prosecution case. In the present case, the prosecution did make an effort to associate an independent witness, namely Jit Singh, with the proceedings. However, he was subsequently given up on the ground that he had been won over by the accused. Thus, it is not a case where the police party deliberately avoided associating an independent person despite his availability. The fact that a witness, after having been joined, is subsequently not examined on account of having been won over cannot, in itself, be made a ground to reject the testimony of the official witnesses.

29. It is also significant that the prosecution case regarding the recovery is supported by P.W.3 A.S.I. Gurdev Singh, the Investigating Officer, as well as P.W.4 D.S.P. Gurmeet Singh, a Gazetted Officer, who was called to the spot and in whose presence the search of the gunny bags was conducted. Their testimony cannot be discarded merely on the ground that they are official witnesses. There is no rule of law that the testimony of police officials must necessarily be corroborated by an independent witness before it can be acted upon. What is required is that their evidence should be scrutinized carefully and, if found cogent, consistent and trustworthy, the same can form the basis of conviction.



30. Further, the seal after use was not entrusted to Jit Singh and, therefore, his non-examination does not create any missing link regarding the custody or transmission of the case property. The evidence regarding the sealing, custody and subsequent transmission of the samples has been separately brought on record by the prosecution witnesses concerned. In these circumstances, non-examination of Jit Singh does not cause any prejudice to the accused nor does it create a reasonable doubt regarding the recovery. Accordingly, the contention raised by learned *Amicus Curiae* for the appellant on this count is also rejected.

31. Learned *Amicus Curiae* for the appellant further argued that the prosecution has failed to establish on record that the cattle shed from which the contraband was allegedly recovered was owned or possessed by the accused-appellant. It was submitted that in the absence of proof regarding the ownership or possession of the place of recovery, the alleged recovery cannot safely be attributed to the accused.

32. Learned *Amicus Curiae* for the appellant also contended that the testimony of D.W.1 Mohinder Singh, who stated that he was the Lambardar of the village and knew the accused Major Singh, has not been properly considered by the learned trial Court. D.W.1 deposed that on the date of occurrence there was a fair of Baba, which he and accused Major Singh had attended, and at about 2.00 p.m. the police officials took away Major Singh from the fair, stating that he had a dispute with his relative Karnail Singh. He further stated that when they went to the police station for securing the release of Major Singh, the police refused to release him and that the accused was thereafter falsely implicated in the present case. It was,



therefore, argued that the testimony of D.W.1 supports the plea of false implication and creates a serious doubt regarding the prosecution version.

33. Learned State counsel, on the other hand, argued that so far as the ownership or possession of the house in question is concerned, the same has never been disputed by the accused. Rather, a specific suggestion was put to P.W.3 A.S.I. Gurdev Singh that no search warrant for the house of the accused had been obtained before conducting the raid, which was admitted by him. A similar suggestion was put to P.W.4 D.S.P. Gurmeet Singh, who also stated that no warrant had been obtained from the Court or any other competent authority before searching the house of the accused. So far as the testimony of D.W.1 is concerned, learned State counsel argued that the plea of alibi has not been established on record and the testimony of a defence witness, unsupported by any independent or contemporaneous material, cannot displace the consistent prosecution evidence. It was further submitted that D.W.1 admitted in cross-examination that he neither moved any application before any higher authority nor approached the village Panchayat regarding the alleged false implication or the alleged taking away of the accused from the fair.

34. I have considered the rival submissions. So far as the contention regarding the ownership or possession of the cattle shed is concerned, the same does not merit acceptance. The prosecution case is that the contraband was recovered from the cattle shed of the accused and, significantly, the accused has nowhere taken a specific plea that the said cattle shed did not belong to him or was not in his possession. The absence of a formal document of ownership, in the circumstances of the present case, cannot by



itself be treated as sufficient to discard the prosecution version. Ownership in the strict sense is not the only test, what is material is whether the place from which the contraband was recovered was in the conscious possession or control of the accused. The conduct of the accused at the spot, the manner in which the gunny bags were found concealed in the cattle shed, and the evidence of the recovery witnesses have to be considered cumulatively.

35. It is also significant that the defence itself put specific suggestions to P.W.3 A.S.I. Gurdev Singh and P.W.4 D.S.P. Gurmeet Singh regarding the alleged absence of a search warrant before conducting raid of the house of accused. Both the witnesses, in response to the said suggestions, stated that no search warrant had been obtained from the Court or any other competent authority before conducting the search of the house of the accused. Such suggestions, rather than advancing the plea that the premises did not belong to the accused, proceed on the premise that it was house of accused which was searched.

36. Coming to the evidence of D.W.1 Mohinder Singh, the defence has sought to establish through him that the accused was present at a fair at the relevant time and was taken away by the police, thereby suggesting false implication. However, the plea of alibi is a plea of fact and the burden of establishing it rests upon the person who sets it up. In the present case, apart from the statement of D.W.1, no contemporaneous or independent material has been produced to substantiate that the accused was at the fair at the relevant time or that he was forcibly taken away therefrom by the police.

37. The testimony of D.W.1 is also required to be appreciated in the light of his conduct as disclosed in cross-examination. He admitted that he



did not make any complaint or move any application before any higher police or administrative authority regarding the alleged illegal detention or false implication of the accused. He further did not approach even the village Panchayat in this regard. His explanation that the police officials had threatened that a case would be registered against anyone who made such a complaint does not inspire confidence, particularly when no contemporaneous material has been brought on record to substantiate such alleged threat. If the accused had in fact been taken away from a public fair in broad daylight and had thereafter been falsely implicated, one would reasonably expect some contemporaneous protest or complaint from the persons who, according to D.W.1, had gone to the police station for securing his release.

38. It is true that the defence evidence cannot be discarded merely because it has been produced by the accused. However, the Court has to assess such evidence on the same touchstone of probability, consistency and credibility as the prosecution evidence. In the present case, the statement of D.W.1 does not receive corroboration from any independent circumstance. His assertion regarding the presence of the accused at the fair is directly contrary to the consistent testimony of P.W.3 and P.W.4 regarding the presence of the accused at the place of recovery. Nothing material has been elicited from these witnesses in cross-examination so as to establish that the accused was elsewhere at the relevant time.

39. It is further significant that the plea of alibi is not merely a plea casting a general doubt upon the prosecution case, it is a specific plea that the accused was at a different place at the time of the occurrence. Once such



a plea is raised, the defence is required to establish it by reliable evidence. The accused has failed to do so. The testimony of D.W.1, standing alone, does not inspire sufficient confidence to hold that the accused was present at the fair and could not have been present at his cattle shed when the recovery was effected.

40. Thus, neither the alleged absence of documentary proof of ownership of the cattle shed nor the testimony of D.W.1 regarding the alleged presence of the accused at the fair creates a reasonable doubt in the prosecution case. The prosecution evidence establishes the connection of the accused with the place from which the contraband was recovered, whereas the plea of alibi set up by the defence remains unsubstantiated. Both the contentions raised by learned counsel for the amicus curiae are, accordingly, rejected.

41. No other argument was raised by learned *Amicus Curiae* for the appellant.

42. Consequently, finding no merit in the present appeal, the same is hereby dismissed. The judgment of conviction and order of sentence dated 18.12.2007, passed by the learned Special Judge, Bathinda, are upheld. The appellant shall undergo the remaining sentence, if any, in accordance with law.

43. Accused-appellant, namely, Major Singh @ Jhanfa are on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to initiate process of re-arrest of the aforesaid appellant, so as to serve the remaining part of the sentence.



44. Before parting with the case, this Court places on record its appreciation for the assistance rendered by Dr. Ram Kumar Singla, Advocate, learned *Amicus Curiae*, in the matter. His assistance has been valuable and is duly acknowledged. The fee of the learned *Amicus Curiae* shall be paid as per the applicable rules.
45. All pending applications, if any, also stand disposed of.

14.09.2026
Anu

(MANDEEP PANNU)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No