IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.848 of 2023
Arising Out of PS. Case No.-370 Year-2022 Thana- GOVERNMENT OFFICIAL COMP. District- Katihar

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Manoj Murmu @ Manoj Murmur, Son of Bitka Murmu @ Bhutku Murmu R/v- Bhawara Shahib Tola, P.S.- Mufassil, District- Katihar

... ... Appellant

Versus

The State of Bihar ... ... Respondent

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Appearance :
For the Appellant : Mr. Ankesh Bibhu, Amicus Curiae
For the Respondent : Mr. Zeyaul Hoda, A.P.P

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
Date : 19-08-2025

Heard the parties.

2. The present appeal has been directed against the judgment of conviction and order of sentence dated 04.01.2023 passed by learned A.D.J-Cum-Spl. Judge, Excise Court No.1, Katihar in connection with Excise P.S. Non F.I.R No. 370 of 2022 whereby and whereunder the appellant has been convicted for the offence punishable under Section 37 of Bihar Prohibition And Excise Act read with Rule-18(4) of Bihar Prohibition and Excise Rule-2021 and has been pleased to sentence him to undergo simple imprisonment for a period of one year. Period undergone during the trial was directed to be set off.

3. As per prosecution case, the appellant was said to have found in the drunken condition on the basis of breath analyzer test.

4. On the basis of prosecution report, Excise P.S.

Non F.I.R No. 370 of 2022 was registered under section 37 of Bihar Prohibition and Excise Act, 2016. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant under section 37 of Bihar Prohibition and Excise Act, 2016. Thereafter, on 09.11.2022 the learned trial court took cognizance against the appellant under the aforementioned section. Charge was framed against the appellant on 18.11.2022 and after hearing the parties, acquisition has been explained to the accused in Hindi for the said offence to which he pleaded not guilty and claimed to be tried.

5. After closing the evidence, statement of witnesses under Section 313 Cr.P.C of appellant has been recorded on 12.12.2022 where he denied the charges and claimed innocent and it was admitted that earlier he was arrested in non FIR Excise P.S. Case No. 284 of 2022 dated 14.10.2022 for the consumption of liquor and released from court after depositing the fine.

6. During course of trial, prosecution has examined two witnesses. P.W-1,Pawan Kumar Yadav, who is informant and investigating officer of the Case and P.W-2, Tala

Hansda, who is police official.

7. Prosecution has relied upon following documentary evidence on record:-

Exhibit P1/1- Breath Analyzer Report and Certificate under Section 65 B Indian Evidence Act.

Exhibit P2- Arrest Memo

Exhibit P2/1-Signature of witness on arrest memo

Exhibit P3-Self Written Statement.

Exhibit P4-Form VI.

8. Learned counsel of behalf of appellant has submitted that neither P.W. 1 nor P.W. 2 has made any statement with regard to description of the place of occurrence. In this way, place of occurrence is not proved and if place of occurrence is not proved, the genesis of case cannot be proved by prosecution. The counsel of appellant has submitted that informant has become investigating officer and no reason has been assigned as to why informant has become investigating officer and the appellant has been prejudiced thereby. Learned counsel on behalf of the appellant has submitted that it is admitted fact that informant is not expert and he has used the breath analyzer for testing the appellant which is beyond the stretch of imagination for putting allegation upon the appellant for which no substance is available with the informant and it has been submitted that breath analyzer test is not a conclusive test.

Hon'ble Supreme Court in the case of ***Bachubhai Hassanalli Karyani Vrs. State of Maharashtra reported in 1971 (3) SCC 930,*** has held that:-

> "*no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupiles were dilated. Consumption of alchol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.*"

9. Learned counsel for the appellant further submits that in the present case, there was no material information which disclosed that either blood or urine test was conducted by the prosecution side to prove the case. In the light of aforesaid facts and circumstances of the case, the prosecution has completely failed to prove its case beyond reasonable doubt against the appellant. Apart from that, two witnesses were examined on behalf of the prosecution but during the course of examination of said witnesses, major contradiction have been reflected in their statements as P.W 2 has stated that 8-10

persons were available beside the appellant but P.W. 1 is completely silent regarding the presence of other persons apart from the appellant. During course of examination, P.W 2 has stated that no test was conducted on appellant with regard to intoxication at the place of occurrence and the said point creates doubt when the appellant was apprehended on a particular point but why the test was not done on a particular point. On the said score, the conduct of the informant is very much doubtful. The counsel of appellant has further submitted that breath analyzer machine was not specially marked for identification. There was nothing on record which suggests or reflects that this particular machine was used for testing the appellant. P.W. 1, who is I.O. and informant, has clearly stated that he has no specialized training for conducting the test.

10. On the score of Section 65-B of the Indian Evidence Act, 1872 , the prosecution has failed to prove that whether ASI who having no knowledge about breath analyzing machine is a person who can authenticate the said machine.

11. Learned counsel on behalf of State has submitted that whole prosecution story rests on breath analyzer test and the said test has been exhibited. P.W 1 and P.W 2 both have been examined and both have supported and corroborated

the story of prosecution and the judgment of conviction and order of sentence passed by the concerned court is on the basis of material available on record and same is also based on the sound principle of law and hence, the impugned judgment does not require any interference.

12. In the present appeal, the question which is necessary for consideration is :

"Whether the prosecution has proved the case beyond the shadow of reasonable doubt ?"

13. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties, as noted above.

14. It is necessary to evaluate, analyze and screen out the evidence of witnesses adduced before the trial court in the light of offence punishable under section 37 of Bihar Prohibition and Excise Act, 2016.

15. It is crystal clear that place of occurrence which is the genesis of the case finds no place in the evidence of P.W 1 and P.W 2. On the point of place of occurrence, both witnesses are silent. P.W 1, during cross examination, has admitted that he has not pointed out the boundary of the place of

occurrence, though, he is the investigating officer of the case. The investigating officer has been examined as P.W 1, who is informant, has not properly identified the place of occurrence and not identified the very genesis of the case. Learned counsel for the appellant has pointed out several flaws in the story of prosecution. It has been pointed out that breath analyzer test is not a conclusive test and there is no material that there was urine or blood test. In the absence of material information with regard to blood test or urine test, it is unfathomable to reach out a particular conclusion so far as allegation against the appellant is concerned.

16. Section 65-B of the Indian Evidence Act, 1872 reads as follows:-

> ***"65-B. Admissibility of electronic records.*** ***—(1)*** *Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2) The conditions referred to in subsection (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or
(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.
(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—
(a) identifying the electronic record containing the statement and describing the manner in which it was produced;
(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
(5) For the purposes of this section,—
(a) information shall be taken to be supplied

to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

17. It is necessary to cite the judgment delivered by Hon'ble Supreme Court in the case of ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal*** reported in ***(2020) 7 SCC 1.*** The Hon'ble Supreme Court, in paragraph 60, 61, 73.2, 81 and 82 of the aforesaid judgment has held as follows :

"60. It may also be seen that the person who gives this certificate can be anyone

out of several persons who occupy a 'responsible official position' in relation to the operation of the relevant device, as also the person who may otherwise be in the 'management of relevant activities' spoken of in Sub-section (4) of Section 65B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief" (Obviously, the word "and" between knowledge and belief in Section 65B(4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time).

61. We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly "clarified" in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D 426, which has been followed in a number of the judgments of

this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

73.2. The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. (supra) which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "under

> *Section 62 of the Evidence Act,…" with this clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.*
>
> *81. What is laid down in Section 65B as a precondition for the admission of an electronic record, resembles what is provided in the second part of Section 136. For example, if a fact is sought to be proved through the contents of an electronic record (or information contained in an electronic record), the Judge is first required to see if it is relevant, if the first part of Section 136 is taken to be applicable.*
>
> *82. But Section 65B makes the admissibility of the information contained in the electronic record subject to certain conditions, including certification. The certification is for the purpose of proving that the information which constitutes the computer output was produced by a computer which was used regularly to store or process information and that the information so derived was regularly fed into the computer in the ordinary course of the said activities."*

18. In the present case the Investigating Officer, who is informant, has himself stated that he has not got any

specialized training for conduction breath analyzer test, then, question arises as to how machine will be handled at a particular point of time and under what circumstances test is required to be conducted and how the said officer will give certification if he has no proper for training for handling the said machine. Any certification given by said person is beyond any stretch of imagination and same does not satisfy the requirement prescribed under the law.

19. Learned counsel for the appellant has raised a very pertinent point that there was no special mark put on the breath analyzer machine and appellant was not tested on particular point which is the place of occurrence. P.W. 2 has already admitted that apart from the appellant, 8-10 persons were present. In that context, role of informant, who is I.O. of the case, is questionable. Being informant and I.O. of the case, he failed to reveal that apart from the appellant, 8-10 persons were present and why others were not made as witness to the prosecution case and why they were not apprehended and tested for the alcoholic test. The fair play of the Investigating Officer is put under question whether the I.O. has done fair play or not ?

20. With reference to the aforesaid aspect of the

matter, it is necessary to cite few judgments pronounced by the Hon'ble Supreme Court.

21. In ***Megha Singh v. State of Haryana*** reported in ***(1996) 11 SCC 709,*** the Hon'ble Supreme Court, in para 4, has held as under :

> *"4. ……..We have also noted another disturbing feature in this case. PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."*

22. In the case of ***Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15,*** the Hon'ble Supreme Court, in para 5, has held as under :

> *"5. Now, ordinarily this Court does not*

interfere with concurrent findings of fact reached by the trial court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial court and the High Court and that has resulted in serious miscarriage of justice calling for interference from this Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation of the case. How could the complainant himself be the investigator? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to

that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the first information report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case."

23. In the case of ***State by Inspector of Police , Narcotic Intelligence Bureau, Madurai, Tamilnadu Vs. Rajangam*** reported in ***(1976) 1 SCC 15,*** the Hon'ble Supreme Court, in paras 8, 9, 10, 11 & 12, has held as under :

"8. *The short question which falls for consideration of this Court is: whether PW 6 who registered the crime could have investigated the case or an independent officer ought to have investigated the case?*

9. *The learned counsel appearing for the accused submitted that the controversy involved in this case is no longer res integra. In Megha Singh v. State of Haryana [(1996) 11 SCC 709 : 1997 SCC*

(Cri) 267] , this Court has taken a categorical view that the officer who arrested the accused should not have proceeded with the investigation of the case. The relevant paragraph reads as under: (SCC p. 711, para 4)

"4. ... We have also noted another disturbing feature in this case. PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

10. *The ratio of Megha case has been followed by other cases. In another case in Balasundaran v. State [(1999) 113 ELT 785 (Mad)] , in para 16, the Madras High Court took the same view. The relevant portion reads as under: (ELT p. 790, para*

16)

"16. Learned counsel for the appellants also stated that PW 5 being the Inspector of Police who was present at the time of search and he was the investigating officer and as such it is fatal to the case of the prosecution. PW 5, according to the prosecution, was present with PWs 3 and 4 at the time of search. In fact, PW 5 alone took up investigation in the case and he had examined the witnesses. No doubt the successor to PW 5 alone had filed the charge-sheet. But there is no material to show that he had examined any other witness. It therefore follows that PW 5 was the person who really investigated the case. PW 5 was the person who had searched the appellants in question and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating agency. On this score also, the investigation is bound to suffer and as such the entire proceedings will be vitiated."

11. *In this view of the legal position, as crystallised in Megha Singh case, the High Court was justified in acquitting the accused. We see no infirmity in the view*

which has been taken by the High Court in the impugned judgment.

12. *In our considered view, no interference is called for. The appeal, being devoid of any merit, is accordingly dismissed."*

24. In the case of ***Mohan Lal v. State of Punjab,*** reported in ***(2018) 17 SCC 627,*** the Hon'ble Supreme Court, in paras 24, 25, 26, 27, 28, 29 & 30, has held as under :

"24. *In the nature of the controversy, it would be useful to also notice the view taken by different High Courts on the issue. In State of H.P. v. Atul Sharma [2015 SCC OnLine HP 4183 : (2015) 2 Shim LC 693 : (2015) 6 RCR (Criminal) 949], under the NDPS Act, it was observed as follows:*

"10.8. In present case it is proved on record that complainant is SI Bahadur Singh as per FIR Ext. PW12/A and it is proved on record that entire investigation has been conducted by complainant himself and there is no evidence on record in order to prove that investigation was handed over to some other independent investigating officer. It is not the case of prosecution that no other independent investigating officer was available to conduct impartial investigation. We are of

the opinion that conducting entire investigation i.e. preparation of seizure memo, site plan, recording statements of witnesses by complainant himself has caused miscarriage of justice to accused qua fair investigation."

***25**. A similar view has been taken in Fayas Ali v. State of Mizoram [2013 SCC OnLine Gau 763] , relating to prosecution under the NDPS Act, by the Gauhati High Court as follows: (SCC OnLine Gau para 15) "15. From the evidence of PWs 1 and 4, it is clearly found that the major part of the investigation including the arrest of the accused, preparation of seizure, taking of sample, examination of the seizure witnesses and examination of the accused person, was completed by PW 1, who was the informant/complainant in the present case. Therefore, it is clearly found that the investigation, in its true sense, was done by the complainant himself. In Rajangam [State of T.N. v. Rajangam, (2010) 15 SCC 369 : (2012) 4 SCC (Cri) 714], the Supreme Court, relying on the decision held in Megha Singh [Megha Singh v. State of Haryana, (1996) 11 SCC 709 : 1997 SCC (Cri) 267], observed that the investigation is to be done by a person other than the complainant and that the*

investigation done by the complainant is bound to suffer and vitiate the entire proceeding."

26. *The Punjab and Haryana High Court in Gannu v. State of Punjab [2017 SCC OnLine P&H 4660 : (2017) 3 RCR (Criminal) 566] relating to the NDPS Act, after referring to Noor Aga [Noor Aga v. State of Punjab, (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748] and the views [Laltu Prasad v. State of W.B., 2016 SCC OnLine Cal 4879 : (2017) 2 RCR (Criminal) 237] of the Calcutta High Court also apart from Atul Sharma concluded as follows:*

"14. Another aspect of the matter is that in sheer violation of the principles of fair and impartial investigation, the complainant and the investigating officer is the same person, which makes the prosecution case doubtful. In Laltu Prasad v. State of W.B., it was held that the complainant himself acting as the investigating officer violating the principles of fair and impartial investigation is a practice, to say the least, should not be resorted to and it is a disturbing feature. To the same effect, is a Division Bench judgment of the Hon'ble Himachal Pradesh High Court reported

as State of H.P. v. Atul Sharma, wherein, it has been held that where the complainant himself conducts investigation, it causes miscarriage of justice to accused qua fair investigation."

27. *A Single Judge of the Kerala High Court in Naushad v. State of Kerala [2000 SCC OnLine Ker 365 : (2000) 1 KLT 785], relating to the NDPS Act held as follows:*

*"3. ... In *a case of this nature, when the complainant himself is a Police Official, the investigation should have been conducted by his top ranking officer and the final report also ought to have been filed by the higher official. A complainant being a police officer cannot be an investigating officer. For, in such case, the accused and the prosecution will be deprived of their valuable rights of contradicting and corroborating, the previous informations recorded under Section 154 or 155 CrPC and previous statement of the witness, being a police officer, complaint recorded, under Section 161 CrPC enjoined in Sections 145 and 157 of the Evidence Act and proviso of Section 162 CrPC. In the instant case, before me, PW1 is an Assistant Sub-Inspector of Police, and I understand from*

the Public Prosecutor as well as from the counsel for the petitioner that the particular police station has got a Sub-Inspector of Police. Therefore, in this case, the investigation ought to have been conducted by the Sub-Inspector of Police or any other police officer above the rank of PW1. In the instant case, thus an incurable infirmity and flaw have been committed by the prosecution, quite against the proposition of law. Therefore, on that score itself, the petitioner is entitled to get an order of acquittal. In view of my above conclusion on the footing of position of law, this is a fit case, which has to be allowed by acquitting the petitioner."

28. *Disapproving of the same, a Division Bench in Kader v. State of Kerala [2001 SCC OnLine Ker 107 : 2001 Cri LJ 4044] , held: (SCC OnLine Ker para 13)*

"13. Unlike usual cases under the Criminal Procedure Code, in cases under the NDPS Act, by the time of arrest, main part of investigation will be completed and duty of the investigating officer is mainly in sending the samples for chemical analysis and other routine work and there is no likelihood of any prejudice in usual circumstances. Therefore, we are

of the opinion that merely because a detecting officer himself is investigating officer or the officer of the same rank as that of the detecting officer is investigating the case and files report before the court will not vitiate the proceedings under the NDPS Act in the absence of proof of specific prejudice to the accused. Therefore, legal position stated in Naushad v. State of Kerala to the contrary is overruled."

29. *The view taken by the Kerala High Court in Kader [Kader v. State of Kerala, 2001 SCC OnLine Ker 107 : 2001 Cri LJ 4044] does to (sic not) meet our approval. It tantamounts to holding that the FIR was a gospel truth, making investigation an empty formality if not a farce. The right of the accused to a fair investigation and fair trial guaranteed under Article 21 of the Constitution will stand negated in that event, with arbitrary and uncanalised powers vested with the police in matters relating to the NDPS Act and similar laws carrying a reverse burden of proof. An investigation is a systemic collection of facts for the purpose of describing what occurred and explaining why it occurred. The word systemic suggests that it is more than a whimsical process. An investigator*

will collect the facts relating to the incident under investigation. The fact is a mere information and is not synonymous with the truth. Kader is, therefore, overruled. We approve the view taken in Naushad.

30. *In view of the conflicting opinions expressed by different two-Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the*

more imperative in laws carrying a reverse burden of proof."

25. In the present case, role of the Investigating Officer is very important in the light of the fact that place of occurrence has not been clearly identified and the statement of P.W. 1, who is the Investigating Officer, is clearly inconsistent on the point regarding presence of other persons apart from the appellant. The statement of I.O. during course of examination had put question mark regarding the fair investigation when his statement is silent not only on the point of place of occurrence but regarding the presence of other persons apart from the appellant also.

26. After hearing both sides, the discrepancies which have come to fore are :

(i) regarding the place of occurrence;

(ii) regarding presence of others at the place of occurrence apart from the appellant;

(iii) appellant was not tested at the place of occurrence and place of occurrence was not identified;

(iv) breath analyzer test was not conclusive in the absence of any urine or blood test; and

(v) there is vital contradictions in the statements of P.W. 1 and P.W. 2 on the point of presence of other persons

apart from the appellant at the place of occurrence.

27. All the discrepancies which have been discussed above makes the prosecution story doubtful on the basis of materials available on record.

28. In the result, in my view, prosecution case suffers from several infirmities, as noticed above. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence dated 04.01.2023 is hereby set aside and this appeal stands allowed. Since the appellant is already on bail, he is discharged from the liability of his bail bonds.

29. The interlocutory application, if any, also stands disposed of.

30. The records of this case be also returned to the concerned trial court forthwith.

31. This Court appreciates the assistance given by Mr. Ankesh Bibhu, learned counsel as amicus curiae.

(Alok Kumar Pandey, J)

vashudha/-

AFR/NAFR	AFR
CAV DATE	NA
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