Before S. S. Sandhawalia, C.J. and K. S. Tiwana, J.

BALRAJ SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 358 of 1979.

November 30, 1981.

Code of Criminal Procedure (II of 1974)—Section 451—Criminal trial—Part or whole of the case property not produced in Court—Such non-production—Whether by itself vitiates the trial.

Held, that in a criminal trial usually, if not invariably, the conviction rests on the direct testimony and the credibility and acceptability thereof. If the direct testimony is credible and unimpeachable and in the view of the court is sufficient to establish the charge and a consequent conviction, it cannot be said that the whole of it would lose all its value by the mere non-production of the case property which is merely corroborative. It must always be borne in mind that the trial of offences and their punishment is a matter of substance which turns on the weight and the credibility of direct evidence and not merely on the technicalities of procedure. When section 451 of the Code of Criminal Procedure, 1973 itself positively visualises and santifies the non-production of case property in the trial, it cannot reasonably be said that a mere inadvertence or omission in producing the same and not exhibiting it in court would *per se* be fatal to the prosecution case. There is no principle which

would show that the mere exhibition of the case property was so pivotal a thing that failure to do so would take the very bottom out of a criminal prosecution. Apart from the cases covered by section 451 of the Code, it is equally possible to visualise a number of contingencies where it may not only be inexpedient but virtually impossible to produce the whole of the case property at each and every hearing.

(Paras 7 and 10)

1. Teja Singh *v.* State of Punjab, Cr. Rev. 491 of 1979 decided on May 4, 1981.

2. Darshan Singh *v.* State of Punjab, 1974 Chandigarh Law Reporter 321.

3. Satnam Singh *v.* State of Punjab 1980 Cr. L. T. 114.

OVERRULED.

Petition Under Section 401 *Crl. P.C. for the revision of the order of Shri J. S. Chatha, Sessions Judge, Jullundur, dated 6th March,* 1979 *convicting and sentencing the petitioner.*

P. S. Sandhu, Advocate, *for the Petitioner.*

D. N. Rampal, *for the State.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the non-production of a part or the whole of the case property in a criminal trial, would by itself, vitiate the conviction of the accused thereafter is the somewhat meaningful issue which has necessitated this reference to the Division Bench.

2. On the 6th of May, 1977, Head Constable Rajinder Singh P.W. 1 and Excise Inspector Randhir Singh P.W. 2 received secret information against the petitioner whilst on patrol duty. The police party then joined a public witness Sadhu Singh and raided the house of the petitioner in his village Ganna Pind. On interrogation by Rajinder Singh, Head Constable, the petitioner made a disclosure statement, Exhibit P.A. that he had kept concealed one drum containing *lahan* in his court-yard under the earth. Thereafter he led the

police party to the place of recovery and got recovered drum Exhibit P. 1 containing as much as 150 kilograms of *lahan*. This was tested by Randhir Singh, Excise Inspector, who found it fit for distillation,—*vide* his report Exhibit P.E. The drum was duly sealed and taken into possession,—*vide* memo Exhibit P.B., and thereafter *ruqa* Exhibit P.C. was sent to the police station on the basis of which the first information report was recorded and further details of the investigation completed.

3. The trial Court accepted the testimony of P.W. Rajinder Singh, Head Constable and P.W. Randhir Singh, Excise Inspector and observed that the defence counsel had failed to point out even a single discrepancy in their statements. No challenge seems to have been raised against the other corroborative evidence, documentary or oral. The bald plea of false implication by the petitioner as also the testimony of his solitary defence witness Malkiat Ram was rejected. It calls for notice that no objection whatsoever with regard to the production or otherwise of the case property was raised before the trial Court either during the proceedings or in the final arguments before it. Holding the petitioner guilty under section 61(i)(a) of the Excise Act, the petitioner was convicted to six months' rigorous imprisonment and a fine of Rs. 1,000.

4. In the appeal before the Court of Session it was for the first time sought to be urged that the conviction was vitiated because of the non-production of the case property and in any case because it had not been duly exhibited in Court. The learned Sessions Judge, however, took the view that this by itself was not an infirmity sufficient to reject the otherwise credible prosecution evidence which had been unreservedly accepted by the trial Court and seemed to be beyond the pale of any meaningful challenge. The conviction and the sentence of the petitioner were consequently maintained.

5. This revision petition first came up before me sitting singly. Learned counsel for the petitioner highlighted his solitary argument that the mere non-production of the case property by itself vitiated the conviction and sought to buttress the same by *Darshan Singh* v. *The State of Punjab*, (1) and *Satnam Singh* v. *The State of Punjab*,

(1) 1974 Ch. L.R. 321.

(2). Reliance was also partly placed on certain observations of Tewatia J., in *Teja Singh* v. *The State of Punjab* (3). In view of the considerable importance of the issue involved, which is not uncommon in occurrence, I had referred the matter to a Division Bench for an authoritative decision.

6. Mr. P. S. Sandhu, the learned counsel for the petitioner has repeated and reiterated his earlier stand that no conviction can be allowed to stand in cases where there has been a failure (however, innocent or inadvertent) to exhibit the case property in the Court itself. In nut-shell the argument in this context was 'no production (of case property) no conviction'.

7. We regret our inability to subscribe to any such abstract theory. The larger perspective of a criminal trial cannot be possibly lost sight of. Usually, if not invariably, the conviction in a criminal trial rests on the direct testimony and the credibility and acceptability thereof. As in the present case it is primarily the unimpeachability of the evidence of P.W. 1 H.C. Rajinder Singh and P.W. 2 Excise Inspector Randhir Singh coupled with the documentary evidence of the disclosure statement, Exhibit P.A. and the test report Exhibit P.W. etc., which forms the core of the prosecution case. It is the actual possession of the contraband property by the accused at the material time which is the crucial issue to be established. The production of case property later in Court is only a corroborative piece of evidence. If the direct testimony is credible and unimpeachable and in the view of the Court is sufficient to establish the charge and a consequent conviction it cannot be said that the whole of it would lose all its value by the mere non-production of the case property which is merely corroborative. It must always be borne in mind that the trial of offences and their punishment is a matter of substance which turns on the weight and the credibility of direct evidence and not merely on the technicalities of procedure.

8. Apart from principle, the fact that the case property by itself is not the very *sine qua non* of a criminal trial seems to be manifest from the statutory provisions of section 451 of Code of Criminal

(2) 1980 Cr. L.T. 114.

(3) Cr. R. 491 of 1979 decided on 4th May, 1981.

Procedure itself. It is in the following terms:—

"S. 451. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation : For the purposes of this section, 'property' includes —

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

9. Before us the learned counsel for the petitioner had attempted to draw a distinction between the case property which is the subject-matter of the Offence as against a case property which has been offence as against a case property which has been merely used for the commission of a crime, e.g., the weapon of offence etc. It, therefore, calls for pointed notice that clause (b) of the explanation aforesaid brings within its sweep any property regarding which an offence appears to have been committed also apart from other kinds of case property. Even with regard to this kind of property section 451 aforesaid gives the widest discretion to the Court to sell or otherwise dispose of the same. It seems to be manifest that an order under section 451 may be passed long before the stage of the trial and the occasion for producing the same therein. Equally it calls for notice that the ambit of section 451 is not confined merely to property which is subject to speedy and natural decay but also wide-rangingly extends to each and every case property if the Court is of the opinion that it is otherwise expedient to make an order thereunder. Obviously in such a case where an order of sale or disposal has been made earlier under the statute there can be no question of

the production of such a property and exhibiting the same at the time of the trial. Can it possibly be said in such a situation that the subsequent criminal trial would be vitiated merely on the score that the case property regarding which an offence had been committed was not produced and exhibited? The answer plainly appears to be in a categoric negative.

10. When the aforesaid section 451 of the Code itself positively visualises and sanctities the non-production of case property in the trial can it then reasonably be said that a mere inadvertence or omission in producing the same and not exhibiting it in Court would *per se* be fatal to the prosecution case. I do not think so. No principle could be cited before us which would show that the mere exhibition of the case property was so pivotal a thing that the failure to do so would take the very bottom out of a criminal prosecution. Apart from the cases covered by section 451 of the Code it is equally possible to visualise a number of contingencies where it may not only be inexpedient but virtually impossible to produce the whole of the case property at each and every hearing. In a case of recovery of *Lahan* where a large haul of 40 to 50 drum is made, can it be said that the conviction must rest on the production of all these drums in the Court room at all the stages of the trial if a recalcitrant accused so demands. Sometimes the contraband property may be so voluminous in its mass that its repeated production in Court may be extremely difficult and in essence equally pointless. One can imagine whole truck loads of poppy husk, etc. recovered for an offence under the Opium Act or similar loads of foodgrains or cement regarding which an offence may have been committed under the Essential Commodities Act in specific cases. Would it be legally mandatory to produce and exhibit every grain of the contraband poppy husk or foodgrains and cement bags in such a case at every hearing in the Court. I do not think that their exhibition in Court at all stages can be made the corner-stone of the prosecution case to the extent that a mere non-production thereof would *ipso facto* be fatal to the trial itself.

11. The argument *ab in convent* in this context cannot also be lost sight of. One cannot lose sight of the fact that there may invariably be a considerable time-lag between the commission of the offence and the subsequent trial thereafter. As has been noticed in

some earlier judgments as well, *Lahan* (which is the subject-matter of recovery in this case also) may evaporate or leak away or be destroyed by a mishap during its custody. Can it be possible to state that the offence would, in such a case, evaporate alongwith the case property? It was probably a consciousness of this situation that made Tewatia J., to observe as follows in *Teja Singh's case* (supra) which was a case of working still :—

> "In a case where the person is caught red handed working a still and besides taking into possession the apparatus of the working still and the distilled liquor, *Lahan* is also taken into possession and a report is there or the record as also the working still, then it is not necessary that the pitcher or the receptacle containing *Lahan* alongwith the contents should be produced in Court. At times it can be well-nigh impossible to preserve the pitcher or the quantity of Lahan for much length of time and some time it may be too bulky to bring it easily in Court every time when case is fixed up for evidence. In such like cases the expert opinion evidence of Excise Inspector rendered after testing and smelling that it was *Lahan*, should suffice."

12. I am entirely inclined to agree with the aforesaid line of reasoning, which, however, appears to me as one of universal application. With the greatest respect I am unable to agree that the position would be different in other cases where the recovery was of *Lahan* alone. No elaborate reasoning for drawing this distinction, which appears to be one without a difference, appears in the judgment. It is apparent that the matter was not adequately and fully canvassed and some of the earlier Single Bench judgments on the point (which are hereafter referred to) were only noticed and followed. I am constrained to hold that the passing observation in *Teja Singh's case* (supra) taking the view that the non-production of the case property, where the main-stay of the prosecution case is the recovery of property, regarding which the offence itself has been committed, would by itself he fatal to the prosecution, does not lay down the law correctly and has, therefore, to be over ruled.

13. Reference must inevitably be made to the judgment of the learned Single Judge in *Darshan Singh's case* (supra). In the very brief observation made therein it was held that the non-production of the contraband goods coupled with the fact that the two eye-witnesses were police officers (and no independent witnesses) would show that the prosecution had failed to establish the guilt of the accused beyond any doubt. A perusal of the very short judgment would indicate that learned counsel for the parties were rather remiss in not adequately canvassing the matter which seems to have been decided on first impression. However, it seems to have been found that the two fold defects in the prosecution case rendered it unsustainable and not that the non-production of case property *per se* could vitiate the same. However, for clarity's sake it must be held that if *Darshan Singh's case* (supra) is construed as an authority for the proposition that the mere non-production of the case property is by itself fatal to the prosecution, then it does not lay down the law correctly and with the greatest respect the said view is over ruled, for the detailed reasons recorded in the earlier part of this judgment.

14. In fairness to Mr. Sandhu reference must also be made to *Satnam Singh's case* (supra), which was pressed by him as a warrant for the proposition that the evaporation of Lahan, which was the case property wherein or the absence of seals on the drum thereof at the time of trial would vitiate the conviction. I am unable to construe the ratio of *Satnam Singh's case* as is being sought to be projected by the learned counsel for the petitioner. The ultimate finding in the very brief order therein was that the possibility of the petitioner's false implication cannot be ruled out. However, if any passing observation in this judgment should also be opened to the construction that the mere evaporation of Lahan, though two summers had passed betwixt the commission of the offence and the subsequent trial, would vitiate the conviction, then with due deference it lays down the law incorrectly, and has to be over ruled to that extent.

15. I must, however, sound a strong note of caution that the view I am inclined to take must not be misunderstood to mean as if the production of the case property is to be dispensed with at the trial. Normally it is the duty of the prosecution to do so. Equally

if some thing vital turns on it the accused can insist upon its production and the refusal to do so would be a factor for adverse notice against the prosecution by the Court. But in the ultimate analysis the issue is one of the prejudice caused to the accused and any failure of justice resulting therefrom. In this context the question whether such an objection could be, but has not been raised at the earliest stage of trial is of considerable relevance. In a case of innocent or inadvertent non-production of the case property material prejudice is to be shown by the accused in order to claim the vitiation of the conviction. No abstract or absolute rule that "no case property, no conviction," can possibly be raised to the pedestal of a rule of law, because this by itself is likely to occasion a failure of justice. As has been said earlier the substantial issues in a criminal trial like the proof and punishment of crime should not be converted into a plaything of technicalities. If the prosecution has innocently or inadvertantly failed to exhibit the case property, yet the accused even though fully represented by counsel makes no objection or grievance thereof at the time of the trial, it would hardly lie in his mouth at the revisional stage to say that all the proceedings stand vitiated even though connived at or wholly condoned by his own conduct.

16. To conclude, the answer to the question posed at the very outset is rendered in the negative and it is held that the mere non-production of part or the whole of the case property would not by itself vitiate the subsequent conviction of the accused.

17. Applying the aforesaid rule, the solitary, though basic, contention raised on behalf of the petitioner must be rejected. The revision petition is, therefore, without merit and is hereby dismissed. Conviction and sentence of the pettitioner are upheld.

K. S. Tiwana.—I agree.

S. C. K.