Before Sudhir Mittal, J.

JULFKAR—*Petitioner*

versus

STATE OF HARYANA—*Respondent*

CRR No. 1125 of 2020

September 09, 2020

The Narcotic Drugs and Psychotropic Substances Act, 1985—Code of Criminal Procedure, 1973—S. 167 (2), 173 (2)—Petitioner sought default bail under Section 167(2) Cr.P.C.—Challan presented by investigating agency without report of chemical examine—A Division Bench held in 2018 that challan presented without report of chemical examiner was incomplete and accused was entitled to default bail—Judgment passed by Division Bench was declared Per Incuriam by two Single Benches—Reference made to a larger bench—Meanwhile, petitioner directed to be released on bail.

Held, that whether in a case under the NDPS Act 1985, a challan presented under Section 173 (2) of the Code of criminal Procedure, is an in- complete challan if presented without the report of the chemical Examiner/Forensic Science Laboratory is the question to be decided in the present case.

(Para 1)

Further held, that this issue had vexed this Court as well as the Courts subordinate to it till the year 2018 when a Division Bench of this Court in ***Ajit Singh alias Jeeta*** *versus* ***State of Punjab, Crl. Rev. No.4659 of 2015,*** held that a challan presented without the report of the Chemical Examiner/Forensic Science Laboratory was an incomplete challan and in such a case an accused was entitled to grant of default bail under Section 167 (2) of the Code of Criminal Procedure.

(Para 2)

Further held, that however, in judgement dated 16th October 2019 passed in Criminal Revision No. 1731 of 2019 ***Akash Kumar @ Sunny*** *versus* ***State of Haryana*** by a learned Single Bench of this Court, the Division Bench judgement in ***Ajit Singh @ Jeeta*** (supra) was declared per incuriam. This judgement has been followed by another Single Bench decision dated 20th December 2019 passed in CRM No. M-44412 of 2019 ***Shankar*** *versus* ***State of Haryana.***

(Para 3)

Further held, that the doctrine of *stare decisis* has been the bedrock of our judicial system and has resulted in uniformity and certainty in decision- making.

(Para 5)

Further held, that thus, a judgement may be held to be per incuriam in case it failed to notice an earlier binding precedent which covered the field. Even in such a situation a smaller Bench cannot say that the judgement of a larger Bench is per incuriam. The only course available to it is to make a reference to the larger Bench.

(Para 10)

Further held, that I am now faced with a situation where I am confronted with two Single Bench judgments in ***Akash Kumar alias Sunny*** *(supra)* and ***Shankar*** *(supra)* and a binding Division Bench judgement in ***Ajit Singh alias Jeeta*** *(supra)*. By virtue of the doctrine of stare decisis, the Single Bench judgements in ***Akash Kumar alias Sunny*** *(supra)* and ***Shankar (supra)*** are binding on me as they lay down a proposition of law although at variance with the law laid down by the Division Bench in ***Ajit Singh alias Jeeta*** *(supra)*. However, I express my respectful disagreement with the aforementioned Single Bench judgments on the ground that a smaller Bench could not have declared the judgment of a larger Bench to be per incuriam in view of the doctrine of *stare decisis* and also that the principle of per incuriam has been applied erroneously. Judicial discipline demands that a reference be made to a Division Bench regarding the validity and correctness of the aforementioned Single Bench judgements. The file of this case be, thus, placed before Hon'ble the Chief Justice with a request to constitute a Division Bench for consideration of this matter. Since the law has been unsettled and is leading to confusion amongst the trial Courts, the matter may be considered urgently.

(Para 11)

Meanwhile, it is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court.

(Para 12)

Abhilaksh Grover, Advocate, *for the petitioner.*

Munish Sharma, A.A.G., Haryana.

SUDHIR MITTAL, J.

(1) Whether in a case under the NDPS Act 1985, a challan presented under Section 173 (2) of the Code of criminal Procedure, is

an in- complete challan if presented without the report of the chemical Examiner/Forensic Science Laboratory is the question to be decided in the present case.

(2) This issue had vexed this Court as well as the Courts subordinate to it till the year 2018 when a Division Bench of this Court in ***Ajit Singh alias Jeeta*** *versus* ***State of Punjab, Crl. Rev. No.4659 of 2015,*** held that a challan presented without the report of the Chemical Examiner/Forensic Science Laboratory was an incomplete challan and in such a case an accused was entitled to grant of default bail under Section 167 (2) of the Code of Criminal Procedure. This judgement decided a batch of 7 cases and is dated 30th November 2018. It was passed on a reference made as under:-

> "1. Whether the presentation of report under Section 173(2) Cr.P.C. by the police without the report of chemical examiner/FSL amounts to incomplete challan and in the absence of any extension of time under Section 36A (4) of the NDPS Act, the accused is entitled to bail under Section 167(2) Cr.P.C.?
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> 2. If the reply is in the affirmative, then what is the position regarding commonly used substances like opium and poppy husk etc., which can be easily identified by the police officer from visual inspection, smell or taste?"

(3) While deciding the said case, the Division Bench noticed that there were conflicting views of Single Benches of this Court starting from the year 2009 till the year 2016, when on 28th January 2016, the aforementioned reference was made. The matter would seem to have been settled as is apparent from a number of later Single Bench judgements of this Court, some of which are ***Bhupinder Kumar @ Binder*** *versus* ***State of Haryana***[1], ***Tarlok and others*** *versus* ***State of Haryana***[2] and judgement dated 22nd May 2020 passed in Criminal Revision No. 1626 of 2019 ***Janta Singh*** *versus* ***State of Haryana.*** These Single Bench judgements indicate that theDivision Bench judgement in ***Ajit Singh @ Jeeta*** (supra) was being followed uniformly. However, in judgement dated 16th October 2019 passed in Criminal Revision No. 1731 of 2019 ***Akash Kumar @ Sunny*** *versus* ***State of Haryana*** by a learned Single Bench of this Court, the Division Bench judgement in ***Ajit Singh @ Jeeta*** (supra) was declared per incuriam.

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[1] 2019 (2) RCR (Crl.) 376
[2] 2019 (3) RCR (Crl.) 348

This judgement has been followed by another Single Bench decision dated 20th December 2019 passed in CRM No. M-44412 of 2019 ***Shankar*** *versus* ***State of Haryana.***

(4) Evidently, the law which had been settled has been unsettled once again on account of the judgements in ***Akash Kumar alias Sunny*** *(supra)* and ***Shankar*** *(supra)*. This would be one of the rare instances where the High Court instead of settling the law has thrown it back into a state of flux as it existed prior to the judgment in ***Ajit Singh alias Jeeta*** *(supra)***.** Depending upon their own perceptions, the trial Courts are following the judgment of their choice as is evident from the facts of this case. In this case recovery of 25 Kgs. 50 Gms. of poppy husk was made on 28th June, 2020 leading to registration of the FIR and arrest of the petitioner. The police presented a challan on 25th August 2020 but unaccompanied by a report of the Forensic Science Laboratory. A period of 60 days expired on 28th August 2020 and the petitioner moved a petition under Section 167 (2) of the Code of Criminal Procedure on 31st August 2020, claiming grant of default bail on the ground that the challan presented on 25th August 2020 was an incomplete challan. The petition was dismissed vide order dated 01st September 2020 by placing reliance upon ***Akash alias Sunny*** *(supra)* and ***Shankar*** *(supra)* and after noticing that the Single Benches had held the Division Bench judgement in ***Ajit Singh alias Jeeta*** *(supra)* to be per incuriam.

(5) The doctrine of *stare decisis* has been the bedrock of our judicial system and has resulted in uniformity and certainty in decision-making. In ***Dr. Shah Faesal*** *versus* ***Union of India***[3], the Supreme Court of India has held as follows:-

> "18. Doctrine of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.
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> 23. This brings us to the question, as to whether a ruling of a co-ordinate Bench binds subsequent co-ordinate Benches. It is now a settled principle of law that the decisions rendered

[3] 2020 (4) SCC 1

by a coordinate Bench is binding on the subsequent Benches of equal or lesser strength. The aforesaid view is reinforced in the ***National Insurance Company Limited versus Pranay Sethi***, (2017) 16 SCC 680 wherein this Court held that:

59.1. The two-Judge Bench in Santosh Devi [***Santosh Devi vs. National Insurance Company Limited (2012) 6 SCC 421 7]*** should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sara Verma [***Sara Verma v. DTC, (2009) 6 SCC 121],*** a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench."

(6) ***In Mahadeolal Komadia*** *versus* ***The Administrator General of West Bengal***[4], the Supreme Court has held as under:-

"We have noticed with some regret that when the earlier decision of two Judges of the same High Court in Deorajan's case MANU/WB/0044/1954: AIR 1954 Cal 19, was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing it is the quality of certainty. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find

[4] 1960 (3) SCR 578

> themselves i n an embarrassing position of having to choose between dissentient judgements of their own High Court."

(7) In ***Ayyaswami Gounder*** *versus* ***Munuswamy Gounder***[5], the Supreme Court reiterated the aforementioned proposition and held that a Single Judge of a High Court not agreeing with earlier decision of Single Judge of the same Court, should refer the matter to a Larger Bench and propriety and decorum do not warrant his taking a contrary view.

(8) A Full Bench of our Court in ***Pritam Kaur*** *versus* ***Surjit Singh***[6] held as follows

> "10. It is equally necessary to highlight that the binding nature of precedents generally and of Full Benches in particular is the kingpin of our judicial system. It is the bond that binds together what otherwise might well become a thicket of individualistic opinions resulting in a virtual judicial anarchy. This is a self-imposed discipline which rightly is the envy of other Schools of Law. Because of the legal position here being axiomatic and well settled it is unnecessary to elaborate the issue on principle."
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> 12. From the above, it would follow as a settled principle that the law specifically laid down by the Full Bench is binding upon the High Court within which it is rendered and any and every veiled doubt with regard thereto does not justify the reconsideration thereof by a larger Bench and thus put the law in a ferment afresh. The ratios of the Full Benches are and should be arrested on surer foundations and are not to be blown away by every side wind. It is only within the narrowest field that a judgement of a larger Bench can be questioned for reconsideration. One of the obvious reasons is, where it is unequivocally manifest, that its ratio has been impliedly overruled or whittled down by a subsequent judgement of the Superior Court or a larger Bench of the same Court. Secondly, where it can be held with certainty that a co- equal Bench has laid the law directly contrary to the same. And, thirdly, where it can be

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[5] 1985 (1) SCR 808

[6] 1984 PLR 202

> conclusively said that the judgement of the larger Bench was rendered per incuriam by altogether failing to take notice of a clear- cut statutory provision or an earlier binding precedent. It is normally within these constricted parameters that a smaller Bench may suggest a reconsideration of the earlier view and not otherwise. However, it is best in these matters to be neither dogmatic nor exhaustive yet the aforesaid categories are admittedly the well-accepted ones in which an otherwise binding precedent may be suggested for reconsideration."

(9) The rule of per incuriam may also be referred to at this stage. In Dr. Shah Faesal *(supra)*, the Supreme Court has opined thereon as under:-

> "28.The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgement passed in ignorance of a relevant statute or any other binding authority [see ***Young v. Bristol Aeroplane Co. Ltd., 1944 KB718 (CA)***]. The aforesaid rule is well elucidated in Halsbury's Laws of England in the following manner:
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> 1687… the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."

(10) Thus, a judgement may be held to be per incuriam in case it failed to notice an earlier binding precedent which covered the field. Even in such a situation a smaller Bench cannot say that the judgement of a larger Bench is per incuriam. The only course available to it is to make a reference to the larger Bench. I am now faced with a situation where I am confronted with two Single Bench judgments in ***Akash Kumar alias Sunny*** *(supra)* and ***Shankar*** *(supra)* and a binding Division Bench judgement in ***Ajit Singh alias Jeeta*** *(supra)*. By virtue of the doctrine of stare decisis, the Single Bench judgements in ***Akash Kumar alias Sunny*** *(supra)* and ***Shankar (supra)*** are binding on me as they lay down a proposition of law although at variance with the law laid down by the Division Bench in ***Ajit Singh alias Jeeta*** *(supra)*.

However, I express my respectful disagreement with the aforementioned Single Bench judgments on the ground that a smaller Bench could not have declared the judgment of a larger Bench to be per incuriam in view of the doctrine of *stare decisis* and also that the principle of per incuriam has been applied erroneously. Judicial discipline demands that a reference be made to a Division Bench regarding the validity and correctness of the aforementioned Single Bench judgements. The file of this case be, thus, placed before Hon'ble the Chief Justice with a request to constitute a Division Bench for consideration of this matter. Since the law has been unsettled and is leading to confusion amongst the trial Courts, the matter may be considered urgently.

(11) Meanwhile, it is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court.

(12) A copy of this order be sent to all the District and Sessions Judges in the States of Punjab, Haryana and U.T. Chandigarh, for their information.

J.S. Mehndiratta