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**AN ESCAPE POD TO ACQUITTAL: Assessing the Impact of *Mohan Lal v. State of Punjab***

*Bharat Barowalia*

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# AN ESCAPE POD TO ACQUITTAL: Assessing the Impact of *Mohan Lal v. State of Punjab*\*

*Bharat Barowalia*\*\*

[**Abstract:** Research paper analyses position prior to 'Mohan Lal judgement', and Decisions Post 'Mohan Lal Judgement' regarding the acquittal of under trials merely on the basis that complainant cannot be the investigating officer in his own case. Paper traces the decisions of the various High Courts and the Supreme Court of India. Through this paper, the author draws the attention towards the lacuna in the law and legislations that the Court had to rectify. It tries to lay a timeline of the events and problems that led to the decision in Mohan Lal Case, and the consequences of this judgment.]

## I

### Introduction

The principles of natural justice are intended to provide a sense of proper duty by lighting the un-treaded paths of law; the torch, whose flames create a fear for personnel exercising power of the law and performance of duties. Derived from the expression 'Jus Naturale',<sup>1</sup> of Roman Law, these principles chiefly consist of Latin maxims:<sup>2</sup> 'Nemo debet esse judex in propria causa' and 'Audi alterum partem'.

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\* *Mohan Lal v. State of Punjab*, (2018) S.C.C. Online S.C. 974

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<sup>1</sup> See Sir Henry James Sumner Maine, ANCIENT LAW: ITS CONNECTION TO THE HISTORY OF EARLY SOCIETY, 27 (1917), Available at: <https://www.gutenberg.org/files/22910/22910-h/22910-h.htm> (Last Visited on May 05, 2020).

The Romans described their legal system as consisting of two ingredients. "All nations," says the Institutional Treatise published under the authority of the Emperor Justinian, "who are ruled by laws and customs, are governed partly by their own particular laws, and partly by those laws which are common to all mankind. The law which a people enacts is called the Civil Law of that people, but that which natural reason appoints for all mankind is called the Law of Nations, because all nations use it." The part of the law "which natural reason appoints for all mankind" was the element which the Edict of the Prætor was supposed to have worked into

There are two principles of natural justice, one, a person cannot adjudge upon any dispute if there exists a suspicion that he/ she would be biased to one or the other for any underlying interest.<sup>3</sup> Lord Denning also stated 'Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.'"<sup>4</sup> The second tenet is a right to fair hearing which states that the parties who have brought their dispute to be adjudged cannot be penalized to their legitimate rights and expectations unless they are given any notice of a case against them, along with a fair opportunity to answer the case/ notice by affording them opportunity to present their own case.<sup>5</sup>

The centrepiece of this paper is the judgement which revolves around the first principle of rule against bias. This rule states that nobody shall be a judge in his own cause or in a cause in which he is interested. Here under the *Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1978*, as situation arose and came into picture through *Mohan Lal v. State of Punjab*<sup>6</sup> in the year 2018. The question that arose was as can the police officer, himself being complainant in a case, becoming so after filing a First Information Report under Section 154 of *Criminal Procedure Code, 1973*<sup>7</sup>. Research paper analyses position prior to '*Mohan Lal judgement*', and Decisions Post '*Mohan Lal Judgement*' regarding the acquittal of under trials merely on the basis that complainant cannot be the investigating officer in his own case. Paper traces the decisions of the various High Courts and the Supreme Court of India. Through this paper, the author draws the attention towards the lacuna in the law and legislations that the Court had to rectify. It tries to lay a timeline of the events and problems that led to the decision in *Mohan Lal Case*, and the consequences of this judgment.

## II

### **The Judgment: *Mohan Lal v. State of Punjab***

A three judges bench comprising of Justice Ranjan Gogoi, Justice R. Banumathi and Justice Navin Sinha, presiding over the Court. The judgment was delivered by Justice Naveen Sinha. It was an appeal against the conviction of the appellant for a sentence of

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Roman jurisprudence. Elsewhere it is styled more simply Jus Naturale, or the Law of Nature; and its ordinances are said to be dictated by Natural Equity (naturalis æquitas) as well as by natural reason.

<sup>2</sup> De Smith, PRINCIPLES OF JUDICIAL REVIEW, 6th ed., Sweet & Maxwell, 321, (2007).

<sup>3</sup> *Surinder Singh Kanda v. The Government Federation of Malaya*, 1962 28 MLJ 169 (Malaysia).

<sup>4</sup> *Metropolitan Properties v. Lannon*, (1969) 1 QB 577, Court of Appeal (England and Wales).

<sup>5</sup> Kevin Y.L. Tan, THE SINGAPORE LEGAL SYSTEM, 192, (1999).

<sup>6</sup> *Mohan*, *Supra* note 1. hereinafter *Mohan Lal*.

<sup>7</sup> *Criminal Procedure Code, 1973*.

10 years of rigorous imprisonment and a fine of ₹1,00,000/- under Section 18 of the *Narcotic Drugs and Psychotropic Substances (NDPS) Act (1978)*<sup>8</sup>.

In this case 4 kg of opium was discovered in the bag of the appellant by the police party comprising of the Chand Singh, Sub Inspector (PW 1) from the accused. The ruqa, consent memo, sample seal was prepared along with other documents and PW 3 handed over the investigation to PW 1.

Later, arguments were raised that the informant, i.e. PW 1, also being the investigation officer in the present case has, therefore, conducted a botched-up investigation. The issue before the Court was that as Section 35 of *Narcotic Drugs and Psychotropic Substances Act, 1985*, carried a reverse burden of proof, can the informant himself be an investigating officer? The Hon'ble Court precisely answered this question in para 18 of this judgment that such event, surely causing violation of principle of natural justice, shall lead to a blotted investigation:

*'... In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.'*<sup>9</sup>

Therefore, the Court based its premise of allowing the appeal on the falsity and biasness of the investigation report, which being the base of the prosecution, and thereby a false investigation report is shattered along with the prosecution's case. The Supreme Court used the decisions of various precedents of the same Court, and High Courts to come to the conclusion that the appellant be set at liberty forthwith.

There had been various instances where the Courts had faced this dilemma prior to this case. We shall see through the important judgments of the Courts, the methods by which the Courts dealt with this same question prior to *Mohan Lal* judgement.

### III

#### **Position Prior to *Mohan Lal v. State of Punjab***

There had been a question as to whether the informant can himself be the investigating officer, and what are the tests to determine if such investigation is proper before *Mohan Lal* as well. The Supreme Court, on this lacuna, took various observations in its various decisions, and in its preceding judgments on this point.

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<sup>8</sup> *Narcotic Drugs and Psychotropic Substances Act, 1985*. Hereinafter NDPS.

<sup>9</sup> *Mohan*, *Supra* note 1, para 18.

From a list of major judgments, the first is *Noor Aga v. State of Punjab*.<sup>10</sup> On the point whether an informant may cause prejudice to the prosecution if he/she investigated the matter, it was observed that such a flaw has no significant impact on the outcome of the investigation and thereby the judgment, as quoted:

*'91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.'*<sup>11</sup>

Another prominent judgment was *Babubhai v. State of Gujrat*<sup>12</sup> in which the Supreme Court held that if any investigating officer must investigate the offence without any objectionable features. It observed that:

*'32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer 'is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth'*<sup>13</sup>

The case of *State of Bihar v. P.P. Sharma*<sup>14</sup> saw the observation of the Hon'ble Supreme Court that before stating that the investigating officer has any enmity against the accused persons, it must be proved before the Court that such investigating officer will not meet this requirement for investigative professionalism. Also, in a case under the TADA<sup>15</sup> of *Megha Singh v. State of Haryana*<sup>16</sup>, the police officer investigating the case was himself the complainant. It was observed by the Court that such police officer couldn't have carried out the investigation as it would raise a doubt in the mind of the suspect and afford the accused an occasion through which he/ she can challenge the investigation on being biased and unfair.

In *State rep. by Inspector of Police, Vigilance and Anti-Corruption, Tiruchirapalli, Tamil Nadu v. V. Jayapaul*<sup>17</sup>, the investigating officer, the Head Constable, was the complainant himself on the offences alleged to be committed by the accused under Section 25 of the

<sup>10</sup> *Noor Aga v. State of Punjab*, (2008) 16 S.C.C. 417.

<sup>11</sup> *Id.* para 91.

<sup>12</sup> *Babubhai v. State of Gujrat*, (2010) 12 S.C.C. 254.

<sup>13</sup> *Id.* para 32.

<sup>14</sup> *State of Bihar v. P.P. Sharma*, A.I.R. 1991 1260.

<sup>15</sup> Terrorist and Disruptive Activities (Prevention) Act, 1987.

<sup>16</sup> *Megha Singh v. State of Haryana*, (1996) 11 S.C.C. 709.

<sup>17</sup> *State rep. by Inspector of Police, Vigilance and Anti-Corruption, Tiruchirapalli, Tamil Nadu v. V. Jayapaul*, (2004) 5 S.C.C. 223.

*Arms Act, 1959*<sup>18</sup> and Section 6(1) of the *Terrorist and Disruptive Activities (Prevention) Act, 1987*. The Court while confirming the conviction of the accused stated that:

*'...We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased.'*<sup>19</sup>

In *Gannu v. State of Punjab*<sup>20</sup>, the Punjab & Haryana High Court was confronted with the same question as to whether the complainant police officer can be the investigating officer in a case. Acquitting the accused, the Court gave its decision on the lines of *State of Himachal Pradesh v. Atul Sharma*<sup>21</sup>, observing:

*'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 West Bengal, 2017 (2) R.C.R. (Criminal) 237 (Calcutta) (DB), 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 Hon'ble Himachal Pradesh High Court reported as State of Himachal Pradesh v. Atul Sharma, 2015 (6) R.C.R. (Criminal) 949, wherein, it has been held that where the complainant himself conducts investigation, it causes miscarriage of justice to accused qua fair investigation.'*<sup>22</sup>

In *Kader v. State of Kerala*<sup>23</sup>, the Kerala High Court, disapproving the view taken in the *Naushad v. State of Kerala*,<sup>24</sup> held that doing the duty and routine work of police officer along with being the first to complain a crime under the NDPS Act should not be a setback enough to vitiate the prosecution proceedings against the accused. It observed:

*'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 ranks as that of the detecting officer is investigating the case and files report before the Court will not vitiate the proceedings under N.D.P.S. act in the absence of proof of specific prejudice to the accused.'*

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<sup>18</sup> *Arms Act 1959*.

<sup>19</sup> *State rep.*, *Supra* note 18, para 6.

<sup>20</sup> *Gannu v. State of Punjab*, 2017 (3) RCR (Criminal) 566.

<sup>21</sup> *State of Himachal Pradesh v. Atul Sharma*, Cr. Appeal No. 246 of 2008 (Himachal Pradesh High Court).

<sup>22</sup> *Id.* para 14.

<sup>23</sup> *Kader v. State of Kerala*, 2001 CriLJ 4044.

<sup>24</sup> *Naushad v. State of Kerala*, 2000 (1) KLT 785.



Therefore, legal position stated in *Naushad v. State of Kerala*, 2000 (1) KLT 785 to the contrary is overruled.<sup>25</sup>

All these cases point a distinct picture of the variance in the precedents delivered by the various High Courts and the Supreme Court of India on the question as to whether the complainant himself could be an investigating officer. Therefore, understanding the need to adjudicate on this point and to avoid any further variance, the Supreme Court adjudicated on this anomaly through *Mohan Lal*.

## IV

### ***Mohan Lal*, Followed in Subsequent Decisions**

Post the *Mohan Lal*, various decisions and orders of the both the Supreme Court of India, and various High Courts came along its lines, following the principle laid under it. The major ones from the Supreme Court had a theme of providing instant acquittals on technical grounds and are discussed here chronologically. The discussions have been categorized into decisions for the cases registered under the NDPS Act, those registered under the Indian Panel Code, 1930, and other various State and Central Acts. This is seen through these judgments that the accused, with the support of *Mohan Lal* have availed acquittals.

#### ***Cases under the NDPS Act***

Various High Courts throughout the Country gave their decisions on the basis of *Mohan Lal* Judgement in many cases related to NDPS Act. The important cases included are *Rajvir Singh v. State of Punjab*<sup>26</sup>, *Mohan v. State of Haryana*<sup>27</sup>, *Annabelle Analista Malibago v. DRI*<sup>28</sup>, *Gurtej Singh Batth v. State*<sup>29</sup>, *State of Himachal Pradesh v. Abdul Latif & Anr.*<sup>30</sup>, *Prakash Kumbhar v. State of Odisha*<sup>31</sup>, and *Leysliener Zandile Luthuli v. Directorate of Revenue Intelligence*.<sup>32</sup>

In the case of *Leysliener Zandile Luthuli v. Directorate of Revenue Intelligence*<sup>33</sup>, the judgment was passed by the Delhi High Court on 27.11.2018 by a single judge bench. In this case the accused was charged under Section 21(c) of the NDPS Act. Along with the public witnesses to the police investigation not examined during the trial, the main contention of the petitioner that the Investigation officer and the complainant are the same person.

<sup>25</sup> Kader, *Supra* note 24, para 6.

<sup>26</sup> *Rajvir Singh v. State of Punjab*, MANU/PH/1700/2018.

<sup>27</sup> *Mohan v. State of Haryana*, MANU/PH/1429/2018.

<sup>28</sup> *Annabelle Analista Malibago v. DRI*, (2018) S.C.C. OnLine Del 12114.

<sup>29</sup> *Gurtej Singh Batth v. State*, (2018) S.C.C. OnLine Del 12562.

<sup>30</sup> *State of Himachal Pradesh v. Abdul Latif & Anr.*, MANU/HP/1829/2018.

<sup>31</sup> *Prakash Kumbhar v. State of Odisha*, (2019) S.C.C. OnLine Ori 18.

<sup>32</sup> *Leysliener Zandile Luthuli v. Directorate of Revenue Intelligence*, (2018) S.C.C. OnLine Del 12561

<sup>33</sup> *Id.*

The opposite counsel contended that the proceedings are vitiated where the Investigating Officer was the informant and not the complainant but, in this case, the Investigating Officer is the complainant. But the Court in para 20 qualified that the *Mohan Lal* judgment not only applies in the cases where the investigation officer is the informant but also in the cases where he/she is the complainant. Para 22 qualifies it even further by stating:

*'A holistic reading of Mohan Lal (supra), in my view, leaves no manner of doubt that the Supreme Court has disapproved, in cases relating to prosecution under the NDPS Act, not only the informant being the IO, but also the complainant and the officer who apprehends the accused, or the officer who conducts the search, being the IO...'*<sup>34</sup>

The accused was thereby acquitted and the proceedings against her were quashed.

### **Cases under the IPC**

In *Raju v. State of Kerala*<sup>35</sup>, decided by the Kerala High Court by the single judge bench on 25.09.2018, the petitioner was charged under Sections 225 & 353 of *Indian Penal Code, 1860*<sup>36</sup>. The revision petitioner's counsel argued through the *Mohan Lal* judgment that if a detection of an offence has been made by a police officer, such detection becomes the disability of the police officer to investigate the offence as quoted in para 9 of the judgment:

*'...The principle laid down by the Honourable Supreme Court will have to be applied in all cases. Investigation under the Indian Penal Code is quite different from the process under the NDPS Act or the Kerala Abkari Act. A witness who witnessed the entire incident cannot be expected to make investigation, and he cannot also submit final report in Court. He will definitely be an interested witness whose investigation would definitely vitiate the whole prosecution. This is the principle laid down by the Honourable Supreme Court in the decision cited supra. Even otherwise, I find that the accused is entitled to acquittal because the whole prosecution case is really doubtful in view of the Ext. D1 FIR which does not contain any allegation or statement as regards the incident alleged in the case.'*<sup>37</sup>

This revision petition was thereby allowed and their conviction by the Learned Trial Court and the appeal Court, thereby was set aside.

As for application under Section 294(b) of Indian Penal Code, the case of *Sheikh Mahathir v. Sub Inspector of Police*<sup>38</sup> becomes relevant. This case was decided by single judge bench of the High Court of Madras on 13.11.2018. This case was registered *suo moto* by the police, when they saw the petitioner uttering obscene words in public. It was argued that as the case as the filing of final report is by the complainant himself therefore the charge sheet is to be quashed on the lines of the *Mohan Lal* judgement.

<sup>34</sup> Mohan, *Supra* note 1, para 22.

<sup>35</sup> *Raju v. State of Kerala*, (2018) S.C.C. OnLine Ker 10460.

<sup>36</sup> Indian Penal Code, 1860.

<sup>37</sup> *Raju*, *Supra* note 36, para 9.

<sup>38</sup> *Sheikh Mahathir v. Sub Inspector of Police*, (2018) S.C.C. OnLine Mad 7890.

The Court, although acquitting the petitioner, avoided citing the *Mohan Lal* Judgement, based its ratio on the facts of the case. The petitioner was acquitted by the Court on the declaration that the proceedings against the accused are to an abuse of the process of law.

In *Barega Bage v. State of Jharkhand*<sup>39</sup>, the Division Judge bench of the Jharkhand High Court, on 28.11.2018 decided this judgment. In this case, the accused were charged under Section 302 r/w 34 of the IPC. The counsel for the appellants argued that the investigating officer and the complainant are the same person (para 27) and this has caused prejudice to the appellants. The Court set aside the conviction order of the appellants by the stating that the case has not been proved beyond reasonable doubts.

In *S. Martin v. State*<sup>40</sup>, the accused, in the present case, was charged by the trial Court for under Sections 120B of the IPC & Sections 5 read with Section 7 of the Lottery Regulation Act, 1988<sup>41</sup>. The counsel for the petitioner argues on the lines of *Mohan Lal* judgment, stating that the informant and the investigation officer being the same person, the entire investigation is, therefore, vitiated. Stating that the facts of the case are squarely covered by the *Mohan Lal* judgement, the petitioner stands acquitted and all other miscellaneous petitions also stand closed. This case was decided on 03.12.2018 by the single judge bench of Madras High Court.

For the case registered under the IPC, titled *Sivanathanam v. S. Bharathi*<sup>42</sup>, the single judge bench judgment of the Madras High Court, decided on 04.12.2018. The appellant was charged in the trial Court under Sections 143, 188 & 353 of the Indian Penal Code. There were two issues raised by the appellants, out of which one was the informant and the investigator being same for the case and thus causing the final report to be vitiated on the touchstone of *Mohan Lal* Judgment. This petition was allowed on the very first issue of the investigator and the informant being the same person and thus the case being covered under the *Mohan Lal* Judgment, the proceedings before the metropolitan magistrate were quashed.

In another case, namely *Jamal Mohamed v. State*<sup>43</sup>, the accused, through counsel prayed for quashing the final report through application under Section 482 of the *Criminal Procedure Code, 1973*. This is a Single Judge bench decision of the Madras High Court, decided on 10.12.2018. The accused was charged under Sections 143 of the Indian Penal Code r/w Section 7(1)(a) of the *Criminal Law Amendment Act, 1932*<sup>44</sup> & Section

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<sup>39</sup> *Barega Bage v. State of Jharkhand*, MANU/JH/1036/2018.

<sup>40</sup> *S. Martin v. State*, (2018) S.C.C. OnLine Mad 10018.

<sup>41</sup> *Lottery Regulation Act, 1988*.

<sup>42</sup> *Sivanathanam v. S. Bharathi*, (2018) S.C.C. OnLine Mad 10430.

<sup>43</sup> *Jamal Mohamed v. State*, (2018) S.C.C. OnLine Mad 11311.

<sup>44</sup> Section 7(1)(a), *Criminal Law Amendment Act, 1932*

Molesting a person to prejudice of employment or business:

(1) Whoever:

(a) with intent to cause any person to abstain from doing or to do any act which such person

41(6)(c)(i),(ii) of the *Chennai City Police Act, 1988*<sup>45</sup>. The counsel for the petitioners argued that the investigating officer and the complainant are the same person and therefore the charge sheet is vitiated by the application of *Mohan Lal* Judgement. The Court, allowing the petition solely on this ground, quashed the proceedings of the metropolitan magistrate.

### **Cases under Miscellaneous Acts**

In the case, titled *Manjodh Singh & v. State of Punjab*<sup>46</sup> and decided by the Single Judge bench of the Punjab & Haryana High Court on 13.09.2018 the accused were charged under Section 61(1)(a) of the *Punjab Excise Act, 1914*<sup>47</sup>. The counsel for the petitioners argued that investigation was conducted by officer who had allegedly conducted the

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has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or

- (b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

*Explanation.-* Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section.

(2) No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitute such offence made by a police officer not below the rank of officer in charge of a police station.

<sup>45</sup> Section 41(6)(c)(i),(ii), Chennai City Police Act, 1988

(6) Any person who-

(a) ...

(b) ...

(c) when the order referred to in sub-section (2) is in force, convenes or collects any assembly or meeting or directs or promotes any procession:

(i) without the permission of the Commissioner under clause (b) of sub-section (3), or

(ii) in contravention of any of the conditions subject to which the permission was granted under that clause, shall be liable, on conviction, to a fine not exceeding one hundred rupees.

<sup>46</sup> *Manjodh Singh & v. State of Punjab*, MANU/PH/1293/2018.

<sup>47</sup> Section 61(1)(a), Punjab Excise Act, 1914

#### **Penalty for offences triable by Court:**

(1) Whoever in contravention of any section of this Act, or of any rule, notification issued or given thereunder or order made, or of any licence, permit or pass granted under this act:

(a) manufactures or collects any intoxicant; or.

(aa)...

recovery of the contraband. The Court found no merit in this argument of the petitioners by stating:

*'While referring to the judgment in case of Mohan Lal v. State of Punjab (supra), learned counsel for the petitioners has argued that the investigation could not be conducted in this case by Head Constable Lakhwinder Singh. This argument of learned counsel for the petitioners has no merit. As already discussed, Head Constable Lakhwinder Singh was competent to effect the recovery from the petitioner. The possession of whisky and country made liquor beyond a particular quantity without licence is an offence and the Investigating officer had not to do any further investigation except preparing documents regarding recovery of whisky/country made liquor from the petitioner'.<sup>48</sup>*

The Court also made clear that the *Mohan Lal* Judgment's observations have been made taking in view of the severity of the NDPS Act and distinguished the judgment. The Court upheld the conviction of the appellants but reduced their sentence.

Through these major judgments of various High Courts, many accused were acquitted from their charge without giving any consideration, whatsoever, to the type of offence, the quantity of the contraband and, therefore, merits of the case. This became a setback to all prosecutions under the NDPS Act as well as other offences because for the majority of the investigations done by the police officers, the initiation of the proceedings was done by a police officer, making him the complainant, but would later assume the role of investigating officer. These, specifically under the NDPS Act, majorly include the instances of chance recoveries of the contrabands. These acquittals were rectified by the Supreme Court through the case of *Varinder Kumar v. State of Himachal Pradesh*<sup>49</sup> where the Hon'ble Court specifically put a stop to the acquittals in the blanket of *Mohan Lal* Judgement.

### ***Judicial Trends post Virender Kumar***

A set of two judgements of the Supreme Court came to the rescue which aided to stop this escape pod of acquittal to shoot away in every case if the abnormality, as pointed in *Mohan Lal* was present. The case *Mukesh Singh v. State (Narcotic Branch of Delhi)*<sup>50</sup> referred the anomaly to a larger bench of three judges, when it was placed before it to be decided. Later on, the other judgement of *Virender Kumar v. State of Himachal Pradesh*<sup>51</sup> put a stop to the acquittals caused in the blanket of *Mohan Lal* judgement by passing a prospective order. These judgments have been discussed as follows.

### ***Mukesh Singh v. State (Narcotic Branch of Delhi)***

Division Judge bench of Justice Uday Umesh Lalit and Justice M.R. Shah passed an order on 17.01.2019 to refer the matter to larger bench against the impugned judgment of the Delhi High Court. The counsel of the petitioner wanted to take the benefit of the

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<sup>48</sup> Manjodh, *Supra* note 47, para 11.

<sup>49</sup> *Varinder Kumar v. State of Himachal Pradesh*, (2019) S.C.C. OnLine SC 170.

<sup>50</sup> *Mukesh Singh v. State (Narcotic Branch of Delhi)*, MANU/SCOR/02281/2019.

<sup>51</sup> *Varinder*, *Supra* note 50.

*Mohan Lal* judgement as a defence. The Court took the reverse view stating that there is no principle which states that if a police officer makes out a FIR with the premise that he himself is the informant, he forfeits his right to investigate the case. It is quoted in para 6:

*‘Though there is no such statutory bar the premise on which the High Court quashed the proceedings was that the investigation by the same officer who ‘lodged’ the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate’.*

*The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack...’<sup>52</sup>*

The Court in disagreement to the *Mohan Lal* Judgment asked for a three judges’ bench to consider this matter. Although as of now, *Mukesh Singh v. State (Narcotic Branch of Delhi)*<sup>53</sup> is *subjudice* in the Constitutional bench of the Hon’ble Supreme Court, it would be interesting to see the balance which will be created by the Hon’ble Apex Court between rights of the accused and the larger societal interest finally answering the question as whether an a police officer being complainant can investigate the case.

### ***Varinder Kumar v. State of Himachal Pradesh***

This is a Three Judges bench judgement passed by Justice Ranjan Gogoi, Justice Navin Sinha and Justice K.M. Joseph on 11.02.2019. The accused had been charged under Section 20(b)(ii)(C) of the NDPS Act. The counsel for the appellant argued on the dictum of *Mohan Lal* Judgment that as the informant and the investigating officer being the same person, the conviction of the appellant is vitiated. Taking into considerations the amount of acquittals that had taken place throughout the Courts in India, the Supreme Court, disallowed any benefits to the accused from the *Mohan Lal* Judgement. Targeting para 25 of the *Mohan Lal* judgement, which wanted to reduce the uncertainty and confusion dependant on the merits of the case, and for the non-application of the *Mohan Lal*

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<sup>52</sup> *Id.* para 6,7.

<sup>53</sup> *Id.*

judgement as a blanket stricture to blindly acquit criminals without seeking into the merits of the case, the Court held that:

*'The paramount consideration being to interpret the law so that it operates fairly, the facts of that case did not show any need to visualise what all exceptions must be carved out and provided for. The attention of the Court was also not invited to the need for considering the carving out of exceptions'.<sup>54</sup>*

Thereby, it led to the end of this practice of delivering blind acquittals under the garb of *Mohan Lal*. The Court held that *Mohan Lal* had become a spring board for acquittals to the accused, an ace card which could be thrown in play at any point of time during the trial. Here, the outcome of this card would always result the accused's acquittal as the accused knows that the 'bogeys' of the procedure of the Courts as settled by *Mohan Lal* has been linked to and pulled by the 'engine' of such procedure established by *Mohan Lal*, bringing the accused to the 'platform' of acquittal:

*'Societal interest therefore mandates that the law laid down in Mohan Lal (supra) cannot be allowed to become a spring board by an Accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous. Criminal jurisprudence mandates balancing the rights of the Accused and the prosecution. If the facts in Mohan Lal (supra) were telling with regard to the prosecution, the facts in the present case are equally telling with regard to the Accused. There is a history of previous convictions of the Appellant also. We cannot be oblivious of the fact that while the law stood nebulous, charge sheets have been submitted, trials in progress or concluded, and appeals pending all of which will necessarily be impacted'.<sup>55</sup>*

The judgement was declared prospective in nature and the subordinate Courts and Forums were made duty bound to apply the order of the judgment in future litigations and decisions. The Court also stated that the rights of the accused which arose from the decision of *Mohan Lal* for his acquittal whence the investigating officer was same as the complainant for his case shall also subside. The Court bypassed the judgement of *Mohan Lal* and to satisfy the accused against their right which the *Mohan Lal's* decision gave them, the Court portrays in picture the greater societal interest of the righteousness in having the scales tipped in the favour of sending right message to society by not letting the accused persons flee away on technical grounds and not the merits of the case:

*'Individual rights of the Accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society –be it the law-abiding citizen or the potential offender'.<sup>56</sup>*

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<sup>54</sup> Varinder, *Supra* note 50, para 11.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

## V

**Conclusion**

When the NDPS Act was enacted in the year 1985, the only punishment for any quantity of narcotic drug or psychotropic substance defined under the act recovered was minimum 10 years of imprisonment, and ₹1 lakh fine. The Courts, it seems thereafter felt that it is too harsh to convict a person for possessing a small quantity of narcotic drug or psychotropic substance with 10 years of imprisonment and ₹1 lakhs as fine and so on. As the conscious of the Court could not be carried away, accused were acquitted when possessing small quantity on technical grounds, and the benefit of those technicalities were also taken when there were huge quantities in the subordinate Courts. The legislature, after a gap of many years realized the lacuna left behind while prescribing the punishment for possessing the contraband. Thereafter different punishment for personal quantity, intermediate quantity and commercial quantity were prescribed. The law kept on developing with the passage of time and now, after the *Mohan Lal* Judgment, a drastic change in the outlook of the Court in cases registered under the NDPS Act was seen.

One of findings in these major judgements of various High Courts across India is that, the Court was more or less bound to acquit the accused and forbidden to look into the merits of the case. The *Varinder Kumar* Judgement<sup>57</sup> has put a stop in such acquittals by bypassing the *Mohan Lal judgement*. The reasoning it given was to protect the societal interests, and to send a right message to society. A line of demarcation has been created by the above said judgment, disallowing any undue benefit to the accused of *Mohan Lal* judgment.

The principle of law is that the complainant cannot be investigator, as in such circumstances there is the highest possibility that he/she would be interested in the outcome of the case and, therefore, he/she couldn't investigate in a fair manner. Can in the NDPS, the police officer investigating the case be considered as complainant as to the extent that he has peculiar interest in the outcome of the case. If not so, shouldn't there be an exception to this rule? In my humble opinion, the complainant cannot be equated to the police officer investigating such case as in almost all circumstances, he has no personal interest in the outcome of the case such that he would prejudice the case and be biased in investigation. He is assumed to investigate fairly, otherwise, if the police official is seen with the eyes of suspect, the whole criminal justice administration would be put in jeopardy and the system may collapse altogether.

Another question that arises is to check on the stage when such police official, assumed to be complainant and the investigator, and his investigation is such that it becomes evident that he/she is interested in the outcome of the case. Yes, in such circumstance, such official's investigation, being detrimental to bring justice, shall be disregarded altogether. In such a circumstance, there may be possibility to start the trial *denovo* in

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<sup>57</sup> *Id.*



very special circumstances, or that such botched-up investigation be caught at infancy and remediate a reinvestigation.

As far as the loopholes of legislations are concerned, apart from the present break of link, many other laws would contain certain confusions which I hope the legislators would rectify and thereby reduce litigation and frequent litigations.