

GAHC010004522011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./47/2011

DADUL MECH,
S/O SRI KIRON MECH, R/O MADHRI GOHAIN GAON, P.S. NAZIRA, DIST.
SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM,

Advocate for the Petitioner : MR.B BURAGOHAIN

Advocate for the Respondent : MR. P S LAHKAR(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 05-12-2023

1. Heard Mr. S. Borthakur, learned counsel for the appellant and Mr. P.S. Lahkar, learned Addl. P.P., Assam.
2. This appeal is preferred challenging the judgment and order dated 23.12.2010 passed by the learned Sessions Judge, Sivasagar in connection with Special Case No. 5 of 2008 convicting Sri Dadul Mech (hereinafter the appellant) u/s 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short) and sentencing him to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs. 2,000/- with default stipulation.

3. The brief facts leading to this case are that on 22.08.2008 at about 3:15 PM a naka checking was held jointly by 318 Field Regiment (Army) and the police at Panigash Area under Namtola OP. At about 3:50 PM the appellant was caught red handed along with a bag containing suspected ganja when the appellant tried to avoid the patrolling team. SI Ashim Borah (hereinafter referred to as the informant) seized the ganja (cannabis) from the possession of the appellant after following the proper procedure of law in presence of SDPO of Charaideo, Sonari and other witnesses. Sample was also drawn from the lot and forwarded for forensic examination to Forensic Science Laboratory, (FSL for short), Guwahati. The appellant was arrested as per Section 42 of the NDPS Act and forwarded to the SDJM at Sonari. On receipt of the expert opinion, the informant lodged the FIR (Ext.-9). The FIR was registered as Sonari P.S. Case No. 205 of 2008 u/s 20 of the NDPS act and ASI D.K. Sharma (hereinafter the IO) was entrusted with the investigation.

4. The IO embarked upon the investigation. He prepared the sketch-map and recorded the statements of the witnesses. He conducted the investigation and on completion of investigation submitted charge-sheet against the appellant u/s 20 of the NDPS Act.

5. At the commencement of trial a formal charge u/s 20(b)(ii)(B) of the NDPS Act was framed and read over and explained to the appellant who adjured his guilt and claimed innocence. To connect the appellant to the crime, the prosecution adduced the evidence of seven (7) witnesses including the Investigating Officer (IO in short) and the defence cross-examined the witnesses to refute the charges.

6. The statement of the appellant was recorded u/s 313 Cr.PC. To the incriminating circumstances projected through the evidence, the answers of the appellant u/s 313 Cr.PC depicts a plea of denial. In his statement u/s 313 Cr.PC the appellant has stated that he was not carrying any *ganja*. He was standing by the road side when another person who was carrying *ganja* was apprehended. The army caught a boy with a bag in his motor-cycle and the army called the police. The police caught the boy along with him as he was standing near the boy who was carrying a bag and he was forcefully taken to Namtala OP and he was arrested with false charges.

7. The learned trial Court delineated on the following point to decide the case:-

“Whether the accused, on 22.08.2008 at about 3:50 p.m. at Panigash area, under Sonari P.S., was found possessing one bag containing 3 kgs. 500 grams of cannabis (ganja), without lawful authority?”

8. (a) It has been held by the learned trial Court that the prosecution case has not been vitiated by the reason that PW-1, despite being the informant was also the Investigating Officer in this case.

(b) It has also been held by the learned trial Court that the corroborating evidence of the witnesses PWs-1, 4 and 5 brings home the charges against the appellant. Conscious possession was proved through the cross-examination of PW-4 who deposed that the person standing in the dock carried the suspected *ganja*. It was also held by the learned trial Court that as PW-1 had immediately informed PW-6 about the incident, the submission of the learned defence counsel that Section 57 of the NDPS Act was not complied with can be ignored. The submission of the learned defence counsel that seeking assistant to conduct the investigation cannot be considered as information u/s 57 of the NDPS Act, can be safely brushed aside.

(c) The learned trial Court relied on the decision of the Hon'ble Apex Court in ***Akmal Ahmed v. State of Delhi (1999) Criminal LJ 2041 (SC)*** and has held that although the independent witnesses have not supported the evidence, the evidence of the government officials have satisfactorily withstood the test of cross-examination. It was held by the learned trial Court that conscious possession could be proved beyond reasonable doubt and the FSL report was accepted as per Section 293 of the Cr.PC.

9. To decide this case in its proper perspective, the evidence is reappraised.

10. The question that falls for consideration in this appeal is that whether the trial court has erred while convicting the appellant.

11. The PW-1 Sri Ashim Borah is the informant and he deposed that on 22.08.2008 at about 3:10 PM, the Army Major of No. 318 Army Regiment Sri Bharat Rangchar Thur came to the Namtola OP and requested for assistance in a search operation. He, PW-1 was the I/C of the Namtola OP. Thereafter, a search operation was held at Panigash Tinali which is about 1 km away from the OP. At that time a person carrying a bag was stopped and searched and they found *ganja* like substance inside the bag carried by the person. He, PW-1 informed the departmental senior about the incident. The SDPO from Charaideo arrived and seized one weighing scale in presence of witnesses and the suspected *ganja* was weighed and the *ganja* was found to be of 3.5 kgs in weight. Two samples each containing 50 grams of *ganja* was drawn and seized from the bulk and the remaining bulk was sealed in a packet in presence of witnesses.

12. PW-1 further deposed that he recorded the statements of the witnesses and arrested the appellant u/s 42 of the NDPS Act. On 23.08.2008, he forwarded one of the two samples to FSL at Assam, Guwahati for chemical examination. On 13.09.2008 the FSL Report was received which was a positive report for cannabis (*ganja*). He then lodged a formal FIR with the police of Sonari PS. Charge-sheet was laid by SI Sri Durga Kingkar Sarmah of Sonari PS. He identified the following:-

Ext.-1 as the extract of the GD Entry;

Ext.-2 as the seizure list of the weighing scale;

Ext.-3 as the seized *ganja* containing bag;

M Ext.-1 as the seized *ganja*;

Ext.-4 as the forwarding letter of the SDPO;

Ext.-5 as the Challan;

Ext.-6 as the Authority Letter

Ext.-7 as the FSL Report

Ext.-8 as the Report Forwarding Letter of the F.S.L. authority;

Ext.-9 as the FIR; and

Ext.-10 as the site map of the place of occurrence.

PW-1 further deposed that he wrapped Ext.-3 with a piece of cloth and sealed the same. He identified Exts-3(2), 3(3) and 3(4) as the signatures of SI, Suraj Kumar Rang, Sri Ramen Borgohain and Sri Bir Kumar Singh respectively. He identified Ext.-3(5) as the signature of the appellant. In his cross-examination PW-1 deposed that the place of occurrence is a tinali (tri-junction) and the place is surrounded by a tea garden. There is a road side shed and a shop at the place of occurrence. There were pedestrians and commuters on the road at that time. The appellant was proceeding on foot and was carrying a bag. He (PW-1) also admitted that he investigated into the case and recorded the statements of the witnesses.

13. PW-2, Sri Romen Borgohain is one of the seizure witnesses and he deposed that on 22.08.2008 at about 3:30 PM, while he was waiting for vehicle at the place of occurrence (PO in short) near Sonari PS for his onward journey towards Namtola, he saw the police approaching with a white coloured bag and the police called him to the police station. When he reached the police station, he was asked to affix his signature on a white coloured bag stating that the bag contained *ganja*. He recognized Ext.-3 as the seizure memo and he identified his signature as Ext.-3(5). He identified his signature on the sealed packet as Ext.-3(3) and Ext-2 as the seizure memo. He admitted in his cross-examination that he did not go through the contents of the documents and he did not see the appellant or any weighing scale.

14. It is apparent that the evidence of the seizure witness, PW-2 does not support the seizure of the *ganja*. He has failed to identify the appellant despite being a seizure witness at the place of occurrence. His evidence depicts that the police had earlier informed him that the white coloured bag contained *ganja*.

15. In sync with the evidence of PW-2, Sri Saruj Kumar Ram deposed as PW-3 that he is the owner of the food shop in front of the Sonari PS. On the relevant day, in the year 2008, the police asked for his weighing scale and he carried the weighing scale to the police station. He weighed some grass like substances which weighed 3.5 kgs. His weighing scale was seized vide Ext-2 and thereafter it was handed back to him. One plastic bag containing *ganja* was seized vide Ext.-3 wherein he affixed his signature as Ext.-3(6). He affixed his signature on the sealed packet Material Ext.-1 as Ext.-3(2). In his cross-examination he deposed that his signatures were obtained by the police by exercising pressure and out of fear he affixed his signatures.

Thus it can be safely held that the evidence of seizure witness PW-3 does not at all support the seizure of the *ganja* in connection with this case.

16. Major Sri Bharat Ranganathan deposed as PW-4 that on 22.08.2008 at about 3:15 PM, he along with the Incharge of Namtola police outpost and other army personnel were on checking duty at Panigash Tinali. At that time they found the appellant carrying suspected *ganja*. He (PW-4) forthwith handed over the appellant to the In-charge of Namtola Outpost who was present at the spot. The suspected *ganja* was seized and weighed which was found to be 3.5 kgs. He identified the sealed packet of suspected *ganja* as Material Ext.-1.

17. The evidence of PW-4 further reflects that the police of Namtola outpost observed all formalities while conducting search and seizure of the *ganja*. In his cross-examination he identified the appellant as the person who was carrying the suspected *ganja*. He denied the suggestion of the defence that the *ganja* was seized from the tea garden and not from the possession of the appellant.

18. Close on the heels of the evidence of PW-4, Sri Bir Kumar Singh, an army personnel deposed as PW-5. PW-5 recognized Ext.-3 as the seizure memo and he identified his signature as Ext.-3(7). He identified Material Ext.-1 as the seized suspected *ganja* kept in a plastic bag, wrapped with a piece of cloth as the *ganja* seized at the place of recovery. He identified the weighing scale vide Ext.-2 and Ext.-

2(4) as his signature. In his cross-examination, he deposed that the place of occurrence was a road side shed, surrounded by a tea garden. The bag containing *ganja* was seized from the possession of the appellant. He denied the suggestion of the defence that the *ganja* was recovered from the nearby tea garden.

19. Sri Jayanta Sarathi Borah was the SDPO of Charaideo at Sonari at the time of the incident. He deposed as PW-6 that on 22.08.2008, at about 3:40 PM, the In-charge of Namtola police outpost, SI Ashim Borah called him over mobile phone and informed him that a person was apprehended along with some suspected *ganja* in the bag. He rushed to the spot of recovery. In his presence the I/C of Namtola OP weighed the recovered suspected *ganja* with the help of a weighing scale brought from a nearby shop and the *ganja* weighed to be 3.5 kgs. Thereafter the I/C of Namtola OP seized the recovered suspected *ganja* in his presence vide Ext.-3. He proved his signature on the seizure Memo as Ext.-3(8). He identified M Ext.-1 as a plastic bag wherein the seized suspected *ganja* was carried. The weighing scale was also seized in his presence vide Ext.-2. He proved his signature on Ext-2 as Ext.-2(5).

20. PW-6 further deposed that the weighing scale was given in zimma to its owner. One sample of the seized suspected *ganja* containing 50 grams was forwarded to the Forensic Science Laboratory for chemical examination. He proved the forwarding letter as Ext.-4 and his signature as Ext.-4(1). He proved the authority letter, authorizing the FSL to examine the seized sample of suspected *ganja* as Ext.-6 and Ext.-6(1) as his signature. He proved Ext.-5 as the challan of the sample and Ext.-5(1) as his signature. He deposed that the suspected *ganja* was seized at the spot of the recovery.

21. A scrutiny of the evidence reveals that except the seizure witnesses, the evidence of the informant is supported and corroborated by the evidence of the official witnesses PWs-4, 5 and 6. All the official witnesses have also identified the appellant as the person who was carrying the *ganja* seized in connection with this case. The irony is that the Scientific Officer or the expert who conducted the chemical examination was not examined as a witness. The report of the Scientific Officer was not proved. The FSL report was identified by the informant, PW-1 as Ext.-7. The signature of the Scientific Officer was identified by PW-1 as Ext.-7(1). The PW-1, not being acquainted with the signature of the Scientific Officer has identified the signature. Whether these documents can be used as a conclusive proof without the signatory being examined as a witness.

22. Now, in this case the appellant has denied that he is complicit. The proof of the document was necessary in this case to ascertain genuinity of the report. However, Court has to accept documents issued by a Chemical Examiner as valid evidence without examining the author thereof.

23. At this juncture the decision of this Court has been relied upon by the learned counsel for the appellant. It has been held by this Court in *Bhim Ram and Others v. State of Assam, 2012 SCC OnLine GAU 11* that:-

“10. In cross-examination, the I.O, PW-5, stated that on 10.12.06 he produced the accused persons before the court and till delivery of the samples by special messenger, they were in the said custody of the outpost but he had made no G.D.Entry to that effect. From his evidence it is established that the seized *ganja* were not forwarded to the O/C, Rangia GRP PS for taking necessary action and instead he kept the same at the outpost Barpeta Road. The i/c cum I.O.(PW-5) received the FSL report (Exhibit-1) on 12.1.2007 and only after receiving positive report of cannabis (*ganja*), he lodged the FIR on 12.1.07 with the O/C,Rangia GRPS. A case was registered and the I/C Shri Bipin Sarma,PW-5, was entrusted with the investigation of the case. It is to be noted that the Officer In-charge,Rangia GRPS officially had no knowledge about the seizure of *ganja*, drawing of samples, sending of

samples to FSL and receipt of the report until the FIR was lodged with him by the out post in-charge. In my considered view the in-charge of police outpost is not authorised/permitted to take such action without giving intimation to the Officer In-charge of the Rangia G.R.P.S, I am also of the considered view that the power , function and duty regarding preparation of inventory of seized Narcotic Drugs or Psychotropic substances containing such details relating to their description, quality, quantity, mode of packing ,marks, numbers or such other identifying particulars etc. are entrusted with the O/C of the nearest police station or Officer empowered U/S 53 of the [NDPS Act](#). It is so evident from the provision U/S 55 of the [NDPS Act](#), which is reproduced hereunder :-

"55. Police to take charge of articles seized and delivered:-

An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer, who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station "

24. The learned Addl. PP has also relied on the decision of Hon'ble the Supreme Court in *Gurbax Singh v. State of Haryana*, reported in (2001) 3 SCC 28 wherein it has been held that:-

" 9. The learned counsel for the appellant next contended that from the evidence it is apparent that the I. O. has not followed the procedure prescribed under [Sections 52, 55 and 57](#) of the N.D.P.S. Act. May be that the I.O. had no knowledge about the operation of the [N.D.P.S. Act](#) on the date of the incident as he recorded the FIR under [Section 9/1/78](#) of the Opium Act. In our view, there is much substance in this submission. It is true that provisions of [Sections 52 and 57](#) are directory. Violation of these provisions would not ipso facto violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article. In the present case, I.O. has admitted that the seal which was affixed on the muddamal article was handed over to the witness P.W.1 and was kept with him for 10 days. He has also admitted that the muddamal parcels were not sealed by the officer in charge of the police station as required under [Section 55](#) of the N.D.P.S. Act. The prosecution has not led any evidence whether the Chemical Analyser received the sample with proper intact seals. It creates a doubt whether the same sample was sent to the Chemical Analyser. Further, it is apparent that the I.O. has not followed the procedure prescribed under [Section 57](#) of the N.D.P.S. Act of making full report of all particulars of arrest and seizure to his immediate superior officer. The conduct of panch witness is unusual as he offered himself to be a witness for search and seizure despite being not asked by the I.O., particularly when he did not know that the substance was poppy husk., but came to know about it only after being informed by the police. Further, it is the say of the Panch witness that Muddamal seal used by the PSI was a wooden seal. As against this, it is the say of PW2 SI/IO that it was a brass seal. On the basis of the aforesaid evidence and faulty investigation by the prosecution, in our view, it would not be safe to convict the appellant for a serious offence of possessing poppy-husk."

25. Reverting back to the instant case, it is held that although the provisions u/s 52, 55 and 57 of the NDPS Act are directory, the IO cannot totally ignore these provisions and such failure will have a bearing on the bonafide of the entire action of the IO. It has been submitted by the learned counsel for the appellant that it has surfaced from the evidence of the OC/In-charge, PW-7 that the seized articles were not handed over to him. The evidence of the complainant, who conducted the initial investigation (PW-1) reveals that the samples were drawn on 22.08.2008 and the samples were forwarded for chemical examination on 23.08.2008 and he forwarded the samples to the FSL for chemical examination. Thus the proceeding u/s 55 of the NDPS Act was not scrupulously followed.

26. The learned counsel for the appellant has strenuously submitted that the Forensic Report was exhibited by the IO, PW-1. This forensic report cannot be accepted because there is no description of the seal in the forensic report. It is not clear from the evidence of the IO, PW-1 and the evidence of the OC, PW-7 where the seized articles and the seized samples were kept in the interregnum before the sample was forwarded to the FSL. This sample may not be the same sample which was examined by the Chemical Examiner and considering the gravity of the offence, the accused deserves the benefit of doubt due to the discrepancies in the arrest, search and seizure. Through Ext.-4 the PW-6, Sri Jayanta Sarathi Borah, SDPO of Charaideo at Sonari had forwarded the seized *ganja* for forensic examination and Ext.-4(1) and Ext.-5(1) are the signatures of PW-6 which have been proved by PW-6.

27. Further the learned counsel for the appellant laid stress in his argument that it is not clear under whose custody the sample was forwarded to the FSL nor was the person who took the sample from Namtola to FSL at Guwahati, was examined as a witness. Moreover, the evidence of PW-6 is not significant as he has admitted in his cross-examination that he did not witness the seizure of the contraband and he did not see from whose possession the contraband was seized. It is also submitted by the learned counsel for the appellant that the seizure list depicts seizure of the bulk of the *ganja*. This seizure list was seen by the Magistrate but the sample which was drawn allegedly at the place of occurrence was not seen by the Magistrate or by the trial Court.

28. In his cross-examination PW-6 deposed that the offence was detected at about 3:40 PM and he arrived at the place of occurrence at about 4:10 PM and he was present when the process of seizure was ongoing.

29. The IO Sri Durga Kingkar Sarmah deposed as PW-7 that on 16.09.2008 he received the FIR from ASI Ashim Borah, the I/C of Nomtala OP and registered the Sonari P.S. Case No. 105 of 2008 and recorded the statements of the informant and after going through the Case Diary, he submitted charge-sheet against the appellant. He proved the FIR as Ext.-9 and the charge-sheet as Ext.-11. He admitted that he did not visit the place of occurrence.

30. I have given my thoughtful consideration to the submissions at the Bar. I find force in the argument of the learned counsel for the appellant. As the offence alleged against the appellant is a grave offence, the procedure of entire investigation ought to have been scrupulously followed by the Investigating Agency. It appears that the investigation was committed in very apathetic and slipshod manner. Section 55 of the NDPS Act was indeed not scrupulously followed. Moreover, the Scientific Officer was also not examined as a witness. It has also emerged that Section 52 of the NDPS Act was not followed, nor was Section 57 of the Act adhered to.

31. The learned counsel for the appellant has also relied on the decision of Hon'ble the Supreme court in *Pradeep Narayan Madgaonkar and Others v. State of Maharashtra*, reported in (1995) 4 SCC 255 wherein it has been observed that:-

“11. Learned Counsel for the State, however, vehemently argued that there was no reason for the court to disbelieve the official witnesses PW 1, PW 4 and PW 6 who had no reason to

falsely implicate any of the appellants. They are independent respectable persons. Indeed, the evidence of the officials (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigating or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration Of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony. We cannot loose sight of the fact that these police officials did not join any independent witnesses of the locality and made an attempt to create an impression on the courts that both PW 2 and PW 5 were witnesses of locality and were independent, knowing fully well that PW 2 was a witness who was under their influence and 'available' to them, as he had been joining the raids earlier also and PW 5 was a close associate of PW 2, their friendship having developed during the days of gambling when admittedly the police never conducted any raid at their gambling den."

32. The learned Addl. PP has relied on the decision of the Hon'ble Supreme Court in *State of Punjab v. Baldev Singh* , reported in (1999) 6 CC 172, wherein it has been observed that:-

"The provisions of Sections 100 and 165 CrPC are not inconsistent with the provisions of the NDPS Act and are applicable for affecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure, comes across a person being in possession of the narcotic drug or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act. In Balbir Singh case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Cr.PC in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 per se does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view."

33. It is submitted by the learned Addl. PP that non-examination of independent witnesses does not vitiate the trial.

34. I have considered the submissions at the Bar with circumspection. In this case the independent witnesses have not at all supported the prosecution case. It is true that the evidence of the officials (police) witnesses cannot be discarded merely on the ground that they belong to the police force but the

evidence of the official witnesses has to be of a much higher order than the one we find available in the present case. In the case at hand we notice procedural lapses. The seizure witnesses PW-2 and PW-3 have not at all supported the seizure of the contraband. The PW-2 and PW-3 have not identified the accused-appellant herein. The PW-3 has categorically stated that he affixed his signature on the seizure-list Ext.-3 as he was terrified of the police officials and the PW-2 has stated that he was not given an opportunity to read the contents of the seizure-list marked as Ext.-2 and Ext.-3. It is apparent that the evidence is bristled with contradictions and it cannot be held that the evidence of the officials appears to be unbiased and can be relied solely to convict the appellant.

35. A decision of the Hon'ble Supreme Court is relevant to this case. It has been held in *Naresh Kumar alias Nitu v. State of Himachal Pradesh*, reported in (2017) 15 SCC 684, wherein it has been observed that:-

“9. The presumption against the accused of culpability under [Section 35](#), and under [Section 54](#) of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. [Section 35](#) (2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. That the right of the accused to a fair trial could not be whittled down under the Act was considered in [Noor Aga vs. State of Punjab](#), (2008) 16 SCC 417, observing:-

“58.....An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

59. With a view to bring within its purview the requirements of Section 54 of the Act, element of possession of the contraband was essential so as to shift the burden on the accused. The provisions being exceptions to the general rule, the generality thereof would continue to be operative, namely, the element of possession will have to be proved beyond reasonable doubt.”

36. In the facts of the present case, and the nature of the evidence discussed, it is held that the prosecution has failed to establish the foundational facts beyond all reasonable doubt. Conscious possession could not be proved against the appellant due to the discrepancies in the evidence. The order of conviction u/s 20(b) of the NDPS Act is not sustainable and is hereby set aside. The appellant is

acquitted from the charges u/s 20(b)(ii)(B) of the NDPS Act and is set at liberty forthwith.

37. However, keeping in view the provisions of Section 437-A Cr.PC, the appellant Sri Dadul Mech is directed to furnish a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand) and a surety bond in the like amount before the learned trial Court, which shall be effective for a period of 6 (six) months.

Send back the LCR.

JUDGE

Comparing Assistant