



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Appeal No. 269/2023

BHASKAR BARUAH
S/O PROMOD BARUAH,
VILL.- KENEDY PARK,
P.S.- MARIANI, DIST.- JORHAT, ASSAM, PIN- 785634.

..... Appellant.

-Versus-

1. THE STATE OF ASSAM,
REP. BY LD. P.P., GOVT. OF ASSAM.
2. RANJIT KR. DEY
(SI OF POLICE GUWAHATI GPRS)
AGED ABOUT 64 YEARS
S/O LT. RAJANI KANT DEY
VILL.- BARUAH BARI
P.O.- SONAPUR, DIST.- KAMRUP (M)
ASSAM, PIN- 782402.

..... Respondent.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates for the Appellant : Mr. N K. Murry.

Advocate for the respondent : Mr. K.K. Parasar.
Addl. P.P. Assam.

Date of Hearing : 15.09.2023

Date of Judgment : 03.10.2023.

JUDGMENT (CAV)

Heard Mr. N.K. Murry, learned counsel for the appellant and Mr. K.K. Parasar, learned Addl. P.P. for the State respondent.

2. This appeal, under Section 374[2] of the Cr.P.C. is preferred by the appellant against the judgment and order dated 12.05.2023, passed by the learned Special Judge, Kamrup [M] at Guwahati, in NDPS Case No. 100/2019.

3. It is to be noted here that vide judgment and order dated 12.05.2023, the learned court below has convicted the appellant, Sri Bhaskar Baruah, under Section 20[b][ii][B] of the NDPS Act and sentenced him to suffer rigorous imprisonment for 4 years with fine of Rs. 50,000/- with default stipulation.

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“On 15.09.2019, ASI S.K. Dube along with GRP and CRPS personnel checked Train No. 12423 DN Rajdhani Express, which were being parked at plat form No. 1 and at about 7 am they have recovered two big white coloured polythene carry bags inside a dark green coloured VIP trolley bag from a passenger, under Seat No. 43. Then the informant had taken the passenger to Platform No. 1 and reported the matter to

the Officer In-Charge of GRPS. Accordingly, the Officer In-Charge of GRPS, Guwahati has issued an authorization letter, under Section 41[2] of the NDPS Act to SI Ranjit Kr. Dey and on the basis of the said letter the informant along with the staff rushed to the Platform No. 1 and conducted search of the passenger and recovered seven handful dry leafs packets, suspected to be Ganja in two big white coloured polythene bags. The appellant, when asked, introduced himself as Bhaskar Baruah of Mariani, Jorhat and also he discloses that he purchased the same from a person at Shillong and boarded the train from Guwahati Railway Station to Delhi for business purpose. Thereafter, the informant weighed and found total 5 kgs of Ganja and seized the same in presence of witnesses and drawn sample from the seized Ganja and sent the same for FSL for examination. Thereafter, the appellant was arrested under Section 43 of the NDPS Act and handed over the Officer In-Charge of Guwahati GRPS and thereafter, SI Ranjit Kr. Dey had lodged one FIR. Thereafter, the investigation was carried out and the FSL report was collected, which confirmed that the sample collected from the seized articles gave positive test for Ganja. And accordingly, on completion of investigation, charge sheet was submitted against the appellant to stand trial in the court under Section 20[a] of the NDPS Act. Thereafter, the appellant was produced before the learned court below and after hearing both the parties, the learned court below had framed charge against the appellant under Section 20[b][ii][B] of the NDPS Act and explained the particulars of the charge to the appellant to

which he pleaded not guilty and claimed to tried. Thereafter, the prosecution side had examined the witnesses and thereafter, examined the appellant under Section 313 of the Cr.P.C. Thereafter, hearing learned counsel for both the parties, the learned court below has convicted the appellant and sentenced him as aforesaid.”

5. Being highly aggrieved, the appellant has approached this Court, by filing the present application on the grounds mentioned as under:-

- [i] That, the seized articles were not seized from the possession of the appellant;
- [ii] That, while conducting search, the informant did not comply with the provision of Section 50 and 100 of the NDPS Act;
- [iii] That, the informant has not comply with the provision of Section 52[a] of the NDPS Act;
- [iv] That, the informant is not the eye witness and before his arrival the sample was taken;
- [v] That, all the prosecution witnesses are the official witnesses and there is no any independent witness, which is contrary to the provision of Section 100[4] of the NDPS Act.

6. Mr. Murry, learned counsel for the appellant, during the argument, had reiterated the grounds mentioned herein above and further submits that the Investigating Officer had not complied with

the provision of Section 50/100/52[A] of the NDPS Act and that non compliance of the same is fatal to the prosecution case. Mr. Murry further submits that all the witnesses of the prosecution are official witnesses and there is no independent witness of seizure, to the occurrence and that before arrival of the informant at the place of occurrence the sample was drawn up and that too in absence of the Magistrate, and as held in the case of **Nazir Ahmed vs. The King-Emperor [Air] 1836 PC 256**, the procedure prescribed in the statute has to be followed and all other modes are forbidden. Mr. Murry had also referred following case laws to bolster his submission:-

- [i] **Noor Aga vs. State of Punjab and another**, reported in **[2008] 16 SCC 417**;
- [ii] **Mohan Lal vs. State of Punjab**, reported in **[2018] 17 SCC 627**; and
- [iii] **Sahib Singh vs. State of Punjab**, reported in **[1996] 11 SCC 685**.

7. On the other hand, Mr. Parasar, learned Addl. P.P. has supported the impugned judgment and order and submits that the learned court below has rightly arrived at the conclusion of guilt of the appellant under Section 20[b][ii][B] of the NDPS Act and that there are sufficient materials to establish the ingredients of the charge under the aforesaid section against the appellant and therefore, it is contended to maintain the conviction and sentence, so passed by the learned court below. Mr. Parasar has also submitted written argument on behalf of the respondent No.1, reiterating the same points.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the memo of appeal as well as the grounds mentioned therein and the record of the learned court below and also the impugned judgment and order dated 12.05.2023, passed by the learned Special Judge, Kamrup [M] at Guwahati, in NDPS Case No. 100/2019.

9. It appears from the record of the learned court's below that the charge was framed against the appellant under Section 20[b][ii][B] of the NDPS Act, which states about the unlawful possession of the contraband substance. The charge against the appellant was that at about 7 am of 15.09.2019, he was in possession of 5 kgs Ganja, while he was travelling by Train No. 12423, Down Dibrugarh Rajdhani Express, in Coach No. B-9, seat No. 43, which was standing in Platform No. 1 of the Guwahati Railway Station.

10. In order to prove the charge against the appellant, in the learned court below the prosecution side had examined as many as 5 witnesses. P.W. - 4, Shri Ranjit Kr. Dey is the SI of Guwahati GRPS. His evidence reveals that on 15.09.2019, at about 7 am, the Officer In-Charge of GRPS, Guwahati had informed him that the train checking party, which was deputed at Platform No. 1 of Guwahati Railway Station had recovered some Ganja like substances from a passenger in Delhi bound Rajdhani Express and detained him at the Platform and thereafter, a GD Entry No. 380 dated 15.09.2019, Exhibit -p4, was made by the OC and instructed him to take necessary step as per the NDPS Act and issued an authority letter, Exhibit 5 to him. Thereafter, he proceeded to the Platform

No. 1 and found the train checking party with a person, along with a green coloured trolley bag and accordingly, they have checked the trolley bag and found 7 *muthas* of Ganja in 2 white coloured polythene bags, weighing about 5 kg. Thereafter, he had collected four samples of 24 grams each marked as A1 and A2 as original and he also seized one android mobile handset, train ticket and one pan card belonging to the person and preparing seizure list Exhibit p3, and he also confirmed the trolley bag - Material Exhibit-2 and proved the envelope containing duplicate samples as material Exhibit 3 and also proved the envelope containing the seized mobile phone, pan card and train ticket as Material Exhibit- 4. Thereafter, he proved inventory list as Exhibit p6 and thereafter, prepared sketch map Exhibit p7 and thereafter, requested the nearby people to become witness of seizure list, but none had agreed. Thereafter, he has examined the witnesses and he proceeded to the Guwahati, GRPS after completion of all the formalities and took the accused and the sample to the OC. Thereafter, he lodged the FIR- Exhibit p8 at the GRPS. The defence had cross- examined this witness at length. But nothing tangible could be elicited to discredit his version. It is, however, elicited that at the time of preparing inventory and drawing of samples the members of train checking party and S.I., Sanjay Kr. Dubey and another constable who accompanied him to the platform No. 1, were present.

11. PW-5, Mahesh Baishya, is the SI of Guwahati, GRPS, who had completed remaining part of the investigation and his evidence reveals that having been endorsed by the O/C to complete the investigation, he found that the seized articles were submitted to the Sheristadar of Guwahati, GRPS vide receipt - Exhibit p9.

Thereafter, on the next day, on 16.09.2019, he received the original samples from the Sheristadar and through special messenger he had forwarded the sample to the FSL vide Exhibit p10 and thereafter, he had sent the same to the Director of FSL for examination vide test memo in triplicate -Exhibit p11. Thereafter, he received the report- Exhibit p12 from the Directorate of Forensic Science -Exhibit p13 and p14 are the receipt dated 16.09.2019, and the report of the FSL reveals that the sample gave positive tests for Cannabis [Ganja] and the on completion and having found materials against the accused he had submitted Charge Sheet -Exhibit p15 against accused.

12. In his cross-examination, it is elicited that he had sent the sample to the FSL on 16.09.2019. The prosecution side has examined Dr. Dhurbajyoti Hazarika, the Deputy Director, Drugs and Narcotics Division, Directorate of Forensic Science as P.W.-1 and he confirmed that the sealed envelope in Exhibit A1 and A2, containing 25 grams of dry plant materials, which he marked as DN-775/2019[a] and DN-775/2019[b] and facsimile of the seal was found to be "GHTY GRPS", and accordingly, he examined the same as per United Nation Drug Testing Laboratory Manual and found that the sample gave positive test for Cannabis [Ganja] and he submitted his report as Exhibit p5 and which was forwarded by the Directorate of Forensic Science, Assam vide Exhibit p2 and he also confirmed the remnant of sample, Material Exhibit 1. And nothing tangible could be elicited in cross-examination of this witness also.

13. Thus, the report- Exhibit p1 and the evidence of P.W.1 goes a long way to establish beyond reasonable doubt that the sample

collected by P.W. 4 and forwarded to FSL by P.W.-5, gave positive test for Cannabis [Ganja]. The total weight of the Cannabis (Ganja) was 5 kg. It is to be noted here that the factum of quantity of Cannabis (Ganja) has not been disputed by the appellant side.

14. Now it is to be seen from whose possession it was recovered. In this regard, the evidence of P.W.-2 and P.W.-3 are relevant. The evidence of P.W.-3 reveals that on 15.09.2019, he was attending checking duty at Guwahati Railway Station at Platform No. 1, from 6 am to 10 am and at around 7 am Delhi bound Rajdhani Express arrived at the Platform No. 1, and they have entered into the Train and while checking seat No. 43 of coach No. B9 they have found one green coloured trolley bag and upon inquiry, accused Bhaskar Baruah claimed the ownership of the said bag, and then on suspicion they asked Bhaskar Barua to open the bag, and thereafter, they found 7 *muthas* of Ganja in 2 white coloured plastic bags. Thereafter, the matter was reported to O/C of GRPS, Guwahati who asked them to bring down the passenger to the platform and thereafter, S.I. Ranjit Kr. Dey arrived at the place of occurrence with weighing machine and after weighing the same, they have found total 5 kg of Ganja. Then SI Ranjit Kr. Dey drew 4 nos. of sample from the contraband substance and also seized mobile phone, train ticket from the accused, vide seizure list-Exhibit p5. Thereafter, the person was taken to the GRPS, Guwahati and handed over to the O/C. Cross-examination of these witnesses could elicit nothing tangible to discredit his version and he categorically stated that they have found the accused in seat No. 43 and the accused himself opened the trolley bag and thereafter, they become sure that it belongs to him.

15. PW-2, Premchand Singh also accompanied P.W. 3 and lends unstinting support to his version. He also confirmed the seizure list - Exhibit p3 and Material Exhibit 2, 3 and 4. It is elicited in his cross-examination that during regular checking they have found ganja in the trolley bag of the accused and not on the basis of any specific information and they have found the accused sitting in the Seat No. 43 of Coach No. B9. Thus, the P.W.-2 also corroborated the version of P.W.-3 in material particulars.

16. It is a fact that no independent eye witnesses have been examined herein this case. But, I find no ground to disbelieve the Police personnel, who appears to have been testified cogently without fear or favour. Nothing tangible could be elicited in their cross-examination also and that they have successfully withstood the same. Thus, the evidence of P.W.-2, 3, 4 and 5 goes a long way to establish beyond reasonable doubt that the seized Ganja were recovered from the possession of the accused in a trolley bag while he was traveling in Rajdhani Express on 15.09.2019. It is of course argued by the learned counsel for the appellant that no independent eye witnesses were examined by the prosecution side as mandated by the Section 100 of the Cr.P.C. But, it appears from the evidence of PW-4 that he had requested the independent witnesses to remain present at the time of seizure and taking sample, but nobody agreed to the same. This piece of evidence of PW-4 is not disputed in cross-examination by the appellant. Thus, the submission of Mr. Murry, the learned counsel for the appellant, that mandate of section 100 Cr.P.C. has not been followed, is found to be devoid of merit. I have gone through the case law – **Sahib Singh** (supra) referred by him in this regard and I find that the ratio laid down

therein would not advance his case inasmuch as here in this case the I.O. had called independent witnesses to join search and seizure but none agreed. In the referred case the I.O. made no such attempt to call independent witness.

17. I have also considered the submissions of learned Advocates for the appellant, in the light of facts and circumstances discussed herein above. And I find the submission of learned counsel for the appellants bereft of merit, so far it relates to non compliance of section 42 and 50 are concerned at the time of seizure. As discussed earlier, the contraband substances were recovered and seized while the same were being carried in a 'public conveyance'. In that view of the matter the section to be attracted herein this case is not 42 and 50 of NDPS Act. Rather section 43 is attracted herein this case and Mr. Kaushik, the learned Addl. P.P. has rightly pointed this out during argument. Be it mentioned here that in the case of **S.K. Raju@ Abdul Hoque @ Jagga(supra)** it has been held by Hon'ble Supreme Court that:-

"An empowered officer under Section 42(1) is obligated to reduce to writing the information received by him, only when an offence punishable under the Act has been committed in any building, conveyance or an enclosed place, or when a document or an article is concealed in a building, conveyance or an enclosed place. Compliance with Section 42, including recording of information received by the empowered officer, is not mandatory, when an offence punishable under the Act was not committed in a building, conveyance or an enclosed place. Section 43 is attracted in situations where the seizure and arrest are conducted in a public place, which includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public."

18. Here in this case the contraband substances were recovered from a trolley bag, not from the person of the accused. And as such, to the considered opinion of this court, section 50 of the NDPS Act is not attracted herein this case. Though Mr. Murry, the learned counsel for the appellant submits that non compliance of section 50 NDPS Act vitiates trial yet, I find the same bereft of merit. Notably, explaining the object of the section 50 of NDPS Act, Hon'ble Supreme Court, in the case of **Baljinder Singh (supra)** has held that *"Section 50 of the Act affords protection to a person in matters concerning "personal search" and stipulates various safeguards."*

19. However, there is substance in the submission of Mr. Murry, the learned counsel for the appellant that the mandatory provision of section 52 A of the NDPS Act was not followed here in this case and the representative sample was not drawn in presence of the Magistrate and the law, laid down by Hon'ble Supreme Court in the case of **Union of India v. Mohanlal, (2016) 3 SCC 379**, has not been followed. In this context I find it necessary to discuss the provision of section 52A of the NDPS Act.

20. Section 52A of the NDPS Act read as under:-

"52A. Disposal of seized narcotic drugs and psychotropic substances:-

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs,

psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in subsection (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in subsection (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of such Magistrate, photographs of such drugs, substances or

conveyances and certifying such photographs as true; or

- (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

21. In the case of **Mohanlal (supra)** Hon'ble Supreme Court has held as under.

"15. It is manifest from Section 52-A(2)include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer- in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

22. While explaining the importance of compliance of section 52 A, in the case of **Mangilal vs. The State of Madhya Pradesh** reported in **2023 LiveLaw (SC) 549** Hon'ble Supreme Court has held as under:-

"4. Sub-section (1) of Section 52A of the NDPS Act facilitates the Central Government a mode to be prescribed to dispose of the seized narcotic substance. The idea is to create a clear mechanism for such disposal both for the purpose of dealing with the particular case and to safeguard the contraband being used for any illegal purpose thereafter.

5. Sub-section (2) of Section 52A of the NDPS Act mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars. This has to be followed through an appropriate application to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking

relevant photographs in his presence and certifying them as true or taking drawal of samples in his presence with due certification. Such an application can be filed for anyone of the aforesaid three purposes. The objective behind this provision is to have an element of supervision by the magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52A of the NDPS Act, where a certification of a magistrate is lacking any inventory, photograph or list of samples would not constitute primary evidence.

6. The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52A of the NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn."

23. Again in the case of **Simarnjit Singh vs. The State of Punjab**, in Criminal Appeal No. 1443 of 2023 (Arising out of S.L.P.(Crl.) No. 1958 of 2023) decided on 9 May, 2023 Hon'ble Supreme Court has held that :-

"drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of Mohanlal (2016) 3 SCC 379, This creates a serious doubt about the prosecution's case that substance recovered was a contraband."

24. Now, advertng to the facts and circumstances here in this case, I find that after recovery of contraband substances the officer concerned i.e. P.W.4 never approached the Magistrate for certifying the correctness of the inventory, certifying photographs of such drugs or substance taken before the Magistrate as true for grant of permission to draw representative sample so drawn in his presence. He had merely produced the seizure list before the learned

Magistrate, for his signature. He had drawn the sample in the very place of occurrence. Thus, the entire process of drawing of sample, was not in conformity with Section 52A of the NDPS Act and the law laid down by Hon'ble Supreme Court in the case of **Mohanlal (supra)**. This creates a serious doubt about the prosecution's case which is not free from suspicion and the same cannot be said to be established beyond all reasonable doubt, in the given background, especially in view of the evidence of P.W.1 and P.W.3.

25. Notably, the learned court below had totally ignored this aspect in the impugned judgment and order and though the learned counsel for the appellant had raised the issue of non compliance of section 52 A of the NDPS Act, the learned court below had dealt with the same, in Para No. 19 of the judgment, as under:-

"Record reflects that inventory list was prepared by the search seizing officer, P.W.4 - Ranjit Kr. Dey on 15.09.2019, itself and it also bears the signature of the accused. The same was produced before the Ld. JMFC, Kamrup(M) on 15.09.2019 and there is endorsement of the Id. Magistrate with his seal and signature. Prosecution proved the inventory list as P-6/PW-4. As such it is not a case that no inventory was prepared."

26. Thus, it becomes crystal clear that though the inventory was prepared and produced before the learned JMFC, yet, mandatory rule of evidence, which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn had not been followed. After doing everything at the place of occurrence, right from preparing inventory to taking of

sample, only the inventory was produced before the learned Magistrate. Mr. Murry, the learned counsel for the appellant has rightly pointed this out during argument that if a statute has conferred a power to an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of act in any other manner than that which has been prescribed and that the principle laid down in the case of **Nazir Ahmed vs. King Emperor**, reported in **AIR 1936 PC 253** is applicable in the case in hand and that the said principle has been followed in the case of **State of U.P. vs. Singhara Singh and others**, reported in **AIR 1954 SC 358**. There is substance in the submissions, so advanced by Mr. Murry, and this court is inclined to record concurrence with the same. I have also gone through the other case laws (i) **Noor Aga (supra)** and (ii) **Mohan Lal (supra)** and I find that the ratio laid down in the case of **Mohan Lal (supra)** has advanced the argument of Mr. Murry, learned counsel for the appellant. In the case of **Mohan Lal** in para No.13 it has been held as under:-

“13. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in an NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in the absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.”

27. Also I find that in the given facts and circumstances on the record, the ratio laid down in the case of **Noor Aga** (supra) also to some extent, advanced the case of the appellant in as much as in the said case a view has been taken that if there are discrepancies in the prosecution evidence that lack credibility, the accused can be acquitted.

28. As the samples of the contraband substances, here in this case, was collected in contraventions of the provisions of section 52A of the NDPS Act and also in total contravention of the ratio laid down in the case of **Mohanlal (supra)**, it gives rise to reasonable suspicion in mind about the veracity of the case. Therefore, it cannot be said that the prosecution side has succeeded in bringing home the charge against the appellant beyond all reasonable doubt. The appellant, as such, is entitled to be acquitted on benefit of doubt. Thus, impugned judgment and order, so passed by the learned court below, failed to withstand the legal scrutiny and on such count it requires interference of this court.

29. In the result, I find sufficient merit in this appeal, and accordingly, the same stands allowed. The impugned judgment and order of conviction stands set aside and quashed. The appellant is acquitted on benefit of doubt. He shall be released from the jail forthwith if not warranted in any other case. Send down the record of the learned court below with a copy of the judgment and order.

J U D G E

Comparing Assistant