

GAHC030003512022



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

Case No. : CrI.A./15/2022

Lalnilawmsanga
S/o Laldawngliana(L)
R/o Darlawn Venghlun, Aizawl District, Mizoram.

VERSUS

The State of Mizoram
Aizawl, Mizoram.

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent : Ms. Mary Lalruatkimi Kiangte (Addl.PP, Mizoram)

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

JUDGEMENT

Date : 17-03-2023

Heard Mr. C. Lalfakzuala, learned counsel for the appellant and Ms. Mary L. Kiangte, learned Additional Public Prosecutor for the State respondent.

[2.] This appeal is directed against the Judgment & Order dated 13.05.2022 passed by the learned Special Judge under the ND&PS Act, Aizawl in SR No. 52/2017 arising out of Criminal Trial No. 421/2017, whereby the appellant was

convicted under Section 22(c) r/w Section 8(c) of the ND&PS Act. Upon such conviction, the appellant was sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 1 lakh and with a default clause vide Order dated 21.05.2022.

[3.] The case of the prosecution in brief is that a reliable information was received that some amount of contraband drugs suspected to be Methamphetamine was in transit at Thuampui Veng, Aizawl. Therefore, an information report was submitted to the Officer-in-charge, Special Narcotic Police Station who then immediately issued an authorisation under Section 41(2) of the ND&PS Act, authorising one S.I K. Lalmawizuala to conduct search of the suspected person, building and its premises. On proceeding to Thuampui, the suspected person was intercepted and after arranging two local witnesses, the person was asked as to whether he wanted to be search in front of the Gazetted Officer or a Magistrate. The suspect declined the offer and accordingly, the authorised Sub-Inspector search his belongings and the premises in the presence of the two local witnesses and recovered 12 packets of blue plastic polythene, containing tablets suspected to be Methamphetamine which was concealed inside the house. The same was seized and marked before the two local witnesses. Upon weighing the seized article, it was found to be 444 grams consisting of 4442 numbers of tablets and having the local market value of Rs.

2,22,100/- approximately. Samples were drawn and sent for FSL examination. The suspect was accordingly arrested and an FIR was filed on 18.09.2016 by the authorised Sub-Inspector before the Officer-in-charge, Special Narcotic Police Station, Aizawl, Mizoram. The FIR was registered as Special Narcotic PS Case No. 20/2016 dated 18.09.2016 under Section 22(c) of the ND&PS Act.

[4.] After the case was registered in the above manner, the Investigating Officer conducted the investigation and found a *prima facie* case to be well established against the appellant under Section 22(c) of the ND&PS Act and accordingly, submitted the final report. The learned Special Judge framed the charge against the appellant under Section 22(c) of the ND&PS Act on 04.05.2017, and to which, the appellant pleaded not guilty and claimed for trial. As such, trial commenced against the appellant and during the trial, the prosecution examined as many as 3 (three) prosecution witnesses, while the defence examined one witness. After the evidence of the prosecution was over, the appellant was examined under Section 313 Cr.P.C. so as to enable him to explain the evidence which appeared against him. The appellant however, denied of his involvement in the recovery of the suspected drugs. He also denied having been given the offer to search before the Magistrate or a Gazetted Officer. Thereafter, the learned Special Judge upon gathering the parties and considering the evidence led during the trial convicted and

sentenced the appellant in the manner as already indicated hereinabove.

[5.] Mr. C. Lalfakzuala, learned counsel submits that although the FSL report indicated that the suspected drugs that were seized contained Methamphetamine but the FSL report was not exhibited by the prosecution during the trial. The prosecution also did not examine the expert, who had examined the seized articles in the FSL. He further submits that the Investigating Officer was also not examined by the prosecution during the trial. The prosecution further failed to exhibit the charge sheet as well. Referring to page No. 28 & 29 of the paper book, the learned counsel submits that although they are the deposition of PW-2 & PW-3 respectively, they do not contain the signature of the Trial Judge. He also submits that PW-2 & PW-3 are the independent witnesses, who were said to have been present at the time of seizure of the alleged drugs but since their version in their examination-in-chief and in the cross examination are contradictory, the statements of PW-2 & PW-3 has no evidentiary value. The learned counsel by further referring to the charge sheet submits that according to the Investigating Officer, the seized articles was received by the Court Malkhana-in-charge for safe custody at the Court Malkhana vide CMR No. 237/2016 dated 09.08.2016 but however, as per the FIR dated 18.09.2016, the contraband articles was said to have been seized on 18.09.2016. He therefore submits that the seized articles could not have been

kept in the Malkhana before it was seized on 18.09.2016.

[6.] The learned counsel by referring to Section 61 of the Evidence Act, 1872 (Evidence Act) submits that the contents of documents may be proved either by primary or by secondary evidence. In the instant case, neither the FSL report, nor the charge sheet has been exhibited by the prosecution. Further, neither the I.O nor the FSL expert has been examined before the Trial Court. Therefore, the burden of proving the contents of the documents has not been discharged by the prosecution. Therefore, the mandate of Section 61 r/w Section 62 & 64 of the Evidence Act has not been complied with by the prosecution. The appellant therefore should be acquitted from the charge. The learned counsel also submits that PW-1, who is the Seizing Officer during the trial has deposed that he had found 12 blue plastic polythene on the floor inside the house of the appellant and opening the plastic polythene, he found Methamphetamine tablets inside and formally seized them in the presence of witnesses. However, the evidence of PW-1 is to the effect that he was on duty at the Special Narcotic Police Station on 18.09.2016, when he received the information from his source but in the information report at page No. 80 of the paper book, PW-1 has recorded the date of receiving information as 16.09.2016. The evidence of the PW-1 being contradictory to what he had recorded in the information report, his evidence cannot be relied upon. The learned counsel therefore submits that

upon an overall appreciation of the evidence led by the prosecution, the same is not sufficient to hold the appellant guilty of the charged offence and to convict him accordingly. He therefore submits that the appellant should be acquitted. In support of his submission, Mr. C. Lalfakzuala has relied upon the following authorities:-

(i) Judgment & Order dated 17.05.2019 passed by this Court in Criminal Appeal No. 23/2018 (*J.H. Goldena & Anr. Vs. State of Mizoram*)

(ii) Judgment & Order dated 31.05.2019 passed by this Court in Criminal Appeal No. 2/2019 (*Lalthuama vs. State of Mizoram*)

(iii) *Life Insurance Corporation of India & Anr. Vs. Ram Pal Singh Bisen*, reported in (2010) 4 SCC 491.

(iv) *Naresh Kumar alias Nitu Vs. State of Himachal Pradesh*, reported in (2017) 15 SCC 684.

(v) *Suraj Mal Vs. State (Delhi Administration)*, reported in (1979) 4 SCC 725.

[7.] Ms. Mary L. Khiangte, learned Additional Public Prosecutor, on the other hand submits that the absence of the signature of the learned Trial Judge has not been raised by the appellant in his appeal. Therefore, the same being beyond the pleadings, the appellant cannot be allowed to raise such a ground at the time of hearing. She otherwise submits that the same at most can be considered as a human error and the same is not fatal to the case of the

prosecution. She submits that the absence of the signature of the Trial Judge does not in any way prejudice the case of the appellant in any manner.

[8.] The learned Additional Public Prosecutor with regard to the stand taken that Section 52 A of the ND&PS Act has not been complied with submits that non-compliance of the same by itself would not vitiate the case of the prosecution, inasmuch as, under Section 55 of the ND&PS Act, the police can very well take charge of the articles seized and delivered and keep it in safe custody pending the orders of the Magistrate. On this, the learned Additional Public Prosecutor submits that there cannot be any two opinions about the provision of Section 55 of the ND&PS Act, inasmuch as, the legislative intent is clearly discernible in the said section. Therefore, non-drawing of samples before the Magistrate is not fatal to the case of the prosecution. In this connection, the learned Additional Public Prosecutor has relied upon the case of ***Chief Information Commissioner & Anr. Vs. State of Manipur & Anr.***, reported in ***(2011) 15 SCC 1***. With regard to the alleged discrepancy about the date of receipt of the information, the learned Additional Public Prosecutor submits that as on 16.09.2016 in the information report recorded, no name was entered or in other words the name of the suspect was not known. When the information received was pursued on 18.09.2016, the authorised Sub-Inspector along with his party intercepted the suspected person at Thuampui Veng, Aizawl and the

suspect turn out to be the appellant. She therefore submits that there is no discrepancy as regards the date of the information going by the said explanation. In this regard, the learned Additional Public Prosecutor refers to the statements made by PW-1 in his cross examination.

[9.] The learned Additional Public Prosecutor further submits that as regards the search and seizure before the Gazetted Officer or Magistrate, the same is otherwise not attracted to the present case, inasmuch as, the body of the suspect was not searched and it was the house which was searched. As such, even if the appellant was not asked as to whether he wanted to be searched in front of a Gazetted Officer or a Magistrate, the same would not vitiate or affect the case of the prosecution. In support of her submission, the learned Additional Public Prosecution has relied upon the case of the ***State of Punjab Vs. Baljinder Singh & Anr.***, reported in ***(2019) 10 SCC 473***. Insofar as the date appearing in the final report that the seized article was kept in the Court Malkhana for safe custody on 09.08.2016, the same only appears to be a typographical error or a mistake.

[10.] To substantiate her submission, the learned Additional Public Prosecutor refers to the final report itself, more particularly in the third paragraph of page 22 of the paper book, wherein it was recorded that the

seized article was kept in the P.S Malkhana vide MR No. 20/2016 dated 18.09.2016, which goes to show that the suspect contraband substance was indeed recovered on 18.09.2016. The learned Additional Public Prosecutor further submits that during the trial, no one had complaint regarding non-exhibition of the FSL report and the charge sheet and therefore, the appellant cannot raise such a ground at this stage. She submits that even if the Investigating Officer was not examined during trial, the deposition of the Seizing Officer is sufficient for conviction of the appellant. She submits that the Apex Court in ***Baldev Singh Vs. State of Haryana***, reported in **(2015) 17 SCC 554** in the given facts of that case held that there is no legal proposition that evidence of police officials, unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Under such circumstance, the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness. Therefore, in the instant case as well, the evidence of the Seizing Officer can definitely be the basis for convicting the appellant. She also refers to the case of ***Rajesh Dhiman Vs. State of Himachal Pradesh***, reported in **(2020) 10 SCC 740**, wherein the Apex Court

held that non-exhibition of independent witnesses would not ipso facto entitle one to seek acquittal.

[11.] Referring to the statements made by the appellant in his examination under Section 313 Cr.P.C., the learned Additional Public Prosecutor submits that although the FSL report and the FSL expert may not have been exhibited and examined during the trial, but when the question was put before the appellant that the seized articles were found to be Methamphetamine and was asked to give an explanation, the appellant simply said that he has no comments. The same would go to show that the appellant did not deny about the recovery of the suspected Methamphetamine and he simply refused to give any comments. Therefore, under the facts and circumstance, the prosecution has been able to establish the guilt of the appellant with proof beyond reasonable doubt and therefore, the impugned judgment and order convicting and sentencing the appellant may not be interfered with by this Court.

[12.] The learned Additional Public Prosecutor also submits that the defence has also failed to prove the fact as to how the seized article has come into the possession of the appellant and therefore, the defence having failed to discharge his burden, he has rightly been convicted by the learned Trial Court.

[13.] I have heard the submissions made by the learned counsels for the

rival parties and I have perused the materials available on record. The appellant was convicted under Section 22(c) r/w Section 8(c) of the ND&PS Act and was sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 1 lakh with a default clause. In order to see as to whether the conviction of the appellant can be sustained, let us examine the evidence led by the prosecution and the defence during the trial.

[14.] PW-1, Sh. K. Lalmawizuala, SI of Police in his examination-in-chief deposed that on 18.09.2016, while he was on duty at SPL Narcotic PS, he received an information from their source that some quantity of Methamphetamine was in transit at Thuampui Veng, Aizawl and he therefore, reduced the same into writing. Thereafter, upon obtaining authorization from the Officer-in-charge, Special Narcotic PS, he and party rushed towards Thuampui. On reaching Thuampui, he requested two persons, Sh. Lalringa Kolni and Sh. Lalchagliana (PW-2 & 3 respectively) of Thuampui Veng to witness the conduct of search. They proceeded towards the residence of the appellant and on finding him, asked him whether he wanted to be searched in front of a Gazetted Officer or a Magistrate. The appellant however declined to be searched in front of a Gazetted Officer or a Magistrate. PW-1 then read out the authorization letter and explained to the appellant about the contents of the authorization. Thereafter, he conducted search in presence of the witnesses and

found 12 blue plastic polythene on the floor and inside the polythene he found Methamphetamine tablets. He then formally seized the Methamphetamine tablets in the presence of the witnesses and upon counting them, found that there were 4442 tablets weighing 444 grams. He then took 3 tablets each from each of the polythene for duplicate sample. Packing and sealing was done after the witnesses and the appellant appended their signature. He then arrested the appellant and intimated his family about the arrest. He submitted his report of seizure and arrest and the FIR to the Officer-in-charge, Special Narcotic PS, Aizawl. He exhibited the information report, his signature, the authorization report of seizure and arrest and signature, seizure memo and signature, arrest memo and signature, FIR and signature and the seized article containing Methamphetamine tablets packed in 12 blue polythene as exhibit P1, P1 (a), P2, P3, P3(a), P4, P4 (a), P5, P5 (a), P6, P6 (a) and M1 respectively.

[15.] PW-1 in his cross examination stated that he was invited to search the seizure before reaching the place of occurrence and he knew about the authorization letter which he read out before conducting search. He also stated that while obtaining authorization, the name of the appellant was already filled up and she was suspected of possessing illegal drugs. He also stated that he conducted the sealing and packing of the seized article at the place of occurrence in the presence of the civilian witnesses.

[16.] PW-2, Lalrinsanga Colney in his examination-in-chief deposed that on the night of 18.09.2016, while he was in his resident, the police personnel requested him to be a witness of search and seizure of contraband drugs. He followed them and they went to the residence of the appellant. In his presence, the police conducted search inside the resident of the appellant and recovered 12 plastic polythene which were in blue colour. Inside each plastic polythene, there was Methamphetamine tablets. The police personnel seized the tablets and in his presence counted them and took weightment of the same. They were altogether 4442 tablets weighing 444 grams. On each tablets 'R7' was written and in his presence, police personnel took 3 tablets as sample from each of the 12 polythene and he stood as a seizure witness and put his signature in the seizure memo. PW-2 exhibited the seizure memo, his signature, the seized article containing Methamphetamine tablets packed in 12 blue polythene as exhibit P4, P4 (c), M1 and M1 (a) respectively.

[17.] PW-2 in his cross examination stated that it was the fact that he did not see nor was he present when the weight of the seized article was taken and samples drawn or whether it was indeed done. At the same time, PW-2 also stated that he was present at the place of occurrence when the weight of the seized article was taken and the samples drawn. He further stated that it was the fact that he was present when the tablets were counted and it was also a

fact that he does not know the weight of the samples drawn. What can be noticed is that there are contradictory statements in the deposition made by PW-2 in his cross examination itself and also compared to what he stated in his examination-in-chief.

[18.] PW-3, Sh. Lalchangliana in his examination-in-chief deposed that he knows the accused person (appellant). At the relevant time, the appellant had rented a house within their locality. On the night of 18.09.2016, while he was in his resident, the police personnel requested him to witness the search and seizure of contraband drugs. He then followed them and they went to the residence of the appellant. They found the appellant in his residence and in his presence, the police personnel conducted search inside his house and recovered 12 plastic polythene packets which were blue in colour from the floor. Inside each plastic polythene, there were Methamphetamine tablets and the same were seized by the police personnel. They counted the same in his presence and it was found to be 4442 tablets weighing 444 grams and on each tablet was written 'R7'. In his presence, the police personnel took 3 tablets as sample from each of the 12 polythene and he stood as a seizure witness and he put his signature in the seizure memo. The deposition of PW-3 is similar to the deposition of PW-2. PW-3 exhibited the seizure memo, his signature, the seized article and his signature as exhibit P4, P4 (b), M1 and M1 (b) respectively.

[19.] Similar to what PW-2 had stated in his cross examination, PW-3 make identical statements. In other words, there is contradiction in the statements made by him in the cross examination itself and also when the same is compared to his deposition in the examination-in-chief. What can be further noticed is that the deposition of PW-3 as well as PW-2 does not contain the signature of the Presiding Judge, while the same is available in respect of PW-1.

[20.] One Mr. Darhmingliana was examined as DW-1. In his examination-in-chief, he stated that the appellant was his nephew and as such, he was well acquainted with him. He stated that the appellant had rented his house at the relevant time and the CID personnel, who checked the residence of the appellant, had visited his house during the daytime, while he was at home. They checked the resident of the appellant in the night time. He presumed that the appellant is innocent and has been falsely implicated in the case. He was not present at the place of occurrence when search, seizure and arrest was conducted but was informed about the incident by his relatives. He also stated that the appellant is a noble person and proprietor of Nitea Steel & Aluminium Fabrication and currently residing at Darlawn with his family. His wife was working as a Hindi teacher in Government Darlawn High School. As far as he knew, the appellant was not a habitual offender and he did not have any

pending case against him before any Court of law. In his cross examination, DW-1 stated that it was a fact that the appellant was his wife's nephew and that he did not know whether the accused is the proprietor of Nitea Steel & Aluminium Fabrication. He also stated that he knew that the seized article was recovered from the residence of the appellant but he was not present at the time of seizure and arrest at the place of occurrence.

[21.] From the evidence led by the prosecution, it is noticed that the Case Investigating Officer, SI H. Lalhmingthangi was not examined, the report of the Forensic Science Laboratory was not exhibited and likewise, the Examining Officer who conducted test on the seized article in the Forensic Science Laboratory was also not examined. The seized article was otherwise exhibited as Exhibit M1 by the 3 prosecution witnesses. The Apex Court in *Life Insurance Corporation of India & Anr. (Supra)* which was a matter relating to departmental enquiry, the procedure, evidence and proof of documents held that mere filing or exhibiting of a document in court does not amount to proof of its contents. Admission of a document in court may amount to admission of its contents but not their truth. Under the law of evidence, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. Contents of the document cannot be proved by merely filing in a court. The Apex Court in *Naresh Kumar alias Nitu (Supra)* held that in

the stringent nature of the provisions of the ND&PS, the reverse burden of proof, the presumption of culpability under Section 35 and the presumption against the accused under Section 54, any reliance upon Section 114 of the Evidence Act in the facts of the case at hand, can only be at the risk of a fair trial to the accused. 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. Accordingly, in the facts of that case and the nature of evidence discussed, the Apex Court found that the prosecution failed to establish the foundational facts beyond all reasonable doubt and upheld the order of acquittal passed by the Special Judge, which was reversed by the High Court.

[22.] In the present case as well, besides exhibiting the seized article as material exhibit, the prosecution did not examine the case I.O. Not only was the FSL expert not examined but the FSL report itself was not exhibited. Therefore, it cannot be said that the prosecution has discharged its burden of proving that the seized article was indeed a banned substance, i.e. Methamphetamine and the possession of which was punishable under the relevant law.

[23.] We have already noticed that PW-2 and PW-3 has made contradictory statements in their cross examination and also in a comparison between their examination-in-chief and cross examination. The Apex Court in *Suraj Mal (Supra)* in the given facts of that case held that mere recovery of bribe money divorced from the circumstances under which it was paid was not sufficient for conviction particularly when the substantive evidence of the case was not reliable. The Apex Court held that it is a well settled principle of law that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in absence of special circumstances, no conviction can be based on the evidence of such witness/witnesses. In the present case as well, it may be noticed that PW-2 and PW-3 are independent witnesses and in their respective cross examination, they have denied of having seen the weightment of the seized articles being taken and the samples being drawn. They have also denied of being present when the same was done. However, such denial is again continued with their statements recorded that they were present at the place of occurrence when samples was drawn and the seized article was weighed. In such a situation, it is only the evidence of PW-1 which remains to be appreciated. But then, PW-1 as Sub-Inspector of police was the one who is said to have seized the Methamphetamine tablets, drawn the

samples, packed and sealed the samples drawn. Although he stated in his examination-in-chief that he and party along with two independent witnesses rushed to the spot but however, none of the other police personnel who were part of the police party have been examined. In other words, there are no materials to corroborate the evidence of PW-1 and therefore, the evidence of PW-1 alone will not be sufficient to discharge the burden of the prosecution to prove the case against the appellant with proof beyond reasonable doubt.

[24.] Another aspect of the matter which can be seen is that drawing of samples, packing and sealing the samples has not been done in the presence of a Magistrate. The Apex Court in the case of *Union of India Vs. Mohanlal & Anr.*, reported in (2016) 3 SCC 379 at paragraph Nos. 19 & 31.1 held as follows:-

"19. Mr. Sinha, learned Amicus Curiae, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification, etc., without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process

of making any such application and resultant sampling and certification cannot be left to whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not broke any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by Sub-section (3) of Section 52-A. We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.

31.1. *No sooner the seizure of any narcotic drugs an psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52- A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52- A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15*

to 19 of this order.”

[25.] From the above abstract, it may be seen that according to the Apex Court sample of seized narcotic or psychotropic drug etc should be drawn before a Magistrate under Section 52-A of the ND&PS Act. However, there is no law laid down by the Apex Court that non-compliance of such requirement would vitiate the entire judicial proceeding. But at the same time, from the appreciation of the prosecution's evidence as stated hereinabove, it is seen that the evidence of PW-2 and PW-3, who are independent witnesses is unreliable and therefore, the evidence of PW-1 alone in my considered view, cannot be the basis for convicting the appellant. Although the learned Additional Public Prosecutor has relied upon the case of *Baldev Singh (Supra)* but the fact remains that even if the evidence of PW-1 is to be exhibited, the articles which were seized has not been proved to be a banned substance in accordance with law. In other words, the FSL report and the expert have not been exhibited and examined. Therefore, the said decision does not render any assistance to the case of the prosecution. Similarly, the case of *Rajesh Dhiman (Supra)* relied upon by the learned Additional Public Prosecutor, in the absence of proof about the seizure of contraband substance by exhibiting the FSL report and examining the expert will also not render support to the case of the prosecution.

[26.] Thus, upon due consideration of the case in its entirety, I am of the considered view that the prosecution has failed to prove and establish their case with proof beyond reasonable doubt. As such, the appellant is found to be entitled to be given the benefit of doubt. In view of such finding, the conviction and sentence of the appellant is found to be unsustainable and the impugned judgment and order and the order of sentence is hereby set aside. The appellant is directed to be released from jail unless he is wanted in connection with any other case.

JUDGE

Comparing Assistant