

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A.(J)01 of 2023**

Shri Pradip Kumar Roy,
son of late Sindhu Gopal Roy,
resident of Kumarghat,
Hospital Chowmuhani,
P.S. Kumarghat,
District- Unakoti Tripura,
(Permanent address : Melagarh),
P.S. Melagarh, District- Sepahijala Tripura

----- Appellant(s)

Versus

The State of Tripura,
represented by the Secretary,
Department of Home,
Government of Tripura, Agartala

----- Respondent(s)

For Appellant(s)	:	Mr. S. Kar Bhowmik, Sr. Adv. Mr. S. Datta, Adv.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of Hearing	:	16.01.2024
Date of Judgment & Order	:	05.02.2024
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(Biswajit Palit, J)

Heard Mr. S. Kar Bhowmik, Learned senior counsel assisted by Mr. S. Datta, Learned counsel appearing for the appellant as well as Mr. S. Debnath, Learned Additional P.P. appearing for the State-respondent.

2. This is an appeal under Section 374(2) of Cr.P.C. is filed challenging the judgment and order of conviction and sentence dated 20.12.2022 passed by Learned Special Judge (NDPS), Dhalai Judicial

District, Ambassa in connection with case No.Special (NDPS)27/2019 wherein the Learned Special Judge convicted and sentenced the convict-appellant under Section 21(C) of the NDPS Act, 1985 to suffer R.I for 10 years and with fine of Rs.1,00,000/- i.d to suffer R.I for six months and under Section 25 of the NDPS Act, 1985 to suffer R.I for 10 years and with fine of Rs.1,00,000/- i.d to suffer R.I for a period of six months and both the sentences shall run concurrently.

3. The case of the prosecution before the Learned Special Judge was that on 29.08.2019 one sub-Inspector of Police, Makhan Das of Ambassa Police Station lodged one suo-moto complaint to the Officer-in-Charge of Ambassa Police Station alleging, inter alia that on 29.08.2019 at about 10:45 hrs. when the complainant accompanied by Sub-Inspector Manoj Kumar Pal and other police personnel were performing vehicle checking duty at Ambassa near Chandraicherra bridge on NH-08 road vide Ambassa PS GD Entry No.14, dated 29.08.2019 and at about 11:40 hrs., they found one orange colour DATSUN GO-T car proceeding from Manu to Agartala with high speed and accordingly, they gave signal to stop the vehicle but the driver tried to escape from the place and ultimately, the police personnel detained the vehicle and found that temporary number TR01-AT(TEM)6865 was fixed on the front glass. Accordingly, the complainant prepared vehicle checking memo at spot and during checking, 12 numbers of different size cartons/packets containing ESKUF cough syrup were recovered. Immediately the complainant informed the matter to SDPO, Ambassa and Officer-in-Charge of Ambassa Police Station. Complainant also sent a message to Superintendent of Police, Dhalai seeking permission to conduct search and seizure. After some time SDPO, Ambassa and Officer-in-Charge of Ambassa Police Station rushed to the spot with investigation kit box, i.e., laptop, gala, seal etc, and the complainant prepared pre-search memo in

presence of SDPO, Ambassa and other independent witnesses. Complainant and other members of search team got themselves physically searched by local witnesses. During search, complainant recovered 1394 bottles codeine based ESKUF Cough Syrup of different batch numbers containing 100 ml in each bottle from the vehicle of accused Pradip Kumar Roy. Accordingly, complainant seized the contraband articles along with sale certificate, tax invoice, delivery report, trade certificate, temporary certificate, insurance certificate, driving licence and Aadhar card of appellant-accused Pradip Kumar Roy under a proper seizure list in presence of witnesses. Thereafter, the complainant arrested the accused and after returning back to police station lodged the suo-moto complaint against the appellant, accused person of this case. On receipt of FIR, Shri Dinesh Debbarma, Sub-Inspector of Police being the I/C, Officer-in-Charge of Ambassa Police Station registered Ambassa Police Station case No.2019 ABS 044 dated 29.08.2019 for the commission of offence punishable under Section 21(C)/25/29 of the NDPS Act, 1985 against the appellant-accused and the case was endorsed to SI Manoj Kumar Paul for investigation. The IO conducted investigation of the case and after completion of investigation laid charge-sheet against the present appellant of this case. On receipt of charge-sheet cognizance of offence was taken by the Learned Special Court and after compliance of the provision of Section 207 of Cr.P.C. charge under Section 21(C)/25/29 of NDPS Act was framed against the accused appellant by the Learned Special Judge and the same was explained to him in Bengali to which he pleaded not guilty and claimed to be tried.

4. To substantiate the charge, the prosecution before the Learned Special Court adduced in total 12 number of witnesses and the prosecution also relied upon some documents which were marked as

exhibits in the case and after conclusion of trial, the Learned Special Judge found the appellant guilty and convicted him and sentenced him as aforesaid.

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Shri Makhan Das	Complainant
PW-2	Shri Pankaj Debnath	Seizure Witness
PW-3	Sri Prasenjit Acharjee	Police Witness & Seizure Witness
PW-4	Shri Joydeb Das	Seizure Witness
PW-5	Shri Ganesh Tripura	Seizure Witness
PW-6	Shri Asish Dasgupta	SDPO
PW-7	Shri Nirode Lal Das	Police Witness & Seizure Witness
PW-8	Shri Nantu Deb,	Seizure Witness
PW-9	Shri Gopal Chandra Biswas,	Independent Witness
PW-10	Shri Dinesh Debbarma	Police Witness
PW-11	Shri Satyabrata Bhattacharjee	Expert Witness
PW-12	Shri Manoj Kumar Paul	Investigating Officer

B. Defence witnesses, if any : Nil

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

C. Court Witnesses, if any :- Nil

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sl. No.	Exhibit Number	Description
01.	Exhibit 1	Search memo along with signature of PW-1 on the search memo
02.	Exhibit 1/1	Signature of PW-4 on the search memo
03.	Exhibit 1/2	Signature of PW-6 on the search memo
04.	Exhibit 2	Seizure list along with signature of PW-1 on the seizure list
05.	Exhibit 2/1	Signature of PW-4 on the seizure list
06.	Exhibit 2/2	Signature of PW-6 on the seizure list
07.	Exhibit 2/3	Signature of PW-8 on the seizure list
08.	Exhibit 3	Inventory prepared by PW-1 along with signature of PW-1 on the inventory

09.	Exhibit 3/2 & 3/3	Signature of PW-6 on the inventory
10.	Exhibit 3/4	Signature of PW-8 on the inventory
11.	Exhibit 4	Ejahaar along with signature of PW-1 on the ejahaar
12.	Exhibit 4/1	Registration endorsement with signature of PW-10 on the ejahaar
13.	Exhibit 5	Signature of PW-2 on the re-seizure list
14.	Exhibit 5/1	Signature of PW-3 on the re-seizure list
15.	Exhibit P-6	Seizure list dated 03.09.2019
16.	Exhibit 6	Signature of PW-5 on the seizure list
17.	Exhibit 6/1	Signature of PW-7 on the seizure list
18.	Exhibit P-6/2	Signature of PW-12 on the seizure list
19.	Exhibit 7	Endorsement and signature of PW-6 on the Drug Testing Laboratory report
20.	Exhibit 9/1	Signature of PW-8 on the motor vehicle checking form
21.	Exhibit P-10	Printed FIR
22.	Exhibit P-10/1	Signature of PW-10 on the printed FIR
23.	Exhibit P-11 (as a whole) to P-14 (as a whole)	Report of Drug Testing Laboratory
24.	Exhibit P-15	Forwarding of Drug Testing Laboratory
25.	Exhibit P-15/1	Signature of PW-11 on the forwarding of Drug Testing Laboratory
26.	Exhibit P-16 (as a whole)	Hand-sketch map with signature of PW-12
27.	Exhibit P-17 (as a whole)	Index of hand-sketch map with signature of PW-12
28.	Exhibit P-18	Seizure list dated 29.08.2019
29.	Exhibit P-18/1	Signature of PW-12 on the seizure list dated 29.08.2019
30.	Exhibit P-19	Inventory prepared by PW-12
31.	Exhibit P-19/1	Signature of PW-12 on the inventory
32.	Exhibit P-20(as a whole)	Certificate of correctness of the inventory
33.	Exhibit P-21, P-21/1 and P-21/2	Photographs

B. Defence : Nil

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

C. Court Exhibits : Nil

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

D. Material Object : Nil

Sl. No.	Exhibit Number	Description
Nil	Nil	Nil

5. In course of hearing of argument, Mr. S. Kar Bhowmik, Learned senior counsel appearing for the appellant submitted before the Court that the prosecution has miserably failed to establish the charge leveled against the appellant of this case. Learned senior counsel at the

time of hearing of argument first of all draw the attention of the Court that the prosecution has been failed to comply with the provisions of Section 42 and Section 52(A) of NDPS Act against the appellant. But the Learned Court below without considering the aforesaid provisions of the NDPS Act just on the basis of evidence on record convicted the appellant for which he urged before the Court for interference and prayed for acquittal of the accused-appellant from the conviction and sentence imposed upon him.

6. Learned senior counsel in course of hearing has referred the Court the evidence of all the witnesses of the prosecution and submitted that in this case no malkhana register have been produced by the prosecution, no inventory was prepared on the spot, certificate of inventory was defective, no charge under Section 179 of MV Act was framed by the Learned Special Court, the seized Alamat were not duly packed and sealed, no R/G as stated by the prosecution was produced and proved by the prosecution, no independent eye witness were adduced by the prosecution to substantiate the charge against the appellant. Because all the witnesses were the police personnel and they are/were interested witness. SDPO, Ambassa was only cited as the witness but he did not take part in the investigation.

7. Finally, Learned senior counsel submitted that since there was total non-compliance of the provision of Section 42 and Section 52(A) of the NDPS Act, so the prosecution has miserably failed to substantiate the charge leveled against the accused-appellant but the Learned Special Judge without considering all the aforesaid points has passed an erroneous judgment which needs to be set aside. He has also relied upon few citations and referring those citations, he submitted that in view of the principles of the said citations, there is no scope to sustain

conviction against the appellant and prayed for acquittal of the accused appellant in this case.

8. On the other hand, Mr. S. Debnath, Learned Addl. P.P. appearing for the State-respondents submitted that this is a case where the prosecution both by oral/documentary evidence on record has been able to prove the charge against the appellant and the Learned Special Judge after due consideration of the evidence on record of the prosecution rightly and reasonably delivered the judgment against the appellant and urged before the Court to uphold the order of conviction and sentence against the appellant of this case.

9. We have heard detailed argument of Learned counsels of both sides at length and gone through the evidence on record. However, before appreciating the submissions made by the Learned counsel of both the parties, let us consider the evidence on record adduced by the prosecution to substantiate the charge leveled against the appellant of this case.

10. PW-1, Shri Makhan Das who was posted as S.I. of Police of Ambassa police station deposed that on 29.08.2019 at about 10:45 a.m. he along with Sub-Inspector Shri Monoj Kumar Paul and other police staff of Ambassa police station went out for performing vehicle checking duty at Ambassa near Chandrai Cherra bridge vide Ambassa police station GD entry No.14 dated 29.08.2019 and when they were performing their duties at around 11:40 a.m., they found one orange coloured Maruti car bearing No.TR-01-AT(TEM)-6865 coming towards Ambassa from Dharmanagar side and on suspicion, they detained and sent one written R/G to the SP, Dhalai seeking permission to search and seizure and accordingly, on receipt of the permission, he informed the Sub-Divisional Police Officer, Ambassa to come to the spot and when SDPO, Ambassa came to the spot, they searched the car in front of him and other

witnesses and recovered twelve numbers of brown coloured paper made packets containing 1394 bottles of codeine based cough syrup from the back dickey of the car by preparing search memo and identified the search memo prepared by him marked as Exbt.1. Thereafter, they seized the same by preparing seizure list and identified the seizure list marked Exbt.2. The inventory was also prepared at the spot and the witness identified the inventory (two pages) prepared by him marked as Exbt.3. After that, seized the cough syrup bottles, car and its driver namely Shri Pradip Kumar Roy alias Sanjoy Roy and thereafter brought the accused to the police station and handed over the accused to the Officer-in-Charge of Ambassa police station along with a written complaint against the driver for registration of a case under Section 21(c)/25/29 of NDPS Act, 1985 and identified his signature in the complaint marked as Exbt.4.

During cross-examination, he stated that he informed the Sub-Divisional Police Officer, Ambassa and Officer-in-Charge of Ambassa police station over telephone from the spot. Sub-Inspector Manoj Kumar Paul was present at the spot at the time of seizure. Sub-Inspector Shri Monoj Kumar Paul was one of the members of the checking duty team. He did not check the papers of the car before searching the vehicle and he suspected the vehicle on the basis of temporary number pasted on the glass. He did not obtain any written statement of the driver. He also did not make any statement to the IO about the confession given by the driver for having possession of cough syrup inside the car. At the time of seizure, photograph was taken. Again stated that he did not draw any sample at the spot and he did not enclose the detailed report of seizure and written R/G sent to SP, Dhalai along with the complaint. Sub-Inspector, Shri Monoj Kumar Paul is the in-charge of Malkhana Police Station. He received the seized articles at the police station from him being the in-charge of the Malkhana. The detained car was of a private

one. The accused Shri Pradip Kumar Roy was not the owner of the car, but he was a driver. No FIR was lodged against the owner of the car.

11. PW-2, Shri Pankaj Debnath deposed that on 29.08.2019 he was posted as i/c, Traffic Unit of Ambassa police station. On that day, at around 11:40 a.m., he along with officers and staff of Ambassa police station were on vehicle checking duty at Chandrai Cherra bridge area and at that time, one driver with Datsun-Go-T car bearing No.TR-01-AT(TEM)-6865 (Orange colour) was found coming from Dharmangar side and due to his inconsistent reply, they suspected him and accordingly, the car was detained and at that time, the accused confessed that he was carrying Escuf cough syrup inside the car. Thereafter, Sub-Inspector Shri Makhan Das completed the legal formalities and informed the officer-in-charge of Ambassa police station and Sub-Divisional police officer, Ambassa and subsequently, the car was searched and from the car, twelve packets containing 1394 bottles of Escuf cough syrup were recovered. The vehicle related papers were collected from the car and the driver was arrested and shifted to the police station. In the police station, Sub-Inspector Shri Monoj Kumar Paul re-seized the seized articles by preparing re-seizure list (two pages) and he put his signature and identified his signature marked Exbt.5.

During cross-examination, he stated that there is no specific mention in the re-seizure list indicating that the car from where the contrabands were seized. He did not put any signature in the seizure list at the spot. One Shri Prasenjit Acharjee was also on duty on that day with him. Sub-Inspector Shri Monoj Kumar Paul, the Investigating Officer was also present at the spot on that day. Apart from that, SI Shri Monoj Kumar Paul, Investigating Officer, SI Shri Makhan Das, complainant and SI Shri Prasenjit Acharjee were also present at the spot. But re-seizure

was not made to the PO. Nothing more came out relevant from his cross-examination.

12. PW-3, Shri Prasenjit Acharjee deposed that on 29.08.2019 he was posted as Sub-Inspector of Police in the Traffic Unit, Ambassa. On that day, at around 11:30 a.m. he along with In-charge of Traffic Unit namely Shri Pankaj Debnath, Sub-Inspector and staff of Ambassa police station were performing vehicle checking duty at Chandrai Cherra bridge area and at that time, one driver with Dutsun-Go-T car bearing No.TR-01-AT(TEM)-6865 (Orange colour) was found coming from Dharmanagar side and due to his inconsistent reply, they suspected him and accordingly, the car was detained and at that time, they found from outside that some cartons containing bottles of cough syrup were inside the car. Thereafter, Sub-Inspector Shri Makhan Das completed the legal formalities and informed the matter to officer-in-charge of Ambassa police station and Sub-Divisional Police Officer, Ambassa and subsequently, the car was searched and from the car twelve cartons containing 1340 bottles of Escuf cough syrup was recovered. The vehicle related papers were also collected from the car and the driver was arrested and shifted to the police station. In the police station, Sub-Inspector Shri Monoj Kumar Paul re-seized the seized articles by preparing re-seizure list (two pages) and he identified his signature on the re-seizure list marked Exbt.5/1 and he was not the seizure witness at the time of seizure of the contraband articles. He was confronted with the statement that he stated to IO that the search was conducted after arrival of the Sub-Divisional Police Officer but the same statement was not found in his statement recorded under Section 161 of the Cr.P.C.

13. PW-4, Shri Joydeb Das deposed that on 29.08.2019 he was going towards Ambassa Town Hall crossing Chandrai Cherra bridge and at that time, he found that one orange coloured car was detained by the

police and in the mean time, some other police personnel also came to the spot and being asked by the police, he put his signature on the seizure list. He identified his signature on the search memo marked Exbt.1/1. Thereafter, police recovered huge quantity of bottles of cough syrup from the car and seized it along with related papers of the car by preparing seizure list and on that seizure list, he put his signature. He identified his signature on the seizure list marked Exbt.2/1. Police prepared the inventory and on the inventory he put his signature and identified his signature marked as Exbt.3/1.

During cross-examination, he deposed that the car detained was Alto car and Ambassa police opened the door of the car after higher police officers reached to the spot and seized the contraband goods.

14. PW-5, Sri Ganesh Tripura deposed that on 03.09.2019 he was posted as Constable of Police in the Crime Section of SP Office. On that day, SI Manoj Kumar Paul seized written detailed report and one R.G. sent by SI Makhan Das to the SP, Dhalai by preparing seizure list produced by him and on that seizure list he put his signature and identified his signature marked Exbt.6.

During cross-examination, nothing came out relevant.

15. PW-6, Shri Asish Dasgupta, deposed that on 29.08.2019 he was posted as Sub-Divisional Police Officer, Ambassa. On that day, he was informed telephonically by the O/C, Ambassa police station that one Dutsun-GT car was detained by them at Chandrai Cherra bridge area during vehicle checking duty. Then he went to the spot and after search, 1394 bottles of cough syrup was recovered from that car and search memo was prepared by Sub-Inspector Shri Makhan Das and on that search memo, he put his signature. He identified his signature on the search memo marked Exbt.1/2. Thereafter, the contraband goods were seized by preparing seizure list and on the seizure list, he put his

signature and identified his signature on the seizure list marked Exbt.2/2. Inventory (two pages) was also prepared by Sub-Inspector Shri Makhan Das at the spot in his presence and he also identified his signature on the inventory marked Exbt.3/2 and Exbt.3/3. The sample drawn was sent to the Drug Testing Laboratory, Ghorkhabasti on 04.09.2019 and the report was received on 16.10.2019 from the Drug Testing Laboratory and thereafter, the same was sent to the Investigating officer of the case with an endorsement on the body of the report. This is his endorsement with the signature on the report marked as Exbt.7. He identified the accused.

During cross-examination, he deposed that when the vehicle was detained he was not present to the PO. No sample was drawn from the spot. Nothing more came out relevant from his cross-examination.

16. PW-7, Shri Nirode Lal Das deposed that on 03.09.2019 he was posted in the Office of the Superintendent of Police, Dhalai District in Crime Section as a police constable. On that day, at about 12:05 hrs. SI Monoj Kumar Paul of Ambassa PS came to the Office of Superintendent of Police and seized one written detailed report and one original R/G by preparing a seizure list in his presence on production of documents by Shri Ganesh Tripura and the witness identified his signature on the seizure list marked as Exbt.6/1.

During cross-examination nothing came out relevant.

17. PW-8, Shri Nantu Deb deposed that on 29th August, 2019 at about 11/11:30 a.m. he was present at Ambassa Bazar. That time, he saw so many people to proceed towards Chandrai Para Bridge on National Highway No.8 to see something. Accordingly, he also visited that place to see the matter and found that some police personnel had detained one Datsun vehicle on the road. He could not say the number of the vehicle and when he arrived to the PO, he saw the driver of the

vehicle who was cordoned by the police personnel. At that time, he saw the police personnel to search their bodies by independent witnesses and when no contraband articles were found in the possession of the police personnel, they proceeded to search the detained vehicle in presence of him and so many independent witnesses. In their presence, police recovered twelve cartons of Escuf cough syrup bottles from the detained car. The driver of the vehicle could not show any paper regarding those Escuf cough syrup bottles to the police personnel. Accordingly, police seized the recovered contraband articles, one I-card of the driver, driving license and some other personal belongings of the driver including the detained vehicle by preparing a seizure list in presence of him and others and obtained his signature on that seizure list and the witness identified his signature on the seizure list marked Exbt.2/3. Police also obtained his signatures on some other papers. His signature on the Motor Vehicle Checking Form dated 29.08.2019 was marked as Exbt.9/1 and the signature on the inventory dated 29.08.2019 marked as Exbt.3/4. He could not identify the driver.

During cross-examination, he has stated that he had no idea about the contents of the papers wherein his signatures were obtained by police. Nothing came out more relevant from his cross-examination.

18. PW-9, Shri Gopal Chandra Biswas deposed that about two years nine months back, at about 11:30 a.m., some police personnel detained one orange colour Alto car near the bridge on river Dhalai adjacent to Chandrai Para School. That time on Pradip Kumar Roy was the driver of the said Alto car. He got a betel nut shop near the bridge on river Dhalai and Chandrai Para School and that time, he was in his shop. He was called by police and thereafter, police unloaded 10/12 cartons of cough syrup but the accused-driver could not give any satisfactory

explanation with regard to the presence of huge cartons of cough syrup in his vehicle. Thereafter, police arrested Pradip Kumar Roy and brought him to Ambassa Police Station along with the vehicle and the cartons of the cough syrup and identified the accused.

During cross-examination, he stated that his signature was not taken in the seizure list.

19. PW-10, Sri Dinesh Debbarma deposed that on 29.08.2019 he was posted as Sub-Inspector of Police and Officer-in-Charge of Ambassa Police Station and on that day, upon receipt of suo-moto complaint of Sub-Inspector Makhan Das of Ambassa Police Station against accused Pradip Kumar Roy, he registered Ambassa PS case No.2019 ABS 044 under Section 21(c)/25/29 of NDPS Act, 1985 and he identified the suo-moto complaint of Sub-Inspector of Makhan Das of Ambassa Police Station marked Exbt.4/1. He has also filled up the FIR form marked Exbt.P/10 and his signature on the printed FIR form marked Exbt.P-10/1. He endorsed the case to SI Monoj Kumar Paul for investigation.

During cross-examination nothing came out relevant.

20. PW-11, Shri Satyabrata Bhattacharya deposed that on 06.09.2019 he was posted at State Drugs Testing Laboratory, Agartala as Junior Scientific Officer and Government Analyst. On that day, their office received sample "Eskuf Cough Syrup" marked Exbt.D1, Exbt.C1, Exbt.B1 and Exb.A1 and the result of investigation of exhibits [D-1, C-1, B-1 and A-1] was positive for the presence of Codeine Phosphate and Chlorpheniramine Maleate. Thereafter, he prepared the reports vide No.2139/SDPO/Ambassa/2019 dated 04.09.2019 and also identified his reports marked Exbt.P/11 (as a whole), Exbt.P/12(as a whole), Exbt.P/13(as a whole) and Exbt.P/14 (as a whole). He forwarded the reports to SDPO, Ambassa. He also identified his forwarding vide

No.F.14(29) DCA/19/4921-22 dated 23.09.2019 marked Exbt.P/15 and his signature of Exbt.P-15/1.

During cross-examination save and except denial nothing relevant came out.

21. PW-12, Manoj Kumar Pal is the IO. He deposed that on 29.08.2019 he along with Sub-Inspector Makhan Das and other Police Station staff while performing vehicle checking duty at Chandraicherra Bridge on National Highway could noticed a vehicle having temporary No.TR-01-AT-(TEM)-6865 proceeding towards Agartala from Manu side little bit on high speed, as such, they stopped the vehicle and talked with the driver but he was hesitating and thereby on suspicion they checked the vehicle and could recover 12 Nos. of cartons of Eskuf cough syrup of different batch numbers and the driver failed to show any documents. The driver was Pradip Kumar Roy and he disclosed that he was taking the consignment to Agartala to smuggle the same to Bangladesh. Sub-Inspector Makhan Das arrested the accused person on the spot and seized the contrabands in presence of the witnesses and himself. Thereafter, after observing all the formalities he submitted suo-moto complaint to Officer-in-Charge of Ambassa Police Station and case was registered and he took up the investigation of the present case on 29.08.2019 as endorsed by the then Officer-in-Charge namely Dinesh Debbarma, Sub-Inspector of Police of Ambassa Police Station. He visited the place of occurrence and prepared the hand sketch map and the index and identification hand-sketch map marked as Exbt.P/16(as a whole) and Exbt.P/17(as a whole). He recorded the statements of witnesses under Section 161 of Cr.P.C. On 29.08.2019 he re-seized the said vehicle, Sale Certificate of the said vehicle and some other documents by preparing a seizure list in presence of witnesses and identified the seizure list marked Exbt.P/18 and the signature of the witness on the

seizure list marked Exbt.P-18/1. On 03.09.2019 he seized a detailed report and a radiogram message under a proper seizure list in presence of the witnesses and identified the seizure list marked Exbt.P/6 and the signature of the witness on the seizure list marked Exbt.P-6/2. On 30.08.2019 inventory was prepared by him and the contraband and the other seized materials were produced before the Learned Magistrate with a prayer for sampling and correctness of the inventory and photographs of sampling etc., by the Learned Magistrate and identified the inventory marked as Exbt.P/19 and his signature of the witness on the inventory marked Exbt.P-19/1. He identified the certificate of correctness of the inventory of the seized contraband which bears the signature of the Learned Magistrate and on identification the certificate of correctness of the inventory of the seized contraband marked Exbt.P/20(as a whole) and also identified the photographs taken by him and certified by the Learned Magistrate and on identification the photographs marked as Exbt.P-21, Exbt.P-21/1 and Exbt.P-21/2. The photographs [Exbt.P-21, Exbt.P-21/1 and Exbt.P-21/2] were duly certified by the Learned Magistrate. After completion of investigation he laid charge-sheet against the accused-appellant and identified the accused in the dock.

During cross-examination nothing came out relevant.

22. As already stated at the time of hearing Learned senior counsel for the appellant drawn the attention of the Court referring non-compliance of the provision of Section 42 and Section 52(A) of NDPS Act by the prosecution and submitted that since from the very beginning there were lack of procedural irregularities conducted by the prosecution and regarding those irregularities, the prosecution before the Trial Court could not explain anything for which judgment against the appellant cannot sustain and submitted that on the day of alleged occurrence all though, according to the prosecution, SDPO was present to the PO but

he was simply cited as a witness but he did not take part in the investigation which vitiates the trial. In this regard, Learned senior counsel has relied upon one citation of our High Court in **Goutam Dutta versus State of Tripura** reported in **2017 (1) TLR 90** wherein in para-23 the Hon'ble High Court has observed as under :

"23. It is quite apparent from the fact of the present case that information was first received by PW8, an Inspector of BSF. He did not record the information and simply passed on the information to PW1, SI of Police of Bishalgarh P.S He recorded the information in G.D (Exbt.11). The copy of that G.D was not forwarded to S.D.P.O He informed S.D.P.O over telephone and S.D.P.O participated in the detention, search and seizure. Simply because S.D.P.O participated in the detention, search and seizure as a witness, does it amount to substantial compliance of Section 42(2) of NDPS Act, is the crucial question here, which in our considered opinion, in view of the discussions held above, was not a compliance in accordance with law. Giving of information orally to the superior officer, without sending a copy as required by law, cannot be said to be a compliance of the provision of law in its strict sense. Since the copy of the entry was not forwarded to the immediate official superior of the recording officer, the prosecution case suffers from serious infirmity which vitiates the trial."

Relying upon the said citation, Learned senior counsel has submitted that mere presence of SDPO as a witness would not amount to substantial compliance of Section 42(2) of NDPS Act.

23. Learned senior counsel further submitted that non-collection of samples at the initial stage and non-sealing of the contrabands after seizure also would vitiate the trial which the lower Court below did not consider and in this regard, he has referred another citation of our High Court in **Safique Miah & Ors. Versus State of Tripura & Ors.** reported in **2015 (2) TLR 180** wherein in Paras-8 and 14 the Hon'ble High Court has observed as under :

"8.***

8. Having considered the submissions made on behalf of the parties, while we are willing to accept the propositions advanced on behalf of the State of Punjab as far as substantial compliance of Section 42 of the NDPS Act, 1985, is concerned, we are unable to accept the latter part of the submissions relating to collection of samples at the Police Station

from the seized goods which had been sealed by P.W.3, Malkiat Singh. Non collection of samples at the initial stage of seizure was a defect, which could not have been cured in the manner in which it was done by opening the bags which had been sealed by Malkiat Singh and mixing the contents thereof.

14. After scrutinising the records, it appears that there is no evidence as regards the compliance of the provisions of Section 42 or Section 52A(2) of the NDPS Act. Even if it is considered that it was not possible on the part of PW.6 to have the authorisation from the competent authority for causing the search and seizure, but the duty was cast on him to prove that what led him to believe that the appellants were carrying the contraband narcotic substances. Apart that, there was no sealing of the packets after seizure and without the proper procedure those materials were produced before the Magistrate. Even there is no evidence on record regarding certification of correctness of the inventory of the samples seized. The sampling has also vitiated for non-compliance of the proper procedure.”

Referring the same, Learned senior counsel submitted that the prosecution in this case could not prove that the seizure of alleged contrabands were made at the initial stage and furthermore, there was no sealing of the seized contrabands after seizure for which the prosecution case has become doubtful but the Learned Trial Court below did not consider this aspect at the time of hearing of argument.

24. Learned senior counsel further referred another citation of the Hon'ble Supreme Court in **Kuldeep Singh versus State of Punjab** reported in **2011 CRI. L.J.2672** wherein in paras 8 and 19 the Hon'ble Supreme Court has observed as under :

“8. Having considered the submissions made on behalf of the parties, while we are willing to accept the propositions advanced on behalf of the State of Punjab as far as substantial compliance of Section 42 of the NDPS Act, 1985, is concerned, we are unable to accept the latter part of the submissions relating to collection of samples at the Police Station from the seized goods which had been sealed by P.W.3, Malkiat Singh. Non-collection of samples at the initial stage of seizure was a defect, which could not have been cured in the manner in which it was done by opening the bags which had been sealed by Malkiat Singh and mixing the contents thereof.

9. Accordingly, as indicated hereinabove, since the provisions of the aforesaid Act have to be construed strictly, we have no other option but to hold that the seizure and collection of samples was not in accordance with the provisions of Section 42

of the Act and the entire procedure stood vitiated as a result thereof."

Referring the said citation, Learned senior counsel also submitted that the seizure and collection of samples were not done in accordance with the provisions of Section 42 of the NDPS Act for which the entire procedure was vitiated but that part was also not considered by the Learned Trial Court.

25. In respect of sealing, Learned senior counsel has also referred another citation of our High Court in **Sujit Dhar versus State of Tripura** reported in **2015 (2) TLR 717** where in paras 26 to 29 the Hon'ble High Court has observed as under :

"[26] When on search of a person or search of a place any contraband substance is recovered it is the duty of the empowered officer/police official to ensure that the same is sealed at the spot. The empowered officer is also authorized to draw samples at the spot itself. In the seizure memo he must clearly mention the identifying mark on the seal affixed on the seized material and/or the samples, if any, drawn on the spot. The weight of the seized material as well as weight of the samples should be clearly mentioned in the seizure memo. In cases of bottles etc. it is not necessary to mention the weight but the number of bottles, the volume of material stated to be in each bottle along with other identifying marks such as name of manufacturer, batch number etc. should be clearly mentioned in the seizure report. After preparing the inventory the material should be sealed at the spot itself. However, in case where the Investigating Officer does not have investigation kit or in case of chance recovery or sometimes when the place of seizure is so remote that there is chance of the accused escaping if this exercise cannot be done at the spot then the material can be taken to the police station. Even in such cases firstly an attempt should be made that the entire seized material is sealed in one packet and then taken to the police station or to the empowered officer along with the person arrested, if any under Section 52A of the Act. The material has to be produced before the Magistrate only where the search has been conducted pursuant to search warrant issued by a Magistrate.

[27] Thereafter when the contraband material is produced in the police station the officer-in-charge of the police station must also ensure that the material is resealed. In case the investigating officer has sealed the material and drawn the samples at the spot then the Investigating Officer can either reseal the entire material without opening the seals and he can affix his own seals also on the sealed package prepared by the Investigating Officer. In such an event the officer-in-charge of the police station shall prepare the

inventory on the basis of the seizure report prepared by the Investigating Officer at the spot.

[28] In case however, Investigating Officer has not prepared seizure report at the spot and has brought the entire material to the police station then the Officer-in-Charge of the police station should ensure that the same is weighed and properly identified as discussed hereinabove and at least two representative samples are drawn out in accordance with law. Thereafter, the entire material should be sealed and a memo should be prepared in this regard. As far as possible independent witness should be associated with this process.

[29] Thereafter the police officer is required to deposit the seized material i.e. the bulk seized material as well as the samples with the police official, in-charge of the Malkhana who shall make an entry in the Malkhana register giving the time and date and receipt of samples along with other details such as the number of packages, number of seals, identifying mark of the seals etc."

26. In respect of sealing and marking, Learned senior counsel also referred another citation of our High Court in **Prantosh Paul versus State of Tripura** reported in **2014 (2) TLR 463** where in para 17 the Hon'ble High Court has observed as under :

"6. ***

"17. In our considered view, this controversy is no more res integra and stands answered by a Constitution Bench judgment of this Court in the case of **Karnail Singh vs. State of Harayana: (2009) 8 SCC 539**. In that judgment, the Court in the very opening paragraph noticed that in the case of **Abdul Rashid Ibrahim Mansuri v. State of Gujarat: (2000) 2 SCC 513**, a three-Judge Bench of the Court had held that compliance of Section 42 of the Act is mandatory and failure to take down the information in writing and sending the report forthwith to the immediate officer superior may cause prejudice to the accused. However, in the case of **Sajan Abraham v. State of Kerala: (2001) 6 SCC 692** again a Bench of three Judges, held that this provision is not mandatory and substantial compliance was sufficient. The Court noticed, if there is total non-compliance of the provisions of Section 42 of the Act, it would adversely affect the prosecution case and to that extent, it is mandatory. But, if there is delay, whether it was undue or whether the same was explained or not, will be a question of fact in each case. The Court in paragraph 35 of the judgment held as under: [**Karnail Singh (supra)**, SCC pp. 554-55, para 35]."

Referring the said judgment, Learned senior counsel has submitted that the due to non-compliance of the provisions of Section 42 of the NDPS Act the prosecution case was not conclusive and doubtful.

27. Learned senior counsel further submitted that in this case the prosecution has relied upon one radiogram message which emerged from the evidence of the complainant. But in this regard, Learned senior counsel submitted that just by sending one wireless message the requirement of Section 42(2) of the Act does not become complete and it cannot be said that the provision of Section 42(2) of the NDPS Act has been complied with and in this regard, he has referred one citation of the Hon'ble Supreme Court of India in **Rajinder Singh versus State of Haryana** reported in **(2011) 8 SCC 130**. In para-12 of the said judgment, the Hon'ble Supreme Court has observed as under :

"12. Mr. Dalal, the learned counsel for the respondent State has, however, referred to para 34 of the judgment of the Constitution Bench in Karnali Singh : (2009) 8 SCC 539 in which general observations have been made with regard to the provisions of Section 41(1) and 42(2) with respect to the latest electronic technology and the possibility that the said provisions may not be entirely applicable in such a situation. Concededly the present case does not fall in this category. In any case the principles settled by the Constitution Bench are in para 35 and have already been reproduced by us hereinabove. Likewise, the dispatch of a wireless message to PW 6 (sic PW 5) does not amount to compliance with Section 42(2) of the Act as held by this Court in State of Karnataka v. Dondusa Namasa Baddi : (2010) 12 SCC 495."

28. Finally, Learned senior counsel has submitted that due to non-compliance of the provision of Section 42 of the NDPS Act and Section 52(A) of the NDPS Act the prosecution case suffers from various infirmities but the Learned Court below did not consider the non-compliance of those provisions of law by the prosecution and found the appellant guilty and urged for setting aside the judgment.

29. On the other hand, Learned Addl. P.P. appearing for the State-respondent has submitted that the prosecution before the Learned Court has been able to prove the charge beyond reasonable doubt against the appellant and the Learned Court below after proper appreciation of the evidence on record reasonably and rightly delivered

the judgment holding the appellant guilty and submitted that samples should not be taken at the time of seizure as per NDPS Act and in support of his contention, Learned Addl. P.P. has referred one judgment of the Hon'ble Supreme Court of India in **Union of India versus Mohanlal and Another** reported in **(2016) 3 SCC 379** where in para-17 the Hon'ble Supreme Court has held as follows :

"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."

30. Lastly, Learned Addl. P.P. urged for upholding the conviction returned by Learned trial Court against the appellant.

31. The Narcotic Drugs and Psychotropic Substances Act, 1985 is a special law enacted by the parliament with an object to control and regulate the operations relating to Narcotic Drugs and Psychotropic Substances. In view of the increasing instances of drug trafficking and drug abuse and also considering the disastrous effect of the same specifically considering the physical and psychological health of the vulnerable citizens particularly the youth which has been considered as a great concern for the nation compelled the parliament to make the stringent law to deal with the offences properly. For effective prevention and control of the drug trafficking and drug abuse it has become a major challenge to the law enforcing agencies of the country to take immediate and proper steps. Proper investigation and prosecution of cases and punishment of offenders is one of the best ways to prevent and control the drug menace. The Act prescribed for stringent punishment of the offenders and also prescribes procedures to be followed in respect of

alleged search and seizures. In the Act also it is specifically mentioned in detail the procedure regarding collection of samples, deposit of articles and also disposal of the same. Certain safeguard is also given in the Act so that no unnecessary harassment is caused to any innocent persons but non-compliance of the prescribed provisions of law by the investigating agency would be fatal for the prosecution and also non-compliance of the relevant provisions would definitely facilitate the illegal possessors of the contravened items to escape from the punishment.

32. Since, Learned senior counsel has confined his arguments regarding non-compliance of the provisions of Section 42 and 52(A) of the NDPS Act, so let us reproduce below the aforesaid provisions for the sake of brevity. For ready reference, Section 42 and Section 52(A) of the NDPS Act are mentioned herein below :

[42. Power of entry, search, seizure and arrest without warrant or authorisation.-- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under

this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]

[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 sub-section (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 3[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 sub-section (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 1972) 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 5[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.]”

33. Now, in the case at hand the main allegation of the prosecution is that on 29.08.2019 when SI Makhan Das of Ambassa P.S. along with S.I Manoj Kumar Paul and other police staffs of Ambassa P.S. were performing vehicle checking duties at Ambassa near Chandrai Cherra bridge on the basis of Ambassa Police Station GD entry No.14 dated 29.08.2019 that day at about 11:40 a.m. they found one orange colour Maruti Car bearing temporary No.TR-01-AT(TEM)6865 was coming from the side of Manu towards Ambassa and on the basis of suspicion they detained the vehicle and sent one R/G to S.P., Dhalai seeking permission to search and seizure and after receipt of permission, he informed SDPO and O/C, Ambassa P.S. to come to the spot and accordingly they came and thereafter, after observing formalities he conducted search of the vehicle and after search, they found 1394 nos. of bottles of codeine based cough syrup from the dicky of the car and he also prepared search memo and thereafter, prepared seizure list and also prepared the inventory which were marked as exhibits. After that, the accused was arrested and he was taken to police station along with the

seized contraband items and the same was handed over to O/C, Ambassa police station and accordingly, on the basis of the complaint O/C, Ambassa police station registered the case.

34. It is also on record that at the time of seizure apart from the police personnel some public witnesses were also there and the prosecution before the Learned trial Court adduced those witnesses.

35. PW-4, Joydeb Das is a public witness. He has specifically stated that in his presence, bottles of cough syrup were seized by the police. He has also put his signature on the search memo and also his signature on the seizure list. The appellant accused by the trend of cross-examination could not raise any doubt to disbelieve/discard his evidence.

36. Similarly, PW-8, Shri Nantu Deb another public witness he also deposed in the same manner like that of PW-4. He deposed that on the alleged day he was present at Ambassa bazaar and when he could know that so many people were proceeding towards Chandrai para bridge on National Highway No.8, accordingly he rushed to the PO, he found the driver of the vehicle and in his presence he found that the police personnel were searching their bodies by independent witnesses and in their presence, from the offending vehicle police recovered 12 cartons of Escuf syrup bottles from the car. Those contravened articles were seized and the witness also put his signature on the seizure list and identified his signature. The appellant also by the trend of cross-examination could not raise any doubt to disbelieve/discard his evidence.

37. Similarly, PW-9 Shri Gopal Chandra Biswas another independent witness very specifically stated that the vehicle was detained by the police to the PO and he has got a shop near the bridge. Police called him and on arrival therein he found that police unloaded 10/12 cartons of cough syrup and the appellant could not give any satisfactory account of the same. The appellant also by the trend of

cross-examination could not raise any doubt to disbelieve his evidence. The witness also identified the appellant as accused.

38. Furthermore, from the evidence of PW-1, Shri Makhan Das it appears that on that relevant day i.e. on 29.08.2019 at the time of performing vehicle checking duty at Ambassa Chandrai Cherra near bridge, on the basis of GD entry they detained the orange colour Maruti car bearing No.TR-01-AT(TEM)-6865 and immediately the matter was informed to SDPO, Ambassa and a message was sent to SP seeking permission to conduct search and seizure and upon receipt of permission from SP, he conducted search over the vehicle and recovered 12 nos. brown colour packets containing 1394 bottles codeine based cough syrup and from the evidence of said witness it appears that there was no such prior information with regard to the transportation of the suspected drugs. So, the question of making GD entry immediately with regard to the detention of vehicle and subsequent search does not arise at all because those contrabands were suddenly at the time of checking of vehicle were discovered. So, it cannot be said that there was non-compliance of the mandatory provision by the prosecution. In this regard, in **Rajinder Singh** (supra) in para 10, 35(D) Hon'ble the apex Court has observed as under :

"10. In Karnali Singh case : (2009) 8 SCC 539 this Court has held that the provisions of Section 42(2) are mandatory and the essence of the provisions has been set out in the following terms :

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the

police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

From the aforesaid principle of law laid down by the Hon'ble Apex Court in **Karnali Singh** (supra) it appears that if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, non recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. Here in the given case there was no prior information. At the time of vehicle checking, the vehicle was detained and from the vehicle, the contrabands were seized by the complainant. So, in the given circumstances of the case, it cannot be said that there was non-compliance of the provision of Section 42 from the side of prosecution.

39. Furthermore, from the other witnesses of the prosecution who are police personnel it is also crystal clear that on the alleged day, the vehicle was first detained in course of vehicle checking duty and the appellant was the driver of the offending vehicle and after observing the formalities when the vehicle was checked, that time 12 packets containing Escuf syrup were recovered and the appellant could not give any satisfactory account of the same and on that relevant point of time SDPO, Ambassa and O.C., Ambassa were present and in their presence, the search was conducted and the contrabands were recovered and thereafter seized and the appellant was arrested and since the contraband articles were the bottles containing Escuf syrup. So, the

submission of Learned senior counsel that those were not properly packed and sealed cannot be accepted and the citations as referred by him are not at all applicable for the decision of the present case.

40. Furthermore, it also appears that PW-6, Sri Asish Dasgupta SDPO, Ambassa according to his evidence he has deposed that on the alleged day he was informed over mobile by the Officer-in-Charge, Ambassa Police Station that a Dutsun-GT car was detained at Chandrai Cherra bazaar and after his arrival, search memo was prepared by S.I., Makhan Das, PW-1 and his signatures were obtained on it and upon search of the vehicle, 1394 bottles of cough syrup were recovered from the said vehicle while the driver failed to give any satisfactory explanation towards possession of such huge quantity of cough syrup inside the vehicle and from his evidence, further it also appear that the inventory was prepared on the spot which was also supported by other witnesses and the witness also put his signature as witness to the inventory. It also appears from the evidence of said witness that Sub-inspector, Makhan Das seized all the contraband cough syrup under a proper seizure list in his presence and during investigation, on 04.09.2019 the sample was drawn and sent to the drug testing laboratory and on 16.10.2019 the report was received and thereafter, the same was sent to IO.

41. From the evidence of PW-12, Sri Manoj Kumar Pal it appears further that on 29.08.2019 he took up investigation of the case as the case was endorsed to him by the O/C Dinesh Debbarma, PW-10 for investigation. During investigation, he visited PO, prepared hand sketch map with index, examined some witnesses and recorded their statement under Section 161 of Cr.P.C. From his evidence also it appears that on 29.08.2019 he seized the vehicle, Sale Certificate of the vehicle along with some other documents in presence of witnesses. On

03.09.2019 he also seized a detailed report and a radiogram message under a proper seizure list. On 30.08.2019 he prepared the inventory of the seized contrabands and other seized materials and produced the seized contrabands and other materials before the Court of Learned Judicial Magistrate, 1st Class, Ambassa for obtaining certificate of correctness of the inventory, sampling and correctness of the inventory and photographs of sampling. He had also collected the Laboratory report and after completion of investigation, he laid charge-sheet against the appellant. In **Goutam Datta** (supra) in para 22 c and d the High Court of Tripura has observed as under :

"19.***

22. This question is no more res integra and stands fully answered by the Constitution Bench judgment of this Court in Karnail Singh v. State of Haryana [(2009) 8 SCC 539]. The Constitution Bench had the occasion to consider the conflict between the two judgments i.e. in Abdul Rashid Ibrahim Mansuri v. State of Gujarat [(2000) 2 SCC 513] and Sajan Abraham v. State of Kerala((2001) 6 SCC 692] and held as under: (Karnail Singh case, SCC pp.554-55, para 35)

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non- sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record

in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

From the above, it appears that the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency and while total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, but delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42.

42. Here in the given case from the facts and circumstances it appears that since the vehicle was detained at the time of checking of vehicle and there was no prior information of the same and the procedure followed by the complainant in my considered view was rightly followed and it cannot be said that there was violation of the provisions of Section 42 by the prosecution agency in the given case. PW-12, the IO in course of his examination stated that on 30.08.2019 inventory was prepared by him and the contraband and other seized materials were produced before Learned Magistrate with a prayer for sampling and correctness of the inventory and photographs of sampling by the Learned Magistrate. The witness identified the inventory marked as Exbt.P/19 and

his signature and his signature marked as Exbt.P-19/1. He also identified the certificate of correctness of the inventory of the seized contravened marked Exbt.P/20 and the photographs taken by him and the certificate given by the Magistrate were also identified and marked as Exbt.P/21, Exbt.P-21/1 and Exbt.P-21/2. He further deposed that photographs were duly certified by the Learned Magistrate. In **Sujit Dhar** (supra) the High Court of Tripura in para-32 has observed as under :

"32. Section 52A has nothing to do with search and seizure. The purpose of Section 52A is to ensure that the contraband substance is disposed of under the supervision of a Magistrate and if the Magistrate follows the mandate of Section 52A then the certificate issued by him is per se admissible in evidence and it is not necessary for the police or the investigating agency to produce the bulk seized material which is the case property before the Court. The intention behind Section 52A is to ensure destruction of such harmful material at the pre trial stage."

From the aforesaid citation it appears that Section 52A of the NDPS Act has no relevance with regard to search and seizure. The actual intention behind Section 52 is to ensure destruction of harmful material at the pre trial stage.

43. Moreover, as pointed out by Mr. S. Kar Bhowmik, Learned senior counsel appearing for the appellant there was no necessity to produce and prove malkhana Register in a case under NDPS Act to substantiate the charge against the accused.

44. Here in the given case from the evidence on record it appears that the prosecution has complied with the provisions of Section 42 and 52A of the NDPS Act and the Learned trial Court after considering the evidence on record and also considering all the legal aspects has rightly and reasonably delivered the judgment upholding the appellant guilty of offence and we do not find any reasonable grounds to interfere with the judgment passed by the Learned Special Court.

45. Thus, after hearing both the learned counsels at length and after going through the evidence on record of the Learned Court below it appears to us that the prosecution in the given case has been able to prove that on the alleged day at the time of vehicle checking duty contraband items were recovered from the vehicle which was being driven by the present appellant of this case near Chandraicherra Bridge at Ambassa.

46. Hence, in the result, the appeal filed by the appellant is hereby dismissed being bereft of merit. The judgment and order of sentence and conviction passed by the Learned trial Court is hereby upheld and accordingly it is affirmed.

A copy of this judgment be sent to Learned trial Court along with the LCR.

JUDGE

JUDGE

