

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) No.11 of 2023

Sri Suresh Chakma
S/o: Sri Madhan Chakma
R/o: ST Colony, P.S-Chailengta,
Dist: Dhalai Tripura.

..... Appellant(s).

Versus

The State of Tripura

.....Respondent(s).

For Appellant(s)	:	Mr. Debajit Biswas, Advocate.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing	:	02.02.2024
Date of Judgment	:	01.04.2024
Whether fit for reporting	:	No.

_B_E_F_O_R_E_

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

_J_U_D_G_M_E_N_T_

The appeal arises from the judgment dated 10.11.2022 passed by Ld. Special Judge (NDPS), Dhalai Judicial District, Ambassa, in Special (NDPS) case no. 28 of 2019 and the related sentence thereof whereby the appellant was convicted under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act) and was sentenced to suffer Rigorous Imprisonment (RI) for 7 (seven) years and to pay a fine of Rs.1,00,000/-(Rupees one lakh) only and in default to pay the fine to undergo further Rigorous Imprisonment (RI) for 6 months.

[2] On 11.10.2019 at about 1415 hours Sub-Inspector Tapan Das of Chailengta Police Station lodged the ejahar, inter alia, to the effect that on that day at about 0930 hours, Inspector Sura Kumar Debbarma, Officer-in-Charge of Chailengta Police Station, received one secret information that the appellant had stored huge quantity of brown sugar (heroin) in his house. Matter was then entered in Chailengta PS GD Book vide Entry No.007 dated 11.10.2019 and same was also

verbally informed to the Sub-Divisional Police Officer (for short- SDPO), Longtharai Valley over telephone seeking permission for conducting search in the house of the appellant. Presence of one Executive Magistrate was also asked for and said information was also conveyed to the Superintendent of Police, Dhalai District over phone. Thereafter, a team of police officials consisting of the informant, said OC of Chailengta PS; SDPO, Longtharai Valley; one Deputy Collector & Magistrate (DCM) of Longtharai Valley namely Sri Sushil Kumar Reang, and other Police Personnel raided the house of the appellant and during search found a plastic pouch containing dry powder of yellow colour suspected to be brown sugar concealed in the heap of fire-woods. Taking some small amount therefrom, they conducted a preliminary test through narcotic drugs detection kit and found the same to be heroin. On measurement, the quantum of the recovered heroin was found to be 10(ten) gm. Thereafter, said item along with one mobile handset were seized in presence of the witnesses and the appellant was also arrested on the spot. Specific case was, thereafter, registered as Chailengta PS Case No. 2019 CLT 016, dated 11/10/2019 based on said FIR under Section 21(b)/25 of the NDPS Act, 1985 against the appellant and SI Partha Pratim Reang was entrusted with the investigation of the same who after investigation finally submitted the charge sheet under Section 21(b)/25 of NDPS Act, 1985 against the appellant.

[3] Ld. Special Judge, thereafter, framed the charge against the appellant under Section 21(b) of NDPS Act, 1985 to which the appellant denied the allegations. Prosecution during trial, examined total 10 (ten) witnesses, out of whom PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-8 and PW-9 were the witnesses who claimed to be present at the spot during such recovery. While convicting the appellant, the trial Court after appreciation of the evidence came to the conclusion that from the very inception of the case, the investigating agency had complied with

all the mandatory provisions of the Act and there was no scope to disbelieve the testimonies of the witnesses.

[4] Mr. Debajit Biswas, learned counsel of the appellant contended that the mandatory provision of Section 42 of the NDPS Act, 1985 was not complied with in this case and before going to search the house of appellant, no written permission from the higher Authority was taken and even after coming from the raid also, within 72 hours no written communication was made by the OC of Chailengta PS or other officers of that Police Station to their higher Authority informing about such recovery and, for non-compliance of the mandatory provision of Section 42 of the Act, the appellant was entitled to be acquitted.

[5] The second point, learned counsel argued, was that no document or any other proof was collected by the informant or by the investigating officer to establish that the appellant was the owner of the house wherefrom the alleged recovery was made. Referring to the evidence of PW-2, PW-3 and PW-4, Mr. Biswas, learned counsel further argued that the police Authority had tried to show these witnesses as independent witnesses but in fact they were men of police authority having previous intimacy with them and on their request these witnesses came to the spot from other localities and factually, no independent witnesses of the locality of the appellant was made a witness of seizure in this case.

[6] Learned counsel of the appellant further argued that as per FIR, the items were sealed at the spot but inventory was prepared at the Police Station which meant that at the time of preparation of the inventory, the sealed packet was unsealed again. Mr. Biswas, learned counsel also tried to point out that the alleged sample was dispatched to the Forensic Laboratory Authority on 18.10.2019, i.e. with a delay of 7 days and according to PW-10, no sample was drawn in presence of Judicial Magistrate and even the Judicial Magistrate also did not certify anything in this regard. Referring to the godown receipt, learned counsel argued that the seized

item was received in the godown on 12.10.2019 at 1100 hours and there was serious doubt about the custody of that seized item during the period after preparation of inventory till receipt of the same in the godown.

[7] Finally, Mr. Biswas, learned counsel of the appellant relied on a decision of Hon'ble Supreme Court in *Mohan Lal Vs. State of Punjab*; (2018) 17 SCC 627, wherein reference of Standing Order No.1 of 88 was made relating to mode and time limit of dispatch of sample to laboratory and according to said Order, the sample was required to be sent within 72 hours of seizure to avoid any legal objection. Reference to another decision of Hon'ble Supreme Court in *Noor Aga vs. State of Punjab*, (2008) 16 SCC 417, was also made therein to the effect that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon so that sanctity of physical evidence in such cases remains intact.

[8] Mr. Biswas, learned counsel also relied on another decision of Hon'ble Supreme Court in *Kuldeep vs. State of Punjab*, (2010) 10 SCC 219, wherein it was observed that when the seizure and collection of sample was not made in accordance with provisions of Section 42 of the Act, the entire procedure stood vitiated as a result thereof. Mr. Biswas, learned counsel of the appellant also referred the decision of Hon'ble Supreme Court in *Darshan Singh vs. State of Haryana*, (2016) 14 SCC 358, where some extracts of another Constitution Bench decision in *Karnail Singh Vs. State of Haryana* was made by engaged Sr. Counsel of the appellant with regard to section 42 of the Act and in that decision it was observed that 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 failed to record in writing the information received, or failed to send a copy thereof, to the official superior, then it would be a suspicious circumstance mainly for a clear violation of Section 42 of the Act. With reference to Section 42 of the Act, Mr. Biswas, learned counsel also relied

on another decision rendered by Bombay High Court dated 05.03.2021 rendered in *the State of Maharastra (Through Yerwada Police Station Pune) Vs. Sou. Rita Ankush Indrekar (Criminal Appeal No.903/2006)* to the effect that the officer should not only reduce information received to writing but also record reasons for the belief while carrying out arrest or search as provided under the proviso to Section 42(1) and to that extent they are mandatory.

[9] The last citation as was referred by Mr. Biswas, learned counsel was of High Court of Jammu and Kashmir and Ladakh in a case between *the State of J&K vs. Verinder Singh & Anr.* (decided on 28.04.2023 in CRAA No. 41 of 2011) wherein it was observed by the High Court that in view of stringent provisions regarding punishment and grant of bail, the legislature in its wisdom enacted Section 55 of the NDPS Act, to ensure that Officer-in-Charge of Police Station shall immediately take charge and keep the alleged contraband in safe custody, in order to rule out any possibility of tampering with the contraband. Prosecution is obliged to prove that the contraband after its recovery and seizure from the accused was kept in safe custody, in the Malkhana of the concerned Police Station under proper entry in the Malkhana register. The prosecution is also obliged to prove that said sample of the contraband was forwarded to FSL without any delay.

[10] Mr. R. Datta, learned P.P. for the State-respondent in reply submitted that it was a case covered under Section 41 of the NDPS Act, and, therefore, the requirements as mandated under Section 42 was not required to be complied with. Moreover, on 12.10.2019 necessary information was sent to the SP, Dhalai District in writing by police, and there was also no denial or cross-examination of PW-10 (I.O.) on this point. However, said letter was not proved into evidence. According to Mr. Datta, Ld. P.P. the petition for drawing of sample, certification of list of samples and inventory and taking of photographs were submitted before the Court. According to him, PW-2 was an independent witness who deposed about the said

search and seizure and other witnesses also corroborated with him. He further contented that the order dated 14.10.2019 of the Judicial Magistrate (First Class), Ambassa, Dhalai Judicial District had reflected that samples were duly collected in his presence and the related envelope containing that sample was also there in the trial court record.

[11] Mr. Datta, learned P.P. also relied on a decision of Hon'ble Supreme Court in *State of Rajasthan Vs. Sahi Ram, (2019) 10 SCC 649*, wherein at para 18 it was observed that if the seizure of the material was otherwise proved, what was required to be proved was the fact that the samples taken from and out of the contraband materials were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts showed the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence were made out. It was also observed that if the seizure was otherwise not in doubt, there was no requirement that the entire material ought to be produced before the court. In *Kallu Khan Vs. State Of Rajasthan, (2021) 19 SCC 197*, as referred by Mr. Datta, same principles were reiterated by Hon'ble Supreme Court. The reason for referring these judgments by Ld. P.P. was that the sample of seized contraband item or the seized item itself were not proved into evidence by the prosecution. Finally, he referred another decision of Hon'ble Supreme Court in *Sekhar Suman Verma vs. Superintendent Of Narcotics Control Bureau & Another, (2016) 11 SCC 368*, to the effect that when the search is conducted by a gazetted officer, the argument on the ground infraction of Section 42 of the Act, has no merit.

[12] Now, while looking to the evidences in the record, it is seen that PW-9 SI Tapan Das (informant of the case) categorically stated that they went on raid on 11.10.2019 in the house of appellant on the basis of information received by Inspector Sura Kumar Debbarma, OC of Chailengta PS and after same was reduced

into writing in GD Entry No.007 dated 11.10.2019 and he was accompanied by SDPO, Longtharai Valley and DCM, Longtharai Valley and other Police Staff. On arrival, some local people were also found gathered there and before conducting search, he himself and other Police Personnel got themselves searched by independent witnesses and prepared Personal Search Memo on the spot. Thereafter, they entered into the house of the appellant and recovered one plastic pouch containing yellow powder from the stack of fire-wood and by applying test kit, same was found positive for presence of brown sugar. As the appellant failed to give satisfactory reply for such unauthorized possession of the same, he was arrested. On taking weight, the seized contraband was found to be 10(ten) gm. Thereafter, he seized said contraband item with one mobile phone by preparing a seizure list (Exbt.3) and on return to the Police Station, he lodged the FIR. Thereafter, he handed over the appellant and the seized items to O.C. of the police station. In his cross-examination, he replied that he did not obtain any search warrant before conducting such search. No further substantial cross-examination was done on him.

[13] PW-5, Inspector Sura Kumar Debbarma, Officer-in-Charge of Chailengta Police Station deposed similarly, corroborating the facts that from a reliable source he had received the secret information of storing of heroin by the appellant in his house and thereafter he reduced the information in GD Book vide Entry No.007 dated 11.10.2019. Thereafter, he communicated that information to the SP, Dhalai District and SDPO, Longtharai Valley and also requested SDM, Longtharai Valley to depute one Executive Magistrate at the time of conducting raid in the house of appellant. According to him, within 5 to 10 minutes, SDPO, Longtharai Valley and the DCM, Longtharai Valley arrived at Chailengta PS and thereafter all of them along with the informant and other Police Personnel went to the house of the appellant and on search recovered that plastic container containing heroin of 10(ten) gm from the stack of firewood from that house, and thereafter SI

Tapan Das seized the recovered drug and sealed the same in an envelope. The appellant was then arrested. He also deposed that after the FIR was registered he endorsed the case to SI Partha Pratim Reang, (PW-10) for investigation. He also proved the extract copies of Chailengta PS GD Entry No. 7, 8 and 11 dated 11.10.2019 which were marked as Exbt.7 as a whole. In his cross-examination, he admitted that before making the search he did not receive any written permission from SP, Dhalai District but he volunteered that he had received oral permission from him. He further stated that he had found the mother, wife and adult sister of the appellant in his residence. He also admitted that no document regarding appellant's ownership in respect of said house was seized.

[14] According to PW.1, Constable Kusum Rani Biswas, she alongwith O.C. of the police station, SDPO, Longtharai Valley and one DCM and other police personnel went to the house of appellant and recovered said alleged heroin therefrom. Other witnesses like PW.2 and PW.2 also corroborated the fact that both the O.C., Longtharai Valley PS and SDPO, Longtharai Valley were there during such search in the house of appellant. Thus, it is established that both SDPO, Longtharai Valley and O.C., Longtharai Valley PS participated in the search who were gazetted officers. Even another gazetted officer namely the DCM Sushil Kumar Reang was also present there. Therefore, this case doesnot come within the purview of section 42 of the Act and the prosecution had no obligation to show compliance of conditions as enumerated in section 42 of the Act.

[15] Three civilians namely Discomoni Chakma (PW.2) of Darogapara, Chailengta, Smti Suchitra Dewan (PW.3) of Longtharai Para and Sri Sukhamoy Chakma (PW.4) of Longtharai Para of Chailengta were also examined by the prosecution and all of them corroborated with each other that on that day, they went to the house of the appellant and found presence of police personnel there including SDPO, Longtharai Valley and O.C. of Chailengta PS. They also stated about

recovery of heroin from a plastic container from that house. They also signed the seizure list. PW.2 stated that his house was situated at Darogapara at a distance of 2 km from the locality of the appellant and he went there on the request of SI Partha Pratim Reang. PW.3 similarly stated that PW.2 was his nephew and she went to the spot with PW.2. Her house was also situated at a distance of 2 km from the house of the appellant. PW.4 similarly stated that he was also not a resident of appellant's locality, rather he went there at the request of SDPO, Longtharai Valley and he was a retired police officer. Thus, it appears that none from the locality of appellant was the witness of recovery and seizure though according to PW.3, local villagers also assembled there and the police authority was very selective in choosing of seizure witnesses from their acquaintance. The search memos (Ext. P.1) interestingly shows that before conducting search in the house of the appellant, PW.2, PW.3 and PW.4 searched the persons of the SDPO, Longtharai Valley, O.C., Chailengta PS, Woman Constable Kusum Biswas (PW.1) and SI Tapan Das and in turn said police officers and Kusum Biswas also searched the persons of PW.2, PW.3 and PW.4., but there also none of the locals was called. On the contrary, PW.8, Sushil Kumar Reang (Deputy Collector and Magistrate) in his cross examination stated that before taking entry into the house of the appellant, he himself and other police personnel present there did not get themselves searched by any independent witness. These are some notable circumstances which require cautious scrutiny of the entire evidences.

[16] Though the police officers like PW.5, Sura Kumar Debbarma (O.C. of the police station), PW.6, Ratna Sadhan Noatia (SDPO), PW.9, SI Tapan Das (informant) and PW.8, Sushil Kumar Reang (DCM) corroborated with each other on material points regarding search and seizure of alleged contraband from the house of the appellant, said PW.8 in his cross examination admitted that without any requisition from police authority and without any instruction from Sub-divisional

Magistrate, Longtharai Valley, he accompanied the police personnel such move by the witness was not a usual or natural phenomenon.

[17] PW-10, SI Partha Pratim Reang in his usual course deposed about different phases of the investigation. PW.7, Sri Suman Kumar Chakraborty, Deputy Director (Chemical Division), Tripura State Forensic Science Laboratory stated that their office received one sealed packet from the office of SDPO, Longtharai Valley on 18.10. 2019 in connection with the instant case through a special messenger. Inside the packet there was one yellow colour envelope containing seal and signature of Judicial Magistrate, 1st Class, Ambassa and inside that envelop, there was one sealed plastic packet containing some orange colour powdery substance of weight 5.5 gm and on examination, presence of Di-acetyl morphine (commonly known as heroin) was found.

[18] Mr. Biswas, learned counsel of the appellant argued that ownership of the appellant of the house wherefrom the alleged item was seized, was not established in the case but such argument is also not convincing. There are sufficient evidences that the appellant was residing in that house along with his mother, wife and one adult sister. Just because other three family members were there in that house, the appellant cannot gain any benefit therefrom, unless he himself has shown any probable grounds of shifting his liability to some other person(s) or he has accounted for such custody.

[19] Mr. Biswas, Ld. Counsel also argued that no sample was drawn before the Magistrate as required under Section 52(A) of the Act. As per the evidence, one inventory was proved by the prosecution under Exbt.P.4 which was certified by the Judicial Magistrate, First Class, Ambassa, Dhalai Judicial District about it's correctness. From the related order dated 14.10.2019 of the Judicial Magistrate, First Class, Ambassa, Dhalai Judicial District passed in connected Misc.33 of 2019, it is found that he also gave necessary certificate as to the correctness of the list of

samples drawn in his presence, but said list of samples as claimed to have been prepared under Section 52(A) of NDPS Act, was not proved before the Ld. Special Judge. Said Ld. Judicial Magistrate, First Class was also not examined in this case and simultaneously seized item or sample thereof was also not proved into evidence. One sealed envelope marked as Exbt.A1 and supposedly countersigned by a Judicial Magistrate, First Class is found lying in record in sealed condition without proving the same into evidence which appears to have been sent to Forensic Lab for necessary examination. The order of the Magistrate dated 14.10.2019 mentions that the seized item was divided into two portions by marking A1 and A2 and marking A1 contained 6.05 gm and marking A-2 contained 5.65 gm, i.e. total weight of the item produced before the Magistrate was 11.70 gm, but as per the seizure list as well as inventory, total weight of seized contraband item was 10.00 gm. The investigating officer (PW.10) also stated that he did not prepare any list of sample before the Magistrate. Therefore, all these discrepancies and deficiencies create serious doubt about the production of original seized material and drawing of sample therefrom before the Magistrate.

[20] In a recent decision in ***Mangilal Versus State of Madhya Pradesh***, **2023 SCC Online 862**, followings were observed by the Apex Court -

“5. Sub-section (2) of Section 52A of the NDPS Act mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars. This has to be followed through an appropriate application to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking relevant photographs in his presence and certifying them as true or taking drawal of samples in his presence with due certification. Such an application can be filed for anyone of the aforesaid three purposes. The objective behind this provision is to have an element of supervision by the magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52A of the NDPS Act, where a certification of a magistrate is lacking any inventory, photograph or list of samples would not constitute primary evidence.

6. The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52A of the NDPS Act is a mandatory rule of

evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken apart from list of samples drawn. In due compliance of Section 52A(1) of the NDPS Act the Ministry of Finance (Department of Revenue) issued a Notification No. G.S.R. 339(E) dated 10.05.2007 which furnishes an exhaustive manner and mode of disposal of drugs ending with a certificate of destruction:

“4. Manner of disposal

1) Where any narcotic drug or psychotropic substances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, of the Act, or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs or psychotropic substances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A as per Annexure 2 to this notification.

2) After the Magistrate allows the application under sub-section (3) of section 52A, the officer mentioned in clause (1) above shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the drug consignments to the Chairman of the Drug Disposal Committee for a decision by the committee on the disposal. The officer shall send a copy of the details along with the drug consignments to the officer-in-charge of the godown.

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4.2 Mode of disposal of drugs.

(i) Opium, morphine, codeine and the baine shall be disposed of by transferring to the Government Opium and Alkaloid Works under the Chief Controller of Factories.

(ii) In case of drugs other than the drugs mentioned in clause (i), the Chief Controller of Factories shall be intimated by the fastest means of communication available, details of drug consignments that are ready for disposal.

(iii) The Chief Controller of Factories shall indicate within 15 days of the date of receipt of the communication, the quantities of drugs, if any, that are required by him to supply as samples under Rule 67B.

(iv) Such quantities of drugs, if any, as required by the Chief Controller of Factories under clause (iii) shall be transferred to him and the remaining quantities of drugs shall be destroyed as per the procedure outlined in para 4.1.2.

(v) Destruction shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards. Such incineration may only be done in places where adequate facilities and security arrangements exist. In order to ensure that such incineration may not be a health hazard or polluting, consent of the State Pollution Control Board or Pollution Control Committee, as the case may be, should be obtained. Destruction shall be carried out at the presence of the Members of the Drug Disposal Committee.

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4.4 Certificate of destruction.

A certificate of destruction (in triplicate) containing all the relevant data like godown entry number, gross and net weight of the drugs seized, etc., shall be prepared and signed by the chairman and members of the Drug Disposal Committee as per format at Annexure 3. The original copy shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Drug Disposal Committee. Details of disposal of drugs shall be reported to the Narcotics Control Bureau in the Monthly Master Reports.”

7. To be noted, the aforesaid notification was in existence at the time of the commission of the offence alleged in the case on hand, stood repealed with effect from 23.12.2022 vide Notification No. G.S.R.899(E). In any case a notification issued in derogation of the powers conferred under sub-section (1) of Section 52A of the NDPS Act can never contradict the main provision, particularly sub-Section (2). However, any guideline issued by way of a notification in consonance with Section 52A of the NDPS Act has to be followed mandatorily.

8. Before any proposed disposal/destruction mandate of Section 52A of the NDPS Act requires to be duly complied with starting with an application to that effect. A Court should be satisfied with such compliance while deciding the case. The onus is entirely on the prosecution in a given case to satisfy the Court when such an issue arises for consideration. Production of seized material is a factor to establish seizure followed by recovery. One has to remember that the provisions of the NDPS Act are both stringent and rigorous and therefore the burden heavily lies on the prosecution. Non-production of a physical evidence would lead to a negative inference within the meaning of Section 114(g) of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act). The procedure contemplated through the notification has an element of fair play such as the deposit of the seal, numbering the containers in seriatim wise and keeping them in lots preceded by compliance of the procedure for drawing samples.”

[21] In the case in hand, production of physical evidence of seized materials is not there. Even, collection of samples in presence of Magistrate has become seriously doubtful in view of the discussions made hereinabove. As a corollary, even if it is proved that seizure of alleged contraband was recovered from the house of appellant, but the prosecution has failed to produce primary evidence regarding such seizure. There are also discrepancies regarding quantity of seized items as reflected in the order of Magistrate and the seizure list. Therefore, there is no evidence to connect the forensic report with the alleged the contraband seized

from the appellant. *In Noor Aga v. State of Punjab, (2008) 16 SCC 417*, Hon'ble Supreme Court observed in para no.100 that physical evidence of a case of this nature being the property of the court should have been treated to be sacrosanct. Non-production thereof would warrant drawing of a negative inference within the meaning of Section 114(g) of the Evidence Act. Further, PW.9 (informant) stated that he had handed over the seized materials to O.C. of the police station after return to the police station, but the O.C. (PW.5) stated that same was handed over to the duty officer which was in violation of provision of section 55 of the Act. There is nothing that it was kept in safe custody. As per the ratio of *Sahi Ram's case*, as referred by Ld. P.P., there is no fixed and definite rule that the total seized materials are required to be produced and proved before the Court and conviction can be sustained if other relevant and auxiliary facts as mentioned earlier are proved. But in the case in hand, as discussed hereinabove, such supportive facts are missing in evidence. Therefore, the benefit goes in favour of the appellant.

In view of above discussions, the appeal is hereby allowed. The impugned Judgment of conviction and sentence are set aside. The appellant is acquitted from the charge framed against him.

Issue release warrant immediately.

Reconsign the LCRs with copy of this judgment.

Pending application(s), if any, shall also stands disposed of.

JUDGE

SATABDI DUTTA Digitally signed by SATABDI
DUTTA
Date: 2024.04.04 12:58:41 +05'30'

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