

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.52 OF 2023**

1. Firoz Khan,
Son of late Sadir Khan,
Aged about 52 years, resident of 482 Nimrani,
Near Masjid, P.S.- Bolokwada, Khalkatta Chowk,
District-Khargeone, Madhya Pradesh.

2. Majahar Khan,
Son of Late Sadir Khan,
Aged about, 36 years, resident of 482 Nimrani near,
Masjid, P.S.- Bolokwada, Khalkatta Chowk,
District –Khargeone, Madhya Pradesh.

.....Appellant(s)

Versus

The State of Tripura.

.....Respondent(s)

For the Appellant(s)	: Mr. S. Lodh, Advocate. Mr. S. Majumder, Advocate.
For the Respondent(s)	: Mr. S. Ghosh, Addl. P.P.
Date of hearing	: 24.09.2024
and delivery of Judgment & Order	: 25.09.2024
Whether fit for reporting	: NO.

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

J U D G M E N T & O R D E R

T. AMARNATH GOUD(J)

This present criminal appeal has been filed against the impugned Judgment of Conviction and Sentence dated 31.08.2023, passed by the learned Special Judge (NDPS), Khowai Judicial District, Khowai, in SPECIAL (NDPS) 36 of 2022, whereby the learned Special Judge (NDPS), Khowai, convicted the appellants for

committing offence, punishable under Sections 20(b)(ii)(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act), and sentenced them to suffer Rigorous Imprisonment for a term of 15 (fifteen) years and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh) only each, in default to undergo further rigorous imprisonment for another 6(six) months for committing offence punishable under Sections 20(b)(ii)(C) of NDPS Act.

2. The prosecution case in brief, is that Sri Ranabrata Ghosh, PSI of Police of Teliamura police station lodged a written complaint before the Officer-in-Charge of Teliamura P.S. on 12.05.2022 alleging inter alia that on 11.05.2022 at 22.10 hours, he along with other police personnel and TSR personnel left the police station for night mobile and vehicle checking duty at Teliamura P.S. area. During the said night, they performed vehicle checking duty at Teliamura market area in front of State Bank of India, Teliamura Branch on National Highway-08. At about 01.50 hours of the intervening night of 11.05.2022 and 12.05.2022, they saw one vehicle bearing registration No. MP 09 GH 3492 (6-wheeler truck) was coming from Agartala side towards Teliamura. On seeing this, the informant along with his staff intercepted the said vehicle and was about to check the same. He also alleged that during the inquiry and on asking questions to the driver and co-driver of the vehicle, it was found that both of them were nervous. From their gesture and posture, something was found that was wrong and fishy. Thereafter, the informant informed the matter to the Officer-in-Charge of Teliamura P.S. and S.D.P.O., Teliamura over telephone, and on receipt of this information, within a short span of

time, the Officer-in-Charge of Teliamura P.S. and S.D.P.O of Teliamura arrived at the spot and in their presence and in presence of independent witnesses under videography, the checking of the said vehicle was started. During checking total 75 number of packets of suspected dry ganja wrapped with brown colour sellotape were found concealed in the stepney wheel in the backside of the vehicle and in one portion of the oil tank of the vehicle which was kept inside with one portion of tank by welding. It is also alleged that on query the driver and co-driver i.e. the appellants herein, could not give any satisfactory reply regarding the carrying of the suspected contraband items. Thereafter, the informant and his staffs arranged one digital weighing machine and after weighing, it was found that total weight of the suspected ganja was 82.7 kgs. In the written complaint, it is alleged that the informant detained the appellants and seized suspected ganja, mobile phones, vehicle, and thereafter the same were handed over to the Officer-in-Charge of Teliamura P.S.

3. On receipt of this written complaint, police registered a case vide Teliamura PS case No. 48 of 2022, dated 12.05.2022 under Section 20(b)(ii)(C)/25/29 of the NDPS Act and Section 177 of the Motor Vehicles Act.

4. After registration of the case, the Officer-in-Charge entrusted the case to S.I. Ranjan Biswas for investigation. After investigation police filed charge sheet vide C/S No. 65 of 2022 dated 31.07.2022 against the appellants for committing offences punishable

under Sections 20(b)(ii)(C) of the NDPS Act and Section 177 of the Motor Vehicles Act.

5. On receipt of the charge sheet, learned Special Judge registered the case as SPECIAL (NDPS) 36 of 2022. After compliance of Section 207 Cr.P.C., charge was framed against the appellants.

6. To prove the case, the prosecution side examined as many as 13 (thirteen) witnesses but the appellant's side did not adduce any witness. After hearing both the sides, Learned Special Judge (NDPS), Khowai Judicial District, Khowai, vide impugned judgment dated 31.08.2023 convicted the appellants for committing offence punishable under Sections 20(b)(ii)(C) of the NDPS Act.

7. Being aggrieved and dissatisfied with the impugned Judgment of Conviction and Sentence dated 31.08.2023, passed by the learned Special Judge (NDPS), Khowai Judicial District, Khowai, in SPECIAL (NDPS) 36 of 2022, the appellants prefer the instant criminal appeal.

8. Heard Mr. S. Lodh, learned counsel assisted by Mr. S. Majumder, learned counsel appearing for the appellants as well as Mr. S. Ghosh, learned Addl. P.P., appearing for the State-respondent.

9. Mr. Lodh, learned counsel appearing for the appellants submit that the prosecution failed to prove the seizure of the

alleged contraband articles. The contraband articles were seized in presence of two independent witnesses, namely, Sri Biswajit Saha and Sri Dhirendra Barman, and two police witnesses. Out of these two independent witnesses, Biswajit Saha was produced as P.W.-2, who deposed that he put his signature in the seizure list in his shop and not in the place of occurrence. On a conspectus of the aforesaid witnesses, it is revealed that seizure of the contraband articles is doubtful. The learned Court below ignored the same. The learned Court below failed to appreciate the deposition of the seizing Officer i.e. P.W.-1. PW-1 in his deposition did not state anything about what he has done with the seized alleged contraband articles after seizure. During trial, the prosecution placed a letter dated 12.05.2022 issued by the Officer-in-Charge of Teliamura P.S. for handing over the seized articles to District NDPS Store. Officer-in-Charge of Teliamura PS appeared in the witness box, but he did not say anything with regard to the letter dated 12.05.2022. It is further submitted that there is no evidence as to how the Officer-in-Charge of the P.S. got the alleged contraband items and how he had handed over the alleged seized articles to the District NDPS Store. There is a clear doubt about the prosecution case. In the instant case, the prosecution did not produce the Register of the District NDPS Store and the same has also created serious doubt about the prosecution case. P.W.-7, the Deputy Director, SFSL stated that he received the exhibits from the SDPO Teliamura, but the same was the confirmed by the SDPO. The stepney wheel where it is alleged that the seized contravened items were concealed and the sellotape with which it is alleged that those contravened items were wrapped were not

exhibited as evidence by the prosecution to prove the case. As such, the prosecution has not been able to prove the case beyond reasonable doubt.

10. To prove the lacuna of the prosecution case and to point out that the prosecution did not produce the evidence to prove their case beyond reasonable doubt, learned counsel appearing for the appellants relied upon **Para-80,111,114,117,120 and 122** of the Hon'ble Supreme Court Judgment reported in **2008 AIR SCW 5964** titled as **Noor Aga Vs. State of Punjab and ors:-**

"80. Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place burden of proof in this behalf on the accused; but a bare perusal the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of accused on the prosecution is "beyond all reasonable doubt" but it is 'preponderance of probability' on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established.

111. The prosecution alleged that 1.4 kgs heroin was concealed in a cardboard container for carrying grapes and were recovered from the appellant at Raja Sansi Airport. Essential key items necessary to prove the same were:

"i) The cardboard carton allegedly used for carrying the heroin to test the veracity.

ii) The bulk, which establishes the quantity recovered.

iii) The three homogenous samples of five grams each taken from the bulk amount of heroin, which would be essential in ascertaining whether the substance that the accused was allegedly in possession of was, in fact, heroin.

114. Preservance of original wrappers, thus, comes within the purview of the direction issued in terms of Section 3.1 of the Standing Order No. 1 of 1989. Contravention of such guidelines could not be said to be an error which in a case of this nature can conveniently be overlooked by the Court.

117. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefore, it becomes obligatory on the part of the subordinate authorities to comply therewith.

122. Concededly neither any such application was filed nor any such order was passed. Even no notice has been given to the accused before such alleged destruction."

11. On the other hand, Mr. S. Ghosh, learned Addl. P.P., appearing for the State has placed reliance upon **Paras-11 to 16 and 19** of the Judgment of this Court dated 30.07.2024 passed in **Crl.a(J) No.29 of 2023** and contended that any minor procedural omissions cannot be treated as gross omissions and acquit the accused persons. The relevant portion of this Judgment is as follows:-

"11. On the other hand, Mr. S. Lodh, learned Special P.P., appearing for the State-respondent countered the submission of learned Sr. counsel that the materials which were seized were not produced before the Court stating that the same is not necessary.

In this regard learned Spl. P.P. relied upon Paras- 14 and 15 of the recent Judgment of the Hon'ble Apex Court reported in (2021) 19 SCC 197 titled as Kallu Khan Vs. State of Rajasthan. The same is given here-in-under:-

"14. At this stage, the argument advanced by the appellant regarding non- production of contraband in the court due to which benefit of doubt ought to be given to the accused, is required to be adverted to. In State of Rajasthan v. Sahi Ram , this Court held that when the seizure of material is proved on record and is not even disputed, the entire contraband material need not be placed on b record. It is not a case in which the appellant has proved beyond reasonable doubt that while sending the samples for forensic tests, seals were not intact or the procedure has been materially not followed by protecting the seized substance or was not stored properly, as specified in Mohanlal in which case the directions were given to be followed on the administrative side. However, in the facts of the case, the said judgment is not of any help to the appellant. 15. Similarly, in Than Kunwar v. State of Haryana 13, this Court observed that if seizure is otherwise proved and the samples taken from and out of contraband material were kept intact; the report of the forensic expert shows potency, nature and quality of contraband material, essential ingredients constituting offence are made out and the non-production of contraband in the court is not fatal. As discussed above, the appellant has failed to show that the findings recorded by two courts suffer from any perversity or illegality on the said issue and warrant interference."

Learned Spl. P.P. submits that contravened items were seized properly and an independent seizure witness is also there who clearly stated that the articles were seized. Learned Spl. P.P. on the location of the seized contraband within the vehicle argued that P.W.-1 in the FIR stated that the same was found in the boot space/dicky of the car and only SDPO said that when he opened the back door he found the item. But, all other witnesses deposed a similar location for recovery of the contraband items from the vehicle. However, all of the witnesses deposed that the contraband items were seized from inside the vehicle. So there is no question about the seizure of the contraband items from the vehicle that the accused-appellant was driving.

12. *On the point that who sent the seized item to malkhana, learned Spl. P.P. submits that in the suo-moto FIR registered by P.W.-1, it is stated that 'on arrival at PS being Malkhana in charge, I have kept all the seized articles at BLG PS Malkhana vide Bishalgarh PS M/R No-02/2022 which refers to Bishalgarh PS GD entry No.30 Dated-16.02.2022' and in his deposition as P.W.-1, he stated that 'the seized contrabands were later on deposited in the PS Malkhana by the I.O'. So, there is no contradiction in his statement. Further, P.W.-10, the officer-in-charge in his deposition also stated that S.I. Raju Bhowmik was in charge of Malkhana on the date of the alleged incident. With regard to how it was sent, learned Spl. P.P. submits that P.W.-9, the SDPO in his cross-examination stated that on 16.03.2022 he sent the samples of SFSL, and from the report, it revealed that the items were forwarded by the SDPO on 10.03.2022. Though there is a minor discrepancy, the same can be attributed to typographical mistake as the document itself is endorsed by the competent authority.*

13. *On non-compliance of Section 57 of the NDPS Act, learned Spl. P.P., relied upon para-9 of the Gurbax Singh Vs. State of Haryana(supra) wherein it is stated that 'It is true that provisions of Sections 52 and 57 are directory. Violation of these provisions would not ipso facto violate the trial or conviction.' Learned Spl. P.P., further submits that the appellant was arrested by the I.O., the detailed report was submitted by the I.O., and inventory was also prepared by the I.O. Some minor wrongs are there in the proceeding but the same is not fatal.*

In this regard, learned Spl. P.P., also referred to relevant portion of the Judgment of the Hon'ble Supreme Court reported in (2020) 3 SCC 321 titled as Varinder Kumar Vs. State of Himachal Pradesh. The same is produced here-in-under:-

7.....Sections 52 and 57 of the NDPS Act being directory in nature are of no avail to the appellant."

14. *On the point of compliance of Section 42 of the NDPS Act, learned Spl. P.P. submits that the same is not required in the context of the case because the police did not receive any prior information about the contraband item but the same was found during checking. On the point of R/G form, learned Spl. P.P. submits that the same was despatch on 16.02.2022 and received on 16.02.2022. Further, it was endorsed by the Superintendent of Police Sepahijala District himself.*

15. On the point of inventory not being prepared at the spot, learned Spl. P.P. submits that though there is some procedural fault, the same was prepared by I.O. certified by the Magistrate, and sent to SFSL with seal and cover. As such, there is no chance of manipulation. Further, the SFSL certified that the seized item was a contraband item i.e. 'ganja' not other things.

16. With regard to the applicability of Section 42 of the Act, learned Spl. P.P., again referred to paras-12 and 13 of Kallu Khan Vs. State of Rajasthan(supra) , the same is produced here-in-under:-

"

"12. After hearing and on perusal of the record and the evidence brought, it is apparent that on apprehending the accused, while making search of the motorcycle, 900 gm of smack was seized to which seizure and sample memos were prepared, as proved by the departmental witnesses. In the facts of the case at hand, where the search and seizure was made from the vehicle used, by way of chance recovery from public road, the provisions of Section 43 of the NDPS Act would apply. In this regard, the guidance may be taken from the judgments of this Court in Raju and Sk. Sakkar, However, the recovery made by Pranveer Singh (PW 6) cannot be doubted in the facts of this case.

13. Now reverting to the contention that the motorcycle seized in commission of the offence does not belong to the accused, however seizure of the contraband from the motorcycle cannot be connected to prove the guilt of the accused. The trial court on appraisal of the testimony of witnesses, Constable Preetam Singh (PW 1), Constable Sardar Singh (PW 2). SI Pranveer Singh (PW 6) and Constable Rajendra Prasad (PW 8), who were members of the patrolling team and the witnesses of the seizure, proved beyond reasonable doubt, when they were on patrolling, the appellant came driving the seized vehicle from the opposite side. On seeing the police vehicle, he had taken back the motorcycle which he was riding. However, the police team apprehended and intercepted the accused and made the search of vehicle, in which the seized contraband smack was found beneath the seat of the vehicle. However, while making search at public place, the contraband was seized from the motorcycle driven by the accused. Thus, recovery of the contraband from the motorcycle of the appellant was a chance recovery on a public road. As per Section 43 of the NDPS Act, any officer of any of the departments, specified in Section 42, is having power of seizure and arrest of the accused from a public place, or in transit of any narcotic drug or psychotropic substance or controlled substance. The said officer may detain in search any person whom he has reason to believe that he has committed an offence punishable under the provisions of the NDPS Act, in case the possession of the narcotic drug or psychotropic substance appears to be unlawful. The learned Senior Counsel representing the appellant is unable to show any deficiency in following the procedure or perversity to the findings recorded by the trial court, affirmed by the High Court. The seizure of the motorcycle from him is proved beyond reasonable doubt, therefore, the question of ownership of vehicle is not relevant. In the similar set of facts, in Rizwan Khan, this Court observed that the ownership of this vehicle is immaterial. Therefore, the argument as advanced by the learned Senior counsel is of no substance and meritless."

19. It is admitted position that the appellant herein was the driver of the vehicle from which the contraband items were seized. All

the witnesses who made search, seizure, and arrest i.e. P.W.-1, Sri Raju Bhomwik, Sub-Inspector of Police, P.W.-3, Additional SDJM Bishalgarh, P.W.-5, the constable of Police, P.W.-9, the SDPO, P.W-10, the O/C Bishalgarh P.S, P.W.-11, the I.O., and P.W.-2, Sri Goutam Deb, the independent witness have unequivocally stated that the accused-appellant herein was the driver of the vehicle at the time of the search and contraband items were seized from the vehicle which was in possession of the accused-appellant. On the point of non-compliance of Sections 52

and 57 of the Act, this Court considering the principle given by the Hon'ble Supreme Court in the Gurbax Singh Vs. State of Haryana(supra) and Varinder Kumar Vs. State of Himachal Pradesh is convinced with the submission of learned Spl. P.P. Further, the evidence of P.W.-6, Sri Suman Kumar Chakraborty, Deputy Director (Chemistry Division) TSFSL read with the SFSL report reveals that all the samples were sealed with the impression of Magistrate. It is evident that the samples were drawn in the presence of the Magistrate and sent to the SFSL and as per the report, the samples were positive for the presence of 'Ganja'. This Court aligns with the submission of the learned Spl. P.P., that though there is some minor procedural fault, but, the same is not fatal and prosecution has been able to prove that the accused-appellant herein on 16.02.2022 was found in conscious possession of 70 kgs of dry 'Ganja' in 5 numbers of plastic sacks which he was transporting in the said vehicle. Further, this Court is of the opinion that as the sacks containing contraband items were multiple and the same could have been hidden in multiple locations inside the car, it explains the minor discrepancy among the deposition of the witnesses on the location of the contraband item inside the vehicle. However, the deposition of the witnesses are unequivocally clear that the said contraband items were found inside the crime vehicle. Furthermore, the Judgments as cited by the learned Spl. P.P. supports and strengthens the case of the prosecution. In the light of the above discussion and evidence, this Court is of the opinion that the Judgments as cited by the learned Sr. counsel appearing for the convict-appellant are not relevant to the facts of this case."

12. Heard and perused the evidence on record.
13. Before delving into the conclusion let us examine some important witnesses of this case.
14. P.W-1 i.e., PSI- Ranabrata Ghosh deposed in the examination-in-chief that on 11.05.2022 when he was posted at Teliamura P.S on that day at around 22.10 hours, he along with Prasenjit Das and other police personnel of the P.S went for a vehicle

checking duty and at around 01.50 hours they noticed one vehicle bearing No. MP-09-GH-3492 which was coming from Agartala towards Teliamura. He gave signal to stop the vehicle and accordingly, the driver of the vehicle, namely, Firoz Khan stopped the vehicle and on questioning the driver they found him nervous and became suspicious. Thereafter, he called SDPO, Teliamura P.S and O.C Teliamura P.S on the spot. In the presence of O.C Teliamura P.S and SDPO Teliamura on opening the fuel tank and the stepney wheel he and his team found 75 numbers of suspected ganja packets which weighed 82.7 kgs. He detained the driver and co-driver Firoz Khan and Majahar Khan and seized the vehicle along with contraband items and mobile from the possession of the accused persons in presence of SDPO Sonacharan Jamatia. He seized the alleged contraband and the items and lodged a suo-moto complaint before O.C Teliamura P.S. The complaint petition is identified by the witness in two pages and is marked as Exbt. 1 (series) and the signature of P.W-1 identified in the complaint petition is marked as Exbt.1/1. The seizure list is also prepared by P.W-1 in the presence of seizure list witnesses along with his signature which after identification by the witness is marked as Exbt.2 and 2/ 1. This witness also identified both the accused i.e., the driver Firoz Khan and co-driver Majahar Khan before the Court.

15. PW-2, Sri.Biswajit Saha deposed in the examination in chief that approximately 6 to 7 months back when he was coming from his house at about 03.00 hours in front of SBI Bank, near Teliamura P.S and he being the owner of a tea stall opposite to SBI

Bank, noticed police personnel checking one vehicle and ganja packets were recovered from the fuel tank and the wheel of the vehicle. The police personnel took his signature and he signed as a seizure list witness and his signature after identification is marked as Exbt.2/2.

16. P.W-7, Sri Suman Chakraborty stated in the examination in chief that on 24.05.2022 their office received one sealed packet from SDPO Teliamura vide forwarding memo No. 1605 dated 22.05.2022 containing exhibits in connection with Teliamura P.S Case No.2022/TLM/048 which was received through special messenger constable Sachindra Jamatia of Teliamura P.S and the exhibits were endorsed to him for examination and opinion. This witness further deposed that the exhibits were received in a yellow paper envelope sealed with seven wax seals with the impression SDPO Teliamura. The packets also bear case reference number, DR number, address of the addressee along with the seal and signature of the forwarding authority. Inside the sealed packets one court sealed yellow colored envelope marked as Y along with case reference sample drawing certificate by J.M 1" Class, Khowai and S.I of Police Teliamura P.S was found. Inside it was found one heat-sealed transparent poly packet containing some greenish brown plant materials with fruiting/ flowering tops, seeds etc., which is subsequently marked in the laboratory as CHEM/244/22 (Y) weighing 37 gms. The exhibits were examined by this witness from 23.06.2022 to 27.06.2022 by the methods mentioned in the report and on examination the exhibits were found positive for the presence of ganja (cannabis). The remnants of the exhibits have been returned

separately under sealed cover. This witness prepared the report in 02 (two) pages which is typed in his office computer vide report No.SFSL 747/22/CHEM/244/22 dated 27.06.2022 and was forwarded from the office of the director of TSFSL vide despatch No. 5781 dated 29.06.2022 and the report along with the remnants has been forwarded to SDPO Teliamura by this witness as Director-in-Charge. The report in 02 (two) pages is identified by this witness along with his signature. The said report is marked as Exbt. 5 (series) and the signature is marked as Exbt.5/1, and 5/2 respectively. The forwarding report which was forwarded by this witness along with his signature and identified by the witness and is marked as Exbt.6 and Exbt.6/1. The remnants that were returned to SDPO Teliamura in sealed cover bearing No.5781 dated 29.06.2022 is identified by the witness and is marked as Exbt. MO-1 and the signature of the witness found in the sealed cover is marked as Exbt. B.

17. P.W-10, Sri Sonacharan Jamatia deposed in the examination-in-chief that on 12.05.2022 while he was posted as SDPO Teliamura P.5 between the intervening night of 11.05.2022 and 12.05.2022 at around 2:00 o'clock in the night he was informed by P.W-1 that the vehicle was detained in front of SBI Bank Teliamura Branch bearing No.MP-09-GH-3492 (six-wheeler truck). He immediately reached the spot and deposed that the vehicle was checked in his presence and dry ganja was recovered from the stepney tyre of the vehicle and the oil tanker amounting to 75 packets of ganja which was recovered packed in yellow colored cello tape. The said recovered ganja weighed 82.7 kgs.

According to this witness, the vehicle along with the documents of the vehicle including driving license of the driver two numbers of Mobile Phone and the documents of the vehicle were seized in his presence. Two persons who were detained are named as Firoz Khan and Majahar Khan. The witness identified his signature in the seizure list which is marked as Exbt. 2/5. The report of the SFSL was forwarded by this witness to the I.O through O.C Teliamura P.S for taking necessary action and he has signed in the first page of the report which has been forwarded and his signature after identification is marked as Exbt. 6/2. This witness further deposed that he has given his signature in 03(three) places of the two packets bearing MR No.170/2022 which is already marked as MO-1. The signature of this witness in three places of the packets is identified by the witness and is marked as Exbt.M-1 (series). The witness also identified both the accused persons.

18. P.W-11, Sri Subimal Barman deposed in the examination-in-chief that on 12.05.2022 he was posted as O.C Teliamura P.S and on that date, he had registered one case bearing No. TLM P.S Case No.48 of 2022 under section 20 (b) (ii) (C)/25/29 of NDPS Act and the case was registered on the basis of suo moto complaint by P.W-1 and he has identified his signature in the complaint petition which is marked as Exbt.1/2. This witness also filled up the printed F.I.R form in his own handwriting bearing his signature which is identified by the witness and is marked as Exbt. 7 and Exbt. 7/1 and he endorsed the case to S.I Ranjan Biswas for investigation. This witness has also prepared the inventory and the said inventory is identified by the

witness along with his signature which is marked as Exbt.8 and Exbt. 8/1 respectively. This witness further deposed that he has informed about the matter to the Superintendent of Police (C/S) Khowai with reference to Teliamura P.S GDE No. 46 dated 12.05.2022 and with reference to Teliamura P.S case No.2022 /TLM/048 dated 12.05.2022 under section 20 (b) (ii) (C) /25/29 of NDPS Act and the said information was given to SP (C/S) Khowai. The witness further deposed that he has sent the contraband items to the NDPS Godown and further made a prayer for sending of seized NDPS Articles to keep in the District NDPS Store for safe custody. The prayer given by this witness is marked as Exbt.9 as a whole after identification and the signature is also marked as Exbt. 9/1.

19. P.W-12, Sri Ranjan Biswas (I.O. of this case) deposed in the examination-in-chief that on 12.05.2022 while he was posted at Teliamura P.S, on that date, O.C Teliamura endorsed this case to him for investigation and he started the investigation by recording the statement of the complainant and arrested the accused persons Firoz Khan and Majahar Khan and also visited the P.O and prepared the hand-sketch map of the PO along with the separate index. The hand-sketch map of the PO is identified by this witness is marked as Exbt.10 and is index is also marked as Exbt.11. This witness also recorded the statement of other witnesses under section 161 of Cr.P.C and sent the sample to the SFSL Narshingarh and collected the same after examination through SDPO Teliamura. The witness further deposed that under Section 67 of NDPS Act a notice was issued to the owner of the

alleged vehicle and after receiving the notice, the owner of the vehicle approached through his son and he also found the involvement of another accused Amjad Khan and arrested him. This witness further deposed that in the Court when the sample was drawn he along with O.C. P.S was present and he has withdrawn the seized contraband from the NDPS Go-down. According to this witness, the entire seizure was videographed and he had collected the DVD Cassette and the certificate under section 65b of the Evidence Act with regard to electronics files enclosed in the DVD. The signature in the DVD cassette is identified by the witness which is marked as Exbt.M-1. This witness further deposed that he has submitted GDE extract in connection with Teliamura P.S GDE No. 46 dated 11.05.2022 and which after identification by the witness is marked as Exbt.12. In the examination-in-chief this witness admitted that due to inadvertence and mistake, he have not submitted some documents in the judicial docket of the court though the said documents are in the police dockets being in Page No. 36,38, 56 and 57. The documents are:-

(1) Receipt copy of the seized contrabands which has been stored in the NDPS Godown,

(II) Written information given to the Higher Authority i.e., S.P Khowai after the seizure which was given by then O.C P.S. Subimal Barman,

(III) Prayer to withdraw the deposited contraband items and after sampling the remaining deposit in connection with MR-266 dated 12.05.2022,

This witness also stated that inadvertently he has not cited Godown in charge as a witness of this case. The witness identified the accused persons before the court. The witness further deposed that the list of samples drawn from the seized material in connection with TLM P.S Case No. 022/TLM/048 dated 12.05.2022 which was prepared by him and the sample was drawn on 19.05.2022. The sample drawn memo is identified by the witness along with his signature which is marked as Exbt.13 and Exbt.13/1. The witness further deposed that the sample was drawn in the court in an envelope bearing No.MR 170/2022 bears his signature along with the signature of Judicial magistrate 1" Class dated 19.05.2022 which is identified by the witness and is marked as Exbt. 14. This witness further deposed that he has given a prayer to produce the deposited NDPS articles for the purpose of drawing of sample. The said prayer along with his signature is identified by the witness and is marked as Exbt.16 as a whole and Exbt.16/1. According to this witness, the deposited NDPS article were produced as per the order of the court and after drawing of sample he has given a prayer for keeping the remaining stock of NDPS article in the safe custody and the said prayer along with his signature is identified by the witness which is marked as Exbt.17 as whole and Exbt.17/1. After completion of the investigation, he has submitted a charge-sheet against the accused persons namely Firoz Khan, Majahar Khan and Amjad Khan vide C.S No. 65/22 dated 31.07.2022 under section 20 (b) (ii) (c)/29 of the NDPS Act, 1985 against Firoz Khan, Majahar Khan and Amjad Khan. The witness also identified the accused person before the court.

20. It is seen from the record that the contraband items were seized properly and the independent witness has also clearly stated that the contraband articles were seized. All the witnesses including the independent witness i.e. P.W.-2 in his deposition stated that he noticed contraband item were seized from the fuel tank and the wheel of the vehicle. It is also the admitted position that the appellants herein were the driver and co-driver of that vehicle which was carrying those contraband items. All the witnesses who made search, seizure, and arrest identified that the appellants herein who were the driver and co-driver of the involved vehicle. At the time of the search, the contraband items were seized from the vehicle which was in the possession of the appellants. This Court aligns with the submission of the learned Addl. P.P. that any minor procedural omissions cannot be treated as a gross omission and acquit the accused persons as because the contraband items were recovered from the vehicle which has been customized specifically for smuggling. Those items were recovered from the Stepney tyre and modified petrol tank (by way of welding) of the said vehicle which was driven by the accused persons herein. As per the evidence of P.W.-1, the eye witness i.e. P.W.-2, P.W.-10 i.e., the investigating officer and the seizure list i.e. Exbt. No.2 to 2/5, this is a case where such huge quantity of contraband items i.e. 82.7 kg of Ganja was seized from the vehicle which is modified and has been made customized for smuggling. It appears that it is an organized crime where this Court has to come down heavily against such narcotic dealers who are affecting the youths in terms of their career and health. Moreover, the Judgment of the Hon'ble Supreme as cited by the learned counsel

appearing for the appellants to support his case is not relevant to the facts of this case.

21. In view of the above submission made, this present appeal stands dismissed, and the impugned Judgment and Order dated 31.08.2023 as passed by the learned Sessions Court stands confirmed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

Send down the LCRs.

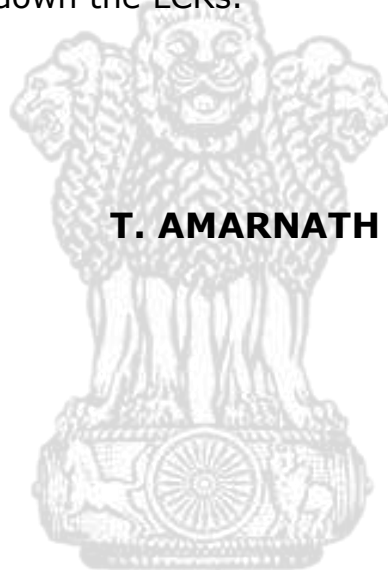
B. PALIT, J

T. AMARNATH GOUD, J

Suhanjit

RAJKUMAR
SUHANJIT SINGHA

Digitally signed by RAJKUMAR
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