

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 50 of 2023

Shri Tutan Das

.....**Appellant(s)**

Versus

State of Tripura

.....**Respondent(s)**

For the Appellant(s) : Ms. Sarama Deb, Advocate.
Ms. M. Sarkar, Advocate.

For the Respondent(s) : Mr. Raju Datta, PP

Date of hearing & delivery
of judgment & order : 27.11.2024.

Whether fit for reporting : Yes/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(ORAL)**

[T. Amarnath Goud, J]

Heard Ms. Sarama Deb, learned counsel alongwith Ms. M. Sarkar, learned counsel appearing for the appellant. Also heard Mr. R. Datta, learned PP appearing for the State-respondent.

[2] This present appeal is filed under Section 374(2) of the Criminal Procedure Code, 1973 against the judgment dated 19.09.2023 passed in Case No. Special (NDPS) 04 of 2019 by the learned Special Judge, Gomati Judicial District, Udaipur, where

under the appellant was convicted and sentenced to suffer rigorous imprisonment for a period of ten years with fine of Rs.1,00,000/- under Section 22(b) of the NDPS Act, 1985 and in default of payment of fine, to suffer imprisonment for more six months.

[3] The prosecution story in brief is that an FIR was filed against the appellant alleging that on the basis of a secret information received on 01.05.2019 at about 13:30 hrs, the informant alongwith staff went to the house of the appellant and on search, found 81 Nos. of plastic vials containing suspected brown sugar measuring 2.43 gm, 2 nos. pf plastic packets containing 34 Nos. of Yaba tablets, a red coloured small plastic box containing suspected brown sugar measuring 9 gm and 16 Nos. of foreign liquor bottles including cash money 76,940/-, one laptop, 7 Nos. of mobile phones and one Maruti Suzuki Alto K10 car bearing registration No. TR-03J- 0716. The informant, who is also the officer in charge of the Police station, seized the articles and arrested the appellant.

[4] The O/C of Nutanbazar PS, Gomati received the ejahar on 01.05.2019 at around 18:05 hrs and registered a case vide Nutanbazar PS Case No. 2019NTB019 dated 01.05.2019 under Section 22(b)/25/27 of the NDPS Act, 1985 and under Section 45 of the Tripura Excise Act, 1987 (TE Act for short). Then the case was

endorsed to the SI of Police for investigation. After completion of investigation the IO has laid down the charge sheet vide No. Nutanbazar PS C/ S No. 27 of 2019 dated 26.09.2019 under Sections 22(c)/25 of the NDPS Act, 1985 and under Section 45 of the TE Act against the accused person. On 02.05.2019 the learned Special Judge, Gomati District, Udaipur received the FIR bearing No. Nutanbazar PS 19 of 2019 under Sections 22(b)/25/27/29 of the NDPS Act, 1985 after registering a formal case number vide Special 04 (NDPS) of 2019. On 27.09.2019, the Ld. Special Judge received the charge sheet and took cognizance of offence under Sections 22(c)/25 of the NDPS Act and under section 45 of the TE Act. On 19.02.2020 the charges under Section 22(c)/25 of the NDPS Act, 1985 was framed by the learned Special Judge against the accused person. Then on 31.03.2021, the case record was transferred to the learned Court below for disposal as per law.

[5] On completion of the investigation and trial, the appellant was convicted in Case No. Special (NDPS) 04 of 2019 by the learned Court below vide Judgment dated 19-09-2023, and sentenced the appellant to suffer rigorous imprisonment for a period of ten (10) years with fine of 1,00,000/- under Section 22 (b) of the NDPS Act, 1985 and in default of payment of fine to suffer imprisonment for more six (6) months. Being aggrieved by the

aforesaid impugned order of the learned Court below, the instant appeal has been filed by the accused appellant before this Court seeking following reliefs:

“(I) Admit this Appeal;

(II) Call for the case record from the Ld. Court of Special Judge, Gomati Judicial District, Udaipur passed in Case No. Special (NDPS) 04 of 2019.

(III) Be kind enough to pass an order for preparation of Paper book.

(IV) After hearing both sides your Lordship would be kind enough to acquit the appellant in the present case.

(V) Meanwhile this Hon'ble Court be also pleased to suspend the sentence of the appellant till the present appeal is disposed of by this Hon'ble Court, for the fair ends of justice.”

[6] Ms. Sarama Deb, learned counsel appearing for the appellant submits that learned Court below has failed to appreciate the fact that there is no independent witness in the instant case. The whole case is based on the deposition of police authorities. It is further contended that there is no evidence that the alleged house from where the alleged contrabands were recovered was possessed by the appellant. She also contends that the informant has completed the entire investigation including the seizure and sampling and endorsed the case for investigation with an intention of incriminating the appellant falsely. To support her contention, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in **Mohinder Singh vs. The State of Punjab** reported in **AIR 2018 Supreme Court 3798**. The contents of the

said judgment as referred by the learned counsel for the appellant is quoted hereunder:

"12. For proving the offence under the NDPS Act, it is necessary for the prosecution to establish that the quantity of the contraband goods allegedly seized from the possession of the accused and the best evidence would be the court records as to the production of the contraband before the Magistrate and deposit of the same before the Malkhana or the document showing destruction of the contraband.*****"

14. The High Court appears to have gone by the oral evidence of Joginder Singh (PW-2) and Harbhajan Singh (PW-3) that the contraband allegedly seized from the accused was produced before the Magistrate. When the trial court which is in possession of the case records recorded a finding that there is no order of the Magistrate showing the production of the contraband before the court and acquitted the accused on that basis, in our view, the High Court ought not to have interfered with the said order of acquittal.*****"

16. Considering the case in hand, the findings of the trial court cannot be said to be 'distorted conclusions' warranting interference. Based on the oral evidence of Joginder Singh (PW-2) and Harbhajan Singh (PW-3), the High Court ought not to have interfered with the order of acquittal and the conviction of the appellant under Section 18 of the NDPS Act cannot be sustained....."

[7] Mr. Raju Datta, learned PP appearing for the State submits that the I.O. on completion of investigation, laid down the charge sheet under Sections 22(c)/25 of the NDPS Act, 1985 and under Section 45 of the Tripura Excise Act, 1987 (TE Act for short) against the accused person and on the basis of the charge-sheet, the Court below has examined the witnesses and decided the case by way of the impugned judgment dated 19.09.2023 passed in Case No. Special (NDPS) 04 of 2019 where under the appellant was convicted and sentenced to suffer rigorous imprisonment for a period of ten years with fine of Rs.1,00,000/- under Section 22(b) of the NDPS Act, 1985 and in default of payment of fine, to suffer

imprisonment for more six months. It is also submitted by learned PP that while passing the impugned order, learned Court below has not dealt with the charges levelled against the accused under Section 45 of the TE Act.

[8] In view of the above discussions, this Court is of the view that while deciding the matter, learned Court below was silent about the charges under section 45 of the TE Act levelled against the accused and passed the impugned order dated 19.09.2023. It is seen from the impugned order dated 19.09.2023 that on 27.09.2019, the learned Special Judge received charge sheet and took cognizance of offence under Sections 22(c)/25 of the NDPS Act and under section 45 of the TE Act. This Court is of the considered opinion that ends of justice would be met if the case in hand be remanded back to the learned Court below for re-appreciating the matter in its entirety on the point of allegations made against the accused person in the FIR regarding possession of 16 bottles of foreign liquor bottles and registering the case under Section 45 of Tripura Excise Act. Accordingly, the matter is remanded back to the learned Court below for fresh adjudication and trial.

Court Below is directed to examine the matter and decide the same in accordance with law. It is further directed that

since the accused person is in jail, the Court below shall consider this matter on priority basis.

Thus, the instant appeal is disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

