

GAHC030004252022



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

Case No. : Crl.A./21/2022

Vanlalruati
R/o Ramhlun Venglai
Aizawl, Mizoram.

VERSUS

Union of India
r/b the Assistant Commissioner,
Customs Division, Aizawl.

Advocate for the Petitioner : Mr K Laldinliana

Advocate for the Respondent : Mr. Johny L Tochwawng

Linked Case : I.A.(Crl.)/16/2022

Vanlalruati
R/o Ramhlun Venglai

Aizawl
Mizoram.

VERSUS

Union of India
Aizawl.

Advocate for the Petitioner : Mr K Laldinliana
Advocate for the Respondent : Mr. Johny L Tochwawng

B E F O R E

HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Hearing : 25.06.2024.

Date of Judgment : 28.06.2024.

J U D G M E N T & O R D E R (CAV)

- Heard Mr. K. Laldinliana, learned counsel for the appellant. Also heard Mr. Johny L. Tochhawng, learned Standing Counsel representing the respondent/Customs Department.

2. Challenge in this appeal is to the Judgment of Conviction dated 19.05.2022 along with the Order dated 20.05.2022 passed by the learned Special Judge, NDPS Act, Aizawl whereby the appellant/accused was held guilty of offence punishable under Section 22(c) of the NDPS Act and sentenced to undergo Rigorous Imprisonment of ten years with a fine of Rs. 100,000/- in default of payment of fine, she is to undergo another period of one year Rigorous Imprisonment, in connection with SR No. 164/2016.

3. The brief facts of the case is that on 13.05.2016, the Customs Division, Aizawl received specific information that one lady in Tata Sumo vehicle bearing

No. AS 11 E 0345, travelling from Aizawl towards Silchar via Durtlang road was carrying some prohibited drugs. On receipt of such information, the Customs Officer proceeded towards Selesih, Aizawl and the vehicle was intercepted at Waiting Shed, Selesih. On being searched, some bundles containing maroon colour tablets suspected to be methamphetamine was recovered from the possession of a lady, who introduced herself as Smt. Vanlalruati, the appellant. On demand, the appellant could not produce any valid document to support her legal purchase, possession, transportation of the said goods which is in violation of Section 8(c) of the NDPS Act and punishable under Section 22(c) of the said Act. Thereafter, the accused was arrested and the case was registered. After completion of the investigation, the charge sheet has been laid against the appellant and trial was commenced before the Court of Special Judge, Aizawl.

4. During trial, charge was framed under Section 22(c) of NDPS Act against the appellant to which, she pleaded not guilty and claimed to be tried. The prosecution examined five witnesses to substantiate the prosecution case and the defence also adduced two witnesses in support of her case. After hearing the arguments advanced by the learned counsel for the parties, the learned Trial Judge convicted the accused appellant as aforesaid. Hence, this appeal.

5. It was argued by learned counsel for the appellant that no independent

witness was examined by the prosecution as provided under Section 100 (4) CrPC at the time of search and seizure. PWs-1 and 2 cannot be called as independent witnesses as they are merely co-passengers of the accused appellant in the alleged vehicle. It is further submitted that the alleged witnesses were not inhabitants of the locality adjacent to the place of search. Hence, they are not eligible to stand as independent witnesses as per the provision of law.

6. It is also the submission of learned counsel for the appellant that the Custom Officer had stopped the alleged vehicle near Selesih Waiting Shed for checking and the alleged seized articles were detected therein. However, no weighment, packing or taking of samples of the seized articles were done at the spot which indicates that there has been gross violation of the Standing Order No. 1/89 dated 13.06.1989 issued by the Ministry of Finance (Department of Revenue), Government of India. Hence, the impugned Judgment and Order dated 19.05.2022 is liable to be set aside.

7. Learned counsel for the appellant has also contended that on perusal of the evidences of PWs-1 and 2, it reveals that the seized articles were not recovered from the possession of the accused appellant. Moreover, there is no proof that the seized articles were recovered and seized under the conscious

possession of the accused. This is indicating of the fact that the alleged seizure and arrest was not done as per provision of law and there has been violation of Section 46(2) CrPC and as such, the impugned Judgment and Order are liable to be set aside.

8. Learned counsel for the appellant has further submitted that the provision of Section 52-A of the NDPS Act has been violated in the instant case. It is submitted that neither PW-3 nor PW-4 has stated that as per provision of Section 52-A of the NDPS Act, any inventory was prepared. Counsel for the appellant has further pointed out that as per section 52-A(2) of the NDPS Act, as and when any narcotic drugs or substance has been seized and forwarded to the officer in charge of the nearest police station, as per provision of sub section 2, he shall prepare an inventory of such narcotic drugs or substance containing such detail relating to that description, quality, quantity marks of packing number or such other identifying particular of such substance and file an application to the Magistrate for the purpose of certifying correctness of the inventory so prepared of taking photographs in presence of the Magistrate or allowing to draw a representative samples of such drugs or substances in presence of the Magistrate.

9. It is submitted on behalf of the appellant that both the witnesses PWs-3

and 4 nowhere stated that any such inventory was prepared. It is also submitted that no detail of batch number, manufacturing dates or manufacturer's detail as required under Section 52-A(2) of the NDPS Act for the purpose of identifying the particulars of the recovery is reflected.

In support of his submission, learned counsel has relied on the following case laws:-

- a) ***(1998) 8 Supreme 435 (Narsi Vs. State of Haryana)***
- b) ***(2023) Livelaw (SC) 890 (Yusuf @ Asi Vs. State)***
- c) ***Criminal Appeal No. 1651/2023 (Mangilal Vs. State of Madhya Pradesh)***
- d) ***Criminal Appeal No. 66/2020 (Thounaozam Punima Singh Vs. Union of India & Others).***

10. Per contra, learned Standing Counsel, Custom has submitted that commercial quantity of narcotic substances was recovered from the conscious possession of the accused appellant. It is further submitted that the appellant in her statement recorded under Section 313 CrPC has admitted that on the date of incident, while she was travelling in a Tata Sumo Vehicle towards Sonabari Gate, Cachar from her residence at Ramhlun Venglai, Aizawl, one Pianga asked

her to carry the seized article with a promise to pay Rs. 20,000/- as a reward. When the vehicle reached Selesih Waiting Shed, the vehicle was intercepted by the Customs Officer. On being searched, they seized 6026 methamphetamine tablets and accordingly, she was arrested. According to the learned Standing Counsel, Custom, from the statement under Section 313 CrPC, it is clear that the appellant was in conscious possession of the contraband items at the relevant time of incident. Hence, the presumption of culpable mental state of the accused appellant could be indicated as per Section 35 of the NDPS Act.

11. It is further contended that PW-1 and PW-2 are independent witnesses examined by the prosecution. They have categorically stated that the alleged Airbag from which the contraband items were recovered belonged to the accused appellant. Hence, there is no violation of Section 100(4) of CrPC.

12. Regarding violation of Section 52-A of NDPS Act, learned Standing Counsel has admitted that the inventory was prepared by the Custom official and the seized articles were not produced before the Magistrate. However, the learned Standing Counsel has pointed out the judgment of the Trial Court vide para 15 wherein it was reflected that- 'on sending the seized articles to the FSL without any undue delay and as no grounds to believe tampering of the seized articles on the way to the aegis of FSL from the custody of seizing party, failure to

comply with Section 52-A of the NDPS Act, alone is not suitable to be held vitiated the trial'.

13. By referring the Judgment of **(2003) 8 SCC 313, Union of India Vs. Satrohan**, the learned Standing Counsel also has submitted that when the search was conducted by the Gazetted Officer himself, compliance with Section 42 is not necessary. In the instant case, the search was conducted by a Custom official who is a Gazetted Officer, as such there is no violation of Section 42 of NDPS Act. According to learned Standing Counsel, the Trial Court has rightly passed the Judgment convicting the accused appellant which needs no interference by this Court.

14. I have considered the submission of learned counsels for the parties and I have also perused the Trial Court record including the judgment.

15. Regarding Section 52-A of the NDPS Act, in the case of **Union of India Vs. Mohanlal & Another** reported in **(2016) 2 RCR (Crl) 858**, wherein the Hon'ble Supreme Court with reference to a procedure regarding seizure and sampling of a contraband under Section 52-A of the NDPS Act has observed as under-

"It is manifest from Section 52 A (2) (c) (Supra) that upon seizure of the contraband, the same has to be forwarded either to the Officer in charge of the near police station

or to the officer empowered under Section 53, who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of a) certifying the correctness of the inventory b) certifying photograph of such drugs or substances taken before the Magistrate as true and c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Sub section 3 of section 52 (A) requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the police station and the officer empowered, the officer concerned is duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. This is so specially when according to Section 52-A (4) of the Act, samples were drawn and certified by the Magistrate in compliance with sub section (2) and (3) of Section 52 A above, constitute primary evidence for the purpose of a trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principle of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authority concerned instead of

helping them in the discharge of their duties. The Central Government would, therefore, do well to re-examine the matter and take suitable steps in the above direction.”

16. Admittedly, from the evidence of PW-3 and PW-4, it is not proved from the record that any inventory was prepared after the recovery and arrest of the appellant when she was taken to the Regional Customs Office at Aizawl. A perusal of statement of both the witnesses PWs-3 and 4, clearly show that neither any inventory was prepared nor any petition was filed before the jurisdictional Magistrate, for preparation of inventory by the Magistrate. This fact also appears from the subsequent order passed by the Magistrate, where there is no mention of production of the inventory before them.

Now the question comes whether violation of Section 52-A of NDPS Act is fatal to the prosecution case and whether conviction of the appellant is not sustainable on that count !

17. Coming to the evidence of the witnesses, PWs-1 and 2 deposed in their evidence that on 13.05.2016, while they were travelling in a vehicle towards Silchar bearing No. AS 11 E 0345, the Custom Officer of Aizawl stopped their vehicle at Selesih Waiting Shed for checking and on being searched, they found three small bundles of maroon colour tablets called Methamphetamine in an

Airbag. On being asked, one co-passenger i.e. the accused, Vanlalruati claimed that the bag belonged to her. The Customs Officer asked the accused to produce any valid document in support of the said tablets. As the accused could not produce any valid document for carrying such large quantity of medicines, the Customs Officer requested other passengers to accompany them to their Office at Aizawl to witness seizure formalities of the seized articles. After reaching the office of the Custom, the Officer thoroughly checked the said Airbag and found 6026 number of methamphetamine tablets. Accordingly, the said tablets were seized. The samples were drawn from the seized articles as per procedure and kept in the envelope and sealed with wax and seized articles were weighed and it was 600 grams approximately. Accordingly, PWs-1 and 2 put their signatures in the seizure list and which were prepared in presence of them.

18. In cross examination, PWs-1 and 2 replied that they did not know from where the seized articles were recovered by the Customs officials. The seized articles did not belong to the accused person.

Subsequently, both PWs-1 and 2 were re-examined by the prosecution wherein they stated that the said Airbag belonged to the accused Vanlalruati.

19. PW-3 is the Customs official who supervised the case. He deposed in his

evidence that on 13.05.2016, a specific information was received by Inspector, Customs Division, Aizawl to the effect that a lady would be travelling from Aizawl to Silchar via Durtlang road as a passenger in Tata Sumo Vehicle bearing Registration No. AS 11 E 0345 and she would be carrying some prohibited drugs. The information was recorded in writing on the same day by the officer who received the information and forwarded to the respective higher authority of the department. Accordingly, the officer of Customs proceeded towards Selesih, Aizawl to intercept the said vehicle. On reaching Selesih Waiting Shed, after sometime, when the vehicle arrived, they checked the said vehicle and it was noticed that there were only three passengers. On preliminary checking, they detected some bundles containing maroon colour tablets suspected to be methamphetamine from the possession of a lady who introduced herself Vanlalruati. On being asked, she could not produce any valid documents to carry such goods. Then they requested the other co-passengers to be witnesses and they agreed to it. As the timing of detection was late at night, and the place was not secure for thorough verification and further proceedings or formal seizure, therefore, he (PW-3) directed the driver of the Tata Sumo to take the vehicle to the Customs Divisional office, Aizawl. The accused travelling with the goods and co-passengers were taken to the Customs office, Aizawl.

20. PW-3 also stated that on reaching the office, he along with other officers thoroughly checked the Airbag and recovered three bundles containing 6026 numbers of suspected to be methamphetamine tablets. In presence of the alleged owner of the goods and the two independent witnesses, the officers conducted a preliminary test on 14.05.2016 by using detection kit in the office premises and the preliminary test shows a positive result for methamphetamine tablets. Thereafter, an inventory of the same was prepared by the Officer and the same was handed over to the alleged owner of the seized contraband items.

21. In his cross examination, PW-3 replied that the alleged contraband was recovered from the Airbag which belonged to the accused. He was present at the time of recovery. The place is a waiting shed constructed in the road side at Selesih. They had prior information and waited for the vehicle at the said waiting shed.

22. PW-4, who is another Customs official and PW-5, who is the Investigating Officer reiterated the same thing whatever stated by PW-3 in his evidence.

23. DW-1 and DW-2 are the sons of the accused appellant. According to them, on the date of incident, their mother was travelling to Silchar for collecting household goods and also for collecting textile/fabrics for their shop. Therefore, it is not in dispute that on the date of incident i.e. on 13.05.2016, the appellant

was travelling in a Tata Sumo Vehicle bearing No. AS 11 E 0345. Coming to the question of recovery of contraband items from the possession of the accused appellant, the witnesses are more or less categorical to that extent. Though the FSL Report is available in the record but the person who examined the contraband items was not examined by the prosecution. However, the FSL Report was exhibited in the Court by PW-3 and there was no question raised by the defence counsel on the point of exhibiting the document during cross examination of PW-3. Hence, non-examination of the Chemical Examiner is not fatal to the prosecution case.

24. So far the point raised by the learned counsel for the appellant alleging non examination of the independent witnesses to the seizure, it goes without saying that the provision of Section 100 of the CrPC if complied with, the issue raised by the appellant cannot be sustained. The argument advanced by the learned counsel for the appellant that the witnesses so cited by the prosecution did not support the prosecution story. Therefore, according to the appellant the prosecution case has not been proved beyond reasonable doubt.

25. I have already discussed the evidence of PWs-1 and 2 from which it reveals that they were present when the contraband items were recovered from the possession of the accused appellant. They have clearly stated that the

Methamphetamine tablets were kept in a Airbag which belonged to the accused appellant. They have also exhibited the seizure list wherein they put their signatures as seizure witnesses. Moreover, Section 100 (5) of the CrPC specifically lays down that there is no need to interrogate independent persons and to bring them as witnesses terming to them to be independent witnesses unless they are specifically summoned for this purpose. If the seizure list shows that the same has been signed by two independent witnesses, there is no scope to disbelieve the search and seizure which took place in presence of such witnesses.

In the case of ***G. Srinivas Goud Vs. State of Andra Pradesh*** reported in ***AIR 2005 SC 3647***, it was held that if the seized contraband as well as the samples drawn were marked as material exhibits, there is hardly any scope to doubt the seizure in presence of the witnesses. All the witnesses available at the spot should be deemed to be independent unless contrary is proved. If sub section (4) and (5) of Section 100 are read together, the confusion can be removed. Therefore, the submission of the appellant is contrary to the ratio laid down in ***G. Srinivas Goud (Supra)*** and cannot be accepted.

26. Regarding non-compliance of the provisions of Section 52-A of the NDPS Act, it has been submitted by the learned counsel for the appellant that the

impugned judgment itself recorded that Section 52-A of the NDPS Act was not complied with although it is mandatory provision. According to learned counsel for the appellant, even no prayer was made before the Magistrate under Section 52-A of the NDPS Act, therefore, according to the learned counsel, this non-compliance of Section 52-A of the NDPS Act favours the accused with an order of acquittal.

27. According to learned counsel for the appellant, since Section 52-A of NDPS Act requires disposal of seized narcotic drugs and psychotropic substances, the authority ought to have complied with the same and having not done so, it is submitted by the appellant that the proceeding had been vitiated for statutory non-compliance.

28. Section 52-A of the NDPS Act is reproduced below-

“[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 [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 1872) 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 [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].”

29. The purpose for which Section 52-A has been incorporated in the Act is to

ensure disposal of contraband to stop repeat of further incident at the behest of unscrupulous person in the department because the course of action for the investigating authority has been mentioned in Section 52-A whereby prosecution should have resorted to obtain an order from the competent court of Magistrate as envisaged under Section 52-A of the Act in terms whereof the officer in power under Section 53 upon preparation of the inventory of narcotic drugs containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as he may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings there under makes an application for any or all of the following purposes-

- a) Certifying correctness of the inventory so prepared; or
- b) Taking, in the presence of such Magistrate, photographs of substances and certifying such photographs as true;
- 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.

30. Sub section (3) of Section 52-A of the Act provides that as and when such an application is made, the Magistrate may as soon as possible allow the application.

In the case of **Noor Aga Vs. State of Punjab and Another**, reported in **(2008) 16 SCC 417**, the destruction was made by the investigating authority without such application as has been required to be filed under the provision of Section 52-A. The Court disbelieved the story of destruction and held that while it was mandatory for the investigating authority to produce the seized contraband before the Trial Court, having not been done so, is a lacuna on the part of the investigating authority which leads to a conclusion that there was neither seizure nor inventory of the contraband which is not the case here. Therefore, principles underlying the decision of **Noor Aga (Supra)** does not help the appellant to get an order of acquittal on the purported ground of non-compliance of Section 52-A of the NDPS Act.

31. This is also necessary to mention that the appellant cannot get any benefit of the argument so made showing non-compliance of Section 52-A unless the act of such non-compliance causes any prejudice to the accused appellant. On this ground also, the appellant's contention cannot be accepted.

32. Section 52-A of the NDPS Act provides for disposal of seized narcotic drugs

and psychotropic substances. The competent authority of the Central Government may having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage, space of any other consideration in respect of any narcotic drugs and psychotropic substances, controlled substances or conveyances, by notification in the official Gazette, specify such narcotic drugs or 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 in compliance of the procedure laid down under the law. Section 52-A was inserted by Act 2 of 1989 with effect from 29.05.1989. The said section has been incorporated in the NDPS Act as per the mandate contained in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Clause 5 of Article 14 of the said Convention requires that parties may take necessary measures for early destruction or lawful disposal of the narcotic drugs and psychotropic substances which have been seized or confiscated and for their admissibility as evidence of duly certified necessary qualities of such substances. The obvious reasons for incorporation of the said provision is not to confer any benefit or protection to the accused but to ensure that the drugs seized and kept in the custody of the

enforcement agency and the courts do not get recycled into illicit traffic. Simply non disposal of the contraband under Section 52-A cannot be conclusive of any benefit favouring acquittal of the accused appellant or the same cannot be extended to the extent of benefitting the appellant to take the plea that the proceedings has vitiated or that the accused appellant cannot be liable for either prosecution or conviction when legislature after due consideration brought Section 54 in the Act. Had there been no such provision like Section 54 where it has been categorically mentioned that in trial under this Act, it may be presumed that the accused has committed the offence under the Act unless the contrary is proved.

33. The non-compliance of the procedure laid down under Section 52-A of the NDPS Act for disposal, does not in any manner, affect the validity of the trial as held by the Hon'ble Apex Court in ***Amarjeet Kaur Vs. State of Haryana & Others***, reported in ***(2003) 1 RCR (Criminal) 99***, which reads as follows:-

“8. I have considered the rival submissions and perused the judgment of Division Bench of Calcutta High Court in Tej Bahadur Singh's case (supra). In my view Section 52A relates only to procedure for disposal of the contrabands. In the present case, the charge is under Section 15 of the Act for the appellant being in possession of contraband. Once the said contravention is established, the accused is liable to be punished.

Procedure for search and seizure is relevant for proving the offence of possession of the contraband. No doubt, if search is illegal in violation of Section 50 of the Act, it

has been held that contraband cannot be taken into consideration. Other provisions of the Act have been held to be directory and vitiate the prosecution only on showing of prejudice to the accused. Sections 52 to 57 of the Act have been held to be directory. Section 52A comes into picture only after seizure, and under Section 55, the officer in charge has to keep in safe custody all the articles seized subject to certain conditions, such as sample is allowed to be taken, and keeping of articles in safe custody is subject to the order of the Magistrate as to the disposal of seized articles. Noncompliance with the procedure laid down under Section 52A for disposal does not in any manner affect the validity of the trial unless prejudice is shown. The case property was produced before the court and is Exhibit P1 to P4, and the same was properly identified. Merely because the same was not disposed of at the pretrial stage by following the procedure does not affect the veracity of the case of the prosecution and does not vitiate the trial. In fact, the object of disposal of the case property at the pretrial stage is to ensure that the case property is not misused, and also to relieve the prosecution of the responsibility of safe custody. Once safe custody and identity of the case property is proved and the case property is produced for inspection of the court, noncompliance of Section 52A does not vitiate the trial and , therefore, I am not inclined to subscribe to the view taken in the judgment of Calcutta High Court in Tej Bahadur's case (supra)."

34. In ***State of Punjab Vs. Makhan Chand*** reported in ***AIR 2004 (SCW) 1419***, it was held that Section 52-A does not empower the Central Government to lay down the procedure for search of an accused but only deals with the disposal of the seized narcotic drugs and psychotropic substances. The relevant paragraphs are reproduced as follows:-

"10. This contention too has no substance for two reasons. Firstly, Section 52-A, as the marginal note indicates, deals with "disposal of seized narcotic drugs and psychotropic substances". Under Sub-section (1), the Central Government, by a

notification in the Official Gazette, is empowered to specify certain narcotic drugs or psychotropic substance's having regard to the hazardous nature, vulnerability to theft, substitution, constraints of proper storage space and such other relevant considerations, so that even if they are material objects seized in a criminal case, they could be disposed of after following the procedure prescribed in Sub-sections (2) & (3). If the procedure prescribed in Sub- sections (2) & (3) of Section 52A is complied with and upon an application, the Magistrate issues the certificate contemplated by Sub-section (2), then Sub-section (4) provides that, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, such inventory, photographs of narcotic drugs or substances and any list of samples drawn under Sub-section (2) of Section 52A as certified by the Magistrate, would be treated as primary evidence in respect of the offence. Therefore, Section 52A(1) does not empower the Central Government to lay down the procedure for search of an accused, but only deals with the disposal of seized narcotic drugs and psychotropic substances.

11. Secondly, when the very same standing orders came up for considerations in Khet Singh v. Union of India, this Court took the view that they are merely intended to guide the officers to see that a fair procedure is adopted by the Officer-in-Charge of the investigation. It was also held that they were not inexorable rules as there could be circumstances in which it may not be possible for the seizing officer to prepare the mahazar at the spot, if it is a chance recovery, where the officer may not have the facility to prepare the seizure mahazar at the spot itself. Hence, we do not find any substance in this contention."

35. In view of the aforesaid legal mandates, the contention of the appellant that in absence of non-compliance of Section 52-A of the NDPS Act, she gives a favourable acquittal, does not at all hold good.

36. Reverting to the case in hand, on a reading of the impugned Judgment of

the Trial Court, it reveals that the Trial Court has appreciated the evidence of the witnesses and the decisions of the several Courts on the issue of Section 52-A of NDPS Act and held that on sending the seized articles to the FSL without any undue delay and as no grounds to believe tampering of the seized articles on the way to the office of FSL from the custody of the seizing party, failure to comply with Section 52-A of NDPS Act alone is not sufficient to accept the submission of learned counsel for the appellant that non-compliance of Section 52-A of NDPS Act vitiates the trial.

37. After hearing the submissions of the learned counsels for the parties and after giving due adherence thereto and in view of the discussion as above, this Court is of the opinion that the order of conviction passed by the learned Trial Court does not call for any interference. Submissions made by the learned counsel for the appellant that the alleged Airbag along with contraband was not seized from the conscious possession of the appellant, the seized contraband was neither produced before the learned Magistrate and no inventory was done and non-examination of the independent witnesses of the seizure, cannot be accepted to hold that the prosecution has failed to prove its case beyond all reasonable doubt or that the appellant is entitled to be acquitted of the charges brought against her. The appeal, therefore, fails. The order of conviction and

sentence are hereby affirmed.

38. In the result, the appeal is dismissed and disposed of accordingly.

39. Send back the Trial Court Record.

JUDGE

Comparing Assistant