

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-598-DB-2011 (O&M)
Reserved on: 30.09.2024
Date of decision: 15.10.2024

NISHAN SINGH ALIAS SHANA

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Deepinder Singh Virk, Advocate for
Mr. P.S. Ahluwalia, Advocate for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 04.06.2011, upon Sessions Case No.2 of 4.6.2008, by the learned Judge Special Court, Sangrur, wherethrough in respect of a charge drawn against the accused *qua* an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”), the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellant. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner:

“xxx

Accordingly the accused/convict is hereby sentenced to undergo rigorous imprisonment for a period of twelve years and is also directed to pay a fine of Rs. One lac and in default of payment of fine to further undergo rigorous imprisonment for a period of two years.”

2. The period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

3. The accused-convict become aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

Factual Background and Investigation proceedings

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PH/1 is assigned. The narrations carried in Ex.PH/1, are that on 17.5.2003 Inspector Harinder Singh, Incharge CIA Bahadur Singh Wala, Sangrur along with SI Baldev Singh and other police officials on official vehicle Nissan bearing No.PB-13-D-1354, driven by HC Sukhdarshan, in connection with patrolling duty were present on the bridge of drain in the area of village Pedni Kalan. There a secret information was received by Inspector Harinder Singh that Nishan Singh alias Shana son of Bhajan Singh, who was employed as a driver on truck No.HR-39-7525 with the help of his brother Sarbjit Singh had been bringing poppy husk from Rajasthan on the above mentioned truck and then had been selling the same at villages namely Pedni Kalan, Bugra etc. On that day they were bringing poppy husk on the above mentioned truck for the selling purposes and in case Naka bandi is held, huge quantity of poppy husk can be recovered from them. It was around 7.10 A.M. Then one Kulwant Singh son of Naranjan Singh came and he was joined in the police party by Inspector Harinder Singh and he was apprised of the facts.

Meanwhile one truck came on the mettaled road from the side of Pedni Kalan

and as per the prosecution version same was being driven by accused Nishan Singh (present accused) and his brother Sarbjit Singh was sitting by his side. On this Inspector Harinder Singh gave a signal to stop the truck and same was stopped at some distance from the police party. Then driver of the truck jumped out from the truck and fled away towards the fields. The other person, who was sitting in the truck was, however, apprehended. On asking he disclosed his name as Sarbjit Singh and he even disclosed the name of the driver as Nishan Singh. Thereupon Inspector Harinder Singh who was in uniform introduced himself to above said Sarbjit Singh and told him that he has suspicion of some intoxicants in the boxes loaded in the truck and further told Sarbjit Singh that he wants to conduct the search of the same. At the same time Inspector Harinder Singh also apprised Sarbjit Singh that he had got right to be searched in the presence of Gazetted Officer or Magistrate and they can be called at the spot. On this Sarbjit Singh replied back that some Gazetted Officer be called at the spot. Regarding this statement of Sarbjit Singh was recorded. Then Inspector Harinder Singh requested DSP Rajinder Singh on wireless set to reach at the spot and on this Rajinder Singh DSP (D) came at the spot on his Govt. vehicle No.PB-13-B-2050. He was in uniform. Then DSP Rajinder Singh introduced himself to said Sarbjit Singh that he is DSP (D), Sangrur and is a Gazetted Officer and his search and the bags loaded in the truck is to be conducted, as it was suspected that the said bags were containing some intoxicants. Even DSP Rajinder Singh then told Sarbjit Singh that he can also call some other Gazetted Officer or Magistrate. However, Sarbjit Singh reposed confidence in DSP Rajinder Singh and told him that search should be conducted. Regarding this consent statement of Sarbjit Singh was recorded. Then as per the directions of DSP Rajinder Singh, Inspector Harinder Singh opened the bags lying in the truck and on opening the bags poppy husk was found. Then the said bags were given serial Number 1 to

36. Then two samples of 250/250 grams each from each bag were taken out separately and were given serial no. 1 to 36 as per their respective bags. Then on weighing of the remaining poppy husk it came to 32 Kgs 500 grams in each bag. Then samples and the bulk parcels were sealed with the seal of DSP Rajinder Singh bearing impressions RS on it. Sample seal chit was also prepared and seal after use was entrusted to Kulwant Singh. Then all the parcels, truck, RC were taken into police possession vide a separate recovery memo, attested by the witnesses. Ruqa was sent to the Police Station, on the basis of which formal F.I.R. was registered. Accused Sarbjit Singh was arrested accordingly and regarding this intimation was given to his father Bhajan Singh. Rough site plan of the place of recovery was prepared. Statements of the witnesses were recorded. On return to the Police Station, Dhuri Inspector Harinder Singh produced the case property, accused Sarbjit Singh and witnesses before Inspector Bhag Singh, SHO of Police Station, Dhuri. He then verified the facts of the case and further interrogated from accused Sarbjit Singh and witnesses and thereafter he affixed his seal bearing impressions BS on the case property and also attested all the parcels and specimen seal chit. Then he directed Inspector Harinder Singh to deposit the case property with MHC Major Singh and on the direction of Inspector Bhag Singh, Inspector Harinder Singh deposited the case property with MHC Major Singh. On 18.5.2003 Inspector Harinder Singh withdrew the case property from the custody of MHC Major Singh and produced the same before S.D.J.M, Dhuri and then the learned S.D.J.M, Dhuri passed the orders and on return to the Police Station, Inspector Harinder Singh again deposited the case property with MHC Major Singh. Even photographs were taken as per the orders of the learned S.D.J.M. After completion of all the formalities of investigation challan was presented against accused Sarbjit Singh, before the learned trial Court. It is pertinent to mention here that the said Sarbjit Singh was convicted

under Section 15 of the ND&PS Act vide judgment dated 9.12.2005. Thereafter the present accused Nishan Singh was arrested and accordingly present challan was put up before the learned trial Court.

Trial Proceedings

5. The learned trial Judge concerned, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charge against the accused, for an offence punishable under Section 15 of the Act. The afore drawn charge was put to the accused, to which he pleaded not guilty, and, claimed trial.

6. In proof of its case, the prosecution examined eleven witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and five witnesses were led into the witness box.

7. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of learned counsel for the appellant

8. The learned counsel for the appellant has made a vigorous address before this Court that, though the FSL concerned, made examinations upon the stuff inside the sample cloth parcels, as became sent to it for examination, besides made an opinion that the stuff examined containing the prohibited narcotic drug/narcotic substance. Furthermore, he also submits that though, the

examined stuff became re-enclosed in the cloth parcels, and, thereons the seal impressions of the FSL became embossed. However, apart from the report of the FSL concerned, the prosecution has not tendered into evidence the sample cloth parcels, nor obviously the examined sample cloth parcel became either produced or adduced into evidence. He submits that the above production was necessary, as in the absence of their production, in Court, the charge against the convict would not become cogently established. Moreover, he further submits that the production, in Court, of the sample parcels after an opinion being made thereon, by the FSL concerned, is but imperative especially when they cannot be either retained, at the FSL concerned, nor if they are returned, to the police *Malkhana* concerned, they cannot also be retained there, but are to be ensured to be produced before the learned trial Court. He submits that the production in Court of the examined stuff as inside cloth parcels, is primary evidence for not only supporting the report of the FSL concerned, but also for supporting the charge.

Submissions of learned State counsel

9. The learned State counsel has however submitted while placing reliance upon Section 52-A of the Act, and, also while placing reliance, upon a notification issued by the Ministry of Finance, Department of Revenue, as drawn on 16.01.2015, (i) that the certified inventory in respect of the seizure as made by the empowered Magistrate was rather alone required to be produced, in Court, besides it was sufficient to clinch the charge, as sub-Section 4 of Section 52-A of the Act, provisions whereof stands extracted hereinafter, declares the certified inventory to be primary evidence in respect of an offence under the Act.

[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 5[such drugs, substances or conveyances] and certifying such photographs as true; or*
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.*

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of

1974), every court trying an offence under this Act, shall treat the inventory, the photographs of 1[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.]

10. He further refers to the notification drawn on 16.01.2015, whereby in terms of the substantive provisions of Section 52-A of the Act, the Drug Disposal Committee has been constituted, and, which has made an order of destruction of the examined cloth parcels. Resultantly, he submits that when the examined sample cloth parcels, as became sent to the FSL concerned, rather became validly destroyed. Therefore, he contends that the production, in Court, of even the examined sample cloth parcels was not required, besides also he submits that the certified inventory Ex.PK, does constitute primary evidence for proving the charge. Relevant paragraphs of the notification (supra), are extracted hereinafter.

“MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 16th January, 2015

G.S.R. 38(E) - *In exercise of the powers conferred by section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, (61 of 1985), hereinafter referred to as the said Act, and in supersession of notification number G.S.R. 339(E), dated 10th May, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, and constraints of proper storage space, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, hereby specifies the narcotic drugs, psychotropic substances, controlled substances and conveyances which shall, as soon as may be after their seizure, be disposed of, the officers who shall dispose them of and the manner of their disposal.*

2. Items to be disposed of. - All narcotic drugs, psychotropic substances, controlled substances and conveyances shall be disposed of under section 52A of the said Act.

3. Officers who shall initiate action for disposal. - Any officer in-charge of a police station or any officer empowered under section 53 of the said Act shall initiate action for disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances under section 52A of that Act.

4. Manner of disposal - (1) Where any narcotic drug, psychotropic substance, controlled substance or conveyance 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 said Act or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A of the said Act as per Annexure 2 to this notification within thirty days from the date of receipt of chemical analysis report of seized narcotic drugs, psychotropic substances or controlled substances.

(2) After the Magistrate allows the application under sub-section (3) of section 52A of the said Act, the officer mentioned in subparagraph (1) 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 seized items to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the aforesaid officer shall send a copy of the details along with the items seized to the officer-in-charge of the godown.

5. Drug Disposal Committee.-The Head of the Department of each Central and State drug law enforcement agency shall constitute one or more Drug Disposal Committees comprising three Members each which shall be headed by an officer not below the rank of Superintendent of Police, Joint Commissioner of Customs and Central Excise, Joint Director of Directorate of Revenue

intelligence or officers of equivalent rank and every such Committee shall be directly responsible to the Head of the Department.

6. Functions. - The functions of the Drug Disposal Committee shall be to-

- (a) meet as frequently as possible and necessary;
- (b) conduct a detailed review of seized items pending disposal;
- (c) order disposal of seized items; and
- (d) advise the respective investigation officers or supervisory officers on the steps to be initiated for expeditious disposal.

7. Procedure to be followed by the Drug Disposal Committee with regard to disposal of seized items. (1) The officer-in-charge of godown shall prepare a list of all the seized items that have been certified under section 52A of the said Act and submit it to the Chairman of the concerned Drug Disposal Committee.

(2) After examining the list referred to in sub-paragraph (1) and satisfying that the requirements of section 52A of the said Act have been fully complied with, the members of the concerned Drug Disposal Committee shall endorse necessary certificates to this effect and thereafter that Committee shall physically examine and verify the weight and other details of each of the seized items with reference to the seizure report, report of chemical analysis and any other documents, and record its findings in each case.

8. Power of Drug Disposal Committee for disposal of seized items.-The Drug Disposal Committee can order disposal of seized items up to the quantity or value indicated in the Table below, namely:-

1	2	3
Sl. No.	Name of item	Quantity per consignment
1	Heroin	5 Kg
2	Hashish (Charas)	100 Kg
3	Hashish oil	20 Kg
4	Ganja	1000 Kg

1	2	3
5	Cocaine	2 Kg
6	Mandrax	3000 Kg
7	Poppy straw	Upto 10 MT
8	Other narcotic drugs, psychotropic substances, controlled substances or conveyances	Up to the value of Rs. 20 lakh:

Provided that if the consignments are larger in quantity or of higher value than those indicated in the Table, the Drug Disposal Committee shall send its recommendations to the Head of the Department who shall order their disposal by a high level Drug Disposal Committee specially constituted for this purpose.

9. Mode of disposal of drugs.-(1) *Opium, morphine, codeine and thebaine shall be disposed of by transferring to the Government Opium and Alkaloid Works under the Chief Controller of Factories.*

(2) *In case of narcotic drugs and psychotropic substances other than those mentioned in sub-paragraph (1), the Chief Controller of Factories shall be intimated by the fastest means of communication available, the details of the seized items that are ready for disposal.*

(3) *The Chief Controller of Factories shall indicate within fifteen days of the date of receipt of the communication referred to in sub-paragraph (2), the quantities of narcotic drugs and psychotropic substances, if any, that are required by him to supply as samples under rule 67B of the Narcotic Drugs and Psychotropic Substances Rules, 1985.*

(4) Such quantities of narcotic drugs and psychotropic substances, if any, as required by the Chief Controller of Factories under sub-paragraph (3) shall be transferred to him and the remaining quantities of narcotic drugs and psychotropic substances shall be disposed of in accordance with the provisions of sub-paragraphs (5), (6) and (7).

(5) Narcotic drugs, psychotropic substances and controlled substances having legitimate medical or industrial use, and conveyances shall be disposed of in the following manner.

(a) narcotic drugs, psychotropic substances and controlled

substances which are in the form of formulations and labeled in accordance with the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) and rules made thereunder may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, after confirming the composition and formulation from the licensed manufacturer mentioned in the label, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder, provided that a minimum of 60% of the shelf life of the seized formulation remains at the time of such sale;

(b) narcotic drugs, psychotropic substance and controlled substances seized in the form of formulations and without proper labeling shall be destroyed;

(c) narcotic drugs, psychotropic substances and controlled substances seized in bulk form may be sold by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), and the rules and orders made thereunder, after confirming the standards and fitness of the seized substances for medical purposes from the appropriate authority under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the rules made thereunder,

(d) controlled substances having legitimate industrial use may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder.

(e) seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee.

- (6) *Narcotic drugs, psychotropic substances and controlled substances which have no legitimate medical or industrial use or such quantity of seized items which is not found fit for such use or could not be sold shall be destroyed.*
- (7) *Destruction referred to in sub-paragraph (b) shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards and such incineration may only be done in places approved by the State Pollution Control Board or where adequate facilities and security arrangements exist and in the latter case, 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, shall be obtained, and the destruction shall be carried out in the presence of the Members of the Drug Disposal Committee.*

10. Intimation to Head of Department on destruction.-*The Drug Disposal Committee shall intimate the Head of the Department regarding the programme of destruction at least fifteen days in advance so that, in case he deems fit, he may either himself conduct surprise checks or depute an officer for conducting such surprise checks and after every destruction operation, the Drug Disposal Committee shall submit to the Head of the Department a report giving details of destruction.*

11. Certificate of destruction.-*A certificate of destruction (in triplicate) containing all the relevant data like godown entry number, gross and net weight of the items seized, etc., shall be prepared and signed by the Chairman and Members of the Drug Disposal Committee as per format at Annexure 3 and 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 shall be kept by the Drug Disposal Committee.*

12. Details of sale to be entered in godown register. *As and when the seized narcotic drug, psychotropic substance, controlled substance or conveyance is sold by way of tender or auction or in*

any other manner determined by the Drug Disposal Committee, appropriate entry indicating details of such sale shall be made in the godown register.

13. Communication to Narcotics Control Bureau.-Details of disposal of narcotic drugs, psychotropic substances, controlled substances and conveyances shall be reported to the Narcotics Control Bureau in the Monthly Master Reports.”

Inventory

11. The inventory drawn in pursuance to the provisions of Section 52-A of the Act, is comprised in Ex.PL/1, its contents are reproduced hereinafter. The said inventory is submitted by the learned State counsel to be tendered into evidence. He further submits that on its tendering into evidence, it clinches the charge, given it being primary evidence in respect thereof.

“xxx

*P.S.: Dhuri District: Sangrur
Through: Insp. Harinder Singh I/C, C.I.A. B.S. Wala.
Versus: Sarbjit Singh son of Bhajan Singh, Jat, resident of Rajo Majra.
Case FIR No.132 dated 17-5-2003, u/S 15/61/85 N.D. & P.S. Act, P.S Dhuri.*

Inventory of the case property

- | | |
|------------------------|---------------------------|
| 1. Quality of | Poppy husk |
| 2. Weight | = 11 Qnt. 88 KG (36 bags) |
| 3. Kind of packing | = In the gunny bags. |
| 4. Identification mark | = No |

*Sd/- Harinder Singh,
I/C C.I.A. B.S. Wala 18.5.2003*

Certified that inventory prepared by I.O. Inspector Harwinder Singh, I/C, C.I.A. B.S. Wala is correct as per case property produced before me.

Sd/- S.D.J.M. Dhuri. 18/5/03”

Analysis of the certified inventory

12. A reading of the above drawn inventory with respect to the seizure of poppy husk carrying a weight of 11 quintals 88 kilo discloses that, in the

preparation of the inventory, as mandated by the provisions (supra), the learned SDJM, Dhuri, on 18.05.2003 made an order Ex.PL/1, thus certifying the correctness of the inventory drawn by the IO, I/C, CIA, BS Wala, and, to which Ex.PL/1 is assigned.

13. The sample cloth parcels carrying thereons the above seal impressions became sent on 20.05.2003 through Constable Manoj Kumar No.2377. The Chemical Analyst concerned, working at the FSL concerned, on receiving the above cloth parcels, hence he not only ensured that the seals carried thereons were intact besides also ensured that the numbers of seals, and, also the English alphabets as recited in Ex.PL/1, rather through making tallies with Ex.PL/1, whereafter he proceeded to make an analysis thereon. Ultimately, an affirmative opinion was made with respect of the stuff carried therein. Moreover, after makings of examination(s) of the stuff inside the sample cloth parcels, the Chemical Analyst did not re-enclose the examined stuff inside the cloth parcels concerned, nor embossed the seals of the FSL concerned, on the said parcel.

“CHEMICAL LABORATORY

Report on the analysis of the sample of Poppy Head forwarded by S.S.P. Sangrur referred to in his endst. No.508 dt. 19.5.03.

The exhibit marked here 210-P-May-03 to 245-P-May-03 was received on 27.5.03 with the particulars overleaf. The seal of the exhibit was intact on arrival and agreed with the specimen seal sent. The exhibit remained in my safe custody after its receipt till the time its analysis was started.

The analysis sample of the marked here 210-P-May-03 to 245-P-May-03 is as under:-

210-P-May-03 to 245-P-May-03

Analytical Data attached herewith.

OPINION: *The analysis indicates that the contents of the exhibit marked here 210-P-May-03 to 245-P-May-03 are of Poppy Head.*

*Sd/- Sushobhita Kumari
Deputy Chemical Examiner to
Govt. Punjab, Chandigarh.”*

14. As above stated, the above examined sample cloth parcels were never returned to the Court nor were produced, as, primary evidence to sustain the charge, rather as stated (supra), they appear to become destroyed at the FSL concerned.

15. In the wake of the above, the following questions arise for determination:

- a) Whether the destruction of the examined sample cloth parcels was made within the ambit of the provisions of Section 52-A of the Act, besides was in pursuance to the notification (supra) as made through an empowerment vested under the provisions contained in Section 52-A of the Act?
- b) Whether there was an imperative necessity for the production in Court of the examined sample cloth parcels, hence for sustaining the charge drawn against the convict.
- c) Whether even without the production of the examined sample cloth parcels, in Court, the report of the FSL concerned, when is supported by a certified inventory Ex.PL/1, thus drawn within the ambit of sub-Section 4 of Section 52-A of the Act, rather becomes the apt primary evidence, to sustain the charge drawn against the convict, besides renders redundant the production of the examined sample cloth parcels, in Court. Importantly given Ex.PL/1, comprising the statutorily mandated primary evidence.

Analysis of statutory provisions

16. A deep reading of Section 52-A of the Act makes emergences, that the relevant parameters rather to be prevailing upon the statutorily constituted

Drug Disposal Committee, for the latter ably ordering for the disposal of seizure, hence becoming comprised in:

- a) the hazardous nature, vulnerability to theft, substitution thereof;
- b) constraint of proper storage space or any other relevant consideration;

17. However, no destruction could be caused of the bulk as remained with the in-charge of the Malkhana of the police station concerned, as in terms of notification (supra), only poppy husk weighing 10 MT was required to be destroyed, but poppy husk weighing less than 10 MT which is the quantum of the poppy husk in the instant case rather was not required to be destroyed, as such, it was incumbent, upon the investigating officer concerned, to, even if at the FSL concerned, the stuff examined, became destroyed by the Chemical Examiner concerned, rather from the bulk prepare sample parcels for an opinion thereons being made by the Chemical Analyst concerned. However, the said has not been done thereby omission (supra), makes inroads into the efficacy of the prosecution case, besides makes the instant distruction to be inefficacious.

18. Moreover, though sub-Section 2 of Section 52-A of the Act assigns leverage to the authorized officer concerned, to prepare an inventory in respect of the seizure, as, relating to all description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars thereof, and/or, the packing in which they are packed, country of region, and, other particulars, as the officer may consider relevant to identify the seizure.

19. However, the above drawn inventory by the empowered officer, makes it incumbent upon him, to yet move an application before the jurisdictionally empowered Magistrate for the purposes 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.

20. Only when the above statutorily mandated certification, is made hence by the jurisdictionally empowered Magistrate, on the inventory prepared by the authorized police officer, that then only the inventory derives the relevant statutory leverage. In addition, though sub-Section 4 of Section 52-A of the Act, assigns to the certified inventory the high pedestal of its constituting primary evidence in respect of the offences under the Act. Moreover, the above assigning of a high pedestal of primary evidence, to a valid certified inventory drawn under Section 52-A of the Act, is not only in respect of the inventory but is also in respect of the photographs, controlled substance or conveyances, besides is in respect of any list of representative samples drawn under sub-Section 2 of Section 52-A of the Act.

Inferences from the above provisions, and, answers to the above formulated questions of law

21. Be that as it may, the preparation of a certified inventory, and, to which the pedestal of primary evidence is assigned in respect of an offence under the Act, does not however yet assign any empowerment, in the Drug Disposal Committee constituted under the notification (supra), to yet destroy, even the examined sample cloth parcels, nor even in the face of destruction of the apposite bulk, as made under the orders of a statutorily constituted Drug

Disposal Committee, can yet exempt the prosecution from ensuring the production of the examined sample cloth parcels before the learned trial Judge concerned. The reason for making the above conclusion becomes rested upon the factum, that clause (c) of sub-Section 2 of Section 52 of the Act, assigns jurisdiction in the Magistrate to allow the authorized officer, to draw representative samples of such drugs or substances, but in his presence. Subsequently not only the inventory, but also the list as drawn in respect of the derivations of representative samples from the bulk of such drugs, or substances, is also required to be certified by him, to be correctly drawn.

22. If so, even if in sub-Section 4 of Section 52-A of the Act, there is a speaking that any certified list of samples, as drawn under clause (c) of sub-Section 2 of Section 52-A of the Act, hence becomes primary evidence in respect of such offence. However, yet it cannot be concluded, that either *per se* the list, besides also *per se* the report of the Chemical Analyst concerned, rather comprising the apt primary evidence to clinch the charge, especially without the examined sample cloth parcel concerned becoming produced in Court. The reason for drawing the above inference becomes rested in the factum, that the list of representative samples, though is declared by sub-Section 4 of Section 52-A of the Act, to constitute primary evidence in respect of the disclosures occurring therein. However, the above is only to enable the Chemical Analyst concerned, who receives them at the laboratory concerned, rather to make the apposite matchings in respect of the numbers of seal impressions, the English alphabets carried thereon, besides to also enable him to ensure the intactness of the seals, as made on the sample cloth parcels, rather through his referring to the descriptions as are carried in the apposite road certificate. Necessarily the above assigning of a pedestal of primary evidence, to the certified list drawn in respect

of representative samples, is but only to the above limited effect. Any opinion to the contrary would result in the prosecution being entitled to prove the charge not through production in Court of the examined sample cloth parcels but through its tendering in Court, only the report of the Chemical Analyst concerned, as made upon the stuff inside the sample cloth parcels, and, that too, only because the certified list drawn in respect of the sample cloth parcels *ipso facto* speaking about yet the laboratory untested stuff enclosed inside the representative cloth samples, containing traces of the prohibited psychotropic substance, and/or, of the narcotic drug. If *per se* the tendering of the certified inventory before the learned trial Judge concerned, along with the report of the FSL concerned, is construed to be primary evidence in respect of a charge under the Act, it would bring the hereafter ill-consequence(s).

- I. *Qua* even without testing of the stuff inside the representative cloth parcels, the Courts of law being led to conclude that the relevant stuff rather containing traces of the prohibited substance or of the narcotic drug.
- II. The Act despite not excluding the laboratory testings of the relevant stuff inside the representative cloth parcels, yet evidentiary vigor being assigned to the certified list. Therefore without the laboratory testings of the stuff inside the representative parcels, does not render, the certified list to *per-se* become primary evidence. If so without the apposite report of the Chemical Analyst concerned, the charge drawn against the accused in respect of an offence cannot be proved nor can the prosecution become exempted from also producing the examined cloth parcels before the learned trial Judge. Resultantly, the list *per se* reiteratedly, is not primary evidence rather the opinion of the Chemical Analyst concerned, as, made in respect of the stuff inside the representative cloth parcel, as sent to it,

becomes the primary evidence, but subject to the examined sample cloth parcels also along with the report of the Chemical Analyst becoming produced in Court.

III. Thus without the apposite laboratory testing being done at the stage of preparation of certified inventory. Resultantly, thereby the provisions of Section 45 of Indian Evidence Act, besides of Section 293 of Cr.P.C., rather do remain intact. The effect of the above is that, the expert evidence has to be proven through production in Court of the examined sample parcels. Moreover, since a rebuttable presumption of truth is assigned to the report of the Chemical Analyst concerned, by the provisions of Section 293 of Cr.P.C. Thus the accused is to be given an opportunity to rebut the presumption of truth.

23. Emphasizingly in the above situation the productions (supra), before the learned trial Judge, becomes the primary evidence to support the charge under the Act. The reason being that, excepting the laboratory testings of the stuff inside the cloth parcel, at the FSL concerned, which but is the relevant trite scientific evidence to prove the charge drawn against the accused in respect of NDPS offences, rather there is no other best scientific evidence to prove it. Therefore, only if at the phase of the drawings of the certified inventory by the learned Magistrate, that the stuff inside the representative cloth parcels, becomes subjected to laboratory testings, that then only would the certified inventory *prima facie* gather evidentiary vigor. Therefore also, the certified list *per se* does not obviously become primary evidence nor exempts from production, in Court, of the report of the FSL concerned, nor also exempts the production in Court, of the examined sample cloth parcels. Consequently, the assigning of the pedestal of primary evidence, to the certified list drawn in respect of the representative

samples, is but at the above phase, unless then the apposite laboratory testings are done, rather limited to the authenticity of the makings of seals thereon, besides for ensuring the intactness of the seals' made thereons, at the time of the drawings of representative parcels in the presence of the Magistrate, besides also only for excluding the possibility of tamperings being done with the representative cloth parcels, upon their travelling to the Chemical Analyst concerned. However, the above assigning of the high pedestal of primary evidence, to the certified list reiteratedly, as above stated rather can ever exempt the production of the examined sample cloth parcels in Court. The reason as stated (supra), is but simple that at the stage of drawings of the representative cloth parcels by the Magistrate from the bulk, and, which leads him to make the statutory certificate, rather there is no laboratory testings done of the stuff inside the representative parcels. If the above testing is done at the above phase, then only the statutory certificate would become the primary evidence, to sustain the charge under the Act, otherwise not. However in the instant case at the time of drawings of the representative parcels before the learned Magistrate concerned, rather there was no laboratory testings done of the stuff inside the representative parcels, thus, there arose a necessity for the production in Court of the examined cloth parcels hence along with the report of the FSL. The reason being that both provisions of Section 45 of Indian Evidence Act, besides the provisions of Section 293 of Cr.P.C., then remained intact. The further consequence thereof, is that, the Expert's report made on the examined cloth parcels is to be proven through the production in Court of the said parcels. Moreover an opportunity to the accused to rebut the presumption of truth, attached to the Chemical Analyst concerned, is also to be granted to him.

Further reasons for drawing the above inferences

24. Even otherwise, if the report of the Chemical Analyst concerned, is rendered insignificant, which it would become, in case without any laboratory examination(s) being made of the stuff inside the sample cloth parcels, yet the certified list of inventory becoming primary evidence, whereupon rather all the laboratories concerned, would become dysfunctional. Moreover, thus the certified list of representative parcels, even without laboratory examinations being made of the stuff inside them, conspicuously, at the time of their preparation before the Magistrate, would yet become unbefittingly construable to be containing traces of the banned psychotropic substances or the banned narcotic drug. The above situation is not contemplated by the statute. Therefore, even if sub-Section 4 of Section 52-A of the Act, opens with a *non obstante* clause, hence ousting the provisions of Section 293 of Cr.P.C., besides ousts the provisions of Section 45 of Indian Evidence Act. Moreover, even though the above ouster is valid, besides is workable, but is subject to at the time of drawings before the Magistrate of the list appertaining to the derivations of representative parcels from the bulk, that yet necessarily then the apposite laboratory testings being done by/in the presence of the Magistrate. The apposite laboratory testings at the above phase can be done either through the Magistrate concerned, forthwith travelling with the representative parcels to the laboratory concerned, or his deputing a responsible officer of the Court to carry the representative samples to the laboratory concerned. Only if the above laboratory testing is done, and, that too at the time of derivations of representative samples from the bulk, but obviously before the Magistrate, that then only the above *non obstante* clause (supra), occurring in sub-Section 4 of Section 52-A of the Act would become enlivened, or would not become redundant, otherwise not.

25. However, in the instant case there is no evidence suggestive, that at the time of drawings of representative samples, from the bulk hence in the presence of the learned Magistrate concerned, his ensuring that the said representative parcels, became tested at a laboratory adjoining the Court premises. Therefore, when only in the above event of the relevant apposite laboratory testings being done, that the mandate of sub-Section 4 of Section 52-A of the Act would have the fullest play, otherwise not. However, if without the apposite laboratory testings being done, more particularly at the stage of preparation of certified inventories or the preparation of the certified list of representative parcels, thereupons rather, the mere preparation of certified inventories or of certified list of representative parcels, cannot be construed to be *per se* resulting in a conclusion, that the yet unexamined stuff inside the representative parcels contained traces of the banned psychotropic substance, and, of the banned narcotic drug. In sequel, there was an imperative necessity for the production of the examined sample cloth parcels in Court along with the report of the FSL. Therefore, in the instant case in wake of the above discussion, the mere production in Court of the certified inventory or the mere production of the report of the FSL concerned, is rather *per se* not sufficient to clinch the charge drawn against the accused.

26. Moreover, in paragraph 35 of the judgment rendered by the Hon'ble Apex Court in **"Noor Aga V. State of Punjab and another" Criminal Appeal No.1034 of 2008, decided on 09.07.2008**, paragraph whereof becomes extracted hereinafter, thus becomes spelt the imperative *sine qua non*, rather requiring to become cogently proven hence for therebys the charge drawn against the accused becoming declared to become unflinchingly proven. However, since after the examination(s) being made of the stuff inside the sample parcels, thus by the

FSL concerned, rather the latter did not re-enclose them in the sealed cloth parcels, hence carrying thereons the seals' of the FSL concerned. Moreover, when the said sample parcel(s) became never returned to the office wherefrom they generated nor when they became produced in Court.

“35. The High Court proceeded on the basis that non-production of physical evidence is not fatal to the prosecution case but the fact remains that a cumulative view with respect to the discrepancies in physical evidence creates an overarching inference which dents the credibility of the prosecution. Even for the said purpose the retracted confession on the part of the accused could not have been taken recourse to.”

27. Consequently, since the expostulation of law carried in verdict (supra), remains unsatiated thereby the accused become entitled to an acquittal.

28. The said view is also supported by a judgment rendered in case titled as **“Gaunter Edwin Kircher V. State of Goa, Secretariat Panji, Goa”, Criminal Appeal No.642 of 1991, decided on 16.03.1993**, relevant paragraph whereof becomes extracted hereinafter.

“J. Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 52A and 53 – Customs Act, 1962, Section 110(IB) – Physical evidence – Case Property – Recovery of heroin from accused – Case property destroyed and not produced – Physical evidence relating to three samples taken from the bulk amount of heroin were also not produced – Bulk quantity was destroyed the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52A of the Act.”

The effects of purposive interpretation to the mandate of sub-Section 4 of Section 52-A of the Act

29. The effect of the above purposive interpretation being made to the mandate of sub-Section 4 of Section 52-A of the Act, is that, it is also required to be given the fullest effect, as only on its being given the fullest effect, hence the legislative intent of its incorporation in Section 52-A of the Act, would become fully achieved. As above stated it opens with a *non obstante* clause, and,

excludes the operation(s) of Section 45 of Indian Evidence Act, besides excludes the operation of Section 293 of Cr.P.C. Section 45 of Indian Evidence Act relates to expert evidence being collected, and, also the expert evidence being tendered besides proven before Courts of law. Moreover, Section 293 of Cr.P.C., relates to the reports made at the FSL concerned, and, to which a rebuttable presumption of truth is assigned. The *non obstante* clause in sub-Section 4 of Section 52-A of the Act would yet remain enlivened, but only when lab testing facilitates are resorted by the learned Magistrates concerned, pointedly at the phase of their deriving representative samples from the bulk besides when they thereafter make an order certifying the correctness thereof. In case the learned Magistrates concerned, at the time of certifying the correctness of the apposite inventory, and, to which the high pedestal of primary evidence is statutorily assigned, proceed to also then personally forthwith travel along with the representative samples, to the laboratory concerned, for the relevant testings being made there, or depute a responsible gazetted officer for the above purpose, then the assigning of the high pedestal of primary evidence to the statutory inventory, would never become rendered redundant rather would remain ever enlivened. Moreover, the above is also subject to the laboratory testings of the stuff inside the representative parcels, also may be, if deemed fit becoming mentioned in the certified inventory, or in some other document appended therewith. If at the initial phase of the learned Magistrate concerned, certifying the correctness of the statutorily made inventory, the above mentionings are made, in the certified list or through his appending with the certified inventory thus the report of the FSL concerned. Consequently, if the above is then done, thus the certified inventory would enjoy the completest sanctity. Moreover, it would also result in the legislative intent hence excluding the provisions of Section 45 of Indian Evidence Act, besides excluding the provisions of Section 293 of Cr.P.C., rather

becoming completely enlivened. Moreover then there would be no necessity, for thereafters *qua* apposite lab testings being done nor would there be any necessity of the examined sample cloth parcels along with the report of the FSL being produced in Court, as primary evidence, to sustain the charge, otherwise not.

30. Since in the instant case at the time of his certifying the correctness of the entries made in the apposite inventory, the learned Magistrate concerned, did not then ensure the apposite laboratory testing being done nor mentioned them then in his certified inventory nor ensured the appendings therewith of the apposite opinion of the FSL concerned. Thus, *per se* the certified inventory does not become primary evidence. Consequently, there was a dire necessity on the part of the prosecution to produce, in Court, both the examined cloth samples, and, also the report of the FSL. However, the above has not been done.

31. In consequence, the argument of the learned State counsel that *per se* the certified list of the representative parcels, is primary evidence becomes rejected, and, accordingly an answer is meted to the corresponding above formulated question of law.

32. Since as above stated this Court, has only for reasons (*supra*), concluded that, hence the deficit certified list of representative sample, is not, primary evidence to prove the charge. Therefore, the prosecution is not exempted from proving the report of the FSL concerned, nor is exempted from producing, in Court, rather along with the report of the FSL concerned, the apposite examined sample cloth parcels. Emphasizingly, the above necessity has arisen only because at the time of presentation of the inventory before the learned Magistrate concerned, by the empowered police officer, rather his omitting to, before his certifying the correctness of the inventory, or immediately thereafter hence ensuring that then, the apposite lab testings being done. The above may

have been ensured through his either personally forthwith ensuring apposite laboratory testings, or through his deputing some responsible gazetted officer to, along with the empowered police officer, travel to the lab concerned, for the relevant testings being made of the stuff inside the representative parcels. Subsequently, if he had in the inventory certified by him, hence referred to the stuff inside the representative parcels hence being put to laboratory testing or had appended with the certified inventory the report of the FSL concerned. Resultantly, then the *non obstante* clause excluding the mandate of Section 45 of Indian Evidence Act, besides the mandate of Section 293 of the Cr.P.C., would become fully enabled and alive, besides would give the fullest effect to the legislative wisdom, in its being engrafted in Section 52-A of the Act. However, in the instant factual situation, for all the above reasons yet the provisions of Section 45 of Indian Evidence Act, besides the provisions of Section 293 of Cr.P.C., remain fully intact.

Summarization of principles

33. (I) The laboratory testings of the stuff inside the representative parcels referred in the certified inventory drawn under Section 52-A of the Act, is but imperative, as, only on laboratory testings being done of the stuff inside the representative parcels, that then it can be concluded that the charge drawn with respect to an offence under the Act is proven.

(II) The mere production of the certified inventory in Court, may not become primary evidence, but would become so only when at the time of drawings of the representative parcels before the learned Magistrate concerned, the apposite laboratory testings are then done, either through the learned Magistrate personally

travelling along with the representative parcels, to the laboratory or his deputing a gazetted officer along with an empowered police officer to travel to the laboratory for the relevant testings being made there.

(III) If the above testings are also referred in the certified inventory or the report of the FSL is appended therewith or a reference to the report of the FSL is made in any document appended with the certified inventory, then the mere production of the certified inventory in Court, becomes primary evidence, and, *per se* on its production in Court, the charge under the Act becomes proven.

(IV) However, if at the time of drawings of the representative parcels or if at the time of makings of the statutory certification qua correctness of the inventory, the Magistrate concerned, does not ensure the apposite laboratory testings being done, then the laboratory testings of the stuff inside the representative cloth parcels, is yet to be done at the laboratory concerned. If so, not only the report of the FSL concerned, but also the examined relevant cloth parcels are to be produced in Court, as both comprise primary evidence, for proving a charge under the Act. Importantly, when in the above relevant factual situation, the provisions of both Section 45 of Indian Evidence Act, and, of Section 293 of Cr.P.C., remain intact.

34. In consequence, there is merit in the instant appeal, and, the same is allowed. The impugned verdict, as, drawn, upon qua the convict, by the learned Special Court, Sangrur, is quashed, and, set aside, and, the appellant is acquitted

of the charge drawn against him. The personal, and, surety bonds of the convict are directed to be forthwith cancelled, and, discharged. The convict if in custody, and, if not required in any other case, is directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to him, but in accordance with law. Records of the Court below, be sent down forthwith.

35. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.
36. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

15.10.2024
Ithlesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No