

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.4 of 2025

The State of Tripura

Represented by the Secretary,
Home Department, Government of Tripura

---Appellant (s)

Versus

1. Abul Hashem,

S/o Late Ali Miah resident of Kulubari,
Ward No.4, PS: Sonamura, District: Sepahijala Tripura

2. Kurban Ali,

S/o Jurul Haque resident of Aralia,
PS: Sonamura, District: Sepahijala Tripura

---Respondent(s)

For Appellant(s)	:	Mr. Raju Datta, PP.
For Respondent(s)	:	Mr. Tapash Datta Majumder, Sr. Advocate. Mr. Kingshuk Bhattacharjee, Advocate. Mr. Dalit Kalai, Advocate. Mr. Samar Das, Advocate. Mr. Keneth L. Debbarma, Advocate. Mr. Soumyadeep Saha, Advocate.

Date of hearing and date of judgment and order	:	30.07.2025
Whether fit for reporting	:	Yes.

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

Judgment & Order (Oral)

Dr. T.Amarnath Goud, J

[1] This is an application under Section 378(1)(b) Cr.P.C corresponding to 419(1)(b) of BNSS against the Judgement/Order dated 28.08.2024 passed by the Ld. Special Judge (NDPS), Sepahijala Tripura, Sonamura in case No. Special (NDPS) 66 of 2022 whereby the respondent-accused person has been acquitted from charge under Section 22(C) of NDPS Act.

[2] It is the case of the appellant that on 06.07.2022, one suo moto written complaint was filed by I/C Inspector Manash Paul before the O/C Sonamura PS stating interalia that on 06.07.2022 at about 2016 hours he received an information from his reliable sources that a huge quantity of Yaba tablets are kept inside the vehicle bearing Registration No.TR- 01-

BM-0526 Hyundai Venue, White colour which proceeded from Thakurmura. On receipt of the information, he immediately conveyed the matter to O/C PS and recorded the information in writing vide Sonamura PS GDE No.33 dated 06.07.2022. Thereafter O/C PS conveyed the matter to SDPO Sonamura and SP C/S Sepahijala for authorization vide Sonamura PS GD Entry No.34 dated 06.07.2022. Accordingly, SDPO Sonamura authorized O/C PS and the complainant to conduct raid and search inside the vehicle bearing Registration No.TR-01-BM- 0526. The complainant along with police personnels reached the spot and identified the vehicle, one person namely Kurban Ali managed to escape from the vehicle, however the driver of the vehicle Abul Hashem was unable to escape and he was detained. Thereafter, the complainant along with staff conducted search and recovered 2200 red colour YABA tablets from the vehicle bearing Registration No.TR-01-BM-0526 which was wrapped by grey colour adhesive tape, which were seized and handed over to O/C Sonamura PS. On the basis of said information, a specific case was registered vide No. Sonamura PS case No.078 of 2022 under Section 22(C)/8/25/29 of NDPS Act against the respondents herein. After investigation, IO submitted Charge Sheet under Sections 22(C),8,25 and Section 29 of NDPS Act and the Ld. Trial Court framed charge against the respondent under Section 22(C) of NDPS Act but without affording reasonable opportunity to the prosecution to produce their witnesses, only after examining 2(two) prosecution witnesses closed the chapter of prosecution evidence and the Ld. Special Judge (NDPS), Sonamura, Sepahijala acquitted the respondents from the charge framed under Section 22(C) of NDPS Act. Hence, this Appeal.

[3] It is contended by Mr. Raju Datta, learned PP for the state-appellant that Ld. Court below did not consider that offence under NDPS Act is a grave offense against the society and huge quantity of contraband were recovered from the dwelling house of the accused and Investigation Officer also submitted charge sheet against the accused person under the provisions of Cr.P.C but without giving an opportunity to the prosecution to produce their prosecution witnesses No.1, 3, 5, 6 & 7 the Ld. Trial Court

erroneously acquitted the accused Respondents. There was no necessity to close the case of 2022 in 2024 hurriedly. Similarly around 145 NDPS cases were acquitted by the learned trial court in a short span.

[4] It is further contended that Ld. Trial Court did not consider the settled principle of law that no accused can be acquitted from a criminal liability without facing proper trial and giving reasonable opportunity to the prosecution agency to prove their case.

[5] To support his case, on the point of issuing summons to the investigating officer, learned PP has relied upon Para no.9 of a judgment of the apex court in **Shailendra Kumar vs. State of Bihar and Others** reported in (2002) 1 SCC 655 where the apex court has observed as follows:

9. In our view, in a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the Court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. From the facts stated above, it appears that accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other the Addl. Sessions Judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summons to the investigating officer if he failed to remain present at the time of trial of the case. The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on part of any witness to remain present, it is the duty of the Court to take appropriate action including issuance of bailable/non-bailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such methods and victims of the crime cannot be left in lurch.

[6] On the point of prescribing an outer limit for conclusion of all criminal proceedings, learned PP has relied upon Para no.29 of a judgment of the apex court in **P. Ramachandra Rao vs State of Karnataka** reported in (2002) 4 SCC 578 where the apex court has observed as follows:

29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II)) and Raj Deo Sharma (I) and (II), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-

(1) The dictum in A.R. Antulay's case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated September 19, 2000 and April 26, 2001 in the abovesaid terms.

[7] On the point of responsibility of the court, learned PP has relied upon Para no.19 of a judgment of the apex court in **Mina Lalita Barua vs State of Orissa and Others** reported in (2013) 16 SCC 173 where the apex court has observed as follows:

19. In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, the duty and responsibility of the Court to be alive and alert

in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect every bit of vital information placed before it. It can also be said that in that process the Court should be conscious of its responsibility and at times when the prosecution either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the Court should remain a silent spectator in such situations. Like in the present case where there is a wrong statement made by a witness contrary to his own record and the prosecution failed to note the situation at that moment or later when it was brought to light and whereafter also the prosecution remained silent, the Court should have acted promptly and taken necessary steps to rectify the situation appropriately. The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and innocent is not punished. It is with the above background, we feel that the present issue involved in the case on hand should be dealt with.

[8] On the point applicability of Section 87 of the Cr.PC, learned PP has relied upon Para no.4 of a judgment of Calcutta High Court in ***Prodyut Kumar Baidya vs Smt. Chaya Rani Baidya and Anr.*** reported in 1995 SCC OnLine Cal 3 where the apex court has observed as follows:

4. Heard the submissions of the ld. Advocates appearing for the parties. Considered the materials on record. From the impugned order it appears that the Sub-Postmaster, Katihar Post Office and Head of Post-Office were served with the summons and they received the same. In spite of receipt of the summons, the Sub-Postmaster, Katihar Post Office failed and neglected to appear before the Court in answer to the summons. The ld. Magistrate sought to have taken steps according to law for securing the presence' of the witnesses before him. Instead of doing the same, he simply avoided it saying that the matter is a quasi-civil in nature and it is duty of the person who cited them as witnesses to secure his presence before the Court. The part that is to be performed by the party who cites a witness is to deposit the requisite and if on his prayer the summons are issued then it becomes the duty of the court to secure the presence of that witnesses if the summons are served upon that witness as the fiat of the court has not been complied with. In the instant case, upon the prayer of the party summons were issued and served upon the witnesses but they ignored the summons and failed to appear before the court. In such circumstances, the court is to take steps for securing their presence before the court as contemplated under the Cr. P.C. The ld. Magistrate is, accordingly, directed to take appropriate steps to secure the presence of the said witnesses before the court and for that he may consider the exercise of his power under Section 87 of the Cr. P.C. 1973.

[9] In the course of his argument, the learned Public Prosecutor drew the attention of this Court to the fact that as many as 145 cases exist in which the accused persons were acquitted without providing a proper opportunity to the prosecution. It was also brought to the notice of this Court that in many of these cases, the public prosecutors assigned to them were reported to have resigned following such acquittals. He finally prayed before this court to allow his appeal by setting aside the impugned judgment of the learned court below.

[10] On the other hand Mr. T.D Majumder, learned senior counsel for the accused-respondents has contended before this court that impugned order as challenged by the state-appellant is just and proper and needs no interference from this court. By way of filing an objection petition against the special leave petition being Crl.L.P 01 of 2025 preferred by the state-appellant, Mr. Majumder, learned senior counsel has drawn the attention of this court to the Para no.4 and 5 of the accompanying affidavit which read as under:

4. That the Ld. Special Judge, after due consideration of the prosecution's evidence, rightly concluded that there was no evidence to substantiate the charges against the respondents. The prosecution examined only two witnesses out of the seven cited, and their testimonies, as recorded in Annexures 1 and 2, failed to establish any incriminating facts against the respondents. PW-1 (Dy.SP Manik Debnath) merely confirmed procedural aspects of registering the case, while PW-2 (Bikash Bhowmik) explicitly stated he knew nothing about the case. Such evidence is wholly insufficient to sustain a conviction under the stringent provisions of the NDPS Act.

5. That the appellant's contention that the Ld. Special Judge illegally closed the prosecution evidence is misconceived. The case records (Annexures 5, 6, 7, and 8) clearly show that the prosecution was granted multiple opportunities to produce its witnesses on 10.04.2024, 20.07.2024, 22.07.2024, and 29.07.2024. Despite these opportunities, the prosecution failed to ensure the presence of key witnesses, including the complainant (CSPW No. 1) and other cited witnesses (CSPWs No. 3, 5, 6, and 7). The Ld. Special Judge's decision to close the prosecution evidence on 29.07.2024 was in accordance with law, as the prosecution's repeated failure to produce witnesses cannot be attributed to the court or the respondents.

[11] Finally, it is contended by the counsel for the respondents that the decision of the learned Special Judge to close the prosecution evidence on July 29, 2024, was not arbitrary but was a just and lawful exercise of

judicial discretion in response to the prosecution's repeated and persistent failure to produce its witnesses. Such inaction on the part of the prosecution cannot, and should not, be attributed to the court or to the respondents. The learned Trial Court, by closing the evidence, merely ensured that the trial progressed in a timely manner, preventing unwarranted delays caused solely by the prosecution's lethargy.

[12] He further stated that the learned Special Judge's judgment of acquittal is a reflection of the prosecution's failure to adduce any credible or incriminating evidence, coupled with its repeated inability to produce its witnesses despite numerous opportunities. The impugned judgment is sound in law and fact, and therefore, this Court is humbly urged to dismiss the appeal and uphold the acquittal of the respondents.

[13] Heard and perused the record.

[14] The trial court took cognizance of the matter and framed charges against the accused-appellant on 20.09.2023. The prosecution presented its case by examining two witnesses. The first, PW-1 Deputy Superintendent of Police Manik Debnath, and the second, PW-2 Bikash Bhowmik, an independent witness, both provided testimony which was duly recorded. For ready reference, the court proceedings dated 20.09.2023 is extracted herein below:

“The accused persons namely Abul Hossain and Kurban Ali on bail are present along with their engaged Ld. Counsel.

Ld. Special P.P is present.

Heard Ld. Counsels of both sides on the framing of charge.

Upon hearing of both sides, this Court finds there is prima facie case for framing of charge under Section 22(C) of NDPS Act against accused person namely Abul Hossain and Kurban Ali. Accordingly, charge has been framed under Section 22(C) of NDPS Act against accused person namely Akter Hossain and Kurban Ali and the contents of the same is read over and explained to them to which they pleaded not guilty and claimed to be tried.

Office is directed to issue summons upon the complainant and RO of this case.

After examination of complainant and RO the complete calendar shall be fixed.

Fix 10.04.2024 for Pws(CSW No.1 & 4).”

[15] However, after reviewing the evidence presented, the trial court found it to be insufficient. Consequently, in its order dated

28.08.2024, the trial court acquitted the accused, Abul Hashem and Kurban Ali, of the charges under Section 22(C) of the IPC, concluding that there was no evidence on which a conviction could be based. For ready reference, the court proceedings dated 20.07.2004, 22.07.2024, 29.2024 and 28.08.2024 are extracted herein below:

20.07.2024

The accused person namely Abul Hossain and Kurban Ali on bail are present along with their respective engaged Ld. Counsels.

Ld. Special P.P is present with one witness namely Bikash Bhowmik, he is examined, cross-examined as PW-02 and discharged.

No other witness is present.

No service report received.

To-date-fixed (22.07.2024) for Pws.

22.07.2024

The accused person namely Abul Hossain and Kurban Ali on bail are present along with their respective engaged Ld. Counsels.

Ld. Special P.P is present.

Today the case record is listed for Pws.

No witness is present.

No service report returned regarding the witnesses.

On perusal of the case record the last two occasions order dated 10.04.2024 prosecution was given last chance to produce the remaining witnesses but he he failed to produce the witnesses and he also admitted failed to produce the witnesses.

Ld. P.P. verbally prays for short adjournment for deposition of the witnesses.

Heard and considered.

Prayer is allowed for the last opportunity failing which the prosecution evidence will be closed as it is a long pending case.

Inform.

Fix 29.07.2024 for Pws (1, 3,5,6 & 7).

29.07.2024

Today the case record is listed for Pws.

The accused person namely Abul Hossain and Kurban Ali on bail are present along with their respective engaged Ld. Counsels.

Ld. Special PP is present.

No witness is present today.

Prosecution was given last chance for producing the witnesses today with direction that if he fails to produce the witnesses the evidence of prosecution witnesses will be closed.

As prosecution has failed to produce the witnesses, on verbal submission of Ld. Special PP the evidence of prosecution witnesses is hereby closed.

Accused is directed to remain present on the next date and furnish bail bond in compliance of Section 437A of Cr.P.C on the next date without fail.

Fix 13.08.2024 for examination of accused person u/s 313 of Cr.P.C/execution of bail bond.

28.08.2024

Bailed out accused persons namely Abul Hassem and Kurban Ali are present along with their Ld. defence counsels.

Ld. PP Mr. M. Sen is present for the state.

Today the date was fixed for examination of the accused person under section 313 of Cr.PC/ furnishing of bail bond under section 437A of Cr.PC.

Bail bond submitted on behalf of the accused person Kurban Ali in compliance of section 437A of Cr.PC which is checked, found correct and accepted.

From the record, I find that, it is a case of no evidence.

Hence, I proceed to conclude this case in exercising power under section 232 of Cr.PC to make an order of acquittal.

In this case charges were framed against the accused persons on 20.09.2023 under sections 22(C) of IPC.

In course examined 2 witnesses.

PW.1 Dy.SP Manik Debnath in his evidence deposed that on 07.07.2022 at about 1.48. hours he received one written complaint of one Sri Manash Paul, Inspector of police and registered the same as SNM PS case No.78/2022 under section 22(C)/08/25/29 of NDPS Act and witness identified the received endorsement on the body of the written ejahar and also identified the Printed FIR form along with signature which are marked and exhibit. PW.1 also identified his signature in the seizure list and in the presearch memo which is marked and exhibit. PW.2 Bikash Bhowmik is an independent witness and nothing made out from their evidences in support of prosecution case.

In the aforesaid circumstances, there cannot and should not be any doubt that it is a case of no evidence at all for which all the accused persons desires to be acquitted from the instant prosecution.

In the result, the accused persons namely, Abul Hassem and Kurban Ali are hereby acquitted from the charges under sections 22(C) of IPC.

Seized alamats, if any be destroyed / released after expiry of appeal period.

The case is disposed of on contest.

Make necessary entry in the relevant TR and CIS

Pronounced in the open court.

[16] To deal with the case, this court thinks it apposite to extract herein below Sections 67, 87, 230 and 242 of Cr.PC.

67. Service of summons outside local limits: When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

87. Issue of warrant in lieu of, or in addition to, summons.

- A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest -

(a) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court has reason to believe that he has absconded or will not obey the summons;

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

230. Date for prosecution evidence.

- If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under Section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

242. Evidence for prosecution

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241 the Magistrate shall fix a date for the examination of witnesses.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing,

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution;

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

[17] The learned Public Prosecutor's submission regarding the alarming number of 145 acquittals in NDPS cases without proper opportunity to the prosecution and the subsequent resignations of public prosecutors further underscores the systemic issues at play, which warrant immediate rectification to uphold the integrity of the judicial process. The

cases pertaining to 2022 were disposed of in 2024 in a hurried manner, which was not warranted.

[18] In light of the fundamental principle that a fair trial is paramount to ensuring justice, this Court notes with concern the Trial Court's premature closure of the prosecution's evidence. The Apex Court's pronouncements are unequivocal **Shailendra Kumar** (supra) mandates the trial court's imperative duty to secure the presence of the Investigating Officer and other crucial witnesses, even resorting to coercive measures like warrants, to prevent the frustration of justice. This critical responsibility was evidently not discharged in the present case, as the prosecution was denied the opportunity to present its full evidence. For ready reference, the same is extracted herein below:

9. In our view, in a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the Court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. From the facts stated above, it appears that accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other the Addl. Sessions Judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summons to the investigating officer if he failed to remain present at the time of trial of the case. The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on part of any witness to remain present, it is the duty of the Court to take appropriate action including issuance of bailable/non-bailable warrants as the case may be. It should be well understood that prosecution cannot be frustrated by such methods and victims of the crime cannot be left in lurch.

[19] Further, the decision to terminate the trial due to the mere lapse of time stands contrary to the dictum in **P. Ramachandra Rao** (supra), which firmly establishes that no rigid outer limit can be prescribed for the conclusion of criminal proceedings, particularly if such termination stifles the prosecution's ability to prove its case. The Trial Court's role, as clarified in **Mina Lalita Barua** (supra), is not that of a silent spectator; rather, it has an active duty to ensure all relevant evidence is brought forth and to intervene when necessary. This inherent judicial responsibility was not upheld. For ready reference, the same is extracted herein below:

19. In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, the duty and responsibility of the Court to be alive and alert

in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect every bit of vital information placed before it. It can also be said that in that process the Court should be conscious of its responsibility and at times when the prosecution either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the Court should remain a silent spectator in such situations. Like in the present case where there is a wrong statement made by a witness contrary to his own record and the prosecution failed to note the situation at that moment or later when it was brought to light and whereafter also the prosecution remained silent, the Court should have acted promptly and taken necessary steps to rectify the situation appropriately. The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and innocent is not punished. It is with the above background, we feel that the present issue involved in the case on hand should be dealt with.

[20] Moreover, the principle from **Prodyut Kumar Baidya** (supra) reinforces the court's obligation to secure witness presence once summons are served. For ready reference, the same extracted herein below:

4. Heard the submissions of the Id. Advocates appearing for the parties. Considered the materials on record. From the impugned order it appears that the Sub-Postmaster, Katihar Post Office and Head of Post-Office were served with the summons and they received the same. In spite of receipt of the summons, the Sub-Postmaster, Katihar Post Office failed and neglected to appear before the Court in answer to the summons. The Id. Magistrate sought to have taken steps according to law for securing the presence' of the witnesses before him. Instead of doing the same, he simply avoided it saying that the matter is a quasi-civil in nature and it is duty of the person who cited them as witnesses to secure his presence before the Court. The part that is to be performed by the party who cites a witness is to deposit the requisite and if on his prayer the summons are issued then it becomes the duty of the court to secure the presence of that witnesses if the summons are served upon that witness as the fiat of the court has not been complied with. In the instant case, upon the prayer of the party summons were issued and served upon the witnesses but they ignored the summons and failed to appear before the court. In such circumstances, the court is to take steps for securing their presence before the court as contemplated under the Cr. P.C. The Id. Magistrate is, accordingly, directed to take appropriate steps to secure the presence of the said witnesses before the court and for that he may consider the exercise of his power under Section 87 of the Cr. P.C. 1973.

[21] The cumulative effect of these judicial pronouncements leads this Court to conclude that the Trial Court's actions constitute a clear

deviation from established norms, resulting in a miscarriage of justice that warrants the setting aside of the impugned judgment.

[22] This Court must remind the trial court of its powers and duties under the Code of Criminal Procedure, 1973, as well as the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 67 of the NDPS Act deals with the power to call for information, which is often a critical piece of evidence. The trial court's duty to secure the presence of the witnesses who can testify to such information is thus integral to the prosecution's case. Under Section 242 of the Cr.P.C., the court is to proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. This is the stage where the prosecution is to be given a fair and complete opportunity. Furthermore, Section 230 of the Cr.P.C. expressly mandates the judge to fix a date for the examination of witnesses and to issue process for compelling their attendance upon the prosecution's application. Finally, Section 87 of the Cr.P.C. provides the necessary legal mechanism, allowing the court to issue a warrant for a person's arrest in addition to, or in lieu of, a summons, if there is reason to believe the person has absconded or will not obey the summons, or fails to appear despite due service. The trial court's inaction in utilizing these statutory powers to ensure a full and fair trial for the State led to a miscarriage of justice that cannot be sustained.

[23] In light of the foregoing, this Court is of the considered opinion that the learned Trial Court gravely erred in acquitting the respondents without providing a fair and reasonable opportunity to the prosecution to lead its evidence. The impugned judgment has resulted in a miscarriage of justice and cannot be sustained.

[24] Therefore, the Judgment/Order dated 28.08.2024 passed by the Ld. Special Judge (NDPS), Sepahijala Tripura, Sonamura in case No. Special (NDPS) 66 of 2022 is hereby set aside.

[25] The matter is remanded back to the learned Special Judge (NDPS), Sonamura, Sepahijala, with a direction to conduct a fresh trial by calling upon all the witnesses of the prosecution. However, it is made clear that if the parties want to rely upon the earlier evidence on record, in that

case, the learned Special Judge may examine the rest unexamined witnesses and deliver a fresh judgment in accordance with law by affording all opportunities to the parties. The same trial shall also be completed as expeditiously as possible.

[26] The appeal is accordingly allowed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

[27] The respondents are hereby directed to surrender before the concerned Trial Court on or before 20.08.2025. Upon their surrender, the Trial Court may consider bail application filed by them in accordance with law.

[28] It is needless to observe that, in the event the accused persons are on bail pending trial, the benefit shall be extended to them.

B.Palit, J

Dr. T. Amarnath Goud, J

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