

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.No.23 of 2025

The State of Tripura,

Represented by the Secretary,

Home Department, Government of Tripura.

.... Appellant.

Versus

Narayan Das,

S/O Lt. Hiralal Das

Resident of Khashchowmani,

P.S.- Melaghar, District- Sepahijala

.....Respondent.

For Appellant(s)	:	Mr. Raju Datta, P.P., Mr. R. Saha, Addl. P.P.
For Respondent(s)	:	Mr. Subrata Sarkar, Sr. Adv, Ms. Ayesha Saha Hirawat, Adv.
Date of Hearing	:	04.11.2025
Date of delivery of Judgment and Order	:	18.11.2025
Whether fit for Reporting	:	YES

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

Judgment & Order

[Dr. T. Amarnath Goud, J]

Leave granted.

02. This appeal is preferred challenging the judgment and order of acquittal dated 26.03.2024 delivered by Learned Special Judge, NDPS in connection with case No.Special (NDPS) 42 of 2019.

03. Heard Learned P.P., Mr. Raju Datta appearing on behalf of the appellant and also heard Learned Senior Counsel, Mr. S. Sarkar assisted by Learned Counsel, Ms. Ayesha S. Hirawat appearing on behalf of the respondent-accused.

04. Taking part in the hearing, Learned P.P. first of all drawn the attention of the Court that on the basis of an FIR laid by Inspector Anupam Das, O/C Melaghar P.S. alleging *inter alia* that on 02.10.2018 at about 2235 hours on the basis of secret information, the informant along with other staff entered into the house of the accused and conducted raid and search and in course of search from the cattle shed of the accused 55 kg of dry ganja was recovered and accordingly, the case was registered and the I.O. conducted investigation.

During investigation, the accused was arrested and was produced before the Court and on completion of investigation, charge-sheet was submitted and accordingly, Learned Trial Court framed charge against the accused under Section 20(b)(ii)(c)/25 of NDPS Act and to substantiate the charge prosecution has adduced in total 7 nos. of witnesses and on conclusion of trial, Learned Special Judge acquitted the accused from the charge of this case.

05. It was submitted by Learned P.P. that Learned Trial Court at the time of delivery of judgment determined following points for decision of this case:

“(1) Whether there was compliance of section 42(2) of NDPS Act this case?

(2) Whether chain of possession of contraband has been proved ?

(3) Whether search and seizure of contraband has been proved through independent witnesses?”

06. Learned P.P. further drawn the attention of the Court that Learned Trial Court at the time of delivery of judgment based upon the evidence on record of PWs-2, 4 & 5 came to the observation that Section 42(2) of NDPS Act was duly complied with but regarding determination of point Nos.2 and 3, came to the observation that the prosecution has failed to prove the chain of possession of contraband items as well as the search and seizure of contraband items from the possession of the accused in-accordance-with law. Thus, came to an erroneous finding and acquitted the accused.

In this regard, Learned P.P. drawn the attention of the Court referring one citation of the Hon’ble Supremem Court in **Rizwan Khan vs. State of Chhattishgarh** reported in **(2020) 9 SCC 627**, wherein in para No.12 Hon’ble the Apex Court observed as under:

“12. It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case [State of H.P. v. Pardeep Kumar, (2018) 13 SCC 808]”

Referring the same, Learned P.P. drawn the attention of the Court that in view of the principle of law laid down by the Hon’ble Apex Court in absence of evidence on

record of independent public witnesses also, there is scope for convicting the accused in a case. He further stated that all the witnesses of the prosecution excepting PW.3 and PW.7 very categorically stated that on the alleged day contraband items were seized from the residence of the accused and in support of that the accused could not show any valid documents. But the Learned Trial Court came to the observation that the prosecution has failed to prove search and seizure of the contraband items through seizure witnesses and furthermore, Learned Trial Court came to the observation that although PWs-1 and 4 in their evidence stated that after search and seizure they apprehend the accused and brought to P.S. but they failed to state in their evidence what happened with the seized contraband items and where it was kept and the prosecution failed to produce the I.O. inspite of following opportunity and thus, came to the observation that prosecution has failed to prove chain of possession of contraband items which according to Learned P.P. was total non-application of mind on the part of Learned Trial Court. So, Learned P.P. in summing up urged before the Court to set aside the judgment of the Learned Trial Court and to remand back the matter to the Learned Court below with a direction to call upon the witnesses and allow the prosecution to prove the documents afresh and for delivery to deliver a fresh judgment.

07. On the other hand, Learned Senior Counsel, Mr. S. Sarkar appearing on behalf of the respondent-accused drawn

the attention of the Court that the Learned Trial Court after considering the oral/documentary evidence on record rightly delivered the judgment and there was no infirmity in the judgment of the Learned Trial Court and furthermore, there was non-compliance of the provision of Section 42(2) of NDPS Act although Learned Trial Court came to the observation that Section 42(2) was duly complied with by the prosecution but not an independent witnesses supported the seizure of contraband items from the possession of the accused, so, there is was no infirmity in the judgment of the Learned Trial Court and urged for dismissal of the appeal filed by the prosecution.

08. We have heard both the sides at length and perused the record of the Learned Trial Court. In this case to substantiate the charge prosecution before the Learned Trial Court out of 9 nos. of witnesses has adduced in total 7 nos. of witnesses but the I.O. could not be examined. From the evidence on record, it appears that Learned Trial Court at the time of delivery of judgment based upon the evidence of PW-3 and PW-7 came to the observation that the Seizure of contraband items and the chain of seizure of contraband items could not be proved by the prosecution but came to the observation that Section 42(2) of NDPS Act was duly complied with.

09. PWs-1, 2, 4 & 5 very categorically stated about the prosecution case.

PW-3 stated that police went to the house of Narayan Das in a case of Ganza although he could not specifically say anything about seizure of contraband items from the residence of accused in his presence.

Similarly, PW-6 only stated that on 03.10.2018 Daroga Babu came to his shop and asked him about Narayan Das and on the following day he could know that accused was arrested by police for dealing Ganza and thus, disbelieved the evidence on record of the Police personnel, who conducted raid and search in the house of the accused and recovered the contraband items.

10. At the time of hearing, Learned Senior Counsel on behalf of the respondent-accused also failed to satisfy this Court regarding non-compliance of Section 42(2) of NDPS Act by the police. But Learned Senior Counsel only projected his argument regarding seizure of contraband items and support of the prosecution case by the independent witnesses. Surprisingly, prosecution before the Learned Trial Court failed to adduce the I.O. inspite of allowing opportunity.

11. We have also perused the record of the Learned Trial Court very carefully. After perusal of the judgment of the Learned Trial Court, it appears that the Learned Trial Court only came to the finding of acquittal on the ground that independent witnesses did not support the case of the

prosecution which in our considered view was not proper, because in view of the principle of law laid down by the Hon'ble Apex Court in the afore noted case (supra), it appears that testimony of official witnesses cannot be rejected on the ground of non-corroboration by independent witness.

12. Thus, the Learned Trial Court came to an erroneous finding for which this Court believes that the matter needs to be remanded back to the Learned Trial Court for retrial of the accused in this case in view of the provision provided under Section 386 of Cr.P.C.

13. In the result, the appeal filed by the State is hereby allowed. The judgment and order of acquittal delivered by Learned Trial Court is hereby set aside. The matter is remanded back to the Learned Trial Court with a direction to recall all the witnesses of the prosecution afresh and thereafter to deliver a fresh judgment in accordance with law after conclusion of trial.

14. However, it shall be open for the prosecution to rely upon the earlier evidence on record, if the prosecution wishes to do so. The accused was on bail at the time of delivery of judgment. The respondent-accused is to surrender before the Learned Trial Court on 09.01.2026 and the Learned Trial Court shall be at liberty to allow the accused to go on bail till conclusion of the retrial.

With this observation, this appeal is stands disposed of on contest.

Send down the LCR along with the copy of this judgment and also a copy of this judgment/order be furnished to Learned Counsel for the appellant for compliance

Pending application(s), if any, also stands disposed of.

JUDGE

JUDGE



**MOUMITA
DATTA**

Purnita

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