

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.No.25 of 2025

The State of Tripura,

Represented by the Secretary,

Home Department, Government of Tripura.

.... Appellant.

Versus

Atikul Islam,

S/O Tajul Islam

Resident of Rangamura,

P.S.- Jatrapur, District- Sepahijala

.....Respondent.

For Appellant(s)	:	Mr. Raju Datta, P.P., Mr. Rajib Saha, Addl. P.P.
For Respondent(s)	:	Mr. Koomar Chakraborty, 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 under Section 378(1)(b) of Cr.P.C. challenging the judgment and order of acquittal dated 30.03.2024 delivered by Learned Special Judge(NDPS), Sepahijala in connection with case No.Special (NDPS) 41 of 2019 under Sections 20(b)(ii)(C)/25 of NDPS Act, 1985.

03. Heard Learned P.P., Mr. Raju Datta appearing on behalf of the appellant and also heard Learned Counsel, Mr. Koomar Chakraborty appearing on behalf of the respondent-accused.

04. At the time of hearing, Learned P.P. drawn the attention of the Court referring the contents of the FIR laid by one Srikanta Chakraborty of Sonamura P.S. to O/C, Jatrapur Police Station alleging inter alia that on 20.06.2018 informant along with Uttam Banik, Dy. S.P. Alok Bhattacharjee, Dy. S.P. (DIB), SPJ, Abhijit Das, AC, DAR Sepahijala along with staff appeared at Jatrapur P.S. with one arrestee Nitish Kumar, S/O- Madan Gopal Singh Yadav of Bidhupur, P.S.- Bidhupur Bazar, District- Baishali, Bihar who was arrested in connection with East Agartala P.S. case No.-2018EAG106 under Section 120(B)/326/307 of IPC & 27 of Arms Act and as per his confession that one Atikul Islam, S/O- Tajul Islam of Rangamura Ward No.-02 under Jatrapur concealed ganja in his dwelling house located at Rangamura. Accordingly, the matter was entered in P.S. G.D.E. No.-03, dated 20.06.2018 and the information was conveyed to the higher authority and thereafter, the informant along with staff of Jatrapur P.S. and also the said accused, Nitish left towards the residence of Atikul Islam and conducted raid and incourse of raid 35 kg of dry ganja was seized from the possession of Atikul Islam and thereafter, the same was seized in-accordance-with law and accordingly, the case was registered by O/C, Jatrapur P.S. On

conclusion of investigation, charge-sheet was submitted and before the Learned Trial Court in total 12 nos. of witnesses were adduced by the prosecution and certain documents were marked as exhibits by the prosecution but the Learned Trial Court came to the observation that Section 42(2) was not complied with by the prosecution in this case and furthermore, Learned Court came to the observation that no pre-search memo could be proved by the prosecution and the seizure list witnesses did not support the case of the prosecution and it was also observed by the Learned Trial Court that the prosecution failed to exhibit any malkhana registrar and also failed to examine the malkhana in-charge and ultimately acquitted the accused. But Learned P.P. further submitted that before the Learned Trial Court the extract of G.D. along with the communication made to the higher authority was very much available with record but before the Learned Trial Court prosecution failed to prove those documents as exhibits. Even from the side of the Learned Trial Court also no such step was taken to find out the truth, thus, Learned Trial Court came to the observation that Section 42(2) was not complied with, pre-search memo was not exhibited and also the Learned Trial Court came to an erroneous observation that the independent seizure list witness did not support the prosecution case and acquitted the accused from the charge of this case, for which the interference of the Court is required and urged before the Court to set aside the judgment and order of acquittal passed

by the Learned Trial Court and urged for remanding back the matter for *de novo* trial of 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]"

Relying upon the same, Learned P.P. submitted that based upon the evidence of police personnel in this case, conviction could be convicted but the Learned Trial Court did not rely upon the evidence of police personnel rather based upon the evidence of private witness came to this observation **that evidence was not proved.**

05. On the other hand, Learned Counsel, Mr. Koomar Chakraborty appearing on behalf of the respondent-accused countered the submission made by Learned P.P. appearing on behalf of the State-appellant and submitted that before the Learned Trial Court there was total non-compliance of the provision of Section 42(2) of NDPS Act. No independent seizure list witness supported the case of the prosecution even the malkhana registrar was not proved for marking as exhibit, even the in-charge of malkhana was not produced before the

Learned Trial Court to support and substantiate the prosecution case and as such according to Learned Counsel, the prosecution case suffers from infirmities and there was no infirmity in the judgment and order of acquittal delivered by Learned Trial Court and asked for dismissal of this appeal.

Learned Counsel, Mr. Chakraborty in support of his contention relied upon one citation of the Hon'ble Supreme Court of India reported in **(2013) 2 SCC 212** wherein in para No.24 Hon'ble the Apex Court observed as under:

"24. As per the statement of PW 1, no effort was made by him to reduce the information into writing and inform his higher authorities instantaneously or even after a reasonable delay which has to be explained with reasons in writing. On the contrary, in the present case, the investigating officer, PW 1 had more than sufficient time at his disposal to comply with the provisions of Section 42. Admittedly, he had received the secret information at 11.30 a.m., but he reached the house of the accused at 2 p.m. even when the distance was only 6 km away and he was in a jeep. There is not an iota of evidence, either in the statement of PW 1 or in any other documentary form, to show what the investigating officer was doing for these two hours and what prevented him from complying with the provisions of Section 42 of the NDPS Act."

Referring the same, he submitted that from the aforesaid observation of the Hon'ble Supreme Court, it appears that in the present case at hand, there was total non-compliance of the provision of Section 42(2) of the NDPS Act.

06. We have heard detailed argument of both the sides at length and perused the record of the Learned Trial Court very carefully. In this case charge was framed against the respondent-accused under Section 20(b)(ii)(C)/25 of NDPS Act. To substantiate the charge prosecution in total adduced 12 nos. of witnesses before the Learned Trial Court. PW-4, S.I.

Srikanta Chakraborty was the informant of this case. He deposed that on 20.0.2018 he was working as S.I. of police at Sonamura P.S. On that day, during interrogation of one Nitish Kumar at Jatrapur P.S. in connection with East Agartala P.S. No.106 of 2018 it was revealed that some contraband articles were kept in the house of one Atikul Islam at Rangamura. Accordingly, search was raid and conducted in the house of Atikul Islam and during raid and search they recovered 35 kg of dry ganja in a blue colour drum from the dwelling hut of accused. He identified the pre-search memo, seizure list etc. and also identified the complaint led by him which was marked as Exhibit-4 and Exhibit-4/1. On perusal of said Exhibit-4, it appears that at Jatrapur P.S. the fact was entered in P.S. G.D. and the matter was reported to the higher authority. But surprisingly, those documents were not produced for marking as exhibits by the prosecution even the said fact was not taken into consideration by Learned Trial Court at the time of delivery of judgment.

PW-1, S.I. Bikash Debbarma, PW-3 Alok Bhattacharjee, PWs-5, 6, PW-8, Bulti Das, Women Constable, PW-12 very categorically stated that the contraband items were seized from the residence of accused but PW-5, Tashlima Akter, PW-2, Uday Bashi Tripura stated that the accused was arrested in connection with this case. Similarly, PW-8, PW-9, Tajul Islam also deposed in the same manner. However, said PW-2 and PW-5 could not say as to why the accused was

arrested but PW-9 Tajul Islam although stated that he was not present to the house of the accused at the time of incident. But later on, he could know that the accused was arrested on a NDPS case based upon those evidence, Learned Trial Court came to the observation that the independent witness did not support the case of seizure laid by the prosecution and also the Learned Trial Court came to the observation that malkhana register was not proved and in-charge of the malkhana was not produced for examination by the prosecution.

From the judgment of the Hon'ble Supreme Court relied upon by the prosecution, it appears to us that in absence the evidence of private witnesses also there is scope for conviction of an accused person and the testimony of official witnesses cannot be rejected on the ground of non-corroboration by independent witnesses. Thus, after hearing both the sides and also after going through the record of the Learned Trial Court, it appears to us that Learned Trial Court has failed to appreciate the evidence on record at the time of delivery of judgment properly and passed an order of acquittal for which the interference of the Court is required and as such in the considered opinion of this Court, the matter needs to be remanded back to the Learned Trial Court for retrial of the accused with a liberty to the prosecution to produce both oral/documentary evidence on record afresh.

07. In the result, the appeal filed by the State is hereby allowed. The judgment and order of acquittal delivered by

Learned Trial Court is set aside. The matter is remanded back to the Learned Trial Court with a direction to retrial of the accused with further direction to call upon all the witnesses of the prosecution and to allow the prosecution to adduce oral/documentary evidence on record in support of the prosecution case affording scope to the respondent-accused to cross-examine the witnesses and thereupon to deliver a fresh judgment in accordance with law. However, liberty is given to the prosecution and to the accused to rely upon the evidence on record recorded earlier. The accused is on bail. However, he is asked to appear before the Learned Trial Court on Learned Trial Court shall be at liberty to consider bail application of the accused and to allow him to go on fresh bail till conclusion of trial.

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

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