

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.No.27 of 2025

The State of Tripura,

Represented by the Secretary,

Home Department, Government of Tripura.

.... Appellant(s).

Versus

1. Nantu Sarkar,

S/O Sri Sukumar Sarkar

Resident of Batadhala Beltai,

P.S.- Sonamura, District- Sepahijala Tripura.

2. Sujit Sarkar @ Mithu,

S/O Lt. Gopi Nath Sarkar

Resident of Batadhala Beltali,

P.S.-Sonamura, District- Sepahijala Tripura.

3. Sukumar Sarkar,

S/O Lt. Sudhan Sarkar

Resident of Batadhala Beltali,

P.S.- Sonamura, District- Sepahijala Tripura.

....Respondent(s).

For Appellant(s)	:	Mr. Raju Datta, P.P., Mr. Rajib Saha, Addl. P.P.
For Respondent(s)	:	Ms. Ayesha S. Hirawat, Adv.
Date of Hearing	:	05.11.2025
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

23.04.2024 delivered by Learned Special Judge(NDPS), Sepahijala in connection with case No.Special (NDPS) 24 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 State-appellant and also heard Learned Counsel, Ms. Ayesha S. Hirawat appearing on behalf of the respondents.

04. Taking part in the hearing, Learned P.P. drawn the attention of the Court that on the basis of a *suo moto* complaint laid by one SI Srikanta Chakraborty of Sonamura P.S. to O/C Sonamura P.S. alleging *inter alia* that on 22.06.2018 at about 1655 hours, Dy. SP (HQR), SPJ Sishir Das, Dy. SP, AC DAR Abhijit Das along with staff appeared at PS and requested the PS staff for conducting raid in the house of Sukumar Sarkar S/O-Lt. Sadhan Sarkar of Batadhala, Beltali ward No.-01 under P.S.- Sonamura on the basis secret information that the son of Sukumar Sarkar namely Nantu Sarkar stored huge quantum of ganja and made one mini factory of ganja in his house. Accordingly, the above information was noted in Sonamura P.S. GDE No.-36, dated 22.06.2018 and the information was conveyed to higher authority for raid on the basis of secret information. Thereafter, the informant along with Dy. SP, SDPO, Sonamura, Dy. SP, AC DAR Abhijit Das along with other staff left for Batadhala in the house of Sukumar Sarkar for raid. On 22.06.2018 at about 1710 hours on arrival in the house of said

Sukumar Sarkar the raid was conducted by him along with Sishir Das, Dy. SP (HQR) and others and found 900 kg dry ganja which was found in plastic wrapped condition and some were found in plastic bags from the possession of Nantu Sarkar and some ganja was found in one DI vehicle BR No-TR07-1537. During close search and raid found one mini factory of ganja processing centre in the rear side of the dwelling house of Sukumar Sarkar which was monitored by said Nantu Sarkar. During search 03 nos. ganja compressing machine with accessories was found. Nantu Sarkar was detained and on being asked Nantu Sarkar admitted regarding the possession of said recovered ganja and mini factory of ganja processing centre. During raid the owner of the house Sukumar Sarkar managed to flee away from the spot. After that the contraband articles i.e. 900 kg of ganja, 03 nos. ganja compressing machine with accessories, one mobile set of Nantu Sarkar and one DI vehicle BR No.-TR07-1537 were seized in presence of witnesses and accordingly, the FIR was laid by the informant. The case was registered, investigation was concluded and after conclusion of investigation I.O. laid charge-sheet against three accused persons.

Before the Court of Learned Special Judge (NDPS) three persons faced trial and to substantiate the charge prosecution before the Learned Trial Court in total has adduced 13 nos. of witnesses and on conclusion of trial, Learned Trial Court came to the observation that the prosecution could not

prove the charge against all the accused persons and accordingly, by judgment dated 23.04.2024 acquitted all the accused persons from the charge of this case. Challenging that judgment, the State has preferred this appeal.

It was submitted by Learned P.P. that from the side of prosecution, the extract of G.D. and the communication made to SP (**Annexure-2 and Annexure-3**) were submitted by I.O. before the Learned Court but unfortunately, during trial the prosecution failed to prove those documents for marking as exhibits. Even the Learned Trial Court at the time of appreciation of evidence on record before delivery of judgment did not consider those documents which were available on record, thus, made an order of acquittal which has caused prejudice to the prosecution and if the prosecution could exhibit those documents, in that case the fate of the case could be otherwise but the Learned Trial Court at the time of delivery of judgment came to the observation that Section 42(2) of NDPS Act was not complied with and the seizure and possession of contraband item was not proved in-accordance-with law and thus, acquitted the accused persons from the charge of this case. So, Learned P.P. urged for allowing this appeal by remanding back the matter to the Court of Learned Special Judge with a liberty to the prosecution to prove those documents i.e. Annexures-2 & 3 before the Learned Trial Court during the period of retrial.

05. On the other hand, Learned Counsel, Ms. Ayesha S. Hirawat appearing on behalf of the respondent-accused persons opposed the submission made by Learned P.P. and submitted that before the Learned Trial Court all the accused persons faced trial and prosecution by adducing oral/documentary evidence on record failed to substantiate the charge levelled against the accused persons and as such Learned Trial Court after considering the evidence on record rightly and reasonably delivered the judgment for which there is no scope to interfere with the same. It was further submitted that before the Learned Trial Court prosecution has failed to comply with the mandatory provision of Section 42(2) of NDPS Act.

In support of her contention, Learned Counsel relied upon one citation of the Hon'ble Supreme Court of India in **State of Punjab vs. Balbir Singh** reported in **(1994) 3 SCC 299** wherein in para No.15(e) Hon'ble the Apex Court observed as under:

"15.e. The object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. Therefore these provisions make it obligatory that such of those officers mentioned therein, on receiving an information, should reduce the same to writing and also record reasons for the belief while carrying out arrest or search as provided under the proviso to Section 42(1). To that extent they are mandatory. Consequently the failure to comply with these requirements thus affects the prosecution case and therefore vitiates the trial."

Referring the same, she drawn the attention of the Court that prosecution has failed to comply with the observation made by the Hon'ble Apex Court in this case and as such there is no merit in this appeal and urged for dismissal of this appeal. Reliance was further placed that in this case leave was not sought for and in support of that she relied upon one citation of the Hon'ble High Court of Kerala in **State of Kerala vs. Sreekumar** reported in **(2001) SCC OnLine Ker 137** wherein in para No.7 Hon'ble the High Court of Kerala observed as under:

"7. In the above circumstances, an affidavit should have been filed by the Advocate General or Government Pleader explaining the delay. However, in this case Public Prosecutor explained how the delay occurred in Advocate General's office. We are satisfied that there are sufficient grounds to condone the delay. Therefore, delay is condoned. Post Crl. M.C. for leave to appeal along with Criminal Appeal for admission."

Further, Learned Counsel relied upon another citation of Hon'ble the Karnataka High Court in **Chandrappa and Others vs. State of Karnataka** reported in **(2007) 4 SCC 415** wherein in para No.42 Hon'ble the Karnataka High Court observed as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation. restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

Referring the same, Learned Counsel submitted that in a case of acquittal there will be double presumption in favour of the accused person. First of all, there will be presumption of innocence in favour of all the accused persons, since they were found not guilty and acquitted and secondly, the accused having secured with acquittal, the presumption of the innocence is further reinforced, reaffirmed and strengthened by the Learned Trial Court and if two reasonable conclusions are possible in that case the Appellate Court should not disturb the findings of the acquittal recorded by the Learned Trial Court. So, in summing up Learned Counsel urged for dismissal of the appeal and also urged before the Court to confirm the order of acquittal passed by the Learned Trial Court.

06. We have heard detailed argument of both the sides at length and perused the record of the Learned Trial Court below. In this case leave was granted at the first stage during admission of appeal. To substantiate the charge before the Learned Trial Court prosecution in total has adduced 13 nos. of witnesses. Learned Trial Court at the time of delivery of the judgment determined the following three points for decision of this case:

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

(2) Whether search and seizure of contraband has been proved?

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

In respect of point No.1 Learned Trial Court came to the observation that Section 42(2) of NDPS Act was not complied with by the prosecution. But in this regard from the evidence on record, it appears that PW-1 in his evidence stated that on the basis of information received from Dy. SP, Head Quarters, Sepahijala and others, he entered the fact in GD and communicated the information to his superior authority, SDPO, Sonamura. Thereafter, raid was conducted by the police personnel and huge contraband items were recovered.

Similarly, PW-2, Arup Kr. Dutta, PW-3, Jayanta Paul, PW-6, Rajdeep Deb, SDPO, Sonamura, PW-7, Abhijit Das, PW-8, Inspector Paritosh Das, PW-9, Indrajit Sarkar, PW-11, Sishir Kumar Das and PW-13, Parth Nath Bhowmik also reiterated the same fact. PW-13, the I.O. in his examination-

in-chief also specifically stated that during investigation, he seized GD extract copy, information copy and RG message. But surprisingly, before the Learned Court prosecution did not prove those documents, i.e., Annexures-2 & 3. Even the Learned Trial Court also did not take any step for consideration of those documents which are available on record, resulting which according to our considered opinion, Learned Trial Court came to a wrong observation that Section 42(2) was not complied with. In respect of search and seizure of possession, Learned Trial Court came to the observation that the independent witnesses did not support the prosecution case and malkhana registrar was not proved, even the prosecution could not produce the malkhana in-charge.

07. In course of hearing, Learned P.P. in this regard drawn the attention of the Court referring one citation of the Hon'ble Supreme 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]"

We have also gone through the aforesaid observation. It appears to us that evidence of private individual is not necessary in all cases in the case of seizure and there is also no any cogent ground to disbelieve the evidence of police

personnel if they are found to be trustworthy. But the Learned Trial Court at the time of delivery of the judgment did not consider the evidence of the police personnel, thus, came to a wrong observation that the seized contraband items were not seized from the residence of the accused and gave an erroneous order of acquittal of all the accused persons in a very casual manner for which it appears to us that the matter needs to be remanded back to the Learned Trial Court for retrial of all the accused persons giving liberty to the prosecution to prove those documents, i.e., Annexures-2 & 3 which prosecution failed to prove before the Learned Trial Court at the time of recording of evidence. Thus, it appears that the judgment of the Learned Trial Court suffers from infirmities which need to be interfered with.

08. In the result, the appeal filed by the State-appellant is hereby allowed. The judgment and order of acquittal dated 23.04.2024 delivered by Learned Special Judge(NDPS), Sepahijala in connection with case No.Special (NDPS) 24 of 2019 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 affording opportunity to both the parties and thereafter to deliver a fresh judgment in accordance-with law. The accused persons are on bail. They are directed to appear before the Learned Trial Court on 09.01.2026, when the Learned Trial Court on their appearance

shall allow them to remain on bail till conclusion of their retrial either on previous bail bond or fresh bail bond.

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

Digitally signed by
MOUMITA DATTA
Date: 2025.11.19
10:42:08 +05'30'