

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. No.24 of 2025

The State of Tripura,

Represented by the Secretary,

Home Department, Government of Tripura

.... Appellant.

Versus

1. Swapan Miah

S/O Sri Jaher Miah of Rahimpur,
Ward No.06
Near Rahimpur Market,
PS- Kalamchoura, District-Sepahijala.

2. Rajkumar Deb

S/O Lt. Subodh Deb of Rahimpur,
Ward No.6, PS-Kalamchoura, District-Sepahijala.

.....Respondents.

For Appellant(s)	:	Mr. Raju Datta, P.P. Mr. Rajib 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.

2. This appeal under Section 378(1)(b) of Cr.P.C. is preferred challenging the judgment and order of acquittal dated 13.02.2024 delivered by Learned Special Judge (NDPS),

Sepahijala Tripura, Sonamura in connection with Case No.Special (NDPS) 20 of 2019.

3. Heard Learned P.P., Mr. Raju Datta appearing on behalf of the appellant and also heard Learned Senior Counsel, Mr. Subrata Sarkar assisted by Learned Counsel, Ms. Ayesha Saha Hirawat appearing on behalf of the respondent accused persons.

4. At the time of hearing, Learned P.P., Mr. R. Datta drawn the attention of the Court that on the basis of suo-moto complaint of SI Rajib Saha being the O/C of Kalamchoura P.S. that on 18.06.2018 at about 10.50 hours on the basis of a secret information that some contraband articles were kept in the shops of Swapan Miah and Rajkumar Deb, he along with other staff members conducted joint raid and recovered 271 nos. bottle Eskuf 100 ml each from the shop of Swapan Miah and 81 nos. of bottle of Phensedyl 100 ml each from the shop of Rajkumar Deb. Regarding possession of which they could not show any valid documents and accordingly on the basis of the said suo-moto complaint, case was registered under Sections 21(C)/25/29 of NDPS Act.

5. The I/O after completion of investigation laid charge-sheet against both the respondent accused persons and accordingly the case was registered before the Court of Learned Special Judge (NDPS), Sepahijala, Sonamura. Before the Learned Trial Court prosecution adduced in total 10 nos. of

official witnesses to substantiate the charge and on conclusion Learned Trial Court acquitted both the respondent accused persons from the charge of the case and challenging that judgment the prosecution has preferred this appeal.

6. According to Learned P.P. before the Learned Trial Court specific evidence was given by PW-7 namely SI Rajib Saha that on the basis of information received from SDPO, Sonamura, Rajdeep Deb that some contraband items were stored in the shop of Swapan Miah and Rajkumar Deb and accordingly the information was entered in Kalamchoura P.S. GD Entry No.14 dated 18.06.2018 and PW-10 Inspector Tapash Das, in course of his examination, stated that as per GD Entry No.14 dated 18.06.2018, the secret information was conveyed to the higher authority. But the Learned Trial Court did not consider the same evidence and came to the observation that there was non-compliance of the provision of Section 42(2) of NDPS Act. It was further submitted that before the Learned Trial Court the abstract of GD was submitted by the I/O but the prosecution through over sight did not take step for making exhibit of the said document before the Learned Trial Court and furthermore, the Learned Trial Court also failed to appreciate the document at the time of delivery of judgment and came to an erroneous finding. So, Learned P.P. urged before the Court to consider the submission of the prosecution and to set aside the judgment of the

Learned Trial Court on the ground of non-compliance of the provision of Section 42(2) of NDPS Act and to allow the prosecution to prove the document by remanding back the matter which is very much lying with the record otherwise prosecution would be seriously prejudiced.

7. On the other hand, Learned Senior Counsel, Mr. S. Sarkar assisted by Learned Counsel, Ms. A. Saha Hirawat appearing on behalf of the respondent accused persons submitted that the Learned Trial Court after considering the materials on record rightly and reasonably delivered the judgment with the observation that Section 42(2) of NDPS Act was not complied with. Learned Senior Counsel also referred the evidences on record of the witnesses of the prosecution and further submitted that there is no infirmity in the judgment delivered by Learned Trial Court and urged for dismissal of this appeal.

8. We have heard argument of both the sides at length and perused the record of the Learned Trial Court. Admittedly, in this case prosecution to substantiate the charge framed against both the respondent accused persons under Section 21(C)/25 of NDPS Act in total adduced 10 nos. of witnesses. We have also perused the evidence on record of the prosecution. Now for the sake of convenience, let us put herein below the relevant provision of Section 42 of NDPS Act which provides as under:-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset,—

- (a) enter into and search any such building, conveyance or place;**
- (b) in case of resistance, break open any door and remove any obstacle to such entry;**
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and**
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:**

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter

and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

From the aforesaid provision it appears that in Section 42(1) of NDPS Act, it is clearly stated that the officer concerned after receipt of information from personal knowledge or information from any other person should reduce the said fact in writing regarding commission of offence in the GD book and under Section 42(2) of NDPS Act the information should be sent to his official superior.

9. Here in the case at hand from the evidence of PW-7 i.e. the informant, Sri Rajib Saha it appears that on 18.06.2018 he was working as SI of Police and on that day at about 10.30 pm SDPO Rajdeep Deb informed him that some contraband articles were stored in the shop of Swapan Miah and Rajkumar Deb at Rahimpur market and accordingly the fact was entered in Kalamchoura P.S. G.D. Entry No.14 dated 18.06.2018 and after that the informant along with SDPO, Sonamura and other staff conducted raid in the shop of Swapan Miah and Rajkumar Deb at Rahimpur market and they recovered 271 nos. of bottles of cough syrup Escuf 100 ml each and after that the same was seized. But before the Learned Trial Court the said GD Entry Number was not proved for marking as exhibits by the prosecution.

10. PW-10, Inspector Tapash Das conducted investigation of this case. In course of his examination he also stated that as per GD Entry No.14 dated 18.06.2018 secret information was also conveyed to the higher authority.

Thus, from the evidence of both the witnesses it is clear that the said fact was entered in GD but surprisingly the said GD entry was not proved as prosecution document before the Learned Trial Court either by the prosecution or by the Learned Trial Court itself also. Section 42(2) of NDPS Act further provides that where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

11. From the abstract of GD annexed with the record it appears that the fact was entered in the PS GD vide No.14 on 18.06.2018 and the same was conveyed to the higher authority i.e. SP of the District for approval and as per permission of the authority further proceeding was carried out. In absence the said document, Learned Trial Court came to the observation that Section 42(2) of NDPS Act was not complied with and came to an order of acquittal on the aforesaid point with further observation that search and seizure was not properly made in accordance with law and Malkhana register was not proved and failed to examine the In-charge of the

Malkhana. From the evidence on record of the prosecution which emerged from the record of the Learned Trial Court, it appears that prosecution has failed to conduct the case properly in accordance with law and the material documents which were brought on record by the prosecution could not be proved before the Learned Trial Court. So, in our considered opinion for fair ends of justice the matter needs to be remanded back to the Learned Trial Court for retrial/de novo trial of the accused person of this case allowing the prosecution to produce the witnesses afresh and to prove the documents regarding compliance of the provision of Section 42(2) of NDPS Act for the ends of justice.

12. In the result, the appeal filed by the prosecution is hereby allowed. The judgment and order of acquittal dated 13.02.2024 delivered by Learned Special Judge (NDPS), Sepahijala, Tripura, Sonamura is hereby set aside. The matter is remanded back to the Learned Trial Court with a direction to record the evidence of all the witnesses of the prosecution afresh and to allow the prosecution to prove all the documents in accordance with law and thereafter to deliver a fresh judgment for fair ends of justice. The accused persons were on bail at the time of delivery of judgment and as such they are asked to appear before the Court of Learned Trial Court on **07.01.2026** when the Learned Trial Court on their appearance

shall allow them to go on fresh bail so as to enable them to conduct their defence properly.

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

Send down the LCR along with a copy of this judgment/order immediately.

Pending applications, if any, also stands disposed of.

JUDGE

JUDGE



Amrita

AMRITA DEB

Digitally signed by AMRITA DEB
Date: 2025.11.18 17:18:24
+05'30'