

**HIGH COURT OF TRIPURA**

**\_A\_G\_A\_R\_T\_A\_L\_A\_**

**Crl. A. No.26 of 2025**

1. The State of Tripura, represented by the Secretary, Home Department, Government of Tripura.

**.....Appellant**

**\_V\_E\_R\_S\_U\_S\_**

1. Jahangir Hossain @ Jakir , S/o Maidur Ali, resident of Sahapur, P.S. Sonamura, District: Sepahijala Tripura.
2. Mubarak Hossain, S/o Maidur Ali, resident of Sahapur, P.S. Sonamura, District: Sepahijala Tripura.
3. Muslim Miah, S/o Masdur Ali, resident of Sahapur, P.S. Sonamura, District: Sepahijala Tripura.
4. Maleka Banu, W/o Jahangir @ Jakir Hossain, resident of Sahapur, P.S. Sonamura, District: Sepahijala Tripura.
5. Abu Hanif, S/o Indru Ali, resident of Sahapur, P.S. Sonamura, District: Sepahijala Tripura.

**.....Respondents**

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|-----------------------------------------|---|------------------------------------------------|
| For Petitioner(s)                       | : | Mr. R. Datta, P.P.                             |
| For Respondent(s)                       | : | Mr. T. Ali, Advocate.<br>Mr. S. Ali, Advocate. |
| Date of hearing and<br>judgment & order | : | 10.12.2025.                                    |
| Whether fit for reporting               | : | <b>YES</b>                                     |

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**HON'BLE JUSTICE DR. T. AMARNATH GOUD**  
**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

**\_F\_I\_N\_A\_L\_O\_R\_D\_E\_R\_**

Heard.

[2] The present appeal has been filed under Section-378(1)(b) of Cr. P.C. against the judgment dated 25.04.2024 passed by the learned Special Judge (NDPS), Sepahijala Tripura, Sonamura, in connection with case No. Special (NDPS) 02 of 2021, whereby and whereunder, the respondent accused persons have been acquitted from the charge under Sections-20(b) (ii)(C)21(C)/22(C)/25/29 of NDPS, 1985.

[3] The appellant has prayed for the following reliefs:

“(a) admit this appeal,

(b) issue notice upon the Respondents,

(c) Call for the records and after hearing be pleased to set aside the Judgment dated 25.04.2024 passed by the Ld. Special Judge (NDPS), Sepahijala Tripura, Sonamura in case No. Special (NDPS) 2 of 2021 and convict the respondents against the charge under Section 20(b)(ii)(C)/21(C)/22(C)/25/29 of NDPS Act, 1985 and remand back the case to the Court of Ld. Special Judge (NDPS), Sepahijala Tripura, Sonamura and give reasonable opportunity to the prosecution agency to produce their prosecution witnesses No. 1,3,5,6,8 & 9 for proving their case.”

[4] The facts in brief are that on 18.06.2018, the complainant i.e. SI Rajib Saha being the O/C of Kolomchoura P.S lodged one *suo-moto* complaint against the accused persons alleging *inter-alia* that on 18.06.2018 at 10.50 hours on the basis of a secret information a joint raid was conducted in the shop of the accused persons namely Swapan Miah and Rajkumar Deb and they recovered 271 nos. bottle Eskuf 100 ml each from the shop of Swapan Miah and 81 nos. bottle of Phensedyl 100 ml each from the shop of Rajkumar Deb.

[5] On the basis of said information, a specific case was registered vide No.2018KLC037 dated 18.06.2018 under Sections 21(C)/25/29 of NDPS Act against the respondents herein. After investigation Charge sheet was submitted against the respondents and Charge was framed under Section 21(C)/25 NDPS Act against the respondent-accused persons. After trial the learned Special Judge acquitted the accused persons on the ground that the prosecution failed to exhibit document to prove there was compliance of Section 42(2) of NDPS Act in this case, the prosecution failed to prove seizure of contraband articles and also on the ground that prosecution failed to prove chain of prosecution of contraband from the time it was seized till it was forwarded to SFSL for forensic examination.

[6] Hence, the present appeal has been filed by the appellant before this Court for redress.

[7] Mr. R. Datta, learned P.P. appearing for the appellant has submitted that the learned Court below most illegally and arbitrarily acquitted the accused respondent without recording the evidence of the prosecution witness Nos.1, 3, 5, 6, 8 & 9 including the complainant, forensic expert and I.O. of the present case. Offence under NDPS Act is a grave offence against the society and huge quantity of contraband articles were recovered from the dwelling house of the accused and the I.O. also submitted charge sheet against the accused person under the provisions of Cr. P.C. but without giving an opportunity to the prosecution witnesses, the learned Court below illegally acquitted the accused respondent.

[8] Learned counsel appearing for the respondents has submitted that those prosecution witnesses have not presented themselves due to non-availability of any tangible evidence for the purpose of prosecution. The order of acquittal passed by the learned Court below may not be considered as perverse as the accused had been acquitted on the ground of no evidence. The learned Court below

has left no stone unturned to try the case in a proper way and to impose punishment to the real accused.

[9] It has been further contended that the Hon'ble Apex Court in its wisdom stated that if the view taken by the trial Court is a plausible view the Hon'ble High Court will not be justified in reversing the order of acquittal merely because a different view is possible. Generally the order of acquittal shall not be interfered with because the presumption of the innocence of the accused is further strengthened by the acquittal. The golden thread runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favorable to the accused should be adopted.

[10] The prosecution has failed to establish the charge as framed against the accused. In the evidence relied by the respondents, the appellant herein the prosecution witness did not mention after seizure of the contrabands those were sealed and packed and representative samples were drawn at PO. Additionally, the prosecution witness also failed to state in their evidence what happened to those contrabands after seizure or to whom it was handed over.

[11] Learned counsel appearing for the respondents made submission on merit and contended that since there is no perversity made out and there are no laches on the part of the respondents, the appellant cannot further take steps to cause any operation to the citizen when he is already acquitted and whenever there is any point of decision or two opinions, in such a case, the benefit should always be given to the accused person and on the said premise, he has placed reliance on some decisions of the Hon'ble Apex Court in *Basappa v. State of Karnataka, reported in (2014) 5 SCC 154, Tuhin Kumar Biswas @ Bumba v. the State of West Bengal in Criminal Appeal No.5146 of 2025 and Ramesh v. The State of Himachal Pradesh in Criminal Appeal No.218 of 2017* and prayed that the appeal which is filed, needs to be dismissed and the benefit of acquittal be extended to his client.

[12] Having heard the learned counsel appearing for the parties and on perusal of the material evidence on record, this Court is of the view that the matter needs to be remanded back to the Learned Trial Court to conduct a fresh trial by calling upon the witnesses afresh allowing the prosecution to prove the relevant documents in support of the prosecution case and thereafter to deliver a fresh

judgment in accordance with law. Both the parties shall also cooperate with the court proceedings.

[13] In that view of the matter, this Court is of the view that the chronology of the present case may be looked into. It is seen from the record that the matter was came up on 30.07.2025 wherein, learned PP has submitted that the certified copy of the impugned judgment of the learned Court below was not submitted but the photocopy of the same was filed. Therefore, no case number has been provided to the present case and no number has been provided to the accompanying leave petition and the matter was listed on 05.08.2025 and on the same date, the matter was adjourned.

[14] Thereafter, on 24.09.2025 the matter was come up wherein, the learned P.P. has submitted that factually the observation made by the learned Court below was incorrect. The communication under the statute, the same are made available before the learned Court below by the prosecution and the Court below without consideration the said documents has granted acquittal. It has been further submitted that the learned Court below in many matters under NDPS cases on the same grounds and that too, in some matters without giving opportunity to examine the witnesses by the prosecution has granted acquittal which requires consideration by this Court.

[15] It has been further averred that the Hon'ble Division Bench of this Court has disposed of the criminal appeal filed by the prosecution and set aside the order passed by the learned Court below and remanded the matter for consideration in accordance with law, after giving due opportunity to the both sides and prayed to pass identical order in the present case. Thereafter, on request of the learned counsel appearing for the respondents herein, the matter was adjourned and listed on 04.11.2025 for relevant papers. Subsequently, on the same date, the matter was adjourned once again and listed 05.11.2025.

[16] On 05.11.2025, learned P.P. submits that he was not in a position to submit before this Court that the status of the appeal filed before the Hon'ble Apex Court and whether the main case is numbered or any directions are obtained and sought for an accommodation. Considering the same the matter was deferred on 25.11.2025. In terms of the earlier order dated 05.11.2025, learned counsel appearing for the respondents has filed an affidavit dated 24.11.2025 indicating that

the matter is pending before the Hon'ble Apex Court and prayed for an adjournment.

[17] On the other hand, Mr. Raju Datta, learned PP appearing for the appellant State submitted before this Court that this is not proper on the part of the respondents to make such submission since the SLP that is said to have been filed by the respondent(s) is pending with the Registry of the Hon'ble Supreme Court with defects and despite there being number of reminders from the Registry, the respondents are not taking further steps. He contends that this Court needs to take an adverse inference with regard to the action of the respondents representing before this Court and also before the Registry of the Hon'ble Supreme Court.

[18] Learned P.P. appearing for the appellant State further submits that since there is no stay from the Hon'ble Supreme Court, the matter before this Court need not be kept in abeyance. However, the matter was posted on 2<sup>nd</sup> December, 2025 with a direction that if at all the respondents obtain any order(s) from the Hon'ble Apex Court, shall place the same before this Court for appropriate actions.

[19] In view of overall analysis and having both sides completed their arguments and prayed to pass appropriate order and thereafter on perusal of the material evidence on record this Court is of the opinion that undoubtedly, there may be some exaggeration in the evidence of prosecution witnesses however, it is the duty of the Court to unravel the truth under all circumstances. In this context, one judgment and order of the Hon'ble Apex Court may bring some lights on the facts and circumstances of the case i.e. in ***Ramesh Harijan v. State of Uttar Pradesh***, reported in (2012) 5 SCC 777, wherein the Hon'ble Apex Court has held as under:

“25. Undoubtedly, there may be some exaggeration in the evidence of the prosecution witnesses, particularly, that of Kunwar Dhruv Narain Singh (PW.1), Jata Shankar Singh (PW.7) and Shitla Prasad Verma (PW.8). However, it is the duty of the court to unravel the truth under all circumstances.

30. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, AIR 1973 SC 2622, this Court held:

“...Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent ...". In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant

probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant...”

[20] In *V. K. Mishra and Another v. State of Uttarakhand and Another*, reported in (2015) 9 SCC 588, wherein, the Hon’ble Apex Court has observed as under:

“38. The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions.”

[21] In view of the above, this Court feels that the matter needs to be adjudicated after giving opportunity to both sides as the witness needs to be explained. Even if the prosecution is expressing any helplessness, it is the bounded duty of the Court to unearth the facts and to meet the ends of justice. Accordingly, the mater is remanded back to the concerned trial Court with a direction to conduct a fresh trial by calling upon the witnesses of the prosecution afresh and further allowing the prosecution to prove the relevant documents in support of the prosecution case allowing the accused to conduct the defence properly and thereupon to deliver a fresh judgment in accordance with law. However, it is made clear that if the parties want to rely upon the earlier evidence on record, in that case the learned Court below may examine the rest witnesses after hearing both the sides affording reasonable opportunities to the parties. The trial shall be conducted as expeditiously as possible. The respondent is hereby directed to present himself before the learned Court below and on his surrender; the learned Court below may consider his bail application if any, filed by him in accordance with law, so that his right is not infringed. The judgment relied by the learned counsel for the respondents are not relevant to the facts and circumstances of the case.

[22] Resultantly, the impugned order dated 25.04.2024 passed by the learned Special Judge (NDPS), Sepahijala Tripura, Sonamura in case No. Special (NDPS) 02 of 2021 is set aside and the instant appeal filed by the appellant is hereby allowed and disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

**S. DATTA PURKAYASTHA, J**

**DR.T. AMARNATH GOUD, J**

*A. Ghosh*