

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrlA (AS) No. 09/2022

Reserved on: 27.05.2025

Pronounced on: 09.07.2025

UT of JK through P/S Baramulla

.....Petitioner(s)/Appellant(s)

Through: Mr. Jahingeer A Dar, GA

V/s

Mohammad Saleem Khokher

..... Respondent(s)

Through: Mr. Musavir Mir, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

1. Appellant has preferred this appeal against the Judgment dated 25.10.2021, passed by the court of Additional Sessions Judge, Baramulla in case titled *State of Jammu & Kashmir versus Mohammad Saleem Khokher*, in case FIR No. 79/2017 registered with police station Baramulla for the offences under Section 8/21 of NDPS Act, for setting aside the same.
2. The brief facts of the case are that on 14.05.2017, Police Station Baramulla received a reliable information to the effect that some unknown person/s in possession of the narcotic substance were all set to come from the area of Uri to the Baramulla town pursuant to which the police station Baramulla under the supervision of Dy. S.P. Headquarter led a Naka on Baramulla -Uri Highway near Veervan and started the search of vehicles and pedestrians. In the course of the

search, the accused was witnessed coming in a suspected condition from the area of Sheeri towards Baramulla who upon seeing the police party, tried to flee away but was tactfully apprehended. The search of the accused, who disclosed his name as Mohammad Saleem Khokher, was conducted as per his option. The contraband narcotic substance Heroine (Brown sugar) was recovered from his possession, which he intended to carry to Baramulla town for the sale among the youth with a view to drag them to the menace of drug addiction.

3. Pursuant to the said occurrence, PW-1 sent a docket to police station Baramulla, on the basis of which an FIR No. 79/2017 was registered and investigation started. During investigation, I.O. seized the already recovered substance i.e. Heroine which weighed 514 grams. The sampling was done in presence of Magistrate and sample was sent to FSL for its opinion. The necessary memos were prepared and investigation was finally concluded in the form of filing of challan against the accused person/respondent before the Competent Court.
4. Respondent/accused was charge sheeted for the commission of offence under section 8/21 NDPS Act by virtue of order dated 31.08.2017, who pleaded not guilty and claimed to be tried and the prosecution was directed to adduce evidence in testification of charge. The prosecution produced and examined all the Nine (9) listed witnesses before the Trial court. While announcing the impugned Judgement, Trial court held that the prosecution has failed to prove the guilt of the accused person beyond any shadow of doubt and, as such, acquitted the accused from the charges levelled against him.

5. The appellant is aggrieved of the impugned order/judgment dated 25.10.2021 and challenges it on the grounds: that the Judgment of acquittal, impugned herein, is against facts and circumstance of the case and is not sustainable in law. That the impugned judgment has been passed in hot haste manner and without application of judicial mind to the facts and circumstances of the case including the nature of offence. That prosecution led un-rebuttable and forceful evidence before the Trial court, which has beyond any doubt rooted the evil designs of the respondent. The Trial court, however, while passing impugned Judgment has lost sight of the law, facts and circumstances of the case and in spite of guilt having been proved against the respondent. That the Trial court has doubted the seizure of contraband from the possession of the accused in an erroneous manner, though the recovery of the contraband was proved to have been made from the possession of the respondent. In the report of chemical analyst, it has been established beyond any shadow of doubt that the substance recovered from the possession of accused was Heroin (Brown sugar). The seizure of brown sugar from the accused has been brushed aside by the Trial court. In fact, it has been a case proved against the accused without any reasonable shadow of doubt. The impugned judgment is perverse inasmuch as it carved out a case of acquittal in favour of the accused for offences under Section 8/21 of NDPS Act, which offence are against the whole society. It is being stated that the Trial court has discarded entire police evidence. As per settled principle of law, if evidence of police officer/police official is reliable, inspires confidence and is of sterling character, same can form basis for conviction inasmuch as the

evidence is to be weighed and not counted and the quality of evidence is more important than the quantity as it assumes significance. It is also being submitted that the impugned judgment is passed in perfunctory manner without appreciating the seriousness of the offence committed by the respondents accused. The Trial court has not considered all important aspects of the case that the trial against accused was started only after the charge was framed against him by the court on the basis of available material brought by the prosecution before the court. It is also stated that the impugned judgment also smacks of the court below having not adhered to the established doctrine of fair trial. The Trial court seems to have carved out a third case which should have not while in effort to disengage the truth from the falsehood and to sift or separate grain from the sheaf. The investigating agency has proved the offences committed by the respondent. It is also submitted that the perusal of the impugned judgment gives an impression that there were contradiction among the statements of the witnesses recorded during the course of trial before the Trial court. But from the bare perusal of the material evidence brought on record during the course of trial by the prosecution, it becomes evidently clear that the recovery of the contraband was proved to have been made from the accused/ respondent himself. However, assuming for the sake of argument but not conceding that there were variations in some details between the statements, same do not ipso facto amount to contradiction and more so fatal to the prosecution case. For the contradiction are bound to happen in the natural course of events and such contradiction only bear

testimony to the fact that the witness has not been tortured but is speaking the truth.

6. The case set up by appellant and contentions raised by counsel for appellant requires perusal of the Trial Court record and the impugned judgement.
7. Before the Trial Court, the prosecution examined all the nine witnesses at the trial. The summary of the evidence produced by the prosecution before the Trial Court is reproduced as under:-

PW-1 Shri Hussain Ahmad Malik, the then Sub Inspector No.115709/ EXK resident of Lar Ganderbal posted at P/S Baramulla (presently posted at Police Station Gulmarg) listed as witness to the occurrence, recovery, seizure and weight, examined on 06.09.2018 deposed in his examination in chief that he knows accused present in the court. That it is the occurrence of 14.09.2017. That the police station Baramulla received an information to the effect that some person/s is coming towards Baramulla from Uri with contraband narcotic substance, pursuant to which he along with his companions and Dy. S.P Headquarter laid a naka at Baramulla-Uri National Highway near Veervan Pandith Colony and started search of the vehicles and pedestrians. That during the course of search one person was witnessed coming from Sheeri towards Baramulla who on seeing the police party tried to flee away but came to be apprehended tactfully. That during the search of the person a blue colored polythene bag containing contraband drug like Brown sugar came to be recovered who disclosed his name as Mohammad

Saleem Khokher son of Feroz Ali Khokher resident of Madiyan Kamalkote Uri. That a docket was sent to the P/S Baramulla through SG. Ct. Javed Ahmad for the purpose of registration of the case FIR. That he prepared a recovery memo in respect of the contraband narcotic drug Brown sugar. That upon the registration of the FIR in the police station the investigating officer (I.O.) of the case namely Farooq Ahmad came on spot who prepared the site plan and started investigation. That the I.O. prepared the seizure memo of the recovered narcotic substance as well as of the recovery memo prepared by him. That he identifies his signatures on the docket which was sent by him to the P/S for registration of the FIR. That the contents of the same are true and correct on which ExPW-1 is inserted. That he also identifies his signature on the recovery memo EXPW-3, the contents whereof are true and correct. That he also identifies his signature on the seizure memo ExPW-3/1 the contents whereof are true and correct. The recovered narcotic substance was weighed in his presence and the memo to that effect was also prepared on which he signed. That he identified his signature on the said memo Ext.P-8/1. That his statement under section 164-A of the Code came to be recorded during Investigation. That the contents of the said statement are true and correct. That the recovered narcotic substance being shown to him is the same which was seized from the accused.

In cross examination the witness deposed that before laying a naka they were not knowing that the accused will come from

Sheeri towards Baramulla vis Pandith Colony road. That the information was received by the SHO P/S and he himself was the In charge SHO at that time. That he had received the information from his own sources. That SG. Ct Javed Ahmad and SPO Javed Ahmad were also accompanying him. That he personally/searched the accused. That the seized narcotic substance came to be recovered from the personal search of the accused. That he does not know as to whether any other article like phone, Card or currency came to be recovered from the accused. That the I.O. brought the balance along with him. That the I.O. brought the balance from the Police Station. That the shopkeeper from whom the balance was brought was not present at the time of weighing the recovered substance. That he has gone through the NDPS Act. That as per Sec. 50 of the NDPS Act accused was needed to be given an option as to whether he wants to be searched through a Magistrate or Gazetted Officer. The Dy. S. P. as Gazetted office was already with him. That option was taken from the accused to the effect that he is ready to be searched through a Gazetted officer. That it has not been mentioned in Ext. P-8 (Option document) that accused can be searched through Magistrate also. That there is no document on the file to the effect that accused was given an option to be searched through Magistrate. That the I.O. used an empty cartridge for sealing of the seized property however, no seizure of the said cartridge was made in his presence. That he has not seen the said cartridge from the date of occurrence till today. He

is no aware as to whether any supardnama was made in respect of the said cartridge. That the occurrence took place on a public place. That no civilian was associated by the I.O. with the occurrence. He cannot say as to whether the used seal (cartridge) was sent to FSL along with sample. The I.O. can comment on the same. That he and the Dy. S.P. went on spot together and also returned back together. That the recovered substance weighed 514 grams. That the I.O. sealed the same on spot and what happened thereafter to the seized property, he does not know.

PW-2 SGCT.Javed Ahmad No. 387/B/EXK 974085. The then posted at Railway Police Station Baramulla, listed as witness to the occurrence, recovery and seizure and examined on 12.03.2018, deposed in his examination in chief that he knows the accused present in the court. That the occurrence is of 14.05.2017. That an information was received by the SHO Police Station Baramulla to the effect that some person/s is coming with narcotic substance. That SHO directed for getting prepared. That they proceeded towards veervan road and laid a naka there. That during checking at naka point accused was witnessed coming on foot. That as soon as the accused witnessed the police party he tried to flee away but he was apprehend and was produced before the Dy. S. P. and SHO. That upon search of the accused a polythene bag came to be recovered which contained the seized property. That thereafter the SHO wrote a docket and he took the same to the police station. That I.O came on spot. That the seized property was weighed as 514 grams. That the balance was

brought from a shopkeeper namely Hamid. That I.O. recorded his signature.

In cross examination the witnesses inter alia deposed that he searched the accused who had put on his pheran. That he recovered an envelope from his which contained white colored powder. That the envelope was of the blue colour. That he handed over the polythene envelope to the SHO. That the SHO opened the polythene in his presence which contained the seized property. That the weighed powder was in the envelope. That he went to police station with the docket. That the I.O. came on spot and what he did on spot he does not know. That when we reached back to the police station, the I.O. got the balance and weighed the substance. That the seized property was weighted in the room of the SHO. That he did not bring the balance but that was got by the Munshi of the P/X. that no further proceedings was conducted in his presence. That the papers were made by the I.O. in the police station. That he has not seen the blue colored polythene in the court today. That he has also not seen the seized property.

PW-3 Javed Ahmad SPO No. 184, then posted at DPL Baramulla as witness to the occurrence, recovery, seizure examined on 29.12.2017 inter alia deposed in his examination in chief that he knows the accused person present in the court. That the occurrence took place on 05.05.2017 and on the day of occurrence he was performing duty in the police station. That an information was received by the officers to the effect that some

person is coming from Uri area with contraband narcotic substance. On receiving this information he along with officers left and a naka was laid at Veervan road. That Hussain Sahib was with them. That they started checking of the vehicle and during checking they witnessed accused who was in a vehicle who tried to flee away but was apprehended and during his search a polythene bag was recovered from his possession which was containing Brown sugar. That thereafter they came back with the officers in the police station where the accused was interrogated. That a balance was brought and the seized property was weighed as 514 grams Brown sugar. That when the officers prepared the file they were asked to sign and he too signed on the papers. He identifies his signature on the recovery memo EXPW-3, the contents thereof are true and correct. That he also identifies his signature on the seizure memo EXPW-3/1, the contents thereof are true and correct.

In the cross examination, the witness deposed that since the officers received a prior information on the basis of which the vehicle in which the accused was travelling was stopped. That Hussain Sahib Sub Inspector was In charge of the naka party. That he searched the accused on the directions of Hussain Sahib. That a blue colored polythene bag was recovered from the possession of the accused which was handed over to SI Hussain Sahib. That after the recovery of the bag they immediately returned back to the police station where seized property was weighed.

PW-4 Mohammad Irfan Khan SPO No. 425, then posted at Baramulla, listed as witness to the seizure and examined on 2nd of November 2017 inter alia deposed in his examination in chief that it is the occurrence of 14.05.2017, when officers had received an information to the effect that somebody is coming from Sheeri area towards Baramulla with narcotic substance. That they left from the police station and when they reached Veervan Baramulla Dy. S.P. was already there who was conducting search of the vehicles. That during search of the vehicles one person was seen coming on foot who tried to flee away on noticing the police party. That he apprehended and a polythene bag which was containing Brown Sugar was recovered from the same bag. That their Incharge then prepared a seizure and informed the police station. I.O. came on spot and prepared the seizure memo.

In cross examination he inter alia deposed that Rahil Mirchal Sahib Dy. S. P. was already on spot. That SI Hussain Sahib, SGCT, Javid Ahmad, SPO Javaid Ahmad, nafri of Dy. S.P. and he chassed the accused to arrest him who was apprehended near Pandith Colony. That accused was apprehended by SI Hussain Sahib. That nothing was recovered during the pocket search of the accused. That I.O. did not given a notice to the accused before his search. It is true that men and women were working in the stone query near the place of occurrence and there remains heavy movement of vehicles at the place of occurrence besides Pandits and Beecon people also live near the place of occurrence. That

no civilian was called on spot. That the accused was apprehended near Beecon Camp and not near Pandith Colony.

PW-5 Abdul Hamid Gojree (Shopkeeper); examined on 11.04.2018 deposed in his examination in chief that he does not know the accused present in the court. That he has not seen him at any point of time. That he is a shopkeeper and police took a balance from his shop and also took his signature. That balance was later on returned to him. That he supardnama regarding the balance EXPW-5 is true and correct and bears his signature. That his shop is located adjacent to the police station.

In cross examination witness deposed that he did not give any statement before the police. He does not know as to why the police took balance from him. He does not know as to what was written by the police on EXPW-5.

PW-6 Manzoor Ahmad, Naib Tehsildar/Executive

Magistrate Baramulla: examined on 02.11.2018, inter alia deposed in his examination in chief that he does not know accused present in the court. That in the year 2017 police station Baramulla produced a sealed packet for sampling and resealing. He weighed the sealed packet which was 514 grams. That brown sugar was inside the packet out of which he took 4 grams and resealed the remaining quantity. That 4 grams were sent for FSL opinion and the remaining quantity was handed over to the police station. That he knows only about sampling and resealing. He deposed that he addressed a communication to the FSL EXPW-6 which bears his signature and the contents whereof are true and

correct. The witness identified the packet which he handed over back to the police station after sampling.

In cross examination witness inter alia deposed that police had made an application to him for sampling purpose. That he has not seen the said application today in the court. That he impressed his official seal and a brass seal reading 15/15 for resealed packet that was handed over to the police. That he has not seen the said brass seal in the court today. He did not sent his used seal to the FSL along with sample. That he got a balance from the shopkeeper for weighing the sample and he does not know from whom shopkeeper the same was brought.

PW-7 Sheikh Hamid Ullah: the then Assistant Scientific Officer FSL Srinagar examined on 18th of March, 2019 deposed in his examination in chief on 16th of May, 2017, he received one sealed packet from Director FSL Srinagar which was marked as S-2 enclosed with a cloth bearing Nine (9) intact seals duly sealed by Executive Magistrate First Class Baramulla vide his letter No. Teh./Bla./JC/107 dt. 15.05.2017 that had been forwarded for examination by Dy. S. P. Headquarter District Baramulla vide his letter No. HQB/FSL/ 2017-1738-39 dt. 15.05.2017 through SI Ab. Rashid No. 781339/EXK which was assigned to him for conducting analysis and report. That during examination when packet S-2 was opened the same was found to contain one small polythene bag containing of four (4) grams of white colour material which was given Exhibit No. H-91/17 by him in the laboratory. That seals were opened in his presence and the

contents of the exhibit were duly examined by him, the same remained under his immediate custody until examination was complete. The contents of the exhibit were subject to chemical, Microscopic and Chromatographic examination and the result was arrived at “Di-Acetylc Morphine (Brown Sugar)”. That the certificate Ext. P-7 is under his seal and signature.

In cross examination witness inter alia deposed that packet received by him was sealed. He has not put the impression on the report Ex.P-7. The seal impression was there on the letter of the Magistrate. He has not seen the original seal till now. The purity of the drug was not requested by the Investigating Agency and he did not determine the same. The without purity test, percentage of the drug cannot be certified. Cocaine is a narcotic drug. It is wrong that brown sugar always contain 20% Cocaine as suggested by the Ld. counsel. There was no specimen seal on the letter of Dy. S. P.

PW-8 Ruhail Mirchal Dy. S. P: the then Dy. S. P. Headquarter Baramulla presently posted at CIK Srinagar examined on 10.07.2018 deposed in his examination in chief that he knows the accused present in the court. It is an occurrence of 14th of May, 2017. That an information was received by police station that some person is coming towards Baramulla from Uri with some contraband narcotic drug as such from police station a party left for Veervan where they put Naka. During this period a person was coming towards Baramulla from Sheeri who was apprehended by the party. Basically, the person on seeing the

police party tried to run away but police apprehended him. The accused had green colored polythene with him, on seeing that police became suspicious that this polythene might have some intoxicating material. That accused was asked to give opinion as to by whom he wants to get searched. Accuses said that he wants to be searched by some Gazetted officer, therefore, accused was brought before him. That polythene was searched where from a brown sugar like substance was recovered. After this the party did the rest of the process, in which seizure memo, memo of recovery, fard-e-ral etc. was prepared. All these memos were scribed in his presence and he attested them. If the memos under discussion are shown to him, he can identify them. He identifies his signature on the Fard-e-ral. The contents are true and correct. He also indentifies his signature on ExPW3, EXPW3/1 & agrees to the contents word by word. That the memos are already exhibited. He identifies his signature on memo of weight. That the contents are true and correct. It is Exhibited EXTP8/1. He identifies his signature on memo of arrest, the contents is true and correct. It is exhibited EXPW8/2. That he has written the letter sent to FSL, which is a part of file, the contents are true and correct, he identifies his signature on it. It is exhibited EXTP8/3. Apart from it initial docket was prepared in his presence and it was sent to the police station for getting the FIR registered. And after that IO came from the police station. If the seized substance is shown to him, he can identify it. P.P sought permission to open a sealed packet. Permission is granted. Packet is opened in which

is a blue polythene, in blue polythene is a white polythene in which it contained the seized substance. That he identifies it and the same substance was recovered from the accused. He has not recorded his statement anywhere regarding the case. No further question was asked.

On cross examination by defense counsel the deposed that he was informed half an hour before the occurrence that accused is coming from Uri to Baramulla with some contraband material. He got information in this regard from police station. That he went to the place of naka from the police station however, he went inside the police station. That he was part of the police party. That his vehicle and party of police station reached the naka at the same time. The place of naka was selected by the Incharge naka party. Sub Inspector Mohd Husain was the Incharge Naka. The accused was identified by Incharge naka party and not by him. After identifying the accused police party apprehended the accused. He didn't himself apprehend the accused. He does not remember whether the accused was apprehended by the Incharge Naka party or some other police official. Fard-e-ral was prepared U/s 50 NDPS Act. It is correct that on receiving the information it was compulsory for his to give notice U/s 50 NDPS Act. Under this notice the accused is to be given option as to whether he would prefer to be searched by some Gazetted officer or in front of a Magistrate. However, in Ext.P-8 it is not mentioned that the accused was told that he has the right to be searched by some Gazetted officer or Magistrate.

However, it is mentioned in ExPW8 that “in the instant case.....with his free will that he will prefer to be searched by a Gazetted officer”. It is correct that he was part of the naka police party because both of us reached the place of occurrence at the same time. He does not know whether the Incharge police station has given information about the occurrence in written form to SSP or not. He was not informed in written form that the accused is coming from Uri to Baramulla with the contraband narcotic substance. He didn't himself search the accused. However, he was searched in his presence and the seized polythene was also opened. He does not remember who opened the polythene in his presence, however, was opened by some person who was part of the naka party. He does not remember whether it was opened on his directions or on the directions of Incharge Naka party. The polythene which was recovered from the accused was of blue colour. He does not remember whether the polythene was sealed or not, or whether there was a knot on the polythene or not. After opening the polythene docket was sent to the police station and from there IO came to be spot and the polythene was handed over to him. IO prepared seizure memo in respect of the polythene which was attested by him. He does not remember what IO did after the seizure. Arrest Memo was also prepared on the spot. IO weighed the seized substance on the spot. IO had the balance (tarazu) however, he does not know whether the balance was brought from police station or some other place. It is written correctly in the initial docket that he had also gone to the Veervan

Naka with the Incharge Naka. It is correct that the Pandit Colony is stretched at about 500 ft. along the general road. People come and go from this Pandith Colony daily. He cannot remember whether there are shops opposite to Pandith Colony or not. It is correct that they had put naka in front of the Pandith Colony, where there are shops as well. He cannot say whether the shops were closed or not. It is not correct that there is often rush of people in the Pandith Colony. However, at some times people come and go from there. It is incorrect that lot of Pandith families live there, however, only few pandith families live there. He does not know whether any pandith family lived there at the time of occurrence or not. He does not know whether any person from the naka party went to his colony on that day or not. It is correct that the naka was put at a wide place (public place). He does not know whether any person from the naka party went to these shops or not. He personally didn't get civilian to the spot. He does not know from where the IO had brought the balance to the spot neither does he know from whom was it brought. Seizure memo was endorsed by him. He does not remember the contents of the recovery memo. Only this much investigation took place in his presence which he mentioned. IO can speak about the rest of the investigation. He didn't himself seal the seized substance. He does not remember whether the seized blue polythene was put in another polythene on the place of occurrence and sealed. He doesn't remember nor can say which seal was used by the IO. He didn't himself take any sample from the seized substance.

However, IO can say. He cannot say that whether the sample taken from the seized substance is required to be sealed under law or not. There is no memo on the court file which would suggest that some amount was taken from the seized substance as a sample of which FSL report was procured. His official seal is used in Memo of recovery which is attested by him. He often keeps his seal with him, therefore, was with him on the day of occurrence as well. He has attested ExPW3, ExTP-8, ExTP8/2 at the place of occurrence. He does not remember whether any paper in respect to his case was attested by him in the police station as well or not. PW2 to PW4 were with him. No Magistrate was with the police party at the time of preparing ExTP-8, ExPW-3, ExTP-8/1, ExTP-8/2 no Magistrate was with us as such were prepared in absence of the Magistrate.

PW-9 Farooq Ahmad I.O (SI No. 791554: the then posted at P/S Baramulla deposed in his examination in chief that he knows the accused present in the court on 14.05.2017 he was posted as Sub Inspector at police station Baramulla. He stated that near Veervan police party had laid Naka under the supervision of SI Hussain Ahmad, Sub-Inspector. The naka party apprehended a suspicious man who was walking towards Baramulla. He tried to run away from the spot, however, was caught by the police, who as per the procedure and law was then brought in front of Gazetted Officer to be searched. That during investigation the Incharge recovered a polythene bag containing brown sugar like substance from the above-mentioned person who identified

himself as Mohammad Saleem Khokher S/o Firos Ali Khokhar R/o Madyaa Kamalkot from whose possession one brown sugar polythene bag was recovered and sent a written docket to the police station Baramulla. Thereafter, after registering FIR 79/2017 U/S 8/21 NDPS Act against the accused he left for the place of occurrence. That on reaching the place of occurrence he prepared the site plan. Site plan part of the file was shown to him which he admitted to be true and correct. It is exhibited ExTP-9. Recovery memo prepared on the spot was given to Incharge and seizure memo of the brown sugar like substance after weighing was prepared by the police. The seizure memo ExPW3/1 was shown to him, it is written and signed by him. Memo of Weight ExTP8/1, is written and signed by him. The weight of the brown sugar like substance is 514 grams. However, balance was given on the supardnama after weighing. He as shown ExPW5, which is written by him, its contents are true and correct. The accused was arrested on the spot. Mamo of arrest was prepared by him which is exhibited ExTP8/2. That during investigation sample of the brown sugar like substance was sent to FSL Srinagar for expert opinion. The expert opinion ExPW-6 is part of the file. The letter through which the sample were sent to FSL, saw it. It is already exhibited ExPW6. Letter ExPW8/3 is part of the record, is the same which was sent to Director FSL by Dy. S.P. Sahib. The statements of witnesses u/s 161 and 164 were recorded. That during investigation the accused was found guilty of offense u/s 8/21 NDPS Act and after completion of

investigation Challan was produced before the court. The docket ExPW-1 was shown to him he admitted it as the same which was received in the station/ thana. It bears his endorsement addressed to the SHO. That the FIR which is part of the file. It bears his signature as SHO. Its contents are true and correct. It is marked as EXTP-9/1. P.P. sought permission to open the packets (Palandajaat). Permission is granted. The seized substance seen is the same polythene that was seized by him it is marked as Mark-F.

In cross examination by defense counsel he stated that on the day of occurrence the Munshi of the police station concerned was Head Ct. Mushtaq Ahmad. That on the day of occurrence SHO of Baramulla police station was on some pre occupied duty or was on leave. That is why he was there as Incharge. It is the duty of Munshi to prepare the Rooz Namcha, maintain the record and all the duties as being given by the SHO. All the parties which go out of the police station there details are written on the Rooz Namcha. That the party who left for Veervan their details would also have been written on the Rooz Namcha. The docket which was sent by the Incharge Naka party reached to him only. The person who sent the docket was Hussain Ahmad. FIR was registered on his directins by the Munshi. It is incorrect that before this incident information was received by police station in respect of any business of narcotics run by the accused because it was a routine naka whereby the accused was apprehended. If anyone says that the police station or the naka party had the prior

information about the accused carrying the contraband narcotic substance then it is not correct. He kept the investigation with him as the Incharge Police station, who was at naka duty other than Hussain Sahab. Firdous Ahad. H. Ct. he does not remember because it is an occurrence of 3 years ago. Before leaving for the place of occurrence he recorded it in the Rooz Namcha. He also does not remember who was with the witness, because it is a three-year-old occurrence. When he left for the place of occurrence he did not take any special kit in respect of the NDPS Act with him, because it wasn't possible at that time. No civil person was present at the place of occurrence. However, incharge naka party had called him because under NDPS Act searching is done in presence of the Gazetted Officer, therefore, the Incharge naka party had called the Dy. S.P. on the spot. We call Gazetted officer only in the case where we are satisfied that some person is in possession of intoxicating substance and no Magistrate is available in front of whom the person can be searched. No Magistrate was brought to the place of occurrence in front of the witness, why wasn't Magistrate brought only PW1 can say that. He himself did the weight. He had taken the balance from one shopkeeper namely Abdul Hameed Gojree. However, didn't take the Abdul Hameed Gojree shopkeeper along. The shop of the said person from whom we had taken the balance is in Baramulla. The place of occurrence is around 6 KMs from Baramulla. We have recorded the statement of the said shopkeeper. He himself got that statement recorded. He did not put his signature. Who

searched the accused witness has no personal knowledge to that effect. He had not taken any person from FSL to the place of occurrence from Baramulla. He has not given the copy of FIR to the complainant. When he reached the place of occurrence he saw the recovered substance in a polythene. The polythene was closed by hand. The polythene was green in color. Then said probably was green in color. He made the packet (Palanda) of the seized substance on the spot. He made the packet of the seized substance by wrapping it in a cloth. He stitched that packet and put seal on it. He put a mark on it, thereafter, took it in his possession. That afterwards he took it to Magistrate and resealed it. He didn't take any sample from the seized substance on the spot. However, went to the Magistrate for getting the sample, however, didn't prepare any paper in respect of taking the sample. He has put empty cartridge of something as seal on the seal on the packet (Palanda). However, its imprint is on the seizure memo. He had brought this seal with him from the police station. He didn't see that seal today in the court. That seal also didn't reach the FSL. He had given that seal to the munshi of police station on Supardnama. However, didn't see that Supardnama today in the court. He had presented the seized substance before the Magistrate on the second day. He had not taken the seal to the Magistrate Sahab. Out of the two packets which were made by him before the Tehsildar Sahab, he sent one to the FSL and kept another with himself. However, didn't prepare any document in this respect. On the same date he took

both the packets and kept them in the record room (Mahal Khana) in respect of which it is registered in the register. That he got the permission from the head of the police to sent the sample to the FSL then he took the sample from the record room (mahal Khana) an sent it to the FSL. The copy of the receipt of the record room (mahal Khana) has not been kept with the challan. When was the packet taken to record room (mahal Khana) and when was it taken out it has been record in the CD. The place of occurrence is located opposite to the migrant colony on the national Highway. That the place of occurrence is a public place which is being used by the general public for ingress and egress purpose besides heavy movement of vehicular traffic remans continue on the said road. That a guard is always on duty at the migrant colony. There are 2 to 3 shops in front of the colony. He does not know whether there is any hotel or not. He didn't associate any civilian with the investigation as witnesses. Today he was the seized substance in transparent while polythene. Which was put in the actual polythene. That he found the seized substance in white polythene. That the packet (Palanda) that he saw today in court didn't bear the seal which he put on it at the time of preparing the packet (Palanda). He has send 4 grams of the recovered substance to FSL for analysis, so that it can be analyzed. He had asked in written form to enquire as to how much narcotic drug is pesent in the 4 grams that are sent to the FSL, so that a record should be kept in the court in respect of the purification. Didn't see the name of the complainant in column 6

of the FIR, however, state through police station has been written. Signature of the complainant has not been taken in the column 14. In column 15 date has not been scribed while dispatching the FIR to the court. FIR has been signed by the witness and has written his name himself by his own pen on the FIR. It is correct that he had contacted the police station concerned of the accused to get information about the accused. It is correct that from the police station the report was received that the accused is not connected to any case in the police station. It is correct that the correction on seizure memo ExTP8/1 was done by the witness himself. The letter that he had sent to the Dy. S.P. Sahab he didn't see that in court today. He has knowledge about the Section 50 of the NDPS Act. We apply this section when we have doubt that someone has intoxication drugs with him. As per the section the opinion is taken from the suspected person as to in front of whom he should be searched, Magistrate or Gazetted officer. He has not prepared any memo in respect of the Section 50 because the Incharge police station has not presented any notice in this respect before the witness. He does not have record as to when the seized substance was kept in the record room (mahal Khana) and when it was taken out of it. He does not know whether the Dy. S.P. Sahab went to Veervan with the naka party or after the naka party. The seal which was put by the Tehsildar Sahab on the packet, the imprints of the seal are put on his letter ExPW6. ExPW6 has its imprints.

8. After recording statement of prosecution witnesses, accused/respondent was explained evidence on record against him in terms of Section 342 Cr.P.C. The Trial Court heard counsel for both prosecution and defence. The Trial Court made its opinion vide order dated 04.03.2020 that case was not as one of “No Evidence” in terms of Section 273 Cr.P.C. The Trial Court, accordingly, directed counsel for defence to adduce evidence in defence. He submitted that he did not need to lead any evidence in defence as there was no incriminating evidence against accused/respondent.
9. Learned counsel for appellant has stated that the Trial Court has not appreciated the evidence produced by prosecution in its right perspective; even the Trial Court laid much emphasis on mere discrepancies while overlooking the incriminating evidence both oral as well as documentary, which was sufficient to hold respondent-accused guilty of offence of criminal acts. It is being stated that Trial Court has discarded entire police evidence and that impugned judgment of acquittal is passed in perfunctory manner without appreciating seriousness of offence committed by respondent/ accused. The Trial Court has not considered all important aspects of the case that trial against accused was started only after charge was framed against him by the court on the basis of available material brought by prosecution before it. The Trial Court has doubted the seizure of contraband from possession of accused in an erroneous manner, though recovery of contraband was proved to have been made from the possession of respondent. In the report of chemical analyst it had been established beyond any shadow of doubt that substance recovered from possession

of accused/respondent was heroin (brown sugar) and the seizure of brown sugar from respondent has been brushed aside by the Trial Court. In fact it has been a case proved against respondent without any reasonable doubt.

10. The core issue that arises for consideration in this case, is whether while recording judgment of acquittal, prosecution evidence has been properly appreciated in its right and proper perspective. Trial Court has recorded entire evidence in its breadth and length in impugned judgment as examined herein above as well. The Trial court, as is apparent from impugned judgment, has, after taking into consideration entire evidence adduced by prosecution, come to conclusion that witnesses have substantially contradicted about the fact as to who searched accused. PW1 to PW3 stated that they searched accused/respondent to the exclusion of one another. Thus the points which gave rise to serious doubts and discrepancies that emerged from prosecution case were that mandatory provisions of NDPS Act especially Section 42, 50 and 57 had not been followed and complied with inasmuch as there was no independent witness associated with the occurrence despite availability and that the witnesses of occurrence have substantially contradicted in respect of material particulars of the case, viz. who searched accused, whether accused was coming on foot or was coming in the vehicle.

11. It has been found by the Trial Court that PW4 in his deposition has stated that no civil was called despite their availability and that Dy.S.P. Rahil Mirchal was already present on the spot and that no notice was given to accused before his search. PW5, namely, Abdul Hamid Gojree

stated that he had not given any statement before police and that he does not know as to why police took balance from him and he does not know what was written on EXPW-5. PW6, Tehsildar/Executive Magistrate, a witness to sampling and resealing, has stated that police station Baramulla approached him with a letter requesting for sampling but the same was neither shown to him nor was the same on the file, which doubts the sampling having practically taken place before the said Magistrate. Even PW8, Dy.S.P., deposed that he did not call any civilian to be associated with the occurrence. PW10, I.O. of the case, stated that it is not correct that police station had received a prior information regarding arrival of any person towards Baramulla along with contraband narcotic drug. He also stated that he does not know who conducted search of accused. He did not prepare any papers regarding sampling process before the Magistrate. So it has been found that prosecution witnesses have contradicted to the fact as to who searched accused. As a sequel thereof, it was found by the Trial Court that two serious doubts and discrepancies emerged from prosecution case, which are: that mandatory provisions of Section 42, 50 and 56 of NDPS Act has been observed in breach; and that no independent witness stands associated with the occurrence despite availability; and that witnesses of occurrence have substantially contradicted in respect of material particulars of the case viz. who searched the accused, whether accused was coming on foot or was coming in the vehicle.

12. It is a trite law that when stringent punishment is provided under an Act, there should be sound safeguard to ensure that innocent persons are not harassed or unnecessarily detained by any arbitrary or

whimsical actions of police or other authorities. The provisions of a Statute have to be interpreted inter alia with reference to the intention of the legislature. It may also be assumed that the legislature would always intend to ensure just and fair action. There are few who understand their legal rights and duties or the provisions of law muchless the provisions of such special law as NDPS Act. It would be just and proper to hold that accused in these cases must necessarily be deemed to know his rights given under Section 50 of the Act. Justice demands that the authorities who have special knowledge of the NDPS Act must inform the accused of their right under Section 50 of the Act and their failure to do so must lead to inference that the mandatory provision has not been complied with. While having concern for the society, the liberty of individual cannot also be allowed to be lightly compromised and for this purpose, the intention of legislature must always be kept in mind. NDPS Act leaves no doubt that legislature wanted to curb menace of drug addition with a heavy hand by providing stringent punishment, it was nevertheless conscious of the constitutional requirement that liberty of individual must not be lightly curtailed and in order to avoid or lessen the possibility of false implication, it provided sound procedural safeguards.

13. The well settled law is that the function of the Court in a criminal trial is to find out whether a person arraigned before it as accused is guilty of offence with which he is charged. For this purpose, the Court scans the material on record to find out whether there is any credible, reliable and trustworthy evidence on the basis of which it is possible to convict accused and to hold that he is guilty of offence with which he is

charged. The burden to prove ingredients of the offence is always on the prosecution and it never shifts to the accused.

14. Testing prosecution case on the touchstone of evidence of witnesses, as reproduced/discussed herein above, impugned judgment is based on the law, reason and the logic. It does not call for any interference. The witnesses, as discussed above, have not been emphatic in stating that the accused was the architect and the author of the crime. The judicial precedence reported in the case of *Prithipal Singh Vs. State of Punjab, 2012 (1) SCC 10*, assumes significance on that count. There it has been held as follows: -

“This court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in acquitting a person on the sole testimony of a single witness. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphases on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record acquittal. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence...”

15. The law settled in the aforesaid judgement is that as a general rule the court can and may act on the testimony of a single witness, provided he is wholly reliable and there is no legal impediment in acquitting a person on the sole testimony of a single witness, but if there are doubts about the testimony, the court will insist on corroboration. It is not number or quantity, but the quality that is material and time-honoured principle is that the evidence has to be weighed and not counted. So, the test is whether the evidence has a ring of truth, is cogent, credible

and trustworthy or otherwise. The legal system has laid emphases on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. Thus, it is open to a competent court to fully and completely rely on a solitary witness and record the acquittal and conversely it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of the evidence.

16. Applying the ratio of the law laid down, as aforesaid, to the facts of the instant case, the statements of witnesses discussed above are not sufficient to convict the accused. There is infirmity in their statements that render them weak, fragile, incoherent or improbable.
17. The argument of learned counsel for accused that there are discrepancies in the statements of witnesses is an argument when tested on the touchstone of the instant case, shows that prosecution has failed in discharging its burden to prove that accused has committed the crime imputed to him. There is, thus, no merit in this appeal. It entails dismissal and as a consequence of which the same is **dismissed** and the judgment of acquittal recorded by the trial court is maintained and upheld.
18. Copy of this judgement be sent down along with the record, if any, received.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
09.07.2025
“Imtiyaz”

Whether the order is reportable: Yes/No