

HIGH COURT OF TRIPURA
AGARTALA

Crl. A. (J) 3/2026

1. Smt. Armika Debbarma, daughter of Ratan Mani Debbarma, resident of Heman Chandra Para, Janmejoypara, P.S. Jampuijala, District- Sepahijala, Tripura;

2. Smt. Tina Debbarma, wife of Shiba Prasad Debbarma, resident of Takarjala, Paschim Takarjala, P.S. Takarjala, District- Sepahijala, Tripura

.... Appellants

Versus

The Union of India, to be represented by the Inspector, Divisional Preventive Force, Customs Division, Agartala, Netaji Chowmuhani, P.S. West Agartala, District- West Tripura.

----Respondent

For the Appellant(s)	:	Mr. MK Roy, Advocate
For the Respondent(s)	:	Mr. P. Datta, Advocate
Date of hearing	:	05.02.2026
Date of delivery of Judgment & Order	:	12.02.2026
Whether fit for reporting	:	Yes

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
JUDGMENT & ORDER

Heard Mr. MK Roy, learned counsel, appearing for the appellant. Also heard Mr. P. Datta, learned counsel appearing for the respondent.

2. The appellants, by means of filing the present appeal have challenged the judgment and order of conviction and sentence dated 15.12.2025 and 19.12.2025, respectively, passed by the learned Special Judge (NDPS), Court No.4, West Tripura, Agartala, in connection with case No. Special (NDPS) 146 of 2024, whereby the appellants have been convicted under Section 22(b) of the NDPS Act, and sentenced to suffer rigorous imprisonment for 5(five) years with default stipulation.

3. The case of prosecution, as per material available on record, is that, on 21.02.2024 at about 1300 hours, the complainant, Sri Soumik Dasgupta, Inspector, DPF, Customs Division, Agartala received secret information that two women were bringing huge quantity of Yaba tablets to Agartala from Silchar by Silchar-Agartala Express train scheduled to reach Agartala between 1630 hours to 1730 hours. On receipt, the complainant reduced the information in writing and placed the same before his superior officer Smt. Sujata Dam (PW-1), Superintendent, Divisional Preventive Force, Customs Division. At about 1600 hours the complainant with his team including the PW- 1, came to Agartala railway station for detection of contraband items and there he contacted with two witnesses (PWs- 4 & 5) to associate them with the search and seizure procedure. At 1700 hours on arrival of the Express train the raiding team rushed near the Auto rickshaw stand near the station where two lady officers of the team apprehended the accused Smt. Armika Debbarma and Smt. Tina Debbarma from there. The team introduced them to both the accused persons their intention to search the handbags the accused persons, they were carrying. On asking, the accused persons opened their respective handbags and from each of their bags they brought out 2 packets with multiple wrappings. From the packets recovered from the bag carried by appellant, Armika Debbarma, a total of 14,000 pink-coloured tablets, suspected to be Yaba tablets, were recovered. Similarly, from the packets recovered

from the bag carried by appellant, Smt. Tina Debbarma, a total of 20,000 such tablets were recovered. The complainant then seized the tablets in presence of witnesses, packed and sealed the same at the spot and prepared seizure list. Thereafter, the accused persons were taken to the office of the complainant and their personal search was conducted. The complainant then arrested both the accused persons. The complainant also reported the seizure and arrest to PW-1 as his superior officer which got registered as 13/CL/NDPS/DPF/AGT/2023-34 and Sri Dinesh Kumar (PW-3), who was appointed as the Investigating Officer. Thereafter, the complainant produced both the accused person before the Court with written complaint for offence under Section 21(C), 22(C), 23(C), 25A, 28 & 29 of the NDPS Act. Subsequently, the investigation was assigned to Sri Shyam Singh Rathore (PW-6) who on completion of investigation submitted his final report against both the accused appellants under Sections 21(C), 22(C), 23(C), 25A, 28 & 29 of the NDPS Act. Thereafter, learned trial court took cognizance of offences against both the accused appellants, and transferred the case before the learned Special Judge, West Tripura, Agartala, where after due compliance with the statutory requirement of furnishing copies of all relevant documents to the accused persons, charges under Section 22(C) read with Section 29 of the NDPS Act were framed against both the accused-appellants, to which both the accused-appellants pleaded not guilty and claimed to be tried. To substantiate the case, prosecution examined as many as seven witnesses and documents were exhibited. On closure of

prosecution witnesses, the accused-appellants were examined under Section 313 Cr.P.C. to which they denied all the incriminating materials brought against them and declined to adduce any defence witness. Basing on the materials and evidences on record, learned Special Judge, convicted and sentenced both the accused-appellants, as stated here-in-above.

4. This court has meticulously gone through the case records, the orders and the judgments relied upon by the learned counsel to the *lis*, contained therein.

5. At the very outset, this court is to ascertain as to whether the contraband items were seized from the possession of the accused-appellants and whether the appellants were in conscious possession of the contraband articles and also whether the search, seizure and arrest was conducted without authorization. Thus, before this Court holds the accused-appellants guilty of the offence under the NDPS Act, it is essential to find out as to whether there is any violation of Section 42 and Section 54 of the NDPS Act. Section 54 of the NDPS Act, deals with *presumption from possession of illicit articles*. Section 54 of the NDPS Act, reads as follows:

“54. Presumption from possession of illicit articles.-- In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of--

- (a) any narcotic drug or psychotropic substance or controlled substance;
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or
- (d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.]”

5(i) Section 42 of the NDPS Act, deals with power of entry, search, seizure and arrest without warrant or authorization. It reads thus:

“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 VA 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 VA 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.”

5(ii) From the prosecution case, it is seen that the PW-2 is the Complainant-cum-Seizing Officer, who on receipt of the secret information of transportation of contraband articles immediately communicated his superior i.e. PW-1, Superintendent. Customs Division, in writing (proved and marked as Exbt. P-1), and on receipt of the information, PW-1, authorized PW-2 to proceed with the search, seizure and detention, and in the entire procedure, PW-1 also accompanied the team formed for the said action. In course of the operation,

the appellants were detained and searched in presence of independent witnesses (PWs 4 and 5) and on search, the contraband articles, as aforestated, were recovered from their possession. Subsequently, the appellants were arrested on 21.02.2024 and on 22.02.2024 in compliance of Section 57 NDPS Act, PW-2 conveyed PW-1, the superior Officer, a detailed report, which is quoted here-in-below:

“Case No. 13/CL/NDPS/DPF/AGT/23-24

dated, 22.02.2024

To,
The Superintendent,
DPF Unit, Agartala,
Sir.

Subject: First Intimation Report of seizure and arrest in compliance of section 57 of NDPS Act 1985 in connection with seizure of total 34,000 nos. of Yaba Tablets valued at Rs. 3,40,00,000/- and arrest of two persons vide NDPS Seizure Case No. 01/CL/NDPS/DPF/AGT/23-24 dated 15.08.2023 in-reg.

1. This is to inform you that a specific information has been received today on 21.02.2024 at about 13:00 hrs to the effect that a huge quantity of Yaba Tablets packed in plastic packets are being transported from Silchar to Agartala through Silchar-Agartala Express train and expected to reach Agartala Railway Stationat around 16:30 Hrs to 17:30 Hrs. The packets containing Yaba tablets which are kept in hand bags are being carried by two female passengers.
2. Consequently, the officers of DPF Unit Agartala Customs Division recovered and seized total 20,000 nos. of Tablets/- believed to be Yaba Tablets from the pink colored hand bag of Smt. Tina Debbarma W/o Shiba Prasad, Takarjala, Paschim Takarjala, Sepahijala, Tripura-799102, and 14000 nos of tablets from the black colored hand bag of Smt. Armika Debbarma D/o Ratan Mani Debbarma, Heman Chandra Para, Janmejoynagar, Sepahijala-799045 and on observing the physical attributes of the tablets the tablets are believed to be Yaba Tablets. Accordingly, a total 34,000 nos. of Yaba tablets are seized from the hand bags of abovementioned persons on the spot on 21.02.2024 at about 21:30 hrs from the exit road of Railway Station, Agartala.
3. The value of the seized 34,000 nos. of Tablets/- was determined at Rs. 3,40,00,000/- Thus total seizure value of the goods and vehicle was ascertained at Rs. 3,40,00,000/- In this regard a case has been registered vide NDPS Case No. Case No. 13/CL/NDPS/DPF/AGT/23-24 dated 21.02.2024
4. Two persons namely, Smt. Tina Debbarma W/o Shiba Prasad Debbarma, Takarjala, Paschim Takarjala, Sepahijala, Tripura-799102 & Smt. Armika Debbarma D/o Ratan Mani Debbarma, Heman Chandra Para, Janmejoynagar, Sepahijala-799045 have been arrested at 10:30 Am on 22.02.2024 under Section 43 (b) of NDPS Act, 1986.
5. Further investigation of the case is in progress.
6. This is for your kind information please”.

For convenience, Section 57 of the NDPS Act, is reproduced hereunder:

“57. Report of arrest and seizure.—

Whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior”.

5(iii) From the entirety, it is well established that the entire search and seizure was done in compliance of Section 42 of the NDPS Act, and there was no violation of Section 42 in any

manner whatsoever. For better appreciation the intimation dated 21.02.2024, made by PW-2 to PW-1, wherein PW-2 sought for executing the information with available logistic, is as under:

"Dated 21.02.2024

To,
The Superintendent,
Divisional Preventive Force,
Customs Division, Agartala
Sir,

Subject: Intimation under section 42 (2) of NDPS Act, 1985 regarding consignment of Yaba Tablets being transported from Silchar to Agartala by train on 21.02.2024- Regarding.

This is to inform you that a specific information has been received today on 21.02.2024 at about 13:00 hrs to the effect that a huge quantity of Yaba Tablets packed in plastic packets are being transported from Silchar to Agartala through Silchar-Agartala Express train and expected to reach Agartala Railway Station at around 16:30 Hrs to 17:30 Hrs. The packets containing Yaba tablets which are kept 2 in hand bags are being carried by two female passengers.

This is for your kind information and necessary order please".

5(iv) Now, coming to the question of the search to be conducted in public place, which according to learned counsel for the appellant has been violated. While acting under Section 43 of the Act, the empowered officer has the power of causing search, seizure of the contraband articles and arrest a person who is found to be in possession of any NDPS articles, in a public place where such possession appears to be unlawful on specific information that would require a warrant under Section 42 of the Act. Section 43 of the NDPS Act, reads as under:

"43. Power of seizure and arrest in public place. -- Any officer of any of the departments mentioned in section 42 may-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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 VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.-- For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]"

5(v) On applying ratio, it is aptly clear that the search operation was conducted on information that two women coming

from Silchar to Agartala by train were carrying contraband articles and were apprehended after proper checking, but the above information was neither in respect of the appellants nor any particular person. Till the disclosure of the appellants that they were carrying the contraband articles, the police personnel were fully unaware about the fact that the appellants were committing any offence under the Act. Admittedly, the search was conducted in public place i.e. at auto-stand near Agartala Railway station. Thus, provision Section 43 of the NDPS Act, is very much attracted in the matter and in no way fatal for the prosecution case.

5(vi) In the present case, PW-1 had categorically deposed that when the accused-appellants were apprehended, PW-1 apprised the accused-appellants about their legal rights that their search would be conducted in the presence of a Magistrate or a Gazetted officer, if they so desired. The witness proved the factum of service of written notice under Section 50 NDPS Act in this regard. PW-1 proved the copy of the said notice as Exbt. P/2 and Exbt. P/3 bearing her signature. PW-1 further deposed that the accused-appellants had put their signature on the notices. Further, PW-1 also categorically deposed that she conducted the personal search of the accused-appellants in presence of independent witnesses and recovered the contraband articles from the possession of the accused-appellants and thereby seized the same by preparing seizure lists (Exbt. 7) by PW-2 and also the signatures of the accused-

appellants on the seizure list (Exbt. 7/B and 7/C). Thus, there was compliance of mandate of Section 50 of the NDPS Act.

Section 50 of the Act is reproduced hereunder for convenience:

“50. Conditions under which search of persons shall be conducted.—

(1)When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazette Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2)If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1).

(3)The Gazette Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4)No female shall be searched by anyone excepting a female.

(5)When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazette Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6)After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

5(vii) Thereafter, PW-1 assigned PW-3 for causing investigation into the matter, who thereafter drawn the sample of the seized articles and sent the sample to SFSL and deposited the remnants in the Central Godown of Customs Division. Therefore, the sanctity of chain of custody *qua* deposit of Exhibits in was also duly proved by the prosecution.

5(viii) During trial, the depositions of PWs-1, 2 and 3 are corroborative in nature and the defense failed to shake their evidence. Deposition of PW-7, Deputy Director of SFSL, also supports the deposition of PWs 1,2 and 3. Deposition of PWs 4 and 5, two independent witnesses also have supported the prosecution case. PW-4 and PW-5 conjointly have deposed that two women who were about to board an auto-rickshaw outside the station were intercepted by two lady Custom Officers. PWs 4 and 5 also have deposed that on search by the said lady Officers

of the detained women, namely, Armika Debbarma and Tina Debbarma, contraband articles were recovered from their possession and the lady officers have arrested said Armika Debbarma and Tina Debbarma after their search and also the contraband articles were seized by them. PWs 4 and 5 also have identified their signatures as witness and also the accused-appellants in the court by face. In cross examination, nothing in favour of accused-appellant was extracted by defence.

5(ix) From examination of the accused-appellants under Section 313 Cr.P.C., except some denials, nothing have emerged so as to shaken the prosecution case. The accused-appellants have failed to point out any animosity of detaining authority or other witnesses for their false involvement in huge quantity of contraband articles. Further, the prosecution has well established that the contraband articles were recovered and seized from the possession of the accused-appellants as it could be well presumed that the accused-appellants were in conscious possession of the contraband articles. Since the prosecution has established its case, automatically the onus shifts to the accused-appellants to demonstrate that they lacked knowledge or intent regarding the possession of the contraband articles, but the accused-appellants in all manner failed.

5(x) From the entirety and documents available on record, it is well established, that the entire search, seizure and arrest have been maintained following mandates of NDPS Act, and there is no violation of the Act, in any manner whatsoever.

6. Learned counsel for the appellants, Mr. Roy, has questioned legality and sustainability of the judgment of the learned trial court. Mr. Roy, learned counsel contended that the entire search and seizure has been done violating the mandates of NDPS Act. Mr. Roy has submitted that the date of incident was 21.02.2024 and complaint was filed on 22.02.2024. He has further contended that the search was made in public place. The main contention of Mr. Roy, is regarding the mismatch of Memo numbers and also regarding some vital omissions. Learned counsel further submitted that there are discrepancies in the deposition of the witnesses and also the alleged dates. In fine, learned counsel for the appellant has submitted that taking into consideration the loopholes, the impugned judgment of conviction and sentence is liable to be set-aside.

7. *Per contra*, Mr. Datta, learned counsel appearing for the respondent has submitted that no mandate under the NDPS Act has been violated and the entire search and seizure is made in accordance with law. Mr. Datta, learned counsel has further submitted that the date of seizure and arrest was 21.02.2024 pursuant to which a Departmental case No. 13/CL/NDPS/DPF/AGT/23-24, dated 21.02.2024 was instituted, but in the Inventory of the seized materials the date is mentioned as 21.02.2023 and in the First Intimation Report the Seizure case number is mentioned as 01/CL/NDPS/DPF/AGT/23-24, dated 15.08.2023, and the same may be considered as minor typographical error (correct date is 21.02.2024 though it has been wrongly typed as 21.02.2023 and 15.08.2023), and such

error cannot be said to be fatal for prosecution. Learned PP has further submitted that the defense has miserably failed to refute the deposition of PW-2(the complainant) regarding the alleged mentioning of wrong date of seizure Memo and First Intimation Report. Learned PP has further submitted that the appellants knowing fully well were carrying the contraband articles with them. To conclude, learned PP has submitted that the grounds taken by the defense in the instant appeal are misconceived and untenable and without any merit, hence urged to dismiss the appeal and to maintain the judgment of conviction and sentence. Learned PP has placed his reliance upon a judgment of Hon'ble Apex Court in ***Dakkandi Dineshan @ P. Dineshan & ors. Vs. State of Kerala [Criminal Appeal No. 118 of 2013]***.

8. Here in this case, the information was received by PW-2 on 21.02.2024 and on receipt of such information, he conveyed the information in writing to his superior on that date itself seeking authorization to cause search and seizure in terms of Section 57 of the NDPS Act, and the endorsement was also proved by PW-1 (Exbt. P/1). The search was made in public place in terms of Section 43 of the NDPS Act, in presence of independent witnesses (PWs 4 and 5) with prior notice to the appellants under Section 50 of NDPS Act. Thus, there is no violation of any of the mandatory provisions of NDPS Act, in this regard, therefore, the submission of learned counsel for the appellant that there was violation of mandatory provisions of NDPS Act, cannot sustain.

8(i) Further, in course of trial, there was no suggestions put on the part of the defense that the contraband articles were related to other cases or that in examination of the appellants under Section 313 Cr.P.C., they did not assert that the said contraband articles are related with any other cases or that they are wrongly detained or that, the appellants did not utter a single word to discard their possession of the contraband articles or the bags recovered from their possession. Moreover, the contraband articles were seized from direct possession of the appellants from where, it could easily be presumed that the appellants were in conscious possession of the contraband articles. The apex court through various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his/her control and had the intent or knowledge of its illegal nature.

8(ii) In ***Abdul Rashid Ibrahim Mansuri v. State of Gujarat*** reported in **2000 (2) SCC 513**, it has been highlighted that *once the prosecution proves physical possession, the burden shifts to the accused to explain how he came into possession of the contraband and prove that he was not aware of its presence or nature. The Court ruled that a person who admits that drugs were found in his possession must prove that he had no knowledge of the illicit nature of the substance.*

8(iii) In ***Madan Lal v. State of Himachal Pradesh*** reported in **(2003) 7 SCC 465**, the Court was dealing with a

case where all the accused persons were travelling in a vehicle when they were nabbed and recoveries were made from them.

The relevant extracts from the said judgment are set out below:

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.”

8(iv) Minor mismatches in seizure memos or typographical errors and minor omissions in documentation do not automatically vitiate any conviction under the NDPS Act, provided the overall evidence regarding the recovery and possession of the contraband inspires confidence. Since the prosecution has been able to establish the chain of custody and prove its case through credible oral and documentary evidence, minor procedural lapses or omissions do not necessarily lead to interfere with the findings of the learned trial court. In addition, the chain of custody in the present case remains clear and continuous. At no stage has any evidence been brought out to indicate tampering, substitution or mishandling. The forensic report confirms the presence of Methamphetamine and Caffeine in the sample, which stands in complete harmony with the seizure, thus, there was mere compliance of Section 52-A(2) of the NDPS Act. Section 52 of the NDPS Act, reads as under:

“52A. Disposal of seized narcotic drugs and psychotropic substances.--²[(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any³[narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such³[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the³[narcotic drugs, psychotropic substances, controlled substances or conveyances] or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the³[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of⁴[such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of⁵[narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]”

8(v) In ***Dakkandi Dineshan @ P. Dineshan(supra)***

it has been held that untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence viz. truthful version of the witnesses, medical evidence, recovery of weapons etc.. In ***para 19***, of the judgment it is held thus:

“19. It is a settled position that ‘falsus in uno, falsus in omnibus’ (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgements. In the case of Ram Vijay Singh vs State of UP⁴, a Three Judge bench of this Hon’ble Court had held that:

“..(20) We do not find any merit in the arguments raised by the learned counsel for the Appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the Court. The maxim falsus in uno, falsus in omnibus is not the rule applied by the courts in India. This Court recently in a judgement *Ilangoan vs State of T.N.* held that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under: (SCC Pg 536, Para 11)”

“..(11) The Counsel for the Appellant lastly argued that once the witnesses had been disbelieved with respect to the co accused, their testimonies with respect to the present accused must also be discarded. The Counsel is, in effect, relying on the legal maxim “falsus in uno, falsus in omnibus”, which Indian Courts have always been reluctant to apply. A three Judge bench of this Court, as far back as in 1957, in *Nisar Ali v. State of UP*, held on this point as follows (AIR p 368, Para 9-10) “(9) This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of Caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. (10) The Doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of Evidence” (21) Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony if the said witness cannot be disregarded qua the present Appellant. Still, further it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity.”

Hence, as can be seen from above, it has being a consistent stand of this Hon'ble Court that the principle ‘falsus in uno, falsus in omnibus’ is not a rule of evidence and if the court inspires confidence from the rest of the testimony of such a witness, it can very well rely on such a part of the testimony and base a conviction upon it.”

8(vi) Learned trial Court though has framed charge under Sections 22(c) read with Section 29 of the NDPS Act, but confining to certain loopholes regarding proving of weight of the seized contrabands, the conviction was affirmed under Section 22(b) of the NDPS Act. Learned trial Court in paragraph 14,15, 16 and 18 of the impugned judgment has elaborately discussed the materials in evidence and has given sufficient reasoning regarding all discrepancies. It would be apposite to quote the relevant paragraphs:

“[14] Learned counsel for the defence vehemently submits that the prosecution case suffers from serious legal and factual infirmities which go to the very root of the matter and render the alleged seizure and subsequent proceedings wholly unreliable. At the outset, it is argued that the alleged seizure is not in conformity with law. No valid authorisation was ever issued in favour of PW-2 Sri Soumik Dasgupta to conduct search and seizure. In absence of any such authorisation, the entire seizure is vitiated and cannot be sustained in the eye of law. Learned defence counsel further submits that although the police station is situated at a distance of hardly 300–400 metres from the place of occurrence, the local police were not informed either before or after the alleged search and seizure. This deliberate omission, according to the defence, casts serious doubt on the genuineness of the prosecution version. It is next contended that PW-1 recorded the statements of the accused persons without obtaining permission from the Investigating Officer, which is impermissible in law and further weakens the prosecution case. The prosecution has also failed to produce any entry from the official register of the complainant’s office to show the movement or outing of the raiding team. In absence of such documentary proof, the story of the team visiting the railway station becomes doubtful and unbelievable. Learned counsel submits that the so-called independent witnesses, namely PW-4 Smt. Dipa Chakraborty and PW-5 Smt. Shilpi Dey (Nag), are not independent witnesses at all but are stock witnesses of the complainant. PW-4 works in the Customs office, while PW-5 runs a canteen in the same premises. Their close association with the complainant’s office seriously dents their credibility as independent witnesses. Moreover, the prosecution case that both these witnesses remained present in the Customs office till 10:30 p.m. is wholly unnatural for ordinary independent witnesses who are women, thereby raising further suspicion. It is further argued that the case reference number is conspicuously absent in the arrest memo, and that crucial documents such as the arrest memo, inventory, and search memo were prepared at the Customs office and not at the place of occurrence. This circumstance strongly suggests that the documents were prepared later, after due deliberation. Learned counsel also submits that the search was conducted without formally arresting the accused persons, which is contrary to established legal procedure. During cross-examination, PW-4 and PW-5 have admitted that they could not even state the contents of the papers on which they allegedly put their signatures, thereby showing that they were mere signatories without knowledge of the proceedings. Serious contradictions are also pointed out with regard to the identity of PW-5: while her address is shown as “under the care of Sujit Chakraborty,” she stated before the Court that she is the wife of Ripon Das, creating a material discrepancy affecting her credibility. Learned defence counsel further submits that no order of the learned Magistrate was obtained for seizure and inventory, which is mandatory under law. It is also pointed out that the signatures of the so-called independent witnesses are absent on Ext. MO-III, IV, V and VI, which are claimed to be packets of seized tablets, thereby casting grave doubt on the sanctity of the alleged seizure. It is further argued that PW-1 has categorically stated that except herself, there was no other female officer or staff in her Unit. In such circumstances, the evidence of PW-2 that the body search of the accused persons was conducted in the presence of one Smt. Nita Nag, Superintendent, becomes wholly unbelievable and false. Learned counsel also submits that the prosecution has failed to explain why only PW-4 and PW-5 were chosen as witnesses when, generally, the place of occurrence was a busy railway station where the presence of several independent members of the public was natural and expected. No explanation has been offered as to why no other independent passenger or bystander was examined. It is further argued that despite having prior secret information, the accused persons were not apprehended immediately after disembarkation from the train inside the railway station. Instead, they were allegedly apprehended near the auto stand, which is highly suspicious and undermines the prosecution version. Lastly, learned defence counsel submits that the complainant has failed to produce the duty roster to establish that the members of the alleged raiding team were actually on official duty at the relevant point of time. This omission further erodes the credibility of the prosecution case. On the basis of the aforesaid submissions, learned counsel for the defence contends that the prosecution has failed to prove the case beyond reasonable doubt and the accused persons are entitled to the benefit of doubt and consequent acquittal.

[15] After carefully examining the entire evidence on record, and after considering objections raised by the defence, this Court finds that the prosecution case remains substantially intact and reliable. The defence has tried to show that the case is full of illegality and procedural defects. However, on close scrutiny, the basic facts of the case are clearly proved. The evidence of PW-2, the seizing officer, supported by PW-1 and further corroborated by testimony of the PW-4 and PW-5 who are found to be independent witnesses, establishes that both accused persons were intercepted near the auto stand outside Agartala Railway Station while carrying bags. From those bags, contraband tablets were recovered. The defence could not shake this fact in cross examination. The argument that PW-2 had no authorisation to conduct the search is not acceptable. The evidence shows that PW-2 received secret information, reduced it into writing, and placed it before PW-1, who directed him to take action and same is proved by the oral evidence of the PW-1 and her endorsement (Ext. P-1). More importantly, the interception and seizure took place at a public place. Therefore, the action is governed by Section 43 of the NDPS Act, which does not require prior written authorisation. The PW-2 is an officer of Customs in the rank of Inspector and this fact is not in dispute. Hence, the seizure cannot be said to be illegal on this ground. The defence contention that the local police were not informed, despite the police station being nearby, also does not help the accused. The NDPS Act does not require Customs officers to inform the police before or after a search. In the absence of any proof of mala fide or false implication, non intimation to the police cannot invalidate the prosecution case. It was further argued that PW-1 recorded statements of the accused without permission of the Investigating Officer. Even if this is accepted, the Court finds that the prosecution case does not rely on any such statement. The case is based on recovery of contraband and scientific evidence. No prejudice has been shown to have been caused to the accused on this count. Much emphasis was placed on the non-production of duty roster or movement register to show that the raiding team went to the railway station. This Court finds that the law does not require production of such internal office documents. The consistent testimony of official witnesses regarding their presence and action cannot be discarded merely for want of such records. The defence has questioned the independence of PW-4 and PW-5. Both witnesses have denied being employees of the Customs office. Merely because they went to the Customs office for completing formalities or stayed there till late hours does not make them interested or stock witnesses. Their evidence regarding interception and recovery has remained consistent and reliable. The defence further argued that seizure and other documents were prepared at the Customs office and not at the spot. This does not make the prosecution case doubtful. The seizure was made at the spot, and preparation of detailed documents at the office is not illegal or unusual. The NDPS Act does not require all documents to be prepared at the place of seizure. The plea that the search was conducted without arresting the accused first is also without substance. Search can legally precede arrest. Arrest follows once recovery is made and reasonable belief is formed. It is true that PW-4 and PW-5 could not state the contents of the documents they signed. However, an independent witness is not expected to understand legal documents. Their signatures only show their presence, which they have consistently supported. Minor discrepancies regarding the address or personal details of PW-5 are insignificant and do not affect the main issue of recovery. Similarly, the alleged contradiction regarding presence of another lady officer during personal search is not material, as nothing incriminating was recovered from the personal search. The recovery in this case is from the bags. The defence argument that more public witnesses should have been examined is also not convincing. The law does not require examination of all possible witnesses. The witnesses examined are sufficient and trustworthy. As regards the nature of the seized substance, the evidence of PW-7 clearly proves that the tablets contained methamphetamine. The forensic report remained unchallenged, and the seals were found intact, ruling out tampering.

[16] The evidence relating to collection of samples, preparation of inventory, and certification thereof further strengthens the prosecution case. PW-3, the Investigating Officer, has clearly deposed that without any undue delay after seizure, he approached the learned Judicial Magistrate, 1st Class, Court No. 6, Agartala, for certification of the inventory, drawal of samples, and taking of photographs of the seized articles. The entire process of sampling was carried out under the direct supervision of the learned lady Judicial Magistrate. The order of the learned Magistrate clearly shows that seized tablets were made homogenous and thereafter sample was drawn. The sample packets were properly packed, sealed, and signed by the learned Magistrate. The inventory of the seized contraband and the photographs of the seized tablets, sample packets, packaging materials, and bags were also prepared and duly certified by the learned Magistrate. The order dated 28.02.2024 passed by the learned Judicial Magistrate, 1st Class, Court No. 6, placed on record, clearly corroborates the said procedure and records compliance with the statutory requirements. The forensic evidence further completes the chain of custody. PW-7, the Deputy Director of the State Forensic Science Laboratory, has categorically stated that the sample packets were received at the laboratory in sealed condition, bearing the seal and signature of the learned lady Judicial Magistrate, 1st Class, Court No. 6, Agartala, along with the seal of the Customs authority. The seals were found intact and tallied with the specimen seal forwarded along with the sample. Judicial supervision during sampling, certification of inventory and photographs, and intact condition of the seals at the forensic laboratory together rule out any possibility of tampering or substitution of the sample. These circumstances provide strong assurance regarding the authenticity of the seized contraband and the reliability of the forensic opinion, and materially support the prosecution case.

17. xxxx

18. However, on the question of quantity, this Court finds that although the prosecution has stated the number of tablets seized, it has failed to prove weight of the tablets seized. Under the NDPS Act, quantity is determined by weight and not by number of tablets. Be that as it may, as per Entry No. 159 of the notification issued by the Central Government, methamphetamine up to 2 grams constitutes a small quantity, whereas a quantity exceeding 50 grams constitutes a commercial quantity. In the present case, 20,000 contraband tablets were recovered from the possession of A-1 and 14,000 such tablets were recovered from the possession of A-2. It is beyond doubt that, if the tablets recovered from each accused are taken individually, their weight would certainly exceed 2 grams. However, it appears that the prosecution has failed to prove the exact weight of the recovered tablets, thereby creating uncertainty as to whether the quantity falls within the category of commercial quantity. In view of such uncertainty, this Court is of the considered opinion that the benefit thereof must go to the accused persons. Accordingly, the

individual recoveries are treated as quantities above small quantity but below commercial quantity. On an overall appreciation of the evidence on record, this Court finds that the prosecution has proved beyond reasonable doubt that both the accused persons were in conscious possession of methamphetamine, a psychotropic substance, in a quantity greater than small quantity but less than commercial quantity which is punishable under Section 22(b) of the NDPS Act. The defence submissions, though elaborately advanced, do not raise any reasonable doubt regarding the guilt of the accused, except to the limited extent concerning the exact quantity involved."

9. Upon a careful re-appreciation of the entire evidence, this Court finds that the prosecution witnesses has given a cogent and consistent account of receipt of secret information and reducing the same into writing, and forwarding it to superior and making contemporaneous entries in the Station Diary thereafter making search and seizure and arrest of the accused-appellants and the entire procedure has been completed following the mandates of the NDPS Act. The evidence of prosecution witnesses is also corroborated by documentary material and has remained undented in cross-examination. Further, mere typographical error does not typically hamper or derail the prosecution's case. Moreover, in terms of the findings of the learned trial court, the Appellant has not made out a case for interference in the impugned Judgment and Order.

10. On over all appreciation of the evidence available on record, this court of the considered view that the prosecution has proved its case beyond any shadow of doubt. The learned trial court was right in convicting the accused appellants on the basis of the evidences let in by the prosecution. On re-appreciation of entire evidence, this court does not find any illegality or perversity in the judgment of the trial court. Judgment of conviction and sentence of the trial court appears to be sound and proper and it does not warrant interference at the hands of

this court. The appeal filed by the appellant is bereft of merits and is free from any ambiguity.

11. In view of the aforesaid, there is no merit in this appeal, and the same is, accordingly, **dismissed**.

Pending application(s), if any, also stands dismissed.

JUDGE



SAIKAT KAR

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