

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A 43 of 2025

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

.....Appellant(s)

Versus

Swapan Shil, son of late Janaki Shil of Nirvoypur,
P.S. Jatrapur, District- Sepahijala

.....Respondent(s)

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

For Respondent(s) : Mr. Ratan Datta, Advocate
Mr. Ankan Tilak Paul, Advocate
Ms. Swarupa Das, Advocate
Mr. Joy Majumder, Advocate

Date of hearing and delivery
of judgment and order : 10.03.2026.

Whether fit for reporting : Yes/No.

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

JUDGMENT & ORDER (ORAL)

[Dr. T. Amarnath Goud, J.]

[1] When the case is called, Mr. Raju Datta, learned P.P. appears for the appellant-State. Mr. Ratan Datta, learned counsel appears on behalf of the respondent.

[2] The present appeal has been filed seeking the following reliefs:

- “(a) admit this appeal,
- (b) issue notice upon the respondents,
- (c) Call for the records and after hearing be pleased to set aside the Judgment dated 14.08.2024 passed by the Ld Special Judge (NDPS), Sepahijala Tripura, Sonamura in case No Special (NDPS) 20 of 2024 and convict the respondents against the charge under Section 21(C)/25 of NDPS Act and remand back the case to the court of Ld. Special Judge (NDPS), Sepahijala Tripura, Sonamura and give reasonable opportunity to the prosecution agency to produce their prosecution witnesses for proving their case.

AND

- (d) To pass such other order/orders as to this Hon'ble court may seem fit.....”

[3] Brief facts of the case, as described in the present appeal are that on 22.11.2023 at about 1535 hours on the basis of secret information, the complainant accompanied with OC Jatrapur PS along with other staff conducted search and raid in the dwelling house of accused at Nirvoypur under Jatrapur PS. During search, they recovered one white colour plastic sack and 3 nos. motor cycles (one white and gray colour Yamaha FZS BR No.R078109, one blue colour Yamaha R15 BR No.R07E-6567, one Red Colour Yamaha FZS Bearing No.TR07D9493) containing 400 nos Phensedyl in the plastic sack. On the basis of that complaint, Jatrapur PS case No. 2023/JTP/063 dated 22.11.2023 under Sections 21(C)/25/29 of NDPS Act was registered against the accused person. After investigation, I.O. submitted Charge Sheet under Sections 21(C)/25 of NDPS Act and the learned Trial Court framed charge against the respondent under Sections 21(C)/25 of NDPS Act. According to the appellant State reasonable opportunity was not provided to the prosecution to produce their witnesses and only after examining 7(seven) prosecution witness, the chapter of prosecution evidence was closed and learned Court below acquitted the respondent from the charge framed under Sections 21(C)/25 of NDPS Act. Being aggrieved, the appellant has preferred the instant appeal seeking the above-quoted reliefs.

[4] Mr. Raju Datta, learned P.P. appearing for the appellant State submits that learned Court below did not consider that offence under NDPS Act is a grave offence against the society and huge quantity of contraband articles were recovered from the accused and Investigating Officer also submitted charge sheet against the accused person under the provisions of Cr.P.C. He contends that without giving opportunity to the prosecution to produce all of their prosecution witnesses, the learned trial Court most illegally closed the evidences and acquitted the accused respondent. Mr. Datta, learned P.P. further submits that learned trial Court did not consider the settled principle of law that no accused can be acquitted from a criminal liability without facing proper trial and giving reasonable opportunity to the prosecution agency to prove their case. It is also contended that during trial, the learned trial Court examined only 7(seven) witnesses out of 12(twelve) cited prosecution witnesses including the complainant and did not exhibited any documents. He further contends that there are many cases of similar nature under NDPS Act where the accused persons were acquitted without providing proper opportunity to the prosecution. Placing reliance on the judgment and order dated

30.07.2025 passed by this Court in Criminal Appeal No.4 of 25, learned P.P. submits that the aforesaid case deals with the similar circumstances and therefore, urges for remanding back the case for conducting fresh trial after setting aside the impugned order dated 14.08.2024 by affording reasonable opportunity to rest of the prosecution witnesses for their examination and cross-examination.

[5] Per contra, Mr. Ratan Datta, learned counsel for the respondent opposes the submissions made on behalf of the appellant State. He submits that the prosecution failed to examine any official from the state forensic science laboratory (SFSL) and therefore the chemical examination was not duly proved in accordance with the law. It is further contended that, in the instant case out of the total 12 nos. of witnesses 7 nos. of witnesses has already been examined and the accused has suffered prolonged incarceration. There were non-compliance of the mandatory safeguards as enshrined under the NDPS Act and the prosecution miserably failed to prove the seizure of the contrabands, chemical examination of the contraband articles and also did not prove the safe custody of the articles. He urges that in view of the serious deficiencies, the prosecution case suffers from enormous doubt resulting in which the benefit of doubt must go in favour of the accused. He further submits that learned trial Court after proper appreciation of the evidence and material on record rightly acquitted the accused vide judgment and order dated 14.08.2024 as the prosecution miserably failed to prove the case against the accused beyond reasonable doubt.

[6] Mr. Datta, learned counsel for the respondents argues that remand should be ordered only in exceptional circumstances where miscarriage of justice is apparent and in the instant case no such circumstances exist and there is no perversity, illegality in the order of the learned trial Court. He contends that in the instant case, it is revealed from the examination of PW 7 i.e., SI Amar Kishore Debbarma that, the secret information about keeping of the contrabands items was received by one police officer Subrata Debnath but the prosecution failed to examine said Subrata Debnath. Moreover, the secret information was neither reduced into writing nor communicated to the superior official within a span of 72 hours violating section 41 and 42 of the NDPS Act. He submits that since receipt of the prior information being the foundation of the prosecution case, non-examination of such a vital witness namely Subrata Debnath strikes at the root of the prosecution

story. He, therefore, urges this Court to dismiss the present appeal. To support his contention, learned counsel for the respondent has also placed reliance on the following paragraphs from the judgments of the Hon'ble Apex Court:

1. *Ajay Kumar Ghoshal etc. v. State of Bihar and Anr.* reported in *AIR 2017 SC 804*:

“.....11. Though the word “retrial” is used under Section 386(b)(i) Cr.P.C., the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the Court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the Court refused to hear certain witnesses who were supposed to be heard.....”

2. *Karnail Singh v. State of Haryana* reported in *(2009) 8 SCC 539*:

“.....35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information [of the nature referred to in Sub-section (1) of section 42] from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To

illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001.....”

[7] Heard the submissions made at the Bar. Perused the material evidence on record.

[8] Mr. Raju Datta, learned Public Prosecutor for the State has fairly represented before this Court that about 150 cases were decided within a short span of time and all resulted in acquittal. When the matter was enquired with the Public Prosecutor of the trial Court, he tendered his resignation and the State has expressed doubt regarding the manner in which the cases were conducted and the resignation was obtained. During the course of hearing, learned P.P. has mentioned that the present appeal is one of such matters where the State has sought interference of this Court on the ground that there has been gross violation of the provisions of the Cr.P.C. in closing the prosecution evidence without affording adequate opportunity to the prosecution to examine the witnesses.

[9] In view of the fair submission made by the learned public prosecutor, this Court feels that the present case in hand is to be taken as a special case for appreciating the evidence for the welfare of the State of Tripura and in the interest of the citizens. This Court feels that it cannot shut its eyes when the matter deals with the interest of the citizens of the State of Tripura to the larger extent and it is not the case that benefit should go to the accused persons for mere technicalities which are pointed out by the learned counsel for the respondent. Since, the future of the youth in Tripura is drowning in darkness day by day due to drug abuse, these sorts of NDPS cases should be dealt with by the trial Court more seriously providing ample opportunity to the prosecution to produce the vital witnesses.

[10] It is seen from record that on 24.07.2024 two witnesses namely P. Seikh Aslam and Puja Chowdhury were examined as PW.02 & P.W. 03 on 25.07.2024 three witnesses namely Samar Debnath, Jitendra Choudhury and Narayan Ch. Debnath were examined as P.W.04, P.W.05 & P.W. 06 and on 26.07.2024, one witness namely Amar Kishore Debbarma, I.O. was examined as P.W. 07 and he learned Court below closed the prosecution evidence and fixed the case 06.08.2024 for examination of accused person under Section 313 Cr.P.C. For the purpose of convenience, the relevant contents from the orders dated 24.07.2024, 25.07.2024 & 26.07.2024 are reproduced herein-below:

“24.07.2024

Today the case record is listed for Pws.
Custody accused Swapan Shil is produced from the J/C.
Ld. Defence Counsel Mr. R.Chowdhury is present for the accused.
No bail petition filed for the accused person.
Ld. Special PP Mr. M. Sen is present.
Two witnesses namely P. Seikh Aslam and Puja Chowdhury are present, they are examined, cross-examined as PW-02 & 03 and discharged.
No other witness is present.
No service report received regarding the summons.
To date fixed (25.07.2024) for Pws(6 to 9)
Accused is further remanded to J/C till 25.07.2024....”

“25.07.2024

Today the case record is listed for Pws.
Custody accused Swapan Shil is produced from the J/C.
Ld. Defence Counsel Mr. R.Chowdhury is present for the accused.
No bail petition filed for the accused person.
Ld. Special PP Mr. M. Sen is present.
Three witnesses namely Samar Debnath, Jitendra Choudhury and Narayan Ch. Debnath are present, they are examined, cross-examined as PW- 04, 05 & 06 and discharged.
No other witness is present.
Received one message intimating the fact that witness Sarbajit Choudhury is unable to appear before this court as he is on leave on medical ground.
Keep it with the record.
To date fixed (26.07.2024) for Pws.
Accused is further remanded to J/C till 26.07.2024.....”

“26.07.2024

Today the case record is listed for Pws.
Custody accused Swapan Shil is produced from the J/C.
L.d. Defence Counsel Mr. R. Chowdhury is present for the accused.

No bail petition filed for the accused person.

Ld. Special PP Mr. M. Sen is present.

One witness namely Amar Kishore Debbarma, IO is present, he is examined, cross-examined as PW- 07 and discharged.

No other witness is present.

As IO has been examined, on verbal submission of prosecution the evidence of prosecution witnesses is hereby closed.

Accused is directed to furnish bail bond of Rs.50000/- in compliance of Section 437A of Cr.P.C on the next date without fail.

Fix 06.08.2024 for examination of accused persons u/s 313 of Cr.P.C/execution of bail bond.

Accused is further remanded to J/C till 06.08.2024.....”

[11] From the above quoted orders of the learned trial Court, it is seen that notices were issued upon the prosecution witnesses but, service report was awaited, and without waiting for service report, prosecution witnesses have been closed at the premature stage. Despite the intimation received from one witness namely Sarbajit Choudhury regarding his inability to appear before the trial Court on medical ground, no opportunity was extended to prosecution by the learned trial Court to examine the said witness by closing the witnesses. This Court opines that there was no necessity to decide the matter in such haste without granting proper opportunity to the prosecution.

[12] Since, in the present case the Officer in charge, Police Station was the person who handled the entire crime scene, the question of compliance of Section 42 of the NDPS Act does not arise but, it falls under Section 41 of the NDPS Act and the Officer in Charge, Police Station who is a gazetted officer stated to be P.W.11 was not examined as prosecution witness. This Court feels that his witness would be very crucial in deciding the case. Since the evidence of certain vital prosecution witnesses was not recorded though summons had been issued, the trial remained incomplete. In the case in hand, out of 12 witnesses since 7 were only examined and learned P.P. reported to this Court that there is no further witness, thus, we are of the opinion that, the matter is liable to be remanded back to the learned trial Court for fresh trial after recording the evidence of the remaining witnesses. It is also opined that the judgments of the Hon’ble Apex Court as referred by the learned counsel for the respondent is not applicable to the facts and circumstances of the present case.

[13] With the above observations, the impugned judgment and order dated 14.08.2024 passed by the learned Special Judge (NDPS), Sepahijala Tripura,

Sonamura in case No Special (NDPS) 20 of 2024 is hereby set-aside. Accordingly, the matter is remanded back to the learned trial Court with a direction to conduct a fresh trial by calling upon the rest of the prosecution witnesses. However, it is made clear that reasonable opportunity shall be afforded to the prosecution witnesses. It is further made clear that after closure of evidences of all the prosecution witnesses, learned Court below shall deliver its judgment afresh. The entire exercise shall be completed expeditiously.

[14] The accused-respondent is directed to surrender before the learned trial Court on or before *31st March, 2026*. Upon his surrender, the learned trial Court may consider bail application, if so, filed by him, in accordance with law so that, his right is not infringed.

[15] Resultantly, the present appeal is allowed to the extent as indicated above. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

S. Datta Purkayastha, J.

Dr. T. Amarnath Goud, J.

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