

HIGH COURT OF TRIPURA
AGARTALA
Crl. A. 32/2024

The State of Tripura

represented by the Secretary, Home Department, Government of Tripura.

----Appellant

Versus

Kajal Rekha, W/o Late Ruhul Amin resident of Madhya Boxanagar, Paschim Para, P.S- Kalamchowra, District- Sepahijala Tripura.

----Respondent

For the Appellant(s)	:	Mr. Raju Datta, P.P
For the Respondent(s)	:	Mr. Sankar Bhattacharjee, Advocate. Mr. S. Noatia, Advocate.
Date of hearing & delivery of Judgment & Order	:	27.01.2026
Whether fit for reporting	:	No

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER(ORAL)

(Dr.T.Amarnath Goud, J)

[1] Heard Mr. Raju Datta, learned Public Prosecutor, appearing for the appellant-State of Tripura. Also heard Mr. Sankar Bhattacharjee, learned counsel appearing for the respondent.

[2] The appellant-State, by means of filing the present appeal has challenged the judgment and order dated 10.09.2024 passed by the learned Special Judge (NDPS), Sepahijala Tripura, Sonamura, in connection with case

No. Special (NDPS) 19 of 2021, whereby the respondent has been acquitted from the charge under Sections 20(b)(ii)(C)/25/29 of the NDPS Act.

[3] Facts leading to the present appeal are that, on the basis of a *suo moto* written complaint, on 25.06.2018, huge quantity of contraband articles were recovered from the possession of the accused-respondent. A specific case was registered against the accused-respondent. After completion of investigation, charge sheet was submitted against the accused respondent under Sections 20(b)(ii)(C)/25/29 of the NDPS Act. Thereafter, learned Special Judge (NDPS), Sonamura, took cognizance of the offence against the accused-respondent and after supplying the prosecution papers, also framed charge against the accused-respondent to which the accused-respondent pleaded not guilty and claimed to be tried. Accordingly, trial commenced. During trial, the learned Trial Court examined only three witness out of nine cited witnesses and exhibited some documents. Subsequently, examination of the prosecution witnesses was closed and the accused respondent was examined under Section 313 Cr.P.C. wherein she denied all the incriminating materials brought against her and thereby the learned trial Court by the impugned order acquitted the accused respondent from the charge leveled against her on the ground that the entire prosecution case is based on no evidence. Being aggrieved, the appellant has filed the present appeal challenging the impugned judgment and order of acquittal.

[4] Mr. Raju Datta, learned PP appearing for the appellant-State, has argued that the learned trial Court did not consider that the huge quantity of

contraband articles were recovered exclusively from the possession of the accused-respondent and the same relates to a grave offence under NDPS Act. Charge sheet was also submitted against the accused-respondent but, the learned trial Court without giving any opportunity to the prosecution witnesses closed the evidence and acquitted the accused-respondent from the charges leveled against her. Mr. Datta, learned PP also submitted that the learned trial Court did not consider the settled principle of law that no accused can be acquitted from criminal liability without facing proper trial and giving reasonable opportunity to the prosecution agency. Mr. Datta, learned PP has further submitted that notices were issued upon the witnesses but, without waiting for the service report, learned trial Court whimsically closed evidence of the prosecution witnesses after examining only three witnesses and most erroneously acquitted the accused-respondent.

[5] Mr. Datta, learned PP contended before this Court that many cases under NDPS Act exist where the accused persons were acquitted without providing a proper opportunity to the prosecution. He, therefore, urges before this Court to remand back the case for conducting fresh trial after setting aside the impugned order dated 10.09.2024 by affording reasonable opportunity to rest of the prosecution witnesses for their examination and cross-examination.

[6] On the other hand, Mr. Sankar Bhattacharjee, learned Counsel appearing for the respondent has submitted that the learned trial Court has rightly closed the prosecution evidence since ,there was total failure on the

part of the prosecution to secure attendance of the witnesses. Mr. Bhattacharjee, learned counsel has further submitted that on verbal submission of the prosecution, learned trial Court has closed the prosecution evidence. Mr. Bhattacharjee, learned counsel has also stated the entire case is based on no evidence hence urges to dismiss the appeal upholding the acquittal of the respondent.

[7] Heard and perused the evidence on record.

[8] Upon hearing the submissions made at the Bar and on perusal of record, this Court is of the view that admittedly, the secret information was conveyed by the concerned officer to the higher authority and as such, provisions of Section 42(2) of the NDPS Act have been complied with. It is also observed that the learned Trial Court did not consider sufficient opportunity to the prosecution agency to produce the prosecution witnesses before the learned Trial Court.

[9] A court cannot automatically acquit an accused under the NDPS Act merely because the witnesses did not turn up. Courts have the power to compel the attendance of witnesses using various provisions of the Criminal Procedure Code. The Court must assess the entire evidence presented and determine if the prosecution has proven its case beyond a reasonable doubt, even in the absence of certain witnesses.

[10] In view of the above, this Court is of the opinion that the matter needs to be remanded back to the Learned Trial Court to conduct a fresh trial by calling upon the witnesses afresh allowing the prosecution to prove the

relevant documents in support of the prosecution case and thereafter, deliver a fresh judgment in accordance with law. Both the parties shall also co-operate with the Court proceedings.

[11] In fine, the matter is remanded back to the learned Special Judge(NDPS), Sepahijala District, Sonamura, with a direction to conduct a fresh trial by calling upon 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.

[12] The accused-respondent is directed to surrender before the learned trial Court on or before 15.02.2026. Upon her surrender, the learned trial Court may consider bail application, if so, filed by her, in accordance with law.

[13] Resultantly, the impugned order dated 10.09.2024 passed by the learned Special Judge (NDPS), Sepahijala Tripura, Sonamura in case No. Speical (NDPS) 19 of 2021 is set aside and the instant appeal filed by the appellant is hereby allowed and disposed of.

[14] 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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