

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.14 OF 2013

Angrezsing s/o Kashmirsing Randhwa,
Age-36 years, Occu:Driver,
R/o-Bhandup (West), Mumbai.

...APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Vazirabad,
Nanded, Tq. & Dist-Nanded.

...RESPONDENT
(Orig. Complainant)

...
Mr. S.S. Thombre Advocate for Appellant.
Mr. B.L. Dhas, A.P.P. for Respondent.

...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 17TH FEBRUARY, 2015.

DATE OF PRONOUNCING JUDGMENT: 11TH MARCH, 2015.

JUDGMENT :

1. The Appellant — original Accused
(hereafter referred as "Accused") has been

convicted under Section 15 of the The Narcotic Drugs And Psychotropic Substances Act, 1985 ("Act" in brief) and has been sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rupees One Lakh; in default of fine to suffer further rigorous imprisonment for two years, by Additional Sessions Judge, Nanded in Special N.D.P.S. Case No.9 of 2010. Being aggrieved, present Appeal has been filed.

2. The case in brief, is as follows:

(A). On 2nd November 2010 at Nanded complainant A.P.I. Manik Bendre (PW-1) with Dy.S.P. Laxmikant Patil, P.I. Keshav Patond (PW-6), P.S.I. Padvi, Police Head Constable Ghuge, Police Constable Bhange and other staff members were patrolling in two Police vehicles. They had gone near Sachkhand Gurudwara as there was a programme of "Halla Bol" and procession of Nagar Kirtan going to be held. They went petrolling.

From Sachkhand Gurudwara they were proceeding towards Langar Saheb Nagina Ghat to see the arrangements of programme there. The time was of about 21.10 hours. They noticed white coloured Tata Sumo vehicle bearing No.MH-15-K-6413 proceeding in front in high speed. As such the vehicle was stopped. It came to halt near Police outpost of Dena Bank, on the road. When the Police were proceeding towards said Tata Sumo, the driver had got down and was about to flee due to which Police officials caught him and brought him near the vehicle. Dy.S.P. Patil and P.I. Patond inquired the name and address from the said person but he was avoiding. On further questioning he gave his name as Angrezsing s/o Kashmirsing Randhava (i.e. - present Accused) from Bhandup Mumbai. When inquired further, as to where he was going and what was in the vehicle, he gave unsatisfactory answers. When the Police party was near the vehicle, there was sharp smell and from the talks of the said person (i.e. Accused) and

his activities, Police suspected that there was something suspicious in the vehicle and the Accused was hiding something. On suspicion when the back door of the Sumo was opened, it was noticed that in a white sack narcotic yellowish Poppy Straw powder was there. On seeing this, Dy.S.P. Patil and P.I. Patond informed Additional Superintendent of Police Shri Umap on phone for permission for taking further proceedings and received the permission. P.I. Patond (PW-6) at 21.20 hours phone called Vazirabad Police Station and giving information called for Police Head Constable Deepaji Mulgir (PW-2) along with articles as would be required for seizure Panchnama. Similarly A.S.I. Dayanand Jadhav (PW-5) was asked to bring two Panchas and Police Constable Bhange was directed to bring a person having a weighing scale. Police Head Constable Mulgir reached the spot along with articles for sealing and Police Constable Bhange brought one Kanhayasingh Hanumansing Hajari (PW-7) and A.S.I.

Jadhav brought Panch Shamshoddin Kazi (PW-3) and one Mohammed Shafi. It was 21.45 hours by this time. Kanhayasing and the two Panchas were introduced to the Accused by Dy.S.P. Patil and P.I. Patond, and informed that the vehicle is to be searched. PW-7 Kanhayasingh was informed that he has to weigh the articles. P.I. informed the Accused at this time, his own name and post and that he is Gazetted Officer and also informed him that in presence of two Panchas vehicle will be searched and to say if he had any objection or if he desires, the vehicle can be searched in presence of some other Gazetted Officer or Magistrate. Notice as per Section 50(1) of the Act was given to the Accused in writing. The Accused endorsed on the notice that this was not necessary and consented to the search of the vehicle. Thereafter, in presence of Panchas, the vehicle was searched and in the back side of the vehicle, there was one white sack and below two seats in compartment Poppy Straw Powder was found. In the

white nylon sack 22 Kg. faint yellowish Poppy Straw Powder was there. The sack weighed 50 Gms. Below the side seat in compartment what was found was 19 polythene bags, each of 2 Kg. containing same powder, the total weight of which was 38 Kgs. Cash of Rupees Five Thousand was also found in the vehicle. All these articles, cash and vehicle were seized by the Police. The Poppy Straw Powder found in the white sack and the plastic bags were mixed and then in two polythene bags samples were drawn and keeping the same in cloth bag in presence of Panchas, on spot itself those were duly sealed and lak seal were also put. The rest of the articles were also sealed and signatures of Panchas and P.I. Patond were put on the labels. The Panchnama was completed by 23.45 hours. The Police then proceeded to the Police Station along with the Accused and the seized articles. PW-1 A.P.I. Bendre filed F.I.R. (Exhibit 18) in this regard and offence was registered at 00.45 hours on 3rd November 2010 at Crime No.23 of 2010 at the

Vazirabad Police Station.

(B). P.I. Patond produced the seized property to the Muddemal Mohrir in the night itself. He also sent his report to superior officer, Superintendent of Police regarding the investigation (Exhibit 44) on 3rd November 2010 itself. Head Constable Kamble who registered the offence to the Police Station, also sent special report Exhibit 45 about the seizure. At the Police Station, after the offence was registered, the Accused was formally arrested vide Exhibit 52. On 3rd November 2010 itself P.I. Patond submitted letter to the Court for examining the samples sealed and certification about the same. On same day the J.M.F.C. issued certificate of examining the Poppy Straw Powder sample of 500 Gms. to be in sealed condition. On same day of 3rd November 2010, sealed sample was sent to C.A. through Police Constable Govind Donpalle (PW-4), with covering letter (Exhibit 31). C.A. Report (Exhibit

57) was received that the sample contained Poppy Straw containing 1.25% of Morphine. The offence was investigated and statements of witnesses were recorded. In the investigation, documents relating to Sumo were seized and the same disclosed that the vehicle stood on the name of Balbir Kaur, the mother of the Accused. After the investigation, charge-sheet was filed.

3. Additional Sessions Judge, Nanded, framed charge against the Accused under Section 15 of the Act. Accused pleaded not guilty. His defence is of total denial. According to him, he was praying in Gurudwara, at which time he was picked up by the Police and according to him, false case was filed.

4. Prosecution brought on record evidence of eight witnesses. Documents concerned have been proved. The trial Court considered the evidence brought on record by the prosecution and for reasons recorded, concluded that the offence has

been established and all the necessary requirements under the Act had been complied with. The trial Court heard the Accused even on the question of sentence, and the sentence as mentioned above was passed against the Accused.

5. I have heard the learned counsel for the Appellant. In the Appeal, grounds have been raised and learned counsel argued that there was non compliance of mandatory provisions of the Act; no independent witness had supported the prosecution and only Police witnesses have supported; information was given to Additional Superintendent of Police orally and written information was not given; and that, in Panchnama Exhibit 26 there was no specific mention of drawing of samples. Panch Shamshoddin and Kanhayasing who brought the scale, did not support and that Dy.S.P. Patil had not been examined. Seal of concerned Police Station was not put on the seized articles at Police Station; the seized property was not produced in

the Court; on 16th August 2011 when Muddemal was produced in the Court, it was recorded that Ganja had been produced. Thus, according to the learned counsel for the Appellant-Accused, the offence was not duly established. Learned counsel further referred to the Rulings which were relied on by the Accused in the trial Court and submitted that they were not properly appreciated by the trial Court.

6. Against this, the learned A.P.P. has supported reasonings and findings recorded by the trial Court. According to the A.P.P. all the concerned formalities were complied with. The quantify found was commercial quantity and Accused was caught in Jeep of his mother along with contraband. The Police complied with all the necessary formalities and although it was a chance seizure, still notice was given to the Accused to take search by the Police party or ask for search in front of any other Gazetted Officer. According

to A.P.P. as it was chance detection in public place like road, no permission under Section 42 of the Act was necessary. Accused was not known to any of the Police officers and there was no reason for them to falsely implicate. The Accused was not even from Nanded. According to learned A.P.P. if the Panch and the person who brought weighing machine, did not support, there is no reason to doubt the prosecution as there was no reason for the Police officers to implicate the Accused and they were doing their duty. The A.P.P. placed reliance on the reported case of **Ram Swaroop vs. State (Govt. NCT) of Delhi, A.I.R. 2013 S.C. 2068** to support his argument that as it was a chance seizure in public place and from vehicle and not person of accused and so compliance of Section 50 of the Act was also not necessary, but still Notice was given.

7. The Point for my Consideration is - Whether the impugned Judgment and Order of conviction and sentence is correct, legal and

proper?

8. The evidence of PW-1 Complainant A.P.I. Bendre as well as PW-6 P.I. Patond when perused, it can be seen that these Police officers along with Dy.S.P. Laxmikant Patil and other Police officials were patrolling the area of Nanded on 2nd November 2010. There was a function in Gurudwara which was going to be held on 4th November 2010 and thus these Police officials were doing their check up. The evidence of these witnesses is supported by the Station Diary Entry No.54 of 20.30 hours (Exhibit 46) that they had gone to Sachkhand Gurudwara and that they had proceeded the Gurudwara and Langar Saheb to see the arrangements in two vehicles. PW-1 and PW-6 have brought on record that when they were proceeding from Langar Saheb from Sachkhand Gurudwara, a Tata Sumo — MH-15-K-6413 was being driven in high speed. They suspected and vehicle was stopped near Dena Bank Police outpost.

Evidence is that as soon as the vehicle was stopped, the driver (the present Accused) alighted and tried to run. He was caught hold of and when asked, started giving evasive answers. Ultimately he had given his name and address which was of Bhandup. The evidence of these Police officials shows that when they opened rear door of the vehicle, they noticed substance having dark smell. PW-1 deposed it was Poppy Straw Powder. In view of this, the evidence discloses that oral permission was sought from Additional S.P. Shahaji Umap to carry out further procedure, which permission was granted by the Additional S.P. Evidence discloses that P.I. Patond then gave phone call to Vazirabad Police Station asking for sending Head Constable Mulgir (PW-2) to come to the spot with necessary articles required for seal. There is Station Diary Entry of 21.20 hours (Exhibit 47) available in this regard. Evidence of PW-2 Deepaji Mulgir has also been brought on record. He deposed that Head Constable Kamble asked him at 21.20 hours that a

vehicle in suspicious manner had been stopped at Dena Bank square and P.I. Patond has called him with the material for Panchnama. Witness deposed that he had gone to the spot with the concerned articles.

9. Evidence further discloses that P.I. Patond directed A.S.I. Jadhav (PW-5) vide order Exhibit 35 to call for two Panchas. Police Constable Bhange was directed to call the person having balance (weighing scale) for which order Exhibit 41 was issued. The evidence shows that thereafter two Panchas Shamshoddin Kazi (PW-3) and one Mohammed Shafi came there. PW-7 Kanhayasing also reached there along with weighing scale. The evidence discloses that P.I. Patond issued letter Exhibit 38. It is in the form of notice to the Panchas that there was suspicion that there was Poppy Straw Powder in the vehicle and the same is to be searched. Signatures of Panchas were taken on the same. The Panchas were ready to act as

Panchas. Similarly, letter was issued to PW-7 Kanhayasing also (Exhibit 42) that he should weigh the articles on the electronic scale which he had brought, as it is suspected that Poppy Straw Powder may be found in the vehicle.

10. The evidence of Police officials further discloses that after the Panchas and person with weighing scale were called, P.I. Patond introduced himself to the Accused informing that the P.I. was the Gazetted Officer. P.I. Patond issued notice Exhibit 43 under Section 50(1) of the Act to the Accused informing that in his possession the Sumo vehicle had been found wherein it was suspected that Poppy Straw Powder is there and Accused was informed that in presence of Panchas the vehicle is now to be searched. Accused was given notice vide Exhibit 43 that the P.I. was Class-I Gazetted Officer and if he desires he can take search of the Police staff and Panchas and Accused has the liberty to even ask to call for some another

Gazetted Officer or Magistrate. Evidence shows that Accused endorsed the receipt of Exhibit 43 and further wrote on the document that he does not want to take search of Panchas or the staff and that it had been explained to him that P.I. Patond was Gazetted Officer. He endorsed that P.I. may take search of the vehicle and he does not wish to call any other Officer or Magistrate. The endorsement on this count was also signed by the Accused, below Exhibit 43.

11. The further evidence brought on record shows that thereafter the vehicle was searched and in the rear portion of the Sumo one white colour sack was found containing Poppy Straw Powder. Below the seat on the back side, 19 polythene bags, each of 2 Kg. were also found. The evidence brought on record shows that in the white plastic sack 22 Kg. Poppy Straw Powder was found and in the 19 polythene bags 38 Kg. Poppy Sraw Powder was found which was in the 19 bags, each containing 2

Kgs. The evidence is that the Police then mixed the powder together and two samples of 500 g.m. each were drawn and the same were duly sealed including labels with signatures of Panchas. In the vehicle Rs.5000/- were also found. Police seized the contraband as well as money and the vehicle. Panchnama Exhibit 26 came to be drawn. Copy of Panchnama was handed over to Accused and his signature was obtained on the same. The Accused did not have pass or permit for the possession of the said contraband. The evidence discloses that thereafter, the seized articles and the Accused were brought to the Police Station. PW-1 filed F.I.R. Exhibit 18 which has been proved. The Panchnama Exhibit 26 was proved by P.I. Keshav Patond.

12. PW-6 P.I. Patond has proved Exhibit 44 as a report which he sent to his superior officers regarding the seizure of the contraband and the offence which had been registered and which was

being investigated. The report was sent on 3rd November 2010 itself. Additionally, head Constable Kamble, who registered the offence, also sent special report to the senior officers vide Exhibit 45. P.I. Patond has proved Station Diary Entry No.2 of 00.05 hours (Exhibit 49) regarding registering of the offence and that the seized articles had been deposited at the Police Station. There is Station Diary Entry No.3 of 00.45 hours (Exhibit 50) proved regarding deposit of seized contraband, the vehicle and the money at the Police Station. PW-6 further proved on record documents at Exhibit 56 which relate to ownership of the Tata Sumo and it disclosed that the owner was Balbir Kaur, the mother of the Accused.

13. In the evidence, prosecution proved that on 3rd November 2010 itself the sample sealed for sending to C.A. was tendered before the J.M.F.C. with letter Exhibit 53 for examining the same and certifying. The J.M.F.C. issued certificate

Exhibit 54 on the same day for having examined Poppy Straw sample in Crime No.23 of 2010 which was in sealed condition. The Certificate has been proved by PW-6 P.I. Patond.

14. Prosecution brought on record evidence of Police Constable Govind Donpalle PW-4 that on 3rd November 2010 P.I. Patond handed over Muddemal to him for sending it to C.A. His evidence is that Muddemal was in sealed condition along with requisition letter. He deposed that on 4th November 2010 he went to Aurangabad and submitted seized property to C.A. and took acknowledgement. He has deposed that when he had received the Muddemal and when he submitted it to C.A., it was in sealed condition. The letter Exhibit 31 in this regard has been proved.

15. PW-6 P.I. Patond proved on record C.A. Report Exhibit 57. Prosecution further brought on record evidence of Assistant Chemical Analyser

Sau. Shubhangi Devnikar (PW-8). Her evidence discloses receipt of the sample in sealed condition along with letter Exhibit 31. She deposed that the seals were intact and she unsealed the parcel. She recorded the weight of the sample which was of 500 Gm. when parcel was separated. Her evidence shows that she removed 50 Gm. for analysis and carried out the tests. Her evidence gives in details the procedure followed and how she ascertained the percentage of Morphine. She found 1.25 Gm. Morphine in 100 Gm. She had brought original documents of testing and xerox copies of the same were proved on record at Exhibit 70.

16. I have gone through the cross-examination of the Police officials. Various details were sought from the Police officials. PW-1 Manik Bendre accepted that the superior officer was informed on Mobile and written intimation was not given. It was suggested to the complainant A.P.I.

Bendre that the Accused was not knowing reading and writing Marathi. The witness denied. Learned counsel for the Appellant -Accused tried to submit that the endorsement below Exhibit 43, the notice under Section 50(1) of the Act was not written by the Accused. However, the evidence of PW-6 Patond proved that the Accused himself wrote the endorsement below Exhibit 43. The Accused is resident of Bhandup, Mumbai. The manner in which the endorsement below Exhibit 43 has been written and signed, it appears to be by the same person and the writing discloses that the Accused is familiar with Marathi though he may not be perfect in writing the spellings. There is no substance in the argument that the Accused was not familiar with Marathi. Exhibit 52 Arrest Panchnama of Accused proved, also recorded that Accused knows Punjabi, Hindi and Marathi. He also held Driving Licence of Maharashtra (Exhibit 56 collectively).

17. It has been further argued by the counsel

for Appellant-Accused that Panchnama Exhibit 19 did not record drawing of samples. It has been argued that separate Panchnama of drawing of samples should have been prepared. Although Exhibit 26 which is a Panchnama in format, did not specifically mention of separating and preparing two samples of 500 Gm. each, still there is evidence of PW-1 Bendre and PW-6 Patond in this regard. The F.I.R. which was immediately registered after the seizure and which has been proved at Exhibit 18 lends credence to the evidence of these Police officials that on spot itself two samples of 500 Gm. each were prepared from the contraband seized and they were duly sealed. Exhibit 26 was completed at 23.45 hours and the raiding party proceeded to the Police Station and by 00.45 hours the offence was registered vide Exhibit 18 in which the fact is recorded. There is no reason to doubt the Police officials on this count.

18. In the cross-examination of PW-1 Manik Bendre, he was asked and he deposed that when he lodged the report, sample packets were submitted to the P.S.O. - Police Head Constable Kamble. When asked he stated that P.S.O. did not put seal of Police Station in-charge on the sample packets. The evidence is that P.I. Patond produced the remaining seized property before the P.S.O. The argument of the learned counsel for Appellant-Accused is that P.S.O. should have put the seal of the Police Station on the seized articles. In the present matter, the P.I. of the Police Station himself was in the raiding party and he had called for the articles for sealing. Articles were sealed on the spot itself after immediately calling for PW-2 Police Head Constable Mulgir with sealing material. The Station Diary Entry No.58 (Exhibit 47) itself shows that PW-2 Mulgir had been sent to the spot for carrying out of the seizure Panchnama along with the seal, lakh, thread and other articles. When from the Police Station itself, the

seal had been called by the P.I. who was the head of the Police Station, such cross-examination has no substance, that when the seized and sealed articles were taken to the Police Station, P.S.O. should have again put another seal on them.

19. PW-3 Panch Shamshoddin admitted signature below Panchnama Exhibit 26, but turned hostile and did not support the prosecution regarding the seizure. The witness is apparently suppressing truth. He claimed that he had been called by the Police Station and as Police asked, he signed Exhibit 26. There is nothing to show that he recorded any protest at the time when his signature was taken or even thereafter, at any time. He has denied that sample packets were packed and sealed in his presence. However, when he was confronted with sealed samples, he accepted his signature on the paper label Exhibit 39. His statement was recorded by P.I. Patond. He was confronted with portion marked "A" of his

statement, which he declined. P.I. Patond however proved the portion marked "A" from statement of this Panch at Exhibit 55-A. It falsifies the witness. It shows that the Panch is not a person of honour. Similar is the condition of PW-7 Kanhayasing Hajari who brought the weighing machine or scale and who also turned hostile. He was also cross-examined. It is a pity that citizens shirk their responsibilities towards the society and leave the whole responsibility on State.

. Learned counsel for Appellant argued that these persons have not supported the prosecution and thus there is evidence only of the Police officials available. I find that the Accused was not belonging to Nanded and it appears that there was soon a function at Gurudwara and in this context, the presence of the Accused at Nanded in vehicle of his mother with such contraband makes his intentions apparent. There is no reason why

Police would involve a person from Mumbai, unnecessarily. The Police witnesses were discharging their duties and I find that their evidence is reliable.

20. It has been argued by the counsel for Appellant-Accused that when the vehicle was stopped, before opening the door, separate Panchnama was not done. I do not find any substance in such submission. Merely because a vehicle is stopped on suspicion, and the door of the vehicle is to be opened, the Police cannot be expected to have divine powers to know in advance as to whether contraband would be found inside or arms would be found or some dead body would be found or nothing objectionable would be found. It would be expecting too much to say that for every step which is to be taken, separate Panchnamas should be drawn. The Panchnama Exhibit 26 read with F.I.R. Exhibit 18 which was immediately filed, makes it clear that when the vehicle was

stopped on suspicion and when the Accused was giving evasive answers, due to doubts, the back door of the Sumo was opened and moment it was realized that there was contraband, the Police took a break and took steps to complete the necessary procedures to proceed further regarding search and seizure.

21. The Judgment of the trial Court shows that the trial Court has, in all necessary details, examined the oral and documentary evidence. Before the trial Court it was claimed that Sections 42, 43 and 50 of the Act were not complied. Trial Court observed that the raid was carried out at public place and not in the house of the Accused. The vehicle had been stopped on suspicion and when the door was opened and it was noticed that there was dark smell of poppy straw, P.I. Patond and Dy.S.P. Laxmikant Patil had informed the Additional S.P. Shri Umap who granted permission to conduct the search. Referring to Sub

-Section 2 of Section 42 of the Act, the trial Court found that in the present matter the raid conducted in public place was under Section 43 and like Section 42 there was no similar provision for writing down grounds of belief or sending of report within 72 hours.

. In fact, in the present matter within 24 hours reports Exhibit 44 and 45 were also sent. The trial Court found that there was no need under Section 43 to record - reasons to believe and for sending report within 72 hours in view of the Judgment in the matter of **State of M.P. vs. Ghanshyam, 2008 Cri. Law Journal 107**. Trial Court also observed that when the superior officer had been informed on the phone, in the given set of facts, there was substantial compliance of Section 42 of the Act. Even regarding Section 50 of the Act, the trial Court observed that it applied when personal search of the Accused was to be taken and in the present matter it was a case of searching

the vehicle caught in public place. Trial Court noticed that inspite of the present facts, keeping provisions of Section 50 of the Act in view, notice Exhibit 43 had indeed been given by PW-6 P.I. Patond although there was no necessity.

22. Trial Court further discussed the arguments, of Panchnama Exhibit 26 not mentioning regarding drawing of samples and trial Court discussed oral evidence and found that Exhibit 18, the F.I.R. which was immediately filed, did mention about drawing of samples. Exhibit 18 shows that the samples had been drawn and duly sealed and official photographer had taken photos and on spot, Panchnama had been prepared by P.I. Patond between 21.50 to 23.45 hours. Thus the trial Court did not suspect regarding drawing of samples on spot. Similarly trial Court found that non examining Dy.S.P. Laxmikant Patil was no reason to disbelieve the other evidence which had been brought on record. Trial Court found that although

Panch PW-3 Shamshoddin and PW-7 Kanhayasing have not supported, it was not fatal to the prosecution case. The trial Court observed that there were no material contradictions, omissions or discrepancies brought on record in the cross examination of the witnesses and there was no reason to discard their reliable, cogent and trustworthy evidence.

23. The trial Court further found the prosecution case reliable looking to the fact that samples were produced on 3rd November 2010 itself before the J.M.F.C. who had issued certificate Exhibit 54 regarding the samples to be duly sealed. Trial Court discussed the evidence of PW-8 Shubhangi and the detailed tests she carried out to support the C.A. Report and found that prosecution has discharged burden in this regard also.

24. It has been argued before this Court and

dispute was raised even before the trial Court that after the samples were produced before the J.M.F.C., rest of the property was not produced in the Court. The trial Court recorded that the property had indeed been produced by the Police in the Court on 16th August 2011 as per Muddemal Receipt M.R. No.21/10 dated 3rd November 2010. At that time the Assistant Superintendent of Property of the District Court endorsed report that considering the Muddemal receipt it was 60 Kg. Ganja, for which there was no place and security point of view needs to be considered. The Assistant Superintendent recorded that there was also Tata Sumo vehicle and the property be allowed to be kept at Police Station itself. Learned counsel for Appellant-Accused argued that Assistant Superintendent of the Court had recorded in his report that 60 Kg. Ganja was there. However, the trial Court considered this aspect also and recorded that Assistant Superintendent of the Court wrongly mentioned that Ganja was

produced instead of Poppy Straw Powder. For this observation, trial Court referred to the Muddemal Receipt which had been produced by the Police. During the course of arguments before this Court also learned counsel for Appellant-Accused was unable to show that Muddemal Receipt tendered by the Police mentioned the article to be Ganja. When the Police are producing the article in the Court with Muddemal Receipt about the Poppy Straw Powder seized, only because Assistant Superintendent of the Court was incompetent to know the article or was negligent in recording his note, would not mean that case of prosecution should be doubted jumping at the first opportunity to start claiming benefit of doubt for something which is not even fault of prosecution. The consistent and clear case of prosecution cannot be doubted merely because of the negligence of the Assistant Superintendent of the Court.

25. The trial Court discussed various Rulings

which were cited before it and distinguished them considering facts of the present matter, and the Rulings relied on by the Accused were not found to be helpful to the Accused. Learned counsel for Appellant-Accused filed copies of those Rulings in this Court and submitted that the trial Court had not properly applied the Rulings. However, considering facts of this case and provisions concerned, I do not find that the reasonings recorded by the trial Court are wrong. Trial Court discussed all the concerned evidence in detail and discarding the defence of the Accused, concluded that offence has been established.

26. It has been argued by the counsel for Appellant- original Accused that apart from the samples, rest of the Muddemal was not produced. I have already discussed that the Muddemal was produced and due to constraint of space, the same was directed to be kept with the Police Station. At the time of recording of evidence, none of the

sides asked for production of Muddemal. As such, the Accused cannot take any disadvantage.

27. Counsel for the Appellant-Accused relied on the case of **Sukhdev Singh vs. State of Haryana reported in 2012 (12) SCALE 699** to submit that there was non compliance of Section 42 of the Act. However, if the facts of that matter are perused, they were different. In that case, ASI Nandlal - PW-1 had while being on patrolling duty, received secret information that accused was in the habit of selling chura post (poppy husk) in his house. The ASI conducted search and the contraband was seized. In Para 21 of the Judgment, it was observed :-

"21. As per the statement of PW1, no effort was made by him to reduce the information into writing and inform his higher authorities instantaneously or even after a reasonable delay which has to be explained with reasons in writing. On the

contrary, in the present case, the Investigating Officer PW1 had more than sufficient time at his disposal to comply with the provisions of Section 42. Admittedly, he had received the secret information at 11.30 a.m., but he reached the house of the accused at 2 p.m. even when the distance was only 6 kilometers away and he was in a jeep. There is not an iota of evidence, either in the statement of PW1 or in any other documentary form, to show what the Investigating Officer was doing for these two hours and what prevented him from complying with the provisions of Section 42 of NDPS Act."

. It is apparent that the facts of present matter are different. In present matter, it was a chance seizure and even then the necessary procedures were followed of informing the superior on telephone and taking permission and even after completing the seizure, within 24 hours report and special report were sent to the superiors. Thus the Judgment is not helpful to the Appellant-

Accused, looking to the facts of the present matter.

28. I have considered the evidence independently and kept in view the reasonings recorded by the trial Court. I find that the conviction recorded and sentence passed by the trial Court are correct, legal and proper. The prosecution has duly established the offence against the Appellant-Accused and there is no reason to interfere with the Judgment of the trial Court vide which the Accused has been convicted and sentenced.

29. For the reasons stated above, the Criminal Appeal stands dismissed.

[A.I.S. CHEEMA, J.]