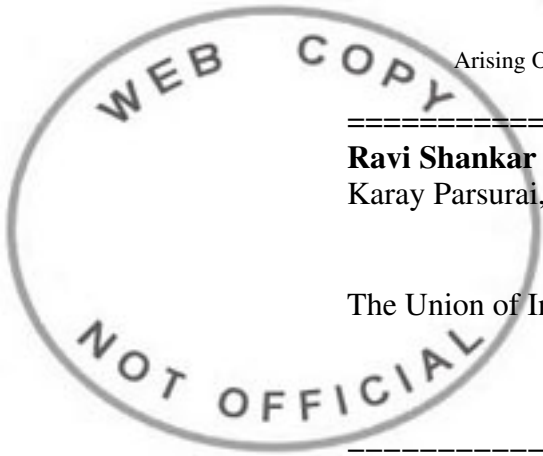




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.915 of 2014

Arising Out of PS.Case No. -718 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District- MUZAFFARPUR

Ravi Shankar Singh, son of Mr. Damodar Singh, resident of village-Chaurasi, P.S. Karay Parsurai, District-Nalanda.

.... Appellant/s

Versus

The Union of India through D.R.I.

.... Respondent/s

with

Criminal Appeal (DB) No. 921 of 2014

Arising Out of PS.Case No. -3 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District- MUZAFFARPUR

Rajesh Kumar, son of Late Shankar Singh, resident of Village- Gugrapur, P.S. Sursaiganj, District- Kannauj (U.P.)

.... Appellant/s

Versus

The Union of India through Director Custom

.... Respondent/s

Appearance :

(In CR. APP (DB) No.915 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur-Advocate
Smt. Kiran Thakur-Advocate
Mr. Md. Imteyaz Ahmad-Advocate
Mr. Nilesh Kumar-Advocate

For the Union of India : Mr. Sanjay Kumar-A.S.G.
Mr. Manoj Kumar Singh-C.G.C.

(In CR. APP (DB) No.921 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur-Advocate
Mr. Nachiketa Jha-Advocate

For the Union of India : Mr. Sanjay Kumar-A.S.G.
Mr. Manoj Kumar Singh-C.G.C.

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

Date: 18-11-2016



Criminal Appeal (DB) No.915 of 2014 wherein Ravi Shankar Singh happens to be the appellant and Criminal Appeal (DB) No.921 of 2014 wherein Rajesh Kumar happens to be the appellant originate against common judgment/ order of conviction and sentence on account thereof, have been heard together and are being decided by a common judgment.

2. Both the aforesaid appeals have been preferred against the judgment of conviction dated 12.09.2014 whereby and whereunder both the appellants namely Ravi Shankar Singh as well as Rajesh Kumar have been found guilty for offences punishable under Sections 20(b)(ii)(c), 23(c) of the N.D.P.S. Act and each one has been directed to undergo rigorous imprisonment for 15 years as well as to pay fine of Rs.2,00,000/- (two lacs) in default thereof, to undergo rigorous imprisonment for 2 years, additionally, respectively with a further direction to run the sentences concurrently vide order dated 16.09.2014 by the 6th Additional Sessions Judge/ Special Judge, Muzaffarpur in D.R.I. Case No.03 of 2011.

3. PW-1, Shivendra Satyarthi having been informed confidentially regarding illegal transportation of narcotic substance by a truck from Nepal, constituted a raiding party and accordingly, proceeded towards destination in the night of 19.05.2011. During course of visit, they found one truck coming out at wee hour which



they intercepted. They made cursory inspection and found smell of contraband however considering that it was night having no source of light, on account thereof, the truck was taken to Muzaffarpur D.R.I. Office where cabin was broken whereupon 463 packets of charas weighing 450 k.g. were seized. After performing the other legal paraphernalia, arrest memo etc. were prepared and on the basis thereof, on 21.05.2011, both the appellants were produced along with forwarding report. Subsequently thereof, the matter was enquired into whereupon prosecution report was filed on 15.11.2011 by the PW-1 Shivendra Satyarthi facilitating trial.

4. During course of trial, it is apparent that altogether six PWs have been examined. Side by side, documents were also exhibited whereupon, the learned lower Court ultimately concluded arraying both the appellants to be guilty for offences as disclosed above and sentenced accordingly.

5. The defence of both the appellants/ accused/ convicts as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. happen to be complete denial as well as false implication. Though, no DW has been examined nor any document has been adduced on their behalf, as is apparent, appellants have completely contradicted the prosecution version to the extent of recovery and further, pleaded that they have been victimized

purposely, intentionally, malafidely.

6. While assailing the judgment of conviction and sentence, it has been pleaded on behalf of appellants that the finding recorded by the learned lower Court happens to be perverse, illegal, contrary to the spirit of law and on account thereof, is fit to be set aside. Furthermore, it has been submitted that N.D.P.S. Act happens to be a Special Act providing severe punishment and on account thereof, there happens to be consistent view that all the requirements, so prescribed thereunder, is to be strictly followed up. In case of failure having on the part of prosecution, the same is bound to give adverse impact irrespective of nature of evidence having produced in order to substantiate its case. From perusal of the case record, it is apparent that there happens to be serious lapses on the part of the prosecution in complying with the mandatory provisions of the law and that being so, the order impugned would not survive.

7. In order to support such plea, it has been submitted that from the evidence of PW-1 as well as PW-2, it is apparent that when the raiding party proceeded from Muzaffarpur, it took Dilip Kumar as well as Ajit Kumar Mishra as a witness of seizure whose presence apart from seizure list, are also found over different documents including panchnama as well as statement of the appellants in terms of Section 67 of the N.D.P.S. Act, but for reason best known



to the prosecution, both of them have not been examined. That means to say, due to non-examination of aforesaid two witnesses, the whole prosecution version is found suffering from inherent lacunae as, genuineness of the prosecution version became shrouded under mist relating to recovery as well as authentication over so alleged voluntarily statement of appellants in terms of Section 67 of the N.D.P.S. Act.

8. It has further been submitted that according to prosecution case, truck in question bearing registration no.BR-24G-6722 was intercepted on a road far away from D.R.I. Office, Muzaffarpur. Thereafter, it was taken to within the premises of D.R.I. Office, which is certainly not a public place and so, the liberty so engrafted under Section 43 of the N.D.P.S. Act cannot be availed by the prosecution. Because of the fact that none of the prosecution witnesses have claimed themselves to be a Gazetted Officer, on account thereof, in terms of Section 42(2) of the N.D.P.S. Act, the matter was to be reported to the superior officer within 72 hours, which has also not been performed nor substantiated at the end of the prosecution. It has also been submitted that seizure was not made at the spot after breaking the cabin rather it was taken to the premises where all paraphernalia were completed at the office located at 1st floor. The aforesaid activity became doubtful in the background of the

fact that witnesses are not at all consistent on that very score and so, the activities having been at the end of the prosecution would have given a cogent and reliable ground to inter adverse too the appellants.

9. It has further been submitted that on account of non-deposit of seized article before the Officer-in-Charge, the mandate of law has been violated. In its continuance, it has also been submitted that even though considering that the seized articles were deposited in the godown of D.R.I., in terms of Section 53 of the N.D.P.S. Act, even then the defect visualizing from the evidence of PW-5 and PW-6 would not justify the same. It has also been submitted that right from initial version, it has been alleged that altogether 463 packets weighing 450 k.g. (in all) were seized, but there happens to be no disclosure with regard to weight of each packet, independently and in likewise manner, there happens to be complete absence of the fact that from each packet, sample was taken out. Contrary to it, the PW-1 had deposed that as per rules sampling has been effected, but such sampling is not at all found in accordance with Circular No.1/88. Apart from this, there has also been non-compliance of Section 53 of the Act in its true spirit and that happens to be reason behind that apart from having a prayer made on behalf of prosecution in terms of Section 52(A) of the N.D.P.S. Act on 22.11.2011 and been allowed vide order dated 12.01.2012 and further, having the relevant

documents brought up on record on behalf of prosecution, the same did not justify the mandate of Section 52(A)(ii) of the N.D.P.S. Act. So, as submitted, in absence of non-compliance of mandatory provisions, appellants are entitled for their acquittal, irrespective of finding as per F.S.L. Report that the samples having been examined at their end speak about charas.

10. Learned counsel representing the Union has submitted that the finding having been recorded by the leaned lower Court is sound, well reasoned based upon factual aspect, so did not attract interference. It has further been submitted that prosecution at the one end had acted in accordance with law while at the other end placed cogent, reliable, trustworthy evidence in order to substantiate the factum of recovery of narcotics charas in such huge quantity from the possession of the appellants. Also placed relevant documents by which compliance of each and every mandatory provisions is found established. So, as there happens to be hardly any kind of flaw in the judgment impugned on account thereof, the judgment is fit to be confirmed.

11. It has further been submitted that Court should not insist and should draw an inference that non-examination of particular witness which happens to be within exclusive domain of the prosecution whom to examine whom to give up, will adversely affect



upon prospect of case rather the Court is expected to see whether from the evidences having been adduced in Court and available on the record duly substantiates the case of prosecution and if so, conviction is bound to be affirmed. So far present case is concerned, admittedly seizure list witnesses have not been examined, but due to their non-examination, the seizure of contraband from the cabin of the truck is not at all found shaken. In likewise manner, it has also been submitted that from the evidences of the witnesses, it is evident that there happens to be proper compliance of mandate of law, more particularly in terms of Section 52(A) of the N.D.P.S. Act and further, the destruction report is available on the record, which was in a pen a of Judicial Officer, who was appointed vide order dated `12.01.2012 by the learned Special Judge/ Sessions Judge and which status in terms thereof, is primary evidence. Furthermore, it has also been submitted that the samples were not only prepared in accordance of law but tested positive identifying the same as charas by F.S.L. Kolkata as well as Delhi and the same happens to be an exhibit of the record. That being so, the judgment impugned is fit to be confirmed.

12. In order to substantiate its case, prosecution had examined altogether six PWs, out of whom, PW-1 Shivendra Satyarthi, PW-2 Anil Kumar, PW-3 Babu Lal Paswan, PW-4 Prem Shankar Sukla, PW-5 Manoranjan Mandal and PW-6 Amarnath Ram.



Side by side had also exhibited the documents as Exhibit-1, seizure list, Exhibit-2, panchnama written by PW-1 in five sheets, Exhibit-3 statement of accused Ravi Shankar Singh under Section 67 of N.D.P.S. Act in seven sheets, Exhibit-4, statement of accused Rajesh Kumar under Section 67 Cr.P.C. in five sheets, Exhibit-5 to 5/11, the report of Chemical Examiner report in twelve sheets received from Chemical Examiner Grade-II, Kolkata, Exhibit-6 to 6/11, Chemical Examiner Report in twelve sheets received from CRCL, Delhi, Exhibit-7 to 7/1, arrest memo of the accused, Exhibit-8 to 8/1, report of D.T.O. Sasaram and of Tata Motors, Exhibit-9, complaint petition, Exhibit-10, entry made in godown register, Material Exhibit-I, seized material sample in sealed packet, Material Exhibit-II to II/XI, sample of seized articles in twelve sealed envelopes marking as 1/2 to 12/2, Material Exhibit-III to III/XI, remnant received from Kolkata in twelve sealed envelop bearing no. CLD 156 N at 4.7.11 to CLD 167N dt. 4.7.11, Material Exhibit-IV to IV/ XI, remnant received from Delhi bearing Lab Regd. No.669/ 52D (N)-109 dt. 31.5.11 to Lab Regd. No.680 SZD-N-120 dt. 31.5.11.

13. Before delving over the materials available on the record having been brought up during course of trial, certain mandatory provisions incorporated under N.D.P.S. are to be taken into consideration which the prosecution is bound to comply. Side by side



also appears to be hazardous to the interest of the accused. The first and foremost which happens to be virtually death knell to the accused is Section 35 of the N.D.P.S. Act whereunder there happens to be presumption regarding culpable mental state of accused subject to rebuttal. However, its application comes only whenever the prosecution succeeds in proving that accused was in possession of contraband goods. Once, in the opinion of the Court, prosecution is found successful in substantiating its case, then in that event, Section 35 of the N.D.P.S. Act will come into play whereunder it could be construed that the accused were in conscious possession of narcotic substance in contravention of law. In case, there happens to be deficiencies at the end of the prosecution, then in that event, the conviction could not allow to subsist under the garb of Section 35 of the N.D.P.S. Act. More or less, the same proposition is found with regard to sanctity of a statement having been in terms of Section 67 of the Act so far, it relates with the accused.

14. In *Noor Aga vs. State of Punjab reported in A.I.R. 2009 SC 852 (Supplementary)* whereunder it has been held:-

“The Court must always remind itself of the well settled principle of Criminal Jurisprudence that more serious the offence, the stricter is the degree of proof.”

15. Under Chapter-V which begins with Section 41 of the



N.D.P.S. Act, procedure has been prescribed. Under Section 41 of the Act, the Magistrate has been authorized to issue warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under the Act, for the search, irrespective of time, of any building conveyance, place. In terms of Section 41(2) of the Act, some sort of relaxation is found with regard to status of the officers being that of gazetted one. So far present controversy is concerned, that relates with applicability of Section 42 as well as Section 43 of the N.D.P.S. Act and for that, both the Sections are quoted below:-

[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 persons 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 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.]

[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.]

16. PW-1, being the complainant, Investigating Officer, leader of the raiding party along with other PWs, proceeded to intercept the vehicle on getting confidential information had stated that on preliminary inspection they perceived presence of secret place as well as smell of narcotic substance. Because it was night, therefore, truck was taken to D.R.I. Office, Muzaffarpur where cabin was broken and then, recovery was made. None of the prosecution witnesses have stated that the place that means to say, the Office of the D.R.I. was under use of or accessible to the public. That being so, the office of the D.R.I. would not be construed as a public place in terms of Section 43 of the N.D.P.S. Act whereupon the search and seizure as suggested by the prosecution is found in accordance with Section 42 of the N.D.P.S. Act and that being so, the PW-1 was under obligation to comply the requirements so prescribed under Sub-section-2 of Section 42 of the N.D.P.S. Act, which requires the matter to be reported to Superior Officer within 72 hours, if the same is not conducted by a Gazetted Officer. The Constitution Bench of the Apex Court in Karnail Singh vs. State of Haryana reported in (2009)8 SCC 539 held that total non-compliance requirements of Sub-section 1 and 2 of Section 42 of the Act is impermissible, however, delayed



compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42 of the Act. From the evidence, it is evident that none of the prosecution witnesses, more particularly PW-1 and PW-2, who played a vital role, spoke regarding compliance of the Section 42(2) of the N.D.P.S. Act. Apart from this, Section 57 of the N.D.P.S. Act also attracts compliance of the end of concerned authority to inform Superior Officer regarding the occurrence along with apprehension of accused.

17. In *State of Haryana vs. Jarnail Singh reported in A.I.R. 2004 SC 2491*, it has been observed that whenever raid and search is conducted by a Gazetted Officer, then in that event, strict compliance of Section 42(2) of the N.D.P.S. Act is not at all attracted. As stated above, none of the PWs had stated that PW-1 or PW-2 were Gazetted Officer in order to sterile the effect of Section 42(2) of the N.D.P.S. Act.

18. In *State of Rajasthan vs. Jag Raj Singh @ Hansa reported in 2016(3) P.L.J.R. 285 (SC)*, it has been held:-

“9. The NDPS Act was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. This Court had occasion to consider the provisions of NDPS



*Act in large number of cases. This Court has noted that the object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. This Court in **State Of Punjab vs Balbir Singh, 1994 (3) SCC 299**, in paragraph 15 has made the following observations:*

“15. The object of NDPS Act is to make stringent provisions for control and regulation of operations relating to those drugs and substances. At the same time, to avoid harm to the innocent persons and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. Therefore these provisions make it obligatory that such of those officers mentioned therein, on receiving an information, should reduce the same to writing and also record reasons for the belief while carrying out arrest or search as provided under the proviso to Section 42(1). To that extent they are mandatory.

Consequently the failure to comply with these requirements thus affects the prosecution case and therefore vitiates the trial.”

*10. To the similar effect are the observations of this Court in **Saiyad Mohd. Saiyad Umar Saiyed & others vs. The State Of Gujarat, (1995) 3 SCC 610**. Following was stated in paragraph 6 of the said judgment:*

“6. It is to be noted that under the NDPS Act punishment for contravention of its provisions can extend to rigorous imprisonment for a term which shall not be less than 10 years but which May extend to 20 years and also to fine which shall not be less than Rupees one lakh but which may extend to Rupees two lakhs, and the court is empowered to impose a fine exceeding Rupees two lakhs for reasons to be recorded in its judgment. Section 54 of the NDPS Act shifts the onus of proving his innocence upon the accused; it states that in trials under the NDPS Act it may be presumed, unless and until the contrary is Proved, that an accused has committed an offence under it in respect of the articles covered by it "for the possession of which he fails to account satisfactorily". Having regard to the grave consequences that may entail the



possession of illicit articles under the NDPS Act, namely, the shifting of the onus to the accused and the severe punishment to which he becomes liable, the legislature has enacted the safeguard contained in Section 50. To obviate any doubt as to the possession by the accused of illicit articles under the NDPS Act, the accused is authorised to require the search for such possession to be conducted in the presence of a Gazetted Officer or a Magistrate.”

11. In the present case, Section 42 is relevant which is extracted as below:

“ 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 persons 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 V A 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 V A 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 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 subsection (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.”

12. The High Court has come to the conclusion that there is breach of mandatory provisions of Section 42(1) and Section 42(2) and further Section 43 which was relied by the Special Judge for holding that there was no necessity to comply



Section 42 is not applicable. We thus proceed to first examine the question as to whether there is breach of provisions of Section 42(1) and Section 42(2). The breach of Section 42 has been found in two parts. The first part is that there is difference between the secret information recorded in Exh. P-14 and Exh. P-21 and the information sent to Circle Officer, Nohar by Exh. P-15. It is useful to refer to the findings of the High Court in the above context, which is quoted below:

“From the above examination, it is not found that Exh. P-14 the information which is stated to be received from the informer under Section 42(2) of Act or Exh. P-21, the information given by the informer which is stated to be recorded in the Rozanamacha, copy whereof has been sent to C.O. Nohar, who was the then Senior Officer, Rather, Exh. P-15, the letter which was sent, it is not the copy of Exh. P-14, but it is the separate memo prepared of their own. From the above examination, it is not found in the present case that section 42 (2) of Act, 1985 is complied with.”

13. What Section 42(2) requires is that where an officer takes down information in writing under



sub-Section (1) he shall sent a copy thereof to his immediate officer senior. The communication Exh. P-15 which was sent to Circle Officer, Nohar was not as per the information recorded in Exh. P 14 and Exh. P 24. Thus, no error was committed by the High Court in coming to the conclusion that there was breach of Section 42(2).

14. Another aspect of non-compliance of Section 42(1) proviso, which has been found by the High Court needs to be adverted. Section 42 (1) indicates that any authorised officer can carry out search between sun rise and sun set without warrant or authorisation. The scheme indicates that in event the search has to be made between sun set and sun rise, the warrant would be necessary unless officer has reasons to believe that a search warrant or authorisation cannot be obtained without affording the opportunity for escape of offender which grounds of his belief has to be recorded. In the present case, there is no case that any ground for belief as contemplated by proviso to sub-section (1) of Section 42 or Sub-section (2) of Section 42 was ever recorded by Station House Officer who proceeded to carry on search. Station House



Officer has appeared as PD-11 and in his statement also he has not come with any case that as required by the proviso to Sub-section (1), he recorded his grounds of belief anywhere. The High Court after considering the entire evidence has made following observations :

“Shishupal Singh PD-11 by whom search has been conducted, on reaching at the place of occurrence by him no reasons to believe have been recorded before conducting the search of jeep bearing HR 24 4057 under Section 42(1), nor any reasons in regard to not obtaining the search warrant have been recorded. He has also not stated any such facts in his statements that he has conducted any proceedings in regard to compliance of proviso of Section 42(1). Since reasons to believe have not been recorded, therefore, under Section 42(2) it is not found on record that copy thereof has been sent to the senior officials. Shishupal Singh could be the best witness in this regard, who has not stated any fact in his statement regarding compliance of proviso to Section 42(1) and Section 42(2), sending of copy of reasons to believe recorded by him to his senior officials.”

15. In this context, it is relevant to note that



before the Special Judge also the breach of Section 42(1) and 42(2) was contended on behalf of the defence. In paragraph 12 of the judgment Special Judge noted the above arguments of defence. However, the arguments based on non-compliance of Section 42 (2) were brushed aside by observing that discrepancy in Exh. P-14 and Exh. P-15 is totally due to clerical mistake and there was compliance of Section 42(2). Special Judge coming to compliance of proviso to Section 42(1) held that vehicle searched was being used to transport passengers as has been clearly stated by its owner Veera Ram, hence, as per the explanation to Section 43 of the Act, the vehicle was a public transport vehicle and there was no need of any warrant or authority to search such a vehicle. The High Court has reversed the above findings of the Special Judge. We thus, proceed to examine as to whether Section 43 was attracted in the present case which obviated the requirement of Section 42(1) proviso. Section 43 of the Act is as follows:

“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 V A 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"

19. In *Mohan Lal vs. State of Rajasthan* reported in

2015 CRI.L.J. 2811, it has been held:-

“23. It is submitted by Ms. Aishwarya Bhati, learned counsel for the appellant that there has been non-compliance of [Section 42](#) of the NDPS Act and hence, the conviction is vitiated. It is urged by her that the Investigating Officer has not reduced the information to writing and has also not led any evidence of having made a full report to his immediate official superior. The High Court has taken note of the fact that information given to Bheem Singh, PW-12, and recovery was made by him who was the Sub-Inspector and SHO at the police station. That apart, in this context, we may refer with profit to the Constitution Bench decision in [Karnail Singh v. State of Haryana](#)(2009) 8 SCC 539, wherein the issue emerged for consideration is whether [Section 42](#) of the NDPS Act is mandatory and failure to take down the information in writing and forthwith sending a report to his immediate officer superior would cause prejudice to the accused. The Court was required to reconcile the decisions in [Abdul Rashid Ibrahim Mansuri v. State of Gujarat](#)(2000)2 SCC 513 and [Sajan Abraham v. State of Kerala](#)(2001) 6 SCC 692.



The Constitution Bench explaining the position opined that Abdul Rashid (supra) did not require about literal compliance with the requirements of [Section 42\(1\)](#) and [42\(2\)](#) nor did Sajan Abraham (supra) hold that requirement of [Section 42\(1\)](#) and [42\(2\)](#) need not be fulfilled at all. The larger Bench summarized the effect of two decisions. The summation is reproduced below:-

"(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 register concerned 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 with requirements of sub-sections (1) and (2) of [Section 42](#) is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with [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 of 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."

24. *In Rajinder Singh v. State of Haryana*(2011) 8 SCC 130, placing reliance on the Constitution Bench, it has been opined that total non-compliance with the provisions of sub-sections (1) and (2) of [Section 42](#) of the Act is impermissible but delayed compliance with satisfactory explanation for the delay can,

however, be countenanced.

25. In the present case, the High Court has noted that the information was given to the competent authority. That apart, the High Court has further opined that in the case at hand [Section 43](#) applies. [Section 43](#) of the NDPS Act contemplates seizure made in the public place. There is a distinction between [Section 42](#) and [Section 43](#) of the NDPS Act. If a search is made in a public place, the officer taking the search is not required to comply with sub Sections (1) and (2) of [Section 42](#) of the NDPS Act. As has been stated earlier, the seizure has taken place beneath a bridge of public road accessible to public. The officer, Sub-Inspector is an empowered officer under [Section 42](#) of the Act. As the place is a public place and [Section 43](#) comes into play, the question of non-compliance of [Section 42\(2\)](#) does not arise. The aforesaid view gets support from the decisions in [Directorate of Revenue and Anr. v. Mohammed Nisar Holia](#)(2008) 2 SCC 370 and [State, NCT of Delhi v. Malvinder Singh](#)(2007) 11 SCC 314.

26. Learned counsel for the appellant has also contended that there has been non-compliance of



Section 57 of the NDPS Act, which reads as follows:- "Report of arrest and seizure - Whenever any person makes any arrest or seizure under this Act, he shall, within fortyeight 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."

27. A three-Judge Bench in *Sajan Abraham* (supra), placing reliance on *State of Punjab v. Balbir Singh*(1994)3 SCC 299, has held that *Section 57* is not mandatory in nature and when substantial compliance is made, it would not vitiate the prosecution case. In *Karnail Singh* (supra), the Constitution Bench, while explaining the ratio laid down in *Sajan Abraham* (supra), analysed the requirement of *Section 42(1)* and *42(2)* and opined that the said pronouncement never meant that those provisions need not be fulfilled at all. However, the Constitution Bench has not delved into the facet of *Section 57* of the NDPS Act.

28. In *Kishan Chand v. State of Haryana*(2013) 2 SCC 502, the Court while dealing with the compliance of *Sections 42, 50* and *57*, has opined thus:- "21. When there is total and definite non-



compliance with such statutory provisions, the question of prejudice loses its significance. It will per se amount to prejudice. These are indefeasible, protective rights vested in a suspect and are incapable of being shadowed on the strength of substantial compliance.

22. The purpose of these provisions is to provide due protection to a suspect against false implication and ensure that these provisions are strictly complied with to further the legislative mandate of fair investigation and trial. It will be opposed to the very essence of criminal jurisprudence, if upon apparent and admitted non-compliance with these provisions in their entirety, the court has to examine the element of prejudice. The element of prejudice is of some significance where provisions are directory or are of the nature admitting substantial compliance. Where the duty is absolute, the element of prejudice would be of least relevance. Absolute duty coupled with strict compliance would rule out the element of prejudice where there is total non-compliance with the provision."

After so stating, the Court proceeded to address the separate rights and protection under the said

provisions and in that context ruled:- "Reliance placed by the learned counsel appearing for the State on Sajan Abraham is entirely misplaced, firstly in view of the Constitution Bench judgment of this Court in Karnail Singh. Secondly, in that case the Court was also dealing with the application of the provisions of Section 57 of the Act which are worded differently and have different requirements, as opposed to Sections 42 and 50 of the Act. It is not a case where any reason has come in evidence as to why the secret information was not reduced to [pic]writing and sent to the higher officer, which is the requirement to be adhered to "pre-search". The question of sending it immediately thereafter does not arise in the present case, as it is an admitted position that there is total non-compliance with Section 42 of the Act. The sending of report as required under Section 57 of the Act on 20-7-2000 will be no compliance, factually and/or in the eye of the law to the provisions of Section 42 of the Act. These are separate rights and protections available to an accused and their compliance has to be done in accordance with the provisions of Sections 42, 50 and 57 of the Act. They are neither interlinked

nor interdependent so as to dispense compliance of one with the compliance of another. In fact, they operate in different fields and at different stages. That distinction has to be kept in mind by the courts while deciding such cases."

29. *In the instant case, on perusal of the evidence, it is clear that there has been substantial compliance of [Section 57](#) of the NDPS Act and, therefore, the question of prejudice does not arise."*

20. In ***Baldev Singh vs. State of Haryana*** reported in ***2016 CRI.L.J. 154***, it has been held:-

"12. Testimony of Ram Singh-PW-1 and evidence on record amply establishes physical possession of the contraband by the appellant. The appellant being the driver of the vehicle by all probabilities must have been aware of the contents of the bags transported in the trolley attached to the tractor. Once the physical possession of the contraband by the accused has been proved, [Section 35](#) of the NDPS Act comes into play and the burden shifts on the appellant-accused to prove that he was not in conscious possession of the contraband. [Section 35](#) of the NDPS Act reads as under:-



35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation to sub-section (1) of [Section 35](#) expanding the meaning of ‘culpable mental state’ provides that ‘culpable mental state’ includes intention, knowledge of a fact and believing or reason to believe a fact. Sub-section (2) of [Section 35](#) provides that for the purpose of [Section 35](#), a fact is said to be proved only when the Court believes it to exist beyond a reasonable



doubt and not merely when its existence is established by a preponderance of the probability. Once the possession of the contraband by the accused has been established, it is for the accused to discharge the onus of proof that he was not in conscious possession. Burden of proof cast on the accused under [Section 35](#) of the NDPS Act can be discharged through different modes. One of such modes is that the accused can rely on the materials available in the prosecution case raising doubts about the prosecution case. The accused may also adduce other evidence when he is called upon to enter on his defence. If the circumstances appearing in the prosecution case give reasonable assurance to the Court that the accused could not have had the knowledge of the required intention, the burden cast on him under [Section 35](#) of the NDPS Act would stand discharged even if the accused had not adduced any other evidence of his own when he is called upon to enter on his defence.

13. In [Abdul Rashid Ibrahim Mansuri vs. State of Gujarat](#), AIR 2000 SC 821, this Court has clearly held that where an accused admits that narcotic



drugs were recovered from bags that were found in his possession at the time of his apprehension, in terms of [Section 35](#) of NDPS Act the burden of proof is then upon him to prove that he had no knowledge that the bags contained such a substance. This Court then went further on to explain as to the standard of proof that such an accused is expected to discharge and the modes vide which he can discharge the said burden. In paras (21) and (22) of the said judgment, this Court held as under:-

“21. No doubt, when the appellant admitted that the narcotic drug was recovered from the gunny bags stacked in the autorickshaw, the burden of proof is on him to prove that he had no knowledge about the fact that those gunny bags contained such a substance. The standard of such proof is delineated in sub-section (2) as “beyond a reasonable doubt”. If the court, on an appraisal of the entire evidence does not entertain doubt of a reasonable degree that he had real knowledge of the nature of the substance concealed in the gunny bags then the appellant is not entitled to acquittal. However, if the court entertains strong doubt regarding the accused’s



awareness about the nature of the substance in the gunny bags, it would be a miscarriage of criminal justice to convict him of the offence keeping such strong doubt undisputed. Even so, it is for the accused to dispel any doubt in that regard.

22. The burden of proof cast on the accused under [Section 35](#) can be discharged through different modes. One is that he can rely on the materials available in the prosecution evidence. Next is, in addition to that, he can elicit answers from prosecution witnesses through cross-examination to dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence. In other words, if circumstances appearing in the prosecution case or in the prosecution evidence are such as to give reasonable assurance to the court that the appellant could not have had the knowledge or the required intention, the burden cast on him under [Section 35](#) of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence.”

21. Now, coming to mode of sampling. According to

Standing Order No.1/88 issued by Narcotic Control Bureau, Government of India, the following procedure has been prescribed:-

1.6 Quantity of different drugs required in the sample

The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/ Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/ containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

1.7 deals with mode of sampling

(a).....

(b) However, when the package/ container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/ the packages/ container may be carefully bunched in lots of 10 packages/ containers may be bunched in lots of 40 such packages such packages/ containers. For each such lot of packages/ containers, one sample in duplicate may be drawn.

(c)

(d).....

(e) While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/ container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

22. In terms of **Standing Order No.1/89 dated 13.6.89**, it has more been clarified and for better appreciation, the relevant paragraphs are quoted below:-

Drawal of samples

2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples form the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama.

Quantity to be drawn for the sampling

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in cases of opium, ganja and charas (hasish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate

sample also. The seized drugs in the packages/ containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

(b) Bunch of Packages/ Containers

2.5 However, when the packages/ containers seized together are of identical size and weight, bearing identical markings and the content of each package given identical results on color test by the drug identification kit, conclusively indicating that the packages are identical in all respects the packages/ containers may be carefully bunched in lots of 10 packages/ containers/ except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/ containers. For each such lot of packages/ containers, one sample (in duplicate) may be drawn.

Drawl of representative samples:

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample are in equal quantity is taken from each package/ container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

23. In *Union of India vs. Mohanlal and another reported in 2016(2) P.L.J.R. 132 (SC)*, it has been held:-

“11. [Section 52-A\(1\)](#) of the NDPS Act, 1985



empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government have in exercise of that power issued Standing Order No. 1/89 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10.05.2007 and the other dated 16.01.2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures. Para 2.2 of the Standing Order 1/89 states that samples must be taken from the seized contrabands on the spot at the time of recovery itself. It reads:

“2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search



witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.” Most of the States, however, claim that no samples are drawn at the time of seizure. Directorate of Revenue Intelligence is by far the only agency which claims that samples are drawn at the time of seizure, while Narcotics Control Bureau asserts that it does not do so. There is thus no uniform practice or procedure being followed by the States or the Central agencies in the matter of drawing of samples. This is, therefore, an area that needs to be suitably addressed in the light of the statutory provisions which ought to be strictly observed given the seriousness of the offences under the Act and the punishment prescribed by law in case the same are proved. We propose to deal with the issue no matter briefly in an attempt to remove the confusion that prevails regarding the true position as regards drawing of samples.

12. *Section 52A* as amended by Act 16 of 2014, deals with disposal of seized drugs and psychotropic substances. It reads:

“Section 52A : Disposal of seized narcotic drugs and psychotropic substances.

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances 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 any narcotic drug or psychotropic substance 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 such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances 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 the narcotic drugs or psychotropic substances 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 of such drugs or substances 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) When 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 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [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.]”

13. It is manifest from [Section 52A](#) (2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under [Section 53](#) who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of



the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. The question of drawing of samples at the time of seizure which, more often than not, takes place in



the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to [Section 52-A\(4\)](#) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of [Section 52-A](#) above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do

well, to re-examine the matter and take suitable steps in the above direction.

24. Now, coming to the evidence on this very score, from the evidence of PW-1, it is evident that he had stated that 463 packets of Charas was found wrapped with cello tap. Some blocks Charas was kept in plastic bag. In Para-7, he had stated that 36 samples were taken out, which were prepared in 12 lots each containing three. He had further stated that the blocks of Charas were of same dimension. He had further stated that as per direction of the Narcotic Control Bureau, if the seized narcotic happens to be more than 40 blocks, then in that event, one set is to be prepared of 40 blocks and three samples have to be taken therefor. During cross-examination at Para-15, he had stated that there were 463 packets. He had not prepared list of each packets in consonance with its weight. IN Para-16, he had stated that he had prepared sample from each block consisting of 40 packets weighing 25 grams. As stated above, as per Standing Order No.1/88, Para-1.7(b) speaks that when the package and container to be sized and weighed, bearing identical one, then in that event, the packages is to be bunched in lot of 10 packages otherwise bunch in lots of 40 such packages. As per Circular No.1/89, 2.5, it should be bunched in the lot of such 40 packages/ container in case are of identical size and weight, bearing identical markings and the contents of each package



gives identical results on colour test by the drug identification key. So, there should have been positive evidence on that very score, which as indicated above, from the evidence of PW-1 is not at all found duly substantiated. The evidence of other PWs are worthless in the background of the fact that PW-2 in Para-2 had simply stated that 463 packets was taken out. It was weighed and happens to be 4 quintals 50 k.g. In Para-4, he had stated that all the activities were taken up by Shivendra Satyarthi, the PW-1. The evidence of PW-3 and PW-4 are not at all distinguishable on that very score, save and except substantiating factum of recovery. PW-5 and 6 are not material one on that very score, because of the fact that these witnesses relates with destruction report.

25. True it is that from F.S.L. Report (Exhibit-5 and 6 series) indicate that the samples which were transmitted to the respective laboratories shown positive results whereupon the same were deemed to be Charas. From Exhibit-8 series, it is evident that the truck in question was carrying fake registration number, but the fact remains that on account of lapses having on the part of the prosecuting agency, the mandatory provisions of the Act has not been complied with. We are expressing our anguish over conduction of investigation by the officials, who are especially entrusted with the aforesaid activity on account of lapses having at their end in non-

compliance of mandatory provision which ultimately cost the prosecution irrespective of such huge recovery of narcotics.

26. That being so, the appellants are found entitled for acquittal. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Both the appellants are under custody. Hence, are directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

I agree.
(Samarendra Pratap Singh, J)

(Samarendra Pratap Singh, J)

Vikash/-

AFR/NAFR	A.F.R.
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