

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 295 of 2020

With

CRAN 1 of 2021

Joy Prakash Singh

Vs.

The State of West Bengal

For the Appellant	: Mr. Gaganjyot Singh, Adv. Mr. Rishav Singh, Adv.
For the State	: Mr. Saibal Bapuli, Ld. APP : Mr. Bibaswan Bhattacharya, Adv.
Heard on	: September 09, 2022
Judgement on	: September 15, 2022

DEBANGSU BASAK, J.:-

1. The appellant has assailed the judgement of conviction dated January 20, 2020 and the order of sentence dated February 7, 2020 passed by the learned Judge, Bench I, City Sessions Court, Calcutta in NDPS Case No. 26 of 2015.
2. The case of the prosecution is that, on September 24, 2015, the police had received a credible source information that one narcotic drug seller/supplier from Bihar would come

to sell/supply narcotic drugs in the North Port Police Station area in the morning of September 25, 2015. Accordingly the police had formed a raiding team, and took permission of the appropriate authority on September 24, 2015 to conduct the raid. On September 25, 2015 at about 7:30 AM the police team had left for the spot with the source, weighing scale, narcotic drug detection-kit and packing materials and other accessories. At about 8 A.M in the morning, the team had reached the northern side footpath of Howrah Bridge. The source had led the team to the spot where they started to maintain watch. At about 8:40 A.M, the source had pointed out one male person coming along the northern side of the footpath of Howrah Bridge from west to east direction carrying a red and blue coloured bag on his right shoulder and one black coloured rucksack bag on his back. The raiding team had intercepted such person. The raiding team had disclosed their identities and informed the person about the purpose of detention. A crowd had gathered at the spot. The police had requested members of the crowd to stand as independent witnesses for the search/seizure under the Narcotics Drugs and Psychotic Substances Act, 1985. The police team had

found nine pieces of rectangular/circular shaped block of flowering and fruiting tops of cannabis plant commonly known as Ganja having characteristic smell wrapped with brown coloured adhesive tapes weighing about 9.500 kg in all. The police team had also found one block weighing about 12.800 kg wrapped with blue coloured polythene and cello tapes from one red/blue coloured travel bag, which the accused was carrying on his right shoulder. The police had taken small quantity of the contraband from each block and found all to be positive for the presence of Ganja. The police had weighed the contraband seized with the help of the weighing machine. A seizure list had been prepared on September 25, 2015. The seized articles had been packed, labelled and sealed on the spot in presence of the witnesses and the accused. They had been marked as A, B, and C. A sample of total hundred grams of Ganja from the mother Exhibit had been packed, labelled and sealed in another envelope and marked as D. The accused person could not render any explanation for possession of the Ganja.

3. On completion of the investigations, the police had submitted a charge sheet. The appellant had been charged for

committing an offence punishable under section 20 (b) (ii) (c) of the Act of 1985 on April 18, 2016. The appellant had pleaded not guilty and claimed to be tried.

4. The prosecution had examined seven witnesses. The prosecution had tendered various documents which were marked as Exhibits. The prosecution had also relied upon Material Exhibits at the trial. In the statement of the appellant, recorded under section 313 of the Criminal Procedure Code, the appellant had claimed to be innocent, and falsely implicated. He had claimed that, the police arrested him falsely at Sealdah station when he got down from Balia Sealdah Train at 4 A.M. The appellant had however not adduced any evidence at the trial.

5. Learned advocate for the appellant has contended that, the prosecution was unable to prove the charge against the appellant beyond reasonable doubt at the trial. He has referred to the manner in which the sampling was done. He has contended that, the sample prepared and sent for chemical examination was not a representative's sample, thereby vitiating the prosecution case.

6. Learned advocate appearing for the appellant has submitted that, Exhibit 6 demonstrates that, the sample was formed by taking small amount of Ganja from nine packets found inside the black bag and the big block found inside the red and blue bag. He has referred to the Certificate of Test being Exhibit 2 which indicates that only 5 grams out of the sample was used for the actual testing of the contraband. He has contended that, the same did not form a representative sample in accordance of the procedure set out in Standing Order 1/88 dated March 15, 1988 of the Narcotics Control Bureau. He has also referred to the Standing Order No. 1/89 dated June 13, 1989. According to him, since there was ten bags, ten samples ought to have been sent for test.

7. In support of the contention that, the sample was incorrect, learned advocate appearing for the appellant has relied upon **1999 Volume 3 Supreme Court Cases 145 (Gaunter Edwin Kircher vs. State of Goa), 2020 (268) DLT 44 (Amani Fidel Chris vs. Narcotics Control Bureau), 2012 (130) DRJ 471 (Basant Rai vs. State) and 2015 SCC Online Delhi 9860 (Edward Khimani Kamau vs. Narcotics Control Bureau).**

8. Learned advocate appearing for the appellant has submitted that, the prosecution did not produce the Malkhana Register and thereby created a doubt in the chain of the custody of the sample. He has relied upon **2005 Volume 3 Supreme Court Cases 59 (State of Rajasthan vs. Gurmail Singh)** in support of such contention.

9. Learned advocate appearing for the appellant has submitted that, there are crucial discrepancies in the evidence of the witnesses regarding the manner of sampling. He has referred to the deposition of some of the prosecution witnesses in this regard. He has contended that, there are discrepancies with regard to the time of occurrence also. He has highlighted the testimony of the seizing officer being PW-2. According to him, there are contradiction in the testimony of PW-2

10. Learned advocate appearing for the state has submitted that, the sampling was done in accordance with law. In support of such contention, he has relied upon **2013 Volume 1 Supreme Court Cases 395 (Sumit Tomar vs. State of Punjab)**. He has referred to the evidence led at the trial and contended that, the movement of the sample from the Malkhana to the Chemical Examiner had been proved by

the relevant entries made in the general diary. He has contended that, the prosecution was able to prove the charge against the appellant beyond all reasonable doubt.

11. In reply, learned advocate appearing for the appellant has contended that, **Sumit Tomar (supra)** did not consider **2008 Volume 16 Supreme Court Cases 417 (Noor Aga versus State of Punjab and another)** as well as **Gaunter Edwin Kircher (supra)**. He has relied upon **2009 Volume 12 Supreme Court Cases 161 (Union of India vs. Bal Mukund and Others)** and has submitted that the prosecution had acted in violation of law while drawing the samples. He has contended that, the prosecution did not Exhibit any Malkhana entries. According to him, the nonproduction of the Malkhana register has vitiated the case of the prosecution. He has contended that, the appellant should be acquitted.

12. At the trial, as noted above, the prosecution had examined seven witnesses. The prosecution had examined the Director, State Drugs Control and Research Laboratory, Kolkata as PW-1. In his testimony, PW-1 had stated that, on September 20, 2015, his laboratory received one brown colour envelope marked as A in intact and sealed condition from

North Port Police Station in connection with the subject case forwarded by the Deputy Commissioner, Detective Department, (Special), Lalbazar. The seal on the envelope had been found to be intact and tallied with the specimen seal on the forwarding memo. On being tested, the materials physically and chemically, with the help of chemist, in his presence, and under his supervision, was found to be positive for the presence of cannabinoids which is commonly known as Ganja. He had tendered his report which was marked as Exhibit 1. He had tendered the forwarding letter which was marked as Exhibit 2. He had tendered the remnant of the sample which was packed and sealed with the seal impression of his laboratory as Material Exhibit No. I. He had identified the envelope which was received by his laboratory and tendered the same as Material Exhibit No. II. He had also identified and tendered the greenish herbal material which was examined in his laboratory as Material Exhibit No. III.

13. A sub- inspector of police Narcotics Cell, Detective Department, Lalbazar had been examined as PW- 2. He had stated that, at about 7:30 PM he received source information that a male person from Bihar would come with Ganja on

September 25, 2015 around 7:30 A.M and proceed along the northern side footpath of Howrah Bridge. He had sought written permission from the officer in charge of Narcotics Cell, Detective Department as well as the Asst. Commissioner, Narcotics Cell. He had tendered the permission letter as Exhibit No. 3. He had stated that the raiding team had been on Howrah Bridge and maintained watch. The source had pointed out to one man who was proceeding on Howrah Bridge from west to east carrying one red and blue colour back on his right shoulder and another black colour back on his back. The raiding team had intercepted such person. The raiding team had disclosed their identity to the intercepted person as also disclosed their intention to search him. He tendered the computer-generated first option as Exhibit No. 4. A gazetted officer had reached the place of occurrence whereupon a second computer-generated option was submitted which was tendered as Exhibit No. 5. He had stated that, the appellant was searched in presence of the two independent witnesses and the gazetted officer. One black colour bag was recovered from the back of the appellant which had Ganja weighing 9.500 kg. Another bag having combined

colour of red and blue was recovered from the right shoulder of the appellant which had Ganja weighing 12.800 kg. He had tested the materials by collecting small quantity from the bags by test kit and it responded positive to the test of Ganja. He had prepared a seizure list which was marked as Exhibit No. six.

14. PW-2 in his deposition had stated that, he had collected sample weighing 100 grams from the bags. Thereafter he had packed, sealed and labelled the alamat, cash and samples and marked the same as A, B, C and D. In Court, he had identified the bag containing Ganja weighing 9.500 kg which was marked as Material Exhibit No. IV. He had identified the nine packets wrapped with brown coloured adhesive containing Ganja found in the bag recovered from the possession of the appellant which was marked as Material Exhibit V to XIII. He had identified the red and blue colour bag containing Ganja weighing 12.800 kg which was marked as Material Exhibit No. XIV. The blue colour polythene packet which was recovered from the possession of the appellant had been marked as Material Exhibit No. XV. He had identified the left thumb impression of one of the witnesses. He had

tendered the arrest memo, inspection memo inventory list and the written complaint as Exhibits 7 to 10 at the trial. He had tendered the report of the arrest dated September 25, 2015 as Exhibit 11.

15. The additional officer in charge of North Port Police Station who was the gazetted officer during the raid had deposed as PW-3. He had identified his signature on the various Exhibits. He had tendered the general diary entry No. 1619 dated September 25, 2015 which he made at the time of leaving of the police station as Exhibit No. 12. He had also tendered the GD entry No. 1634 dated September 25, 2015 which he made after return to the police station as Exhibit 13. He had identified the accused person in Court.

16. The sub- inspector of police who drew the formal First Information Report had deposed as PW-4 at the trial. He had stated that a sub- inspector of police of Narcotics Cell, Detective Department came to the North Port Police Station and submitted one letter of complaint along with seizure list, arrest memo, inspection memo, other case documents with seized articles as also made over the custody of the accused person through the officer in charge North Port Police Station.

He had stated that the he drew up the formal First Information Report. He had tendered the First Information Report in evidence which was marked as Exhibit 14. He had stated how he had proceeded with the matter thereafter. He had identified his signatures on various documents and Material Exhibits which were already marked as Exhibits at the trial. He had identified the accused in Court. He had stated that, the Alamats were deposited at the Malkhana and that was entered into the Malkhana register being No. 92/2015. He had tendered the entry being No. 92/2015 in the Malkhana register as Exhibit 15. He had stated that, he had made over all the Alamats to the sub- inspector of police, Narcotics Cell, Detective Department. He had diarised the matter. He had tendered the general diary being No. 1637 dated September 25, 2015 as Exhibit 16. He tendered the general diary when the case was endorsed to him being No. 1635 dated September 25, 2015 as Exhibit 17.

17. Two independent witnesses who were present at the time of the seizure had deposed as PW-5 and 6. They had corroborated the testimony of the other prosecution witnesses with regard to the interception of the appellant and his arrest

including the seizure of the narcotics, its sampling and the steps taken by the police.

18. The investigating officer had deposed as PW-7. He had narrated how he conducted the investigations. He had identified the two bags containing the Ganja received by him from the Malkhana. He had stated that he had interrogated the sub- inspector of police involved in the interception and recorded his statement. He had interrogated the appellant. He had deposited the seized articles in the Malkhana. He had tendered the Malkhana entry as Exhibit 19. He had sent the samples for chemical examination on September 28, 2015 in terms of the order of the Court. He had tendered the requisition form in that regard which was marked as Exhibit 20. He had received the chemical report and thereafter submitted the chargesheet against the appellant on March 1, 2016.

19. All the prosecution witnesses had been elaborately cross-examined on behalf of the appellant. The appellant could not elicit anything favourable to him from such cross-examination of the prosecution witnesses at the trial.

20. The appellant had been examined under section 313 of the Criminal Procedure Code. The appellant had claimed that the police arrested him falsely from Sealdah station when he got down from Balia Sealdah Train at about 4 A.M when the train reached the station. He had claimed that the police had recorded his statement forcefully. He did not adduce any evidence in support of his defence. He did not produce any evidence to support the claim that he was arrested from Sealdah and not from the Howrah Bridge on the fateful day.

21. At the trial, the prosecution had been able to establish the following: –

- a) Police personnel of Narcotics Cell, Detective Department, acting on information that one male from Bihar would come with Ganja on September 25, 2015 around 7:30 PM and proceed along the northern side footpath of Howrah Bridge, conducted the raid, after obtaining necessary permission. Grant of permission will appear from Exhibit 3.
- b) The raiding team had intercepted the appellant on Howrah Bridge. A Gazetted Officer

was made available at the locale pursuant to request. The appellant was searched in presence of two independent witnesses and one black colour bag containing Ganja weighing 9.500 kg and another bag having combine colour of red and blue had been recovered from the right shoulder of the appellant Containing Ganja weighing 12.800 kg. The police had seized a total quantity of 22.300 Kgs of Ganja from the appellant.

- c) Small quantity of the material seized had been tested at the place of occurrence and it responded positive to Ganja
- d) Police had prepared a seizure list being Exhibit 6 of the material seized at the place of occurrence.
- e) PW-2 had collected samples weighing 100 grams from the two bags which he packed, sealed and labelled.
- f) Police had recovered nine packets wrapped with brown colour adhesive containing Ganja in

one bag which were tendered as Material Exhibit No. V to XIII.

- g) Police had also found one blue colour polythene packet affixed with cello-tape wrapped over newspaper containing Ganja which was marked as Material Exhibit No. XV
- h) Police had taken samples of the Ganja which was tendered in evidence as Material Exhibit No. III
- i) Police had arrested the appellant at the place of occurrence and the arrest memo had been marked as Exhibit No. 11.
- j) The seized materials had been deposited at the police Malkhana and entered into the register being 92/2015 which was marked as Exhibit No. 15.
- k) The first investigating officer being PW- 4 had made over the seized materials and the appellant and other related documents to the second investigating officer on September 25, 2015 and made a general diary entry being No.

1637 dated September 25, 2015 which was marked as Exhibit 16.

- l) PW-7 being the second investigating officer had sent the samples for chemical examination on September 28, 2015 after producing the appellant before the Court on September 26, 2015 and after the Court directed him to send the samples for chemical examination. PW-7 had received the chemical examination report which was produced in Court and marked as in Exhibit being Exhibit 1.
- m) Exhibit 10 being the written complaint containing three pages would show that PW-2 had taken small quantity of the contraband from each block to make the samples. He had made a sample of total 100 grams of the Ganja from the mother exhibits being all the blocks, packed, labelled and sealed the same. This procedure has been assailed on behalf of the appellant being violative of the standing instructions and the standing order.

22. The Standing Instruction 1/88 has been noticed in ***Bal Mukund (supra)***. In the facts of that case, it has been observed that there was nothing to show that samples of adequate quantity from each bag had been taken. It has been held that, taking adequate quantity of materials as samples from each bag was a requirement in law. Moreover, it has noticed that, the appeal was against a judgement of acquittal. It has observed that, the appeal court should not take a contrary view only because another view is possible. The acquittal of the accused therein, was not based mainly on the lack of adequate sampling but also on the voluntariness of the purported confessions and the other evidence on record.

23. The Standing Order 1/89 has been noted in ***Noor Aga (supra)***. It has noted that, in a previous decision of the Hon'ble Supreme Court reported ***2007 Volume 8 Supreme Court Cases 212 (Chief Commecial Manager, South Central Railway, Secunderbad and Other vs. G. Ratnam and Others*** with ***Divisional Commercial Manager South Central Railway, Secunderbad and Other vs. M. Subramanyam Devers*** with ***Union of India and Others vs.***

M. Anjaneyulu), where it was observed that such guidelines were not necessary to be complied with.

24. In **Sumit Tomar (supra)** the Supreme Court has negated the contention that the prosecution committed an irregularity by mixing up the contraband found in the bags and taking samples thereafter. In such circumstances, it has held as follows: –

“11. The next contention, according to the learned Senior Counsel for the appellant, is that the prosecution has committed an irregularity by mixing up the contraband found in the bags and taking samples thereafter. We find no substance in the said argument. The present appellant was driving the car in which two bags of contraband were loaded. He further pointed out that in view of Section 15(c) of the NDPS Act, which prescribes minimum sentence of 10 years and which may extend to 20 years where the contravention involves commercial quantity, the mixing of two bags is a grave irregularity which affects the interest of the appellant. We are unable to accept the said contention.”

25. In **Gaunter Edwin Kircher (supra)** two pieces of Charas weighing 7 grams and 5 grams had been seized. One of the pieces weighing less than 5 grams had been sent for chemical examination and the other piece weighing 7 grams was not sent nor was any part of it by way of sample sent for chemical analysis. Since no sample was taken from one of the

pieces seized, the Court has observed that, the concerned authority should send the entire quantity seized for chemical analysis so that there may not be any dispute regarding the quantity seized. If it was not practicable, in a given case, to send the entire quantity, then sufficient quantity by way of samples from each of the packets or pieces recovered should be sent to chemical examination. The factual scenario in the present case is completely different. Samples from each of the packets had been taken unlike the facts of **Gaunter Edwin Kircher (supra)**.

26. In the context of sampling and preservation of the seized articles under the Act of 1985, we should not lose sight of the pronouncement of the Supreme Court in **2016 Volume 3 Supreme Court Cases 379 (Union of India vs. Mohan Lal and another)**. It has been observed as follows: –

“18. 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.

19. Mr Sinha, learned Amicus Curiae, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification, etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time-frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any undue delay or procrastination as is mandated by sub-section

(3) of Section 52-A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.

20. The Narcotic Drugs and Psychotropic Substances Act, 1985 does not make any special provision regulating storage of the contraband substances. All that Section 55 of the Act envisages is that the officer-in-charge of a police station shall take charge of and keep in safe custody the seized article pending orders of the Magistrate concerned. There is no provision nor was any such provision pointed out to us by the learned counsel for the parties prescribing the nature of the storage facility to be used for storage of the contraband substances. Even so the importance of adequate storage facilities for safe deposit and storage of the contraband material has been recognised by the Government inasmuch as Standing Order No. 1 of 1989 has made specific provisions in regard to the same. Section III of the said Order deals with "Receipt of Drugs in Godowns and Procedure" which inter alia provides that all drugs shall invariably be stored in "safes and vaults" provided with double-locking system and that the agencies of the Central and the State Governments may specifically designate their godowns for storage purposes and such godowns should be selected keeping in view their security angle,

juxtaposition to courts, etc. We may usefully extract Paras 3.2 to 3.9 comprising Section III supra at this stage for ready reference:

“3.2. All drugs invariably be stored in safes and vaults provided with double-locking system. Agencies of the Central and State Governments, may specifically, designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.

3.3. Such godowns, as a matter of rule, shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godown within 48 hours of such seizure, with a forwarding memo indicating NDPS crime number as per Crime and Prosecution (C&P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total number of packages/containers, etc.

3.4. The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure I), shall hand over such acknowledgment to the investigating officer of the case along with the case dossiers for further proceedings.

3.5. The officer in charge of the godown, before accepting the deposit of drugs, shall ensure that the same are properly packed and sealed. He shall also arrange the packages/containers (case wise and lot wise) for quick retrieval, etc.

3.6. *The godown-in-charge is required to maintain a register wherein entries of receipt should be made as per format at Annexure II.*

3.7. *It shall be incumbent upon the inspecting officers of the various departments mentioned at Annexure II to make frequent visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drugs. The inspecting officers should record their remarks/observations against Column 15 of the Format at Annexure II.*

3.8. *The Heads of the respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.*

3.9. *Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of sub-section (2) of Section 52-A of the Act.”*

27. In 2002 Volume 4 Supreme Court Cases 380 (Khet Singh vs. Union of India) the Supreme Court has held that, the Standing Instructions issued by the Narcotics Control Bureau does not have the force of law. It has also held that, contraventions of the instructions, therefore, would not necessarily vitiate the conviction. **Khet Singh (supra)** has been taken into consideration by the Supreme Court in **2004 Volume 3 Supreme Court Cases 453 (State of Punjab vs.**

Makhan Chand). It has observed that, the Standing Orders were merely intended to guide the officer to see that fair procedure adopted by the officer-in-charge of the investigation.

28. Amani Fidel Chris (supra) has considered Standing Order No. 1/88 as also Standing Order No. 1/89. In the facts of that case, it has found that mixing the contents and then drawing the respective sample was not permissible under the Standing Orders. It has, however, not taken into consideration Clause 2.5 of the Standing Order No. 1/89 which speaks of packets/containers of identical sizes being bunched together in a lot of 10 and samples in duplicate being taken from such lots of ten.

29. Basant Rai (supra) has found discrepancies with regard to the deposit of the article seized with the Malkhana. In the facts of that case, the discrepancies had been found to be fatal to the case of the prosecution.

30. Edward Khimani Kamau (supra) has also found discrepancies and contradictions regarding the colour, smell and texture of the contraband recovered from the accused in the testimony of the witnesses. It has found discrepancies

between the evidence of the chemical examination and other prosecution witnesses.

31. In the facts of the present case, total ten packets were found – 9 packets in one bag and one packet in the other bag. It has come in evidence that, the raiding team had taken small quantity of contraband from each of the packets, tested the same with the test-kit taken to the spot and found all the quantities taken from each packet to be positive for presence of Ganja. Thereafter, a sample of total 100 grams of Ganja from all the bags had been prepared. The Jurisdictional Court had directed sending the samples for chemical examination by an order dated September 26, 2015. PW-7 had send the samples for chemical examination on September 28, 2015.

32. In the facts of the present case, we have not found any infraction either of the Standing Instructions or the Standing Order so as to infer that the appellants stood prejudice by the manner of sampling done.

33. It has been contended on behalf of the appellants that, the Malkhana Register was not marked as an Exhibit at the trial. We have found no substance in such contention. Commercial quantity of Ganja had been seized from the

appellant by PW-2. He had taken the samples from the seized commercial quantity of Ganja. PW-2 had prepared the seizure list. The seizure list had been marked as Exhibit-6. PW-2 had arrested the appellant and prepared the arrest memo. The arrest memo had been marked as Exhibit 7 at the trial. The inspection memo had marked as Exhibit 8 at the trial. The inventory list had been prepared by PW-2 and had been marked as Exhibit 9. PW-2 had handed over the seized article and the appellant to the PW-4. PW-4 had placed the seized articles in the Malkhana and entered the same in the Malkhana Register being 92/2015. The appellant had been kept in the lock up by PW-4. The Malkhana Register had been marked as Exhibit-15. Therefore, on intimation from the Deputy Commissioner, Detective Department, PW-4 had handed over the appellant and case related documents to another Sub-Inspector of Police. He had entered a General Diary to such effect which had been marked as Exhibit-16.

34. PW-7 had stated that, he had received the seized articulated from Malkhana which he tendered in evidence as Exhibit-15. PW-7 had sent the samples for chemical

examination on September 28, 2015. The carbon copy of the articles had been marked as Exhibit-20.

35. PW-1 had stated that, on September 28, 2015, he received the samples. He had tendered the chemical examination report which was marked as Exhibit-1 at the trial. Therefore, in the facts and circumstances of the present case, the non-production of the Malkhana Register at the trial cannot be said to be fatal to the case of the prosecution. Certified copy of the relevant entry had been produced at the trial. The chain of events from the seizure of the narcotics till the Chemical Examination Report had been established by cogent evidence at the trial.

36. It has been contended that, there are crucial discrepancies in the witnesses regarding the manner of sampling. We have found no substance in such contention. Evidence of PW-3, PW-5 and PW-6 cannot be said to have contradicted each other. The samples had been found to be positive to the test of Ganja by the laboratory as will appear from the report. The samples had been tested and the test report has been marked as Exhibit-1.

37. It has been contended on behalf of the appellant that there are significant discrepancies as to the timing of the occurrence. PW-2 had stated in his deposition about the time of occurrence which apparently is at variance with the time of occurrence that had been stated by the other prosecution witnesses. The blemish if there be any of the time given by the prosecution witnesses is not fatal. Contemporaneous documents establish that, the incident commenced in the morning of the fateful day. All other prosecution witnesses except PW-2 had corroborated each other with regard to the time. Documentary evidence placed at the trial corroborates the prosecution witness. The noon timings stated by the PW-2 is at variance with the other prosecution witnesses and documentary evidence and has to be considered as a minor blemish.

38. In view of the discussion above, we have found no ground to interfere with the impugned judgement of conviction and the order of sentence.

39. CRA 295 of 2020 2021 is dismissed. All connected applications including CRAN 1 of 2021 are disposed of accordingly.

40. Trial court records along with a copy of this judgement and order be transmitted to the appropriate court forthwith.

41. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[DEBANGSU BASAK, J.]

42. I agree.

[MD. SHABBAR RASHIDI, J]