

IN THE HIGH COURT OF ORISSA, CUTTACK

CRIMINAL APPEAL No. 346 of 2016

From the Judgment and Order dated 19.05.2016/20.05.2016
passed by the 3rd Additional Sessions Judge -cum- Special Judge,
Berhampur in 2(a)C.C No. 25/2015(N)/T.R. No. 18/2015.

Anand Vardaraj Summugabel
Pandaram

Appellant

-Versus-

State of Odisha

Respondent

For Appellant:

Mr. Jugal Kishore Panda
Mr. Bikash Karna

For Respondent:

Mrs. Susamarani Sahoo
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 27.07.2022

S. K. SAHOO, J. The appellant Anand Vardaraj Summugabel
Pandaram faced trial in the Court of learned 3rd Additional
Sessions Judge -cum- Special Judge, Berhampur in 2(a) C.C No.
25/2015(N)/T.R. No.18/2015 for offence punishable under

section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'N.D.P.S. Act') on the accusation that on 12.08.2015 at about 9.55 a.m. he was found in unlawful possession of one white colour jari basta containing 28 Kgs. 500 grams of ganja (cannabis), one white jari basta containing 19 Kgs. of ganja (cannabis) and one blue colour trolley bag containing 18 Kgs. of ganja (cannabis) in total 65 Kgs. 500 grams at S.B.I. Chhak, Berhampur in the district of Ganjam without any authority or licence in contravention of section 8 of the N.D.P.S. Act.

The learned trial Court vide impugned judgment and order dated 19.05.2016/20.05.2016 found the appellant guilty of the offence charged and he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- (rupees one lakh), in default, to undergo R.I. for one year.

2. The prosecution case, in short, is that on 12.08.2015 at about 6.30 a.m. while P.W.3 Arun Kumar Padhi, Inspector in-charge, E.I. & E.B., Berhampur was performing patrolling duty along with his staff, at that time, he received reliable information that one person has got down from the bus carrying ganja. P.W.3 recorded the information and intimated to his superior officer, i.e. Deputy Commissioner of Excise, Berhampur about

such information and proceeded to S.B.I. Chhak along with his staff and detected that the appellant was sitting on a jari basta and beside him, another jari basta so also one black colour trolley bag were kept. P.W.3 suspected the appellant to be carrying some contraband articles in the jari bastas so also in the trolley bag and was waiting for the arrival of the bus to transport the same. He disclosed his identity to the appellant and also apprised him about his right to be searched before a Gazetted Officer or a Magistrate. The appellant gave his option in writing to be searched by P.W.3. P.W.3 gave his personal search to the appellant in presence of the witnesses and then personal search of the appellant was taken and two jari bastas and one trolley bag containing ganja were seized and by opening the same, he took a handful of recovered articles from inside the jari bastas and the trolley bag one after another and by rubbing the same in his hand, from its smell, texture, colour and from his departmental experience of twenty two years, P.W.3 came to know that the articles contained in jari bastas so also the trolley bag was nothing but ganja. The weighment of the ganja was taken and one jari basta was found to be containing 28.500 grams of ganja, which was marked 'A', the other jari basta found to be containing 19 kgs. was marked as 'B' and the trolley bag

containing ganja was found to be 18 kgs. was marked as 'C' and as such, in total 65.500 grams of ganja was seized and the same was recovered from the possession of the appellant. Paper slips were attached to the jari bastas as well as to the trolley bag after its seizure and it was sealed by using the personal brass seal of P.W.3 and the brass seal was handed over in the zima of A.S.I. of Excise Bhagaban Mahanandia (P.W.2) by executing zimanama Ext.2/2. The seizure list (Ext.1/2) of two jari bastas and one trolley bag was prepared in presence of the witnesses in which all of them including the appellant signed and the contents of the seizure list was read over and explained to the appellant and copy of the seizure list was also handed over to him, which he received by putting his signature. P.W.3 prepared the spot map (Ext.3/2) and after explaining the grounds of arrest, the appellant was arrested by P.W.3. P.W.3 brought the appellant, the seized articles and all the documents and produced before the learned Sessions Judge -cum- Special Judge, Berhampur on 12.08.2015 itself with a prayer for drawal of samples from the seized articles. The appellant was remanded to judicial custody and the learned Special Judge directed the learned S.D.J.M., Berhampur for drawal of samples. In pursuance of such order passed by the learned Special Judge, the seized jari bastas and

the trolley bag containing ganja were produced before the learned S.D.J.M., Berhampur, who verified the seal, broke the seals of the jari bastas and trolley bag and drew samples in duplicate from the seized bags each containing 50 grams in total six packets and marked the sample packets as A1, A2, B1, B2, C1 and C2. The learned S.D.J.M. kept the broken seal in a separate envelope. The sample packets marked as A1, B1 and C1 along with the authorization letter of learned S.D.J.M., Berhampur were handed over to P.W.2 to be produced before the Asst. Chemical Examiner, D.E.C.T.L., Berhampur for chemical examination. The rest of the sample packets i.e. A2, B2 and C2 along with envelope containing the broken seal were kept in Court Malkhana and the bulk quantity of ganja in two jari bastas and one trolley bag were kept in the Excise Malkhana as per the order of the Court. P.W.3 submitted preliminary report to his superior authority on 13.08.2015 and on 17.08.2015 he received chemical examination report, which indicated that the sample packets A1, B1 and C1 were found to be containing ganja (cannabis) as defined under section 2(iii)(b) of the N.D.P.S. Act. P.W.3 requested his superior authority to return back the preliminary report for submission of final prosecution report and on 22.08.2015 he received the same and on completion of

investigation, he submitted prosecution report against the appellant under section 20(b)(ii)(C) of the N.D.P.S. Act.

3. The appellant was charged under section 20(b)(ii)(C) of the N.D.P.S. Act to which he pleaded not guilty and claimed to be tried.

4. During course of trial, the prosecution examined three witnesses.

P.W.1 Sunil Das is an independent witness and he did not support the prosecution case for which he was declared hostile by the prosecution and cross-examined.

P.W.2 Bhagaban Mahanandia was the A.S.I. of Excise, E.I. & E.B., Berhampur and he stated that he was performing patrolling duty with P.W.3 on the date of occurrence. He further stated about the seizure of contraband ganja from the possession of the appellant in two jari bastas as well as one trolley bag. He further stated about the test conducted by P.W.3 to come to a conclusion that the recovered articles were nothing but Cannabis and about taking zima of brass seal of P.W.3, which was used in sealing the jari bastas as well as trolley bag. He also stated that the appellant along with the seized articles were produced before the learned Special Judge, Berhampur and

the sample packets were handed over to him to be produced before the D.E.C.T.L., Berhampur.

P.W.3 Arun Kumar Padhi was the Inspector in-charge, E.I. & E.B., Berhampur, who not only conducted the search and seizure, but also investigated the case and submitted the prosecution report.

The prosecution exhibited twelve documents. Ext.1/2 is the seizure list, Ext.2/2 is the zimanama of brass seal, Ext.3/2 is the spot map, Ext.4/2 is the written option given to the appellant, Ext.5/2 is the written consent given by the appellant, Ext.6/2 is the drug testing chart, Ext.7/1 is the weighment chart, Ext.8/1 is the authorization letter of S.D.J.M., Berhampur, Ext.9 is the office copy of reason of belief, Ext.10 is the office copy of information sent to Deputy Commissioner of Excise, Ext.11 is the specimen of brass seal and Ext.12 is the C.E. report.

The prosecution also proved nine material objects. M.O.I is the brass seal, M.O.II is the jari basta containing 28 kg. 650 grams, M.O. III jari basta containing 19 Kg. ganja, M.O. IV is the blue colour trolley bag containing 18 kg. of ganja excluding the weight of bag, M.O.V is the sample packet A2, M.O.VI is the sample packet B2, M.O.VII is the sample packet C2, M.O.VIII is

the envelope containing broken seal and M.O. IX is the remnants of cannabis.

No witness has been examined on behalf of the defence.

5. The learned trial Court after analysing the oral as well as documentary evidence available on record, came to hold that section 42 of the N.D.P.S. Act has been complied with as copy of the information was sent to the Deputy Commissioner of Excise vide Ext.10. It was further held that even though the independent witness (P.W.1) has not supported the prosecution case, but he admitted his signatures on different papers and therefore, the contention raised by the learned defence counsel that independent witness was not present during search, cannot be believed. Learned trial Court further held that there is no discrepancy in the evidence of the official witnesses and in view of the evidence on record, it can be said that the appellant was transporting the contraband articles violating section 8 of the N.D.P.S. Act. After taking into account the report given by the Chemical Examiner, the learned trial Court came to hold that the prosecution has successfully established its case under section 20(b)(ii)(C) of the N.D.P.S. Act against the appellant.

6. Mr. Jugal Kishore Panda, Advocate being ably assisted by Mr. Bikash Karna, Advocate appearing for the appellant contended that the finding of the learned trial Court that section 42 of the N.D.P.S. Act has been duly complied with as copy of the information was sent to the Deputy Commissioner of Excise vide Ext.10, is not correct. It is argued that since no one from the office of the Deputy Commissioner of Excise has been examined and no document from the said office has been proved relating the receipt of Ext.10, it can be said that section 42(2) of the N.D.P.S. Act, which is mandatory in nature, has not been complied with and therefore, the entire prosecution case is vitiated. Learned counsel further argued that though P.W.3 has stated about preparation of preliminary report under section 57 of the N.D.P.S. Act, but such report has not been produced before the Court during trial and there is also no documentary evidence and no oral evidence except the statement of P.W.3 that such report was submitted to the superior authority in consonance with section 57 of the N.D.P.S. Act. It is argued that even though section 57 of the N.D.P.S. Act is not mandatory in nature, but the I.O. cannot totally ignore the same. It is further argued that there is non-compliance of the provision under section 50 of the N.D.P.S. Act and since P.W.3 is the officer, who

conducted search and seizure on receipt of reliable information, he should not have been the Investigating Officer of the case, which has caused serious prejudice to the appellant and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mrs. Susamarani Sahoo, learned Addl. Standing Counsel for the State, on the other hand, supported the impugned judgment and contended that even though independent witness has not supported the prosecution case, but in view of the settled position of law that on the basis of the evidence of the official witnesses, conviction can be sustained and since the evidence of P.Ws.2 and 3, who are the two official witnesses corroborated each other and no material discrepancies are found in their evidence and the evidence relating to search and seizure of contraband articles from the possession of the appellant is clear and cogent and the chemical examination report indicates that the seized articles were nothing but ganja, no fault can be found with the impugned judgment and the order of conviction and therefore, the appeal should be dismissed.

7. Adverting to the contentions raised by the learned counsel for the respective parties and after going through the evidence on record, there is no dispute that the prosecution

examined three witnesses during trial, out of which the independent witness P.W.1 Sunil Das has not supported the prosecution case. He stated that he did not know the appellant and while he was going on the station road, he was detained by the excise people and at their instance, he signed on some papers and he proved his signatures on those papers. The prosecution declared P.W.1 hostile and cross-examined him but except confronting the previous statement to him, nothing more has been brought out from his evidence. The defence also cross-examined P.W.1 and he admitted that he signed on plain papers when no one was present at the spot. Therefore, the evidence of P.W.1 is in no way helpful either to the prosecution or to the defence.

Evidentiary value of two official witnesses:

Coming to the evidence of the two official witnesses, i.e. P.W.2 and P.W.3, in the case of **Herasha Majhi and others -Vrs.- State of Odisha reported in (2020) 1 Orissa Law Reviews 39**, it is held that merely because the independent witnesses have turned hostile, the evidence of the police witnesses cannot be disbelieved. Conviction can be based solely on the testimony of the official witnesses; condition precedent is that the evidence of such witnesses must be reliable, trustworthy

and must inspire confidence. There is absolutely no command of law that the testimony of the police officials should always be treated with suspicion. Of course, while scrutinising the evidence, if the Court finds the evidence of the police officials as unreliable and untrustworthy, the Court may disbelieve them but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is based on the principle that quality of the evidence weighs over the quantity of evidence. The rule of prudence requires a more careful scrutiny of the evidence of the police officials, since they can be said to be interested in the result of the case projected by them. Absence of any corroboration from the independent witnesses does not in any way affect the creditworthiness of the prosecution case. Non-supporting of the prosecution case by the independent witnesses in N.D.P.S. Act cases is a usual feature but the same cannot be a ground to discard the entire prosecution case. If the evidence of the official witnesses which is otherwise clear, cogent, trustworthy and above reproach is discarded in such cases just because the independent witnesses did not support the prosecution case, it would be an impossible task for the prosecution to succeed in a single case in establishing the guilt of the accused. Therefore, the Court has

got an onerous duty to appreciate the relevant evidence of the official witnesses and determine whether the evidence of such witnesses is believable after taking due care and caution in evaluating their evidence.

Section 42 of the N.D.P.S. Act:

So far as the submission relating to non-compliance of the provisions under section 42 of the N.D.P.S. Act is concerned, in the case of **Ramakrushna Sahu and others -Vrs.- State of Orissa reported in (2018) 70 Orissa Criminal Reports 340**, this Court has held as follows :

“Law is well settled that total non-compliance with the provisions under sub-sections (1) and (2) of section 42 of the N.D.P.S. Act is impermissible and it vitiates the conviction and renders the entire prosecution case suspect and cause prejudice to the accused. Section 42 (2) of the N.D.P.S. Act states that when an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall send a copy thereof to his immediate official superior within seventy-two hours. Under section 42 (1), if the empowered officer receives reliable information from any person relating to commission of an offence under the N.D.P.S. Act that the contraband articles and incriminating documents

have been kept or concealed in any building, conveyance or enclosed place and he reasonably believes such information, he has to take down the same in writing. However, if the empowered officer reasonably believes about such aspects from his personal knowledge, he need not take down the same in writing. Similarly recording of grounds of belief before entering and searching any building, conveyance or enclosed place at any time between sunset and sunrise is necessary under the second proviso to sub-section (1) of section 42 of the N.D.P.S. Act if the concerned officer has reason to belief that obtaining search warrant or authorization for search during that period would afford opportunity for the concealment of evidence or facility for the escape of an offender. The copy of information taken down in writing under sub-section (1) or the grounds of belief recorded under the second proviso to sub-section (1) of section 42 of the N.D.P.S. Act has to be sent to his immediate superior official within seventy-two hours.

In case of **State of Punjab -Vrs.- Baldev Singh reported in 1999 (II) Orissa Law Reviews (SC) 474**, the Hon'ble Supreme Court while discussing section 42 of the N.D.P.S. Act, held as follows:-

"10. The proviso to Sub-section (1) lays down that if the empowered 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. Vide Sub-section (2) of Section 42, the empowered officer who takes down information in writing or records the grounds of his belief under the proviso to Sub-section (1), shall forthwith send a copy of his belief under the proviso to Sub-section (1) to his immediate official superior. Section 43 deals with the power of seizure and arrest of the suspect in a public place. The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting under Section 43 of the Act, the empowered officer has the power of seizure of the article etc. and arrest of a person who is found to be in possession of any narcotic drug or psychotropic substance in a public place where such possession appears to him to be unlawful."

The decision rendered in the case of **Baldev Singh** (*supra*) was further considered by a five-Judge Bench of the Hon'ble Supreme Court in the case of **Karnail Singh -Vrs.- State of Haryana reported in (2009) 44 Orissa Criminal Reports (SC) 183** wherein it was held in the concluding paragraph as follows:-

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

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

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed,

it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

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

(d) While total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the

official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

In view of such settled position of law, now it is to be seen whether the contention raised by the learned counsel for the appellant that there is non-compliance of the mandatory provisions under sections 42(1) and 42(2) of the N.D.P.S. Act is sustainable or not.

P.W.3 has stated that on 12.07.2015 while he was performing patrolling duty at S.B.I. Chhak, Berhampur along with his staff, he received reliable information that one person got down from the bus carrying ganja and he immediately

recorded information and intimated to his higher officer, i.e Deputy Commissioner of Excise, Berhampur about such information. He proved the office copy of the said reason of belief marked as Ext.9 (with objection) and the office copy of such information, which was received by the Steno Sri Mohapatra Babu of the Deputy Commissioner of Excise as Ext.10, the signature of Mahapatra Babu was marked as Ext.10/1 (with objection). The evidence of P.W.2, who was performing patrolling duty with P.W.3 is silent relating receipt of any reliable information, its recording by P.W.3 and intimation given to the superior officer, i.e. Deputy Commissioner of Excise. There is no material as to who carried Exts. 9 and 10 to the office of the Deputy Commissioner of Excise. P.W.3 has stated that he has not reflected in the PR that he had sent the Excise Constable Sri B.B. Nayak to his superior authority. The defence has suggested to P.W.3 that Ext.10 was not received by the Steno of Deputy Commissioner of Excise and that he had not sent the copy to the superior officer to which P.W.3 has denied. Admittedly, neither Mohapatra Babu, the Steno of Deputy Commissioner of Excise has been examined nor any other officer from the office of Deputy Commissioner of Excise has been examined to prove that Exts. 9 and 10 were received in the

office of the Deputy Commissioner of Excise. No official register has also been proved from such office relating to receipt of those documents. There is no signature of any one from the office of Deputy Commissioner of Excise in Ext.9. Therefore, not only there is absence of any corroboration to the oral evidence of P.W.3 relating to receipt of any reliable information or recording of such information or sending information in writing to the superior officer, but also there is no documentary evidence to that effect. The document should have been seized by the Investigating Officer from the office of Deputy Commissioner of Excise to corroborate the evidence of P.W.3. Unless the compliance of section 42 of the N.D.P.S. Act is proved by adducing cogent evidence, in appropriate cases the whole prosecution case becomes suspicious. Thus, in the factual scenario, in absence of proving the corresponding documentary evidence and adducing corroborative oral evidence, it is very difficult to hold that there has been compliance of mandatory provision of section 42 of the N.D.P.S. Act.

Section 50 of the N.D.P.S. Act:

Though some discrepancies were pointed out relating to compliance of section 50 of the N.D.P.S. Act, but law is well settled as held by the Constitution Bench of the Hon'ble Supreme

Court in the case of **State of Punjab -Vrs.- Baldev Singh and others reported in 1999 Criminal Law Journal 3672** so also the **State of Himachal Pradesh -Vrs.- Pawan Kumar and others reported in (2005) 4 Supreme Court Cases 350** that the provision of section 50 will come into play only in the case of personal search of the accused and not some baggage like the bag or container etc., which he may be carrying. A bag, briefcase or container etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Therefore, it is not possible to include these articles within the ambit of the word 'person' occurring in section 50 of the N.D.P.S. Act. Therefore, I am not able to accept the contention of the learned counsel for the appellant that in a case of this nature, there is requirement of compliance of section 50 of the N.D.P.S. Act.

Section 57 of the N.D.P.S. Act:

Coming to section 57 of the N.D.P.S. Act, it says that whenever any person makes any arrest or seizure under the N.D.P.S. Act, he shall, within forty-eight 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.

P.W.3 has stated that on 13.08.2015 he submitted the preliminary report to the superior authority and he further stated that he requested his higher authority to return back the preliminary report in order to submit the final prosecution report before the Court. The preliminary report has not been exhibited in the present case and there is neither any corroborative documentary evidence nor oral evidence regarding submission of such report before the superior authority.

In the case of **Gurbax Singh -Vrs.- State of Haryana reported in A.I.R. 2001 S.C. 1002**, it is held that it is true that the provisions under sections 52 and 57 of the N.D.P.S. Act are directory and violation of these provisions would not ipso facto vitiate the trial or conviction. However, I.O. cannot totally ignore the provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article.

In the case of **State of Punjab -Vrs.- Balbir Singh reported in A.I.R. 1994 Supreme Court 1872**, it is held that if there is non-compliance of the provision under section 57 of the N.D.P.S. Act or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the

appreciation of evidence regarding arrest or seizure as well as on merits of the case.

In the case of **Ghadua Muduli -Vrs.- State of Orissa reported in (2018) 71 Orissa Criminal Reports 413**, it is held that when the original report has not been produced and no competent witness from the S.P. office has been examined and no corresponding documents from the office of S.P. has been proved relating to receipt of the full report under section 57 of the N.D.P.S. Act, it is very difficult to accept that there is substantial compliance of such provision.

Therefore, in the case in hand, I am of the humble view that there is no acceptable evidence regarding compliance of section 57 of the N.D.P.S. Act.

Officer conducting search and seizure is the investigating officer :

The point raised by the learned counsel for the appellant that P.W.3 being the officer, who conducted search and seizure, should not have been the Investigating Officer of the case and it has caused serious prejudice to the appellant, has been adjudicated by the Constitution Bench of the Hon'ble Supreme Court in the case of **Mukesh Singh -Vrs.- State**

(Narcotic Branch of Delhi) reported in (2020) 79 Orissa

Criminal Reports (SC) 924 wherein it is held as follows :

"12. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

- I. That the observations of this Court in **Bhagwan Singh v. State of Rajasthan (1976) 1 SCC 15; Megha Singh v. State of Haryana (1996) 11 SCC 709**; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;
- II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and

circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of **Mohan Lal v. State of Punjab (2018) 17 SCC 627** and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

8. In view of the foregoing discussions, when the evidence relating to the mandatory compliance of section 42 of the N.D.P.S. Act is doubtful and there is no cogent evidence relating to compliance of section 57 of the N.D.P.S. Act and P.W.3 being the officer, who conducted search and seizure has also investigated into the case and submitted the prosecution report, I am of the humble view that the impugned judgment and order of conviction of the appellant under section 20(b)(ii)(C) of the N.D.P.S. Act and the sentence passed thereunder cannot be sustainable in law.

Accordingly, the Criminal Appeal is allowed. The appellant is acquitted of the charge under section 20(b)(ii)(C) of the N.D.P.S. Act. The appellant, who is in jail custody, shall be set at liberty forthwith, if his detention is not required in any other case.

Trial Court records with a copy of this judgment be sent down to the learned trial Court forthwith for information.

Orissa High Court, Cuttack
The 27th July 2022/PKSahoo

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S. K. Sahoo, J.

