

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.602 of 2021**

Arising Out of PS. Case No.-52 Year-2014 Thana- GOVERNMENT OFFICIAL COMP.
District- East Champaran

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MUNNA KHAN S/O LATE VIJALI KHAN Resident of Dhoom Nagar
Chawk, Narkatiyaganj, P.S.- Shikarpur, District- West Champaran

... .. Appellant/s

Versus

1. The State of Bihar
2. The Union of India through Assistant Commissioner, Land Customs
Station,Raxaul, East Champaran Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Vikash Kumar Pandey, Advocate Mr. Pratiyush Kumar, Advocate
For the UOI	:	Mr.Anshuman Singh, Advocate Mr. Manoj Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V JUDGMENT

(Per: HONOURABLE MR. JUSTICE JUSTICE RAJIV ROY)

Date : 28-06-2023

Being aggrieved by and dissatisfied with the judgment
and order dated 9.7.2021 passed by learned 3rd Additional
Sessions Judge, East Champaran at Motihari in NDPS Case No.
52 of 2014 arising out of CIS No. 526 of 2014 by which the sole
appellant was convicted for the offences punishable under
sections 20(b)(ii)(C) and 23(c) of the NDPS Act and further dated
17.7.2021 whereby and whereunder he was sentenced to undergo
rigorous imprisonment for 12 years and to pay a fine of Rs.



1,00,000/- (one lakh) for the aforesaid offence under sections 20(b)(ii)(C) and 23(c) of the NDPS Act and in case of default in payment of fine further R.I. for one year, the present appeal has been filed.

2. The matrix of the facts giving rise to the present appeal is/are as follows:-

3. Koshy Jacob (P.W.-1), Custom Inspector, Land Customs Station (as short the LCS), Raxaul is the complainant. He lodged official complaint alleging therein that during the course of routine check at LCS, Raxaul, on 2.8.2014 at around 12:30 hours, the officials of the customs noticed that three persons coming from Nepal side are wearing clothes which which do not deem appropriate for the summer season They were walking slowly on foot and were coming towards India side. The Officer intercepted them and enquired about their purpose of visit to Nepal to which their reply was that they had gone to Nepal for tourist purpose. However, on query, they could not give the details of the places visited by them. On further query as to why they were wearing jackets in the summer, no satisfactory reply was forthcoming.

4. On further query, they informed that 'Charas' is being strapped to the body. They gave their names as Munna



Khan (the appellant), Shukhal Mian and Bhatuna Mian. They were asked as to whether they wanted themselves to be checked by the Superintendent of Customs or any Magistrate to which they stated that they have no problem in getting themselves checked by the Superintendent of Custom, Raxaul. Accordingly, they were produced before Ajay Kumar Sinha (P.W.-13) the Superintendent of Custom, LCS, Raxaul for conducting physical check in the presence of two independent witnesses.

5. On through checking of the body from the appellant Munna Khan, it was found that on the cotton waist jacket of his body having pockets contained 12 plates wrapped in light brown adhesive taps. Upon removal of the tap from the pocket, blackish plates in moist condition (believed to be 'Charas') were recovered. The total weight of the 12 packets was 6 (six) kgs. Accordingly, the appellant was arrested.

6. Thereafter, the 'Panchnama' was prepared which was proved by the witnesses, Rabindra Kumar (P.W.-6) and Sunil Thakur. The appellant as well as the witnesses signed/put thumb impression on the seizure list, a copy of which was given to the accused Munna Khan.

7. The voluntary statement of the accused Munna Khan was taken and subsequently the six samples were drawn by the



complainant from the recovered/seized articles and were sent to Chemical Laboratory, Custom House, Kolkata for examination. The test report came on 11.8.2014 and the same was found to be 'Charas'.

This led to institution of Complaint Case No. VIII(10) 22/seiz/RXL/2014/4760.

8. Subsequently, the cognizance was taken under sections 20(b) (ii) (C), 21, 22, 23 and 24 on 6.11.2014. Further, charge was framed on 24.11.2014. The prosecution in support of their case produced the following witnesses.

1. Koshy Jacob **(P.W.-1)**
2. Sudhir Kumar **(P.W.-2)**
3. Manoranjan Singh **(P.W.-3)**
4. Ravi Ranjan Kumar Sinha, **(P.W.-4)**
5. Mukesh Prasad Sinha, **(P.W.-5)**
6. Ravindra Kumar Chaubey **(P.W.-6)**
7. Nalini Kumar Singh **(P.W.-7)**
8. Sudhendu Kumar Singh **(P.W.-8)**
9. Vinod Kumar Gupta **(P.W.-9)**
10. Ashok Kumar, **(P.W.-10)**
11. Arjun Dom **(P.W.-11)**
12. Rajendra Kumar Keshari **(P.W.-12)**



13. Ajay Kumar Sinha (P.W.-13)

Further on behalf of the prosecution, the following documents were marked as exhibits.

Exhibit-1- Panchnama dated 2.8.2014 with objection.

Exhibit-2 -Seizure list with objection.

Exhibit-3 – Voluntary statement of the accused without objection.

Exhibit-4 – Summon to accused.

Exhibit-5- Test paper dated 11.8.2014.

Exhibit-6 – Official complaint.

Exhibit-7–Interrogatory statement of accused Munna Khan.

Exhibit-8 – Attested copy of certification.

Exhibit-9 – Attested copy of destruction.

9. P.W.1 Koshy Jacob is the complainant in this case.

According to his deposition, during routine preventive check near India-Nepal custom border, he saw three persons coming to India from Nepal. Their activity was found to be suspicious. Upon query, they stated to have gone to Nepal for tourist purpose. Further, upon confirmation by them that they are carrying 'Charas' on another query whether they want to be searched before the Customs of Superintendent or a Magistrate, they accepted to be searched by the Customs of Superintendent. Thereafter, along with two independent witnesses Rabindra Kumar Mandal and Sunil Thakur, they were taken to the Customs Superintendent Office.



10. In the presence of Ajay Kumar Sinha (P.W.-13) search was conducted and 12 pockets were found inside the pockets of the jacket of accused Munna Khan. When the packets were opened, semisolid materials were found which appeared to be 'Charas' and the total weight was found to be six kgs.

11. Further, the P.W.-1 took out some quantity from the recovered packets and six representative samples were prepared. The 'Panchnama' was prepared which was proved by the witnesses namely 'Katib' Rabindra Kumar Mandal and Sunil Thakur and thumb impression of accused Munna Khan was taken. (Ext.-1). It was further deposed by him that the 12 recovered packets were seized and seizure list prepared (Ext.-2). Later, the samples drawn were sent to the Chemical Laboratory Custom House, Kolkata and the report proved that seized materials were 'Charas' (Ext.-5). Thereafter, the official complaint was filed in the Court (Ext.6).

12. In the cross examination, the P.W.-1 stated that the articles recovered were touching his body and covered by clothes. He further accepted that before searching, the accused-appellant was not asked in writing as to whether he wanted to be searched before the Gazetted Officer or a Magistrate. He further accepted that before making search of the accused, no paper was



prepared regarding his own search.

13. The P.W.-1 further accepted that there is no certificate to show that the voluntary statement made by accused was read over and explained to him and finding the same to be true, he put his thumb impression. It was his deposition that he had taken out some samples from the recovered 12 packets and mixed all the samples together and prepared six packets of samples on which numbers were given and the same were signed and sealed by him. He further deposed to have signed all the recovered 12 packets of 'Charas'.

14. He however accepted that the 'Charas' has not been produced before the Court although it was deposited in the godown of the department. He further showed his ignorance about the fact whether the recovered articles were destroyed or not, as according to him, he was transferred.

15. He again accepted that the recovered articles were never produced before the Court rather it was deposited in the godown, Raxaul. Further, no receipt was taken from him though it was mentioned in the godown register, the same was not produced in the Court. He further deposed that out of six packets, three packets of samples were deposited with the godown Incharge.



16. **P.W.-2**, Sudhir Kumar who was also posted as Superintendent at Raxaul Custom check post deposed in line with the P.W.-1 narrating that on suspicion, the accused persons were detained and later they were moved to the Custom Office where he was searched before the Custom Superintendent, Ajay Kumar Sinha and two independent witnesses and from the accused herein, total 12 packets with materials like 'Charas' was/were recovered/seized and the total weight was 6 (six) kgs. It was his further deposition that the samples were taken and sent for examination which was found to be 'Charas'.

17. In the cross-examination, the P.W.-2 accepted that the seizure list was given to the accused-appellant in English. He further gave the weight of each samples to be 40-50 grams. He however, could not say the number of samples that was prepared.

18. Next in line was **P.W.-3** Manoranjan Singh, Superintendent of Custom, Raxaul. According to him, he got order of Assistant Commissioner, Custom, Raxaul on 3.8.2014 to take the accused-appellant Munna Khan to Motihari Court in judicial custody. Subsequently, he produced the appellant before the Court from where he was sent to jail.

19. **P.W.-4** Ravi Ranjan Kumar Sinha was posted as Custom Inspector at Raxaul Custom. According to him, they



found three persons coming from Nepal side wearing jackets in the summer season. As it created doubt, they were detained and the reply was not forthcoming. They were asked whether they wanted to be searched before the Gazetted Officer or Magistrate to which they gave their approval to be searched by Custom Superintendent. They were taken to Custom Preventive Room by P.W.-1 Koshy Jacob alongwith the two independent witnesses.

20. On removing the jacket and shirt from the body of Munna Khan, 12 small packets were recovered/seized which were found to be 6 (six) kgs. The packets were seized and some quantity were taken as samples and sent to Kolkata for test. According to him, the accused Munna Khan was wearing grey colour jacket.

21. **P.W.-5** Mukesh Prasad Sinha, another Custom Inspector posted at Raxaul Custom Station deposed on the same line. In his cross-examination, he stated that the recovered/seized packets were kept in godown but he did not remember the serial number nor the name of the Godown Inspector.

22. **P.W.-6** Ravindra Kumar Choubey was posted as Custom Inspector at Raxaul. He has deposed in the similar manner and in his cross examination further deposed that the samples taken were 25 grams and it took 10-11 hours to



complete the process.

23. The **P.W.-7** Nalini Kumar Singh is the Custom Inspector, Raxaul and he has also narrated the same way. In his cross-examination, he stated that he was there only for few hours, during that period the paper work was not done.

24. **P.W.-8** Sudhendu Kumar Singh, is the another Custom Superintendent and has also narrated the same theory.

25. **P.W.-9** Vinod Kumar Gupta, Custom Superintendent has made statement on the same line.

26. **P.W.-10** Ashok Kumar was posted as Inspector in Custom Office. According to him, the apprehended persons were searched wearing jackets which created doubt as it was summer season and then in the presence two independent witnesses, they were asked whether to be searched by a Magistrate or a Gazetted Officer. As they became ready to be searched by the Gazetted Officer, were taken to the office of Superintendent Ajay Kumar Sinha and upon search 6 (six) kgs of 'Charas' was recovered from the possession of accused Munna Khan. Further, three samples each of the 50 grams were prepared. According to this witness, three packets of samples were prepared of 50 grams each totalling 150 grams was/were taken which was sealed by the complainant, P.W.-1 Koshy Jacob on which both P.W.-1 and the



independent witness put in their respective signatures as also the thumb impression of accused Munna Khan was taken. Further, in his cross-examination in para-14 he stated that the weight of the rest of the articles after taking out the samples 5.850 grams.

27. **P.W.-11** Arjun Dom was at the Raxaul Custom Office and according to him 6 kgs 'Charas' was recovered from the accused Munna Khan.

28. **P.W.-12** Rajendra Kumar Keshari, the Custom Inspector of Raxaul has also deposed the same story.

29. **P.W.-13** Ajay Kumar Sinha, was posted as a Custom Superintendent of Raxaul in whose presence the accused Munna Khan was searched. According to him, the complainant, Koshy Jacob searched accused Munna Khan and recovered 12 packets. On query, the accused described it as 'Charas' which was to be delivered at Bettiah. It was weighed 6 (six) kgs. Further, on the seizure list, signature of the witnesses as also LTI of accused was taken.

30. On the other hand, the case of the defence was total denial. According to the defence counsel, mandatory provisions of Section 50 of the NDPS Act was not followed and the accused was not apprised of his legal and constitutional rights as it was mandatory to ask the person in writing about the



option of being searched by the Gazetted Officer or a Magistrate which was admittedly violated as the P.W.-1 himself accepted that no written query was made under section 50 of the NDPS Act.

31. The further case of the defence counsel was that again Section 52(A) of the NDPS Act was violated and representative sample was not drawn from the presence of the Judicial Magistrate. Further, when 150 grams samples were taken out from the six kgs, only 5.850 grams remained which has also been deposed by one of the witness (P.W.-10). However, from the exhibits that has been certified on 20.11.2014, the material has been shown as 6 (six) kgs which according to the prosecution was destroyed on 16.2.2015/17.2.2015. It clearly mentions that no sample was drawn from alleged seized materials and the appellant-accused was wrongly implicated in this case.

32. In other words, the defence counsel argued that nothing was recovered from the appellant and he was wrongly made accused on the basis of fake documents just to get reward from the government under section 76(d)(g) of the NDPS Act. Further, the case of defence counsel was that all the documents were prepared in English and the appellant was made to put in his LTI without providing any details that the same was read over



and explained to him which he understood correctly and thereafter put his LTI.

33. Further, the case of the defence counsel was that the all the officials are interested witnesses as their officials are custom officials. Further, even the witnesses which has been put forward as independent witnesses cannot be said to be independent witnesses as the word 'Katib' has been used with one Rabindra Kumar Mandal.

34. Learned Special Public Prosecutor on the other hand submitted that all the 13 prosecution witnesses have consistently supported the theory and the report that came from Kolkata also confirmed seized articles to be 'Charas' and as such he should be given severe punishment.

35. The Special Court after going through the depositions, the submissions put forward by the Special Public Prosecutor as also the defence counsel, finally vide an order dated 09.07.2021 convicted the appellant under section -20(b)(ii) (C) and 23(c) and further vide order dated 17.7.2021 sentenced him to under rigorous imprisonment for 12 years and to pay a fine of Rs. 1,00,000/- (one lakh) for the aforesaid offence under sections 20(b)(ii)(C) and 23(c) of the NDPS Act and in case of default in payment of fine further R.I. for one year.



36. Aggrieved, the present appeal.

37. Heard the parties.

38. Mr. Vikash Kumar Pandey, learned counsel for the appellant submits that a bare perusal of the entire facts clearly shows that right from time the appellant was intercepted, all the rules of the NDPS Act were flouted. According to him, it is an admitted fact that Section 50 of the NDPS Act was not followed inasmuch as by their own admission, it has been accepted that the appellant was not asked in writing whether to be searched by a Gazetted Officer or a Magistrate which clearly violated the section 50 of the NDPS Act.

39. Further, the seizure list and voluntary statement was prepared in English and there is nothing on record that before the LTI of accused Munna Khan was taken he was made to understand its contents.

40. Next contention of the learned counsel for the appellant is that even Section 52(A) of the NDPS Act was violated inasmuch as the samples were drawn by the Custom officials/P.W.-1 Koshy Jacob on his own without the mandatory provisions that the same has to be drawn in the presence of a Magistrate.

41. Learned counsel further submitted that admittedly



50 grams each of the six packets of representative samples were prepared and as such the total weight finally should have been 5.700 grams. According to him, P.W.-1 Koshy Jacob has admitted that six representative samples were prepared. It is his further submission that though some of the P.Ws./official witnesses have stated that 50 grams of each samples were prepared and total weight then was 5.850 and thus under no circumstances, the total weight could have remained 6 kgs. Thus it is clear that no representative samples from the alleged seized materials were drawn and/or sent to the Chemical Laboratory, Kolkata and only to implicate the present appellant, this false narration has been given.

42. It is his further submission that even the deposition of different custom officials who have been put forward as P.Ws. are inconsistent inasmuch as while some deposed that six representative samples were drawn, the other claimed that only three representative samples were drawn. Further, there is nothing on record to show where rest of the representative samples which were not sent were kept as was mandatory to be destroyed along with seized materials.

43. Learned counsel further submitted that the seized 'Charas' was never produced before the Court and as per the his



own deposition, the P.W.-1, complainant deposed that although the seized materials were given to Custom Godown Incharge, Raxaul but no receipt was taken. He further deposed that it was inscribed in godown register but no such godown register was ever produced before the Court. It is his last submission that the an innocent person has been framed by the custom officials and he has suffered by remaining in custody for the last nine years.

44. Mr. Anshuman Singh, learned counsel representing the Custom Department on the other hand submits that all the mandatory provisions of the NDPS Act was/were followed. He further submits that the appellant was orally asked whether to be searched by the Superintendent of Customs or a Magistrate and only after his agreement to be searched by the Gazetted Officer, he was taken to near by Custom office where in the presence of P.W.-13 Ajay Kumar Sinha, search procedure was done.

45. His further submission is that upon search of the body of accused Munna Khan, the 'Charas' was recovered/seized. It weighed 6 kgs and 'Panchnama' was prepared signed by P.W.-1 as also independent witnesses and the LTI of accused Munna Khan was taken.

46. He further submits that subsequently the P.W.-1 prepared representative samples and the same was dully



forwarded to the Kolkata Lab and the report proved that the same was 'Charas'. He further submits that although the seized materials were not produced before the Court, the destroying certificate was made available to the Court.

47. The further submission is that there may be some minor discrepancy in not producing godown register and/or no entry about the remaining representative samples, that cannot weaken the prosecution theory which is open and shut case where the appellant was found to be in possession of 6 kgs of 'Charas' and accordingly the learned Sessions Court rightly convicted the appellant and sentenced him to rigorous imprisonment as recorded.

48. We have heard both the sides and have gone through the entire prosecution theory. The case of the prosecution is that upon having found the movement of the accused Munna Khan amongst other to be suspicious, as he was coming from Nepal side to India side and was further asked orally as to whether to be searched by a Gazetted Officer or a Magistrate. The section 50 of the NDPS Act clearly envisages an Officer authorized under section 42 of the said Act to inform the person apprehended of his right to be searched before a Gazetted Officer or a Magistrate which should have been inscribed in writing.



49. Further, section 52(A) of the NDPS Act reads as follows:

"52A. Disposal of seized narcotic drugs and psychotropic substances.—(1) *The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, 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 drugs, psychotropic substances, controlled substances or conveyances] 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 4[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] 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 4[narcotic drugs, psychotropic substances, controlled substances or conveyances] 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, substances or conveyances 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) Where 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 1972) 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."

50. This Court has thus taken note of Section 50A(2)(c) of the NDPS Act which clearly envisages that the sample has to be drawn in the presence of a Magistrate who will certify its correctness.

51. Admittedly, the case of the prosecution is that it was P.W.-1 who took the representative samples from the seized materials and prepared six packets some of which were sent to the Kolkata Chemical Laboratory for examination

52. The Hon'ble Apex Court in the case of **Union of Indian Vs. Mohanlal & Another** reported in **(2016) 3 SCC 379** has clearly held that in absence of the following of the section 52(A) of the NDPS Act, the accused persons are entitled for the relief:



53. It would be appropriate to incorporate paragraph nos.-14 to 17 of the **Mohanlal** (supra) case which are as follows:-

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

"52-A. 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."

15. It is manifest from Section 52-A(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.

16. 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.

17. 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-sections (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.

54. This Court also finds force in the submission put forward by the learned counsel for the appellant that when 50 grams of six representative samples were drawn the weight of the seized products has to go down and thus six kgs of 'Charas' could not have been destroyed and there was definitely lacuna on this account also. Further, the seizure list as also the voluntary statement of the accused-appellant Munna Khan were prepared in English and the LTI of the appellant was taken. The document does not show that the content of the said document were read



over and explained to him which he understood correctly.

55. Further, immediately after the seizure, and once the legal procedure is completed, the seized materials has to be deposited with the nearest police station as defined in section 52 of the NDPS Act. However, in the present case, P.W.-1 himself has accepted that it was handed over to the customs godown and no receipt thereof was taken. He further deposed that in the godown register it was incorporated but again the said godown register was never produced before the Court.

56. Lastly, as observed in earlier paragraphs, withdrawal of representative samples complainant without the presence of the Magistrate nullifies the entire prosecution story.

57. It is important to note that although three persons namely Munna Khan, Shukhal Mian and Bhatuna Mian were intercepted, later the prosecution completely got the said two names out of the picture and we do not know either about any recovery/seizure made and/or whether they too faced trial or not.

58. Taking into account the aforesaid facts, it is clear that the prosecution has completely failed to prove its case beyond the reasonable doubts. The appellant in the aforesaid circumstances is entitled for the benefits of doubt.

59. In the result, the judgment of conviction order



dated 09.07.2021 passed by the learned 3rd Additional Sessions Judge, East Champaran, Motihari in connection with the NDPS case no. 52 of 2014 (arising out of CIS No. 526 of 2014).and the order of sentence dated 17.7.2021 by which he has been directed to undergo rigorous imprisonment for 12 years and pay a fine of Rs. 1,00,000/- for the offences under sections 20(b)(ii)(C) and 23(C) of the N.D.P.S. Act relating to the sole appellant herein is set aside.

60. The Criminal Appeal (DB) No. 602 of 2021 is allowed and the appellant is acquitted of all the charges under sections 20 (b)(ii) (C) and 23 (C) of the N.D.P.S. Act.

61. The appellant is in custody. Let him be released forthwith, if he is not wanted in any other case.

62. The appeal stands allowed.

(Rajiv Roy, J)

(Chakradhari Sharan Singh, J)

(Chakradhari Sharan Singh, J)

Ravi/Kiran

AFR/NAFR	NAFR
CAV DATE	18.05.2023
Uploading Date	10.07.2023
Transmission Date	10.07.2023

